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April 25, 2024

memorandum

To  
Mountain View Rental Housing Committee

From  
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee  
Nazanin Salehi, Special Counsel to the Rental Housing Committee

RE  
Appeal of Hearing Officer's Decision Re: Petition Nos. C23240003 and C23240004

**RECOMMENDATION**

To consider the Tentative Appeal Decision and either accept the Tentative Appeal Decision or modify the Tentative Appeal Decision with instructions to staff citing appropriate evidence in the record to support the changes.

**BACKGROUND**

The instant appeal arises out of two tenant petitions for downward adjustment of rent ("Petitions") based on unlawful rent and failure to maintain a habitable premises. The hearing on the Petitions was held on November 8, 2023. The Hearing Officer's Decision was issued and served on the Parties on February 15, 2024 ("HO Decision").

**Table 1: Relevant Timeline**

<b><u>Date</u></b>	<b><u>Action</u></b>
August 25, 2023	RHC accepted Petition Nos. C23240003 and C23240004
October 18, 2023	Pre-hearing telephone conference held
October 19, 2023	Written Summary of Pre-hearing Conference and the Hearing Officer's Request for Documents served on parties
November 8, 2023	Hearing held and closed
November 20, 2023	Hearing Record closed

February 15, 2024	HO Decision delivered
February 15, 2024	HO Decision served on the Landlord and Tenant
March 1, 2024	Appeal submitted by Appellant-Landlord
April 15, 2024	Tentative Appeal Decision issued
April 25, 2024	Appeal hearing before the Rental Housing Committee

The first Petition requested a rent rollback and rent refund on the basis that (a) the Landlord calculated the Tenant's Base Rent incorrectly based on concessions provided during the initial term of the tenancy, (b) the Landlord improperly imposed the 2021 Annual General Adjustment, (c) the Landlord began charging the Tenant for Utility Charges more than a year after Petitioner moved in, and (4) the Landlord began improperly charging the Tenant for renters' insurance. The second Petition requested a rent refund and ongoing rent reduction on the basis that Landlord had (1) failed to maintain the property in a habitable condition based on the glazing peeling off the sinks, shower and bathtub, a leaking faucet and toilet, and overflowing of trash attracting vermin, and (2) reduced Housing Services based on trash bins regularly blocking Tenant's assigned parking spot, the condition and unavailability of the laundry facilities on the Property, the unavailability/closure of the pool due to a broken gate, and a tenant portal for reporting maintenance issues that did not allow for communication between the property managers and tenants after initial request.

The Hearing Officer determined that Petitioner-Tenant had met her burden of proof that Respondent-Landlord had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because Landlord (a) had not included 10 months of concessions in the calculation of the Base Rent, (b) thereafter imposed the 2021 AGA on the incorrect Base Rent, and (c) had improperly began charging Tenant for Utilities (and associated late fees) more than a year after the initiation of the tenancy. The Hearing Officer determined that the Tenant had not met her burden of proof had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA as it related to charges for renters' insurance. Based on the foregoing, the Hearing Officer awarded the following:

- Petitioner's Base Rent should have been determined by adding all of the rents actually paid by Petitioner in the first twelve (12) months of her tenancy – two (2) months of \$2,695.00 and ten (10) months of \$2,291.00 – and then dividing the sum (\$28,300.00) by twelve (12) for a Base Rent of \$2,358.33.
- Petitioner was entitled to a rent refund of \$4,686.84 for the 12-month period from September 2022 through August 2023, a rent refund of \$1,171.71 for the 3-month

period after she filed her petition, and a rent refund for any months after December 2023 for which she pays more than the lawful Base Rent of \$2,358.33.

- Petitioner was entitled to a rent refund of \$956.63 for the period from October 2022 through the date of the hearing as well as refund of any Utilities Charges paid through the date that the HO Decision became final. Petitioner was entitled to an additional \$300 refund of late fees charged due to unpaid Utility Charges that were determined to be unlawful in this petition.

As it relates to the second Petition, the Hearing Officer determined Landlord was liable for a reduction in the habitability of the Property for the period from January 2023 through the date of the decision based condition of the shower, bathtub and sinks in the Property. The Hearing Officer also concluded that the Tenant had met her burden of proof to demonstrate that the Landlord had failed to improperly address the leaking toilet and faucet. On a related note, the Hearing Officer determined that Landlord had not demonstrated Tenant was responsible for the clogged toilet resulting in an \$850 plumbing bill, and therefore the Landlord was must refund the Tenant the remaining balance of \$400 for the plumbing bill Landlord had imposed. Tenant further met her burden of proof that Housing Services had been improperly reduced without a corresponding decrease in rent because (a) the dumpsters regularly blocked and prevented access to her assigned parking spot and (b) the laundry facilities were in an unusable, unsanitary and unavailable condition. The Hearing Officer concluded the Tenant had not demonstrated an improper reduction in Housing Services based on the pool closure. Based on the foregoing, the Hearing Officer awarded the following:

- Petitioner was entitled to a rent refund of \$100 per month, or \$1,200 total, for the period from January 2023 through December 2023 as well as an ongoing rent reduction of \$100 per month until the glazing issue was adequately addressed by Respondent.
- Petitioner was entitled to a rent refund of \$25 per month, or \$200 total, for the period from May 1, 2023 through December 2023, as well as an ongoing rent reduction of \$25 per month until the sink and toilet were repaired.
- Petitioner was entitled to a \$100 per month rent refund, or a total of \$3,500, for the period 35-month period from February 1, 2021 through December 2023, as well as an ongoing rent reduction of \$100 per month until proper access to her assigned parking spot was restored.
- Petitioner was entitled to a rent refund of \$50 per month, or \$950 total, for the period from June 1, 2022 through December 2023, along with an ongoing \$50 per month rent reduction until fully accessible, clean and safe laundry facilities were provided to the tenants.

Appellant-Landlord raised the following seven issues on appeal:

- A. The Hearing Officer erred or abused her discretion by concluding that Landlord had not addressed the glazing issue and was therefore liable to the Tenant.
- B. The Hearing Officer erred or abused her discretion by finding that the trash overflow of the dumpsters was an issue.
- C. The Hearing Officer erred or abused her discretion by finding there was a reduction in Housing Services due to the Tenant's parking spot being blocked by the dumpsters.
- D. The Hearing Officer erred or abused her discretion in concluding that the Landlord was required to reimburse the Tenant for the remaining balance of the plumbing bill.
- E. The Hearing Officer erred or abused her discretion in determining that the Landlord had to reimburse the Tenant for the closure of the pool.
- F. The Hearing Officer erred or abused her discretion in the reaching the conclusion that the Landlord had not adequately addressed the condition or availability of the laundry facilities.
- G. The Hearing Officer erred of abused her discretion in concluding the CSFRA Regulations regarding rent concessions were applicable to the instant case.

All other elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section C of this report below. All parties to the Appeal are entitled to respond to the Tentative appeal Decision. Responses to the Tentative Appeal Decision were due on April 19, 2024. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

## **ANALYSIS**

### **A. Role of the RHC**

The role of the RHC is not to re-weigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal "*de novo*" pursuant to Regulation Chapter 5, Section H.5.a. *De novo* review would require the RHC to open the hearing record and hold a new, formal hearing. Staff does not recommend *de novo* review for this appeal, because there is sufficient evidence in the record on which the Committee may base its decision.

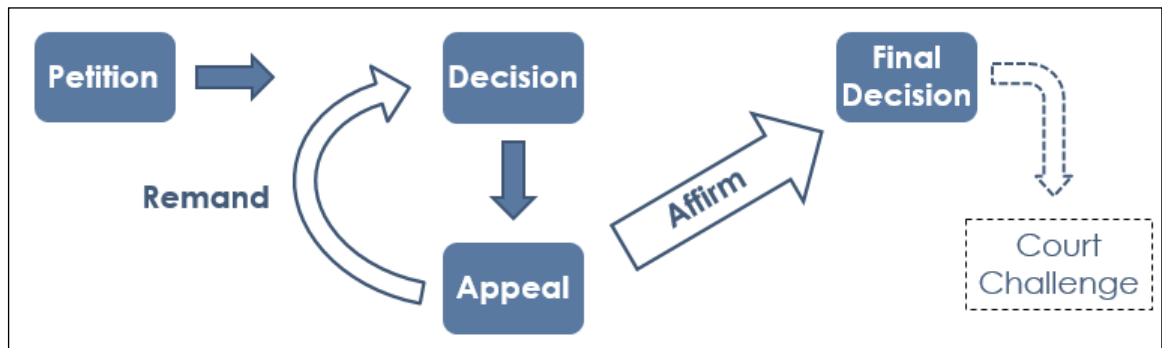
For questions of law (including statutory interpretation), the RHC must exercise its independent judgment without assuming that the Hearing Officer's ruling is correct or affording deference to the Hearing Officer's interpretation. Even though the RHC exercises its independent judgment, its review is still based on the evidence in the record for the petition hearing.

For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and appeal court: the trial court drafts a decision after weighing all the evidence and the appeal court reviews the decision to verify whether the decision was adequate. Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does not mean that RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the hearing.

### **B. Review: Affirming, Reversing and/or Remanding the Appealed Element of the Decision After Remand**

Petitions define the scope of the Hearing Officer's review. Appeals define the scope of RHC review of the Hearing Decision. The portions of the Hearing Decision that were not appealed by any party are considered final. The Tentative Appeal Decision reviews only those portions of Hearing Decision that were appealed by the parties.

The process for an appeal can result in multiple appeal hearings before the RHC if a Hearing Decision is remanded to the Hearing Officer. A summary graphic visualizing the appeal procedure is provided below.



**Graphic 1 Visualization of Appeal Procedure**

### **C. Tentative Appeal Decision - Appeal Elements**

The Tentative Appeal Decision recommends affirming the Hearing Decision in its totality. In summary:

- A. Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion in determining that the Landlord had not addressed the reglazing issue because the Landlord attempted to address the issue but the repairs were denied by Tenant. However, at the hearing, the Hearing Officer considered the argument that the

Tenant had refused reglazing by the Landlord, and determined that because the bathtub, shower and sinks had previously been reglazed twice, Tenant was not obligated to allow the Landlord to repeat repairs that had been unsuccessful. There is sufficient evidence in the record to support this conclusion because testimony from both Tenant and Landlord's representatives and documentary evidence of the text conversations between the Parties demonstrated that the Landlord sought to reglaze, rather than replace, the bathtub, shower and sinks despite the fact that prior reglazing efforts by Landlord's predecessor in interest were unsuccessful.

- B. Appellant-Landlord contends that the Hearing Officer erred or abused her discretion by finding that the overflow of trash in the dumpsters was an issue because Landlord established at the Hearing that they had addressed this problem by hiring a new waste management company. However, the Hearing Officer did not find that the Petitioner had met her burden of proof with regard to this issue and did not award the Tenant any refund or reduction based on this issue. As such, the Tentative Appeal decision does not address the Landlord's arguments related to this issue.
- C. Appellant-Landlord contends that the Hearing Officer erred or abused her discretion by concluding that there was an improper reduction in Housing Services based on access to the Tenant's assigned parking spot being blocked by the dumpsters every week. Specifically, Landlord argues that the Tenant only reported this issue a handful of times, that Landlord promptly addressed the issue anytime it was raised, and that Landlord took proactive steps to resolve the issue when it persisted by hiring a new waste management company. However, the evidence in the record is clear that the issue persisted for nearly the entirety of Petitioner's tenancy, that Landlord raised the issue with their waste management company for the first time in September 2022, and that the issue remained resolved in September 2023 at the time of the Petition. While Landlord did hire a new waste management company, Landlord's representatives testified that the new company was not hired until November 2023 and would not start servicing the property until December 1, 2023, which is after the hearing.
- D. Appellant-Landlord next argues that the Hearing Officer erred or abused her discretion by holding that Landlord should refund Tenant for the remainder of the plumbing bill because the clogged toilet was caused by the Tenant. The only evidence that the issue was caused by the Tenant was second-hand testimony from Landlord's representative, who stated that she was informed by their plumber that the clogged toilet was caused by improper disposals of wipes. No documentation was provided by Landlord to corroborate this testimony, and at the Hearing, the Tenant denied using wipes or disposing of them. She also stated that she had requested documentation from Landlord of the plumber's determination, and when she received the invoice, it did not provide the cause of the clogged toilet. Based on the foregoing, it was reasonable for the Hearing Officer to

determine that Tenant's testimony was credible that she did not cause, and that she was therefore not liable for the plumbing service under her lease.

- E. Next, Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion in concluding that Landlord was responsible to reimburse Tenant for the available of the pool. As with the trash overflow issue, it is unclear why Landlord raises this issue on appeal as the Hearing Officer found that Tenant had not met her burden of proof that there was a reduction in Housing Services based on the pool closure, and did not award any rent refund or reduction.
- F. Thereafter, Appellant-Landlord challenges the Hearing Officer's determination that Landlord was responsible for a reduction in Housing Services based on the condition of the laundry facilities. Landlord's challenge is based on the fact that (1) prior to hiring Anna's Cleaning Service to clean the laundry room, the Landlord employed a handyman who visited twice a month to collect coins and report issues, (2) Tenant never reported the issue to Landlord, and (3) Tenant was observed using the laundry room. None of the foregoing facts undermine the Hearing Officer's conclusions that the Landlord was notified about the issues with the laundry room by several tenants, admitted that they had had issues maintaining the laundry room (in part due to break-ins) and failed to take action sufficient to provide sanitary, safe and available laundry facilities.
- G. Lastly, Appellant-Landlord alleges that the Hearing Officer erred by concluding that Landlord had demanded and retained unlawful rent based on an improper calculation of Base Rent. Landlord's argument here relies on a mistaken understanding of the applicability of CSFRA Regulations, Chapter 2, section (b)(2)(i)-(ii) and Chapter 4, section G(6). Construed together, these sections demonstrate that the Rental Housing Committee intended for the "clarification" of how Base Rent is calculated where concessions are provided in the initial term of the tenancy to apply to tenancies commencing between October 19, 2016 and September 1, 2022, but for such tenancies, limited to the Landlord's liability for a refund to only rent overpaid within one (1) year prior to the date of the filing of the Petition.

#### **D. Appeal Hearing Procedure**

Each party to the appeal will have an opportunity to present their arguments to the RHC and respond to the other party's presentation. As noted above, the parties are not to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals (Gov. § 54954.3(a)). Finally, RHC members may have questions for staff and/or the parties. The following schedule for the appeal hearing is proposed to facilitate the orderly participation of all parties.

**Schedule of Appeal(s) of Hearing Decision(s)**

- Public Comment Period applicable for all Appeals on the agenda

**Appeal Hearing (CSFRA Petition Nos. C23240003 and C23240004)**

Staff Report & Presentation

Appellant-Landlord Presentation of Argument	10 minute maximum
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Respondent-Tenant Presentation of Argument	10 minute maximum
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Appellant-Landlord Presentation of Rebuttal	5 minute maximum
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Respondent-Tenant Presentation of Rebuttal	5 minute maximum
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RHC Question and Answer with Staff
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RHC Question and Answer with Appellant-Landlord
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RHC Question and Answer with Respondent-Tenants
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RHC Deliberations and Decision
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- Conclude Agenda Item

**FISCAL IMPACT**

Adoption of the Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a Hearing Decision to the RHC (as opposed to directly appealing to the courts) is to ensure that Hearing Decisions are legally defensible, and so the appeal process to the RHC reduces the overall risk of legal liability and litigation expenses. As discussed above, the Tentative Appeal Decision recommends upholding the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

**PUBLIC NOTICING** — Agenda posting

**ATTACHMENTS**

1. Tentative Appeal Decision for Petition Nos. C23240003 and C32340004



2. Decision of Hearing Officer (February 15, 2024)
3. Appellant-Landlord Appeal of Decision (March 1, 2024)