From: Kennedy, Andrea
To: Spikes, Jessica
Subject: FW: RHC Agenda Packet for Monday, June 20, 2022
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Subject: FW: RHC Agenda Packet for Monday, June 20, 2022

Dear RHC members,

Please find below questions submitted to staff related to the agenda for the RHC meeting tonight and answers provided.

Anky van Deursen
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1. With pre-September remedy, it seems we are considering the taking of an AGA on top of the expiry of the concession as an unlawful rent increase and thus forcing the rent to rollback to the initial rent at time of tenancy. Am I interpreting this correctly? If so, does this mean someone who moved into their unit in December 2019, had a 1-month-free promo, and paid $1,500/month after that would be able to file a petition in July 2022 for 1 year of rebate and start paying a monthly rent of $1,375 (the monthly rent if we take $1,500*11/12) for the remainder of the December 2021 lease term?

You are interpreting the regulation correctly. The CSFRA at Section 1707(f) lists the conditions under which a rent increase is not permitted. A rent increase is not permitted if the landlord has failed to

substantially comply with all of the provisions of the CSFRA and the rules and regulations of the RHC. Charging a rent that exceeds the legal rent is considered to be failure to comply with the CSFRA. However, once the landlord rolls back the rent to the legal amount and refunds the tenant the amount owed, if any, then the landlord would be eligible to implement all of the prior AGAs. So the landlord could limit the time period during which the rent was reduced by paying the refund immediately and noticing a rent increase for the prior AGAs (subject to the limit of one rent increase per year and the 10% cap on increases in any one year).

2. If I am tracking properly in the example above, don't we expect a large uptick in landlord petitions around fair rate of return, as likely going down to a rent rate from several years ago in today's inflationary environment is going to cause the fair rate of return calculation to result in an increase given to the landlord? In that case, why wouldn't we consider allowing the landlord to take up to the AGA for each year when calculating the refund due to the tenant and also in calculating the rent reversion? It makes the math a bit more tricky, but not excessively so. In my example, this means the hearing officer could see the 2020 rent as $1,414.87 and the 2021 rent as $1,443.16, which would, I feel, help to offset the likelihood of the landlord filing a fair return petition as a response to the tenant's petition. If we let the landlords have the AGA in the historical years to calculate the current corrected rent rate, I feel this also takes into consideration that most landlords (and probably many tenants) did not expect to need to reduce the AGA calculation by the concession and thus took an AGA in good faith as they believed they were operating legally. We could consider taking an increase without considering the concessions deduction post-September 2022 as out of compliance (so no AGA allowed), but give some grace to the historical activities by not considering a missed concession deduction (and solely a missed concession deduction) as substantial non-compliance.

As explained above, the CSFRA requires that landlords be in substantial compliance with the CSFRA in order to be eligible for the AGAs. So to allow a landlord to take the AGAs without bringing the rent into compliance would be a significant deviation from the CSFRA. It would also require the RHC to craft a regulation that would distinguish the concession situation from others where landlords claim to act in good faith but did not understand the CSFRA or were not aware of the CSFRA (we have a petition right now unrelated to concessions where this is the landlord primary defense). It is doubtful that the RHC will see a significant uptick in petitions as a result of the concessions issues for the following reasons. First, tenants have been able to petition for a downward adjustment based on concessions since the inception of the CSFRA but only recently has the RHC seen any petitions on this issue and even then there are only a handful of petitions being filed. Since the CSFRA is complaint driven it will be up to the tenants to bring the petitions and if the past is any guidance, there are likely to be only a handful of tenant petitions as a result of the publicity that these proposed regulations have generated. Additionally, although we do not know for sure the universe of landlords offering concessions, it appears that this is a practice of larger landlords rather than landlords with only a few units. A small number of tenants who bring petitions is unlikely to generate such a significant difference in the net operating income of a larger property to justify a petition for an upward adjustment.

3. For our peers with rent concession language, did they have a delay in clarifying the prohibition

against concessions after their law passed or did they immediately emphasize no concessions are permitted without deducting from rental base in the first year? If the former and there was a delay in clarifying the issue, what did our peers do around historical rent concessions?

These peer jurisdictions define base rent as the rent that was actually paid during the initial tenancy. The regulations clarify that where a discount/concession is made, the amount that is actually paid is averaged over the initial term of tenancy. These regulations do not mention retroactivity since the regulation does not create a right but rather, the regulation clarifies a feature within an existing right. A Tenant at any time may bring a claim via petition for excess rent overcharges and can offer evidence to establish what the base rent actually is. The regulation does not create or alter this process/right, and consequently, the peer jurisdictions do not think notions of retroactivity are implicated. The peer jurisdictions do not have a separate statute of limitations for claims involving factual disputes concerning discounts. Whether the factual dispute is discounts, unlawful rent increases, too much security deposit, etc., it all falls under one claim, rent overcharges, and thus, the peer jurisdictions use one legal standard of timing and application.

4. For Christopher's question, if a mobile home tenant had a lease in effect on March 21, 2021 and that lease was a 12 month lease with 1 month free, wouldn't that tenant's Base Rent be Rental Rate*11/12 = Base Rent, so wouldn't that mobile home tenant actually also benefit from this clarification? For example, let's use the rental rate for the lease in effect on 3/21/2021 as $1,500/month with 1 month free, so the mobile home tenant's Base rent would be $1,500*11/12 = $1,375 as Base Rent.

Assuming that the question related to a mobile home tenancy that was in effect on March 16, 2022 (not March 21, 2021), the MHRSO is clear that the Base Rent in that situation is the rent that was in effect on March 16, 2021. This definition sets rent at a fixed point in time as opposed to the Base Rent for tenancies that commenced after March 16, 2021 where Base Rent is the rent actually paid during the initial term of the tenancy. For tenancies that commenced prior to March 16, 2021 a concession would only impact Base Rent if the concession was effective during the month March. So by way of example, if a tenant signed a lease on January 1, 2021 that granted a concession of the first months rent free and rent thereafter of $1,500 per month, the rent in effect on March 16, 2021 would be $1,500 since that was the rent effect for the month of March.

5. What caused the huge spike in vacancies for the newly built units from April til May? Did something new just open for leasing?

It appears that two new buildings came online in Q2 representing approximately 200 units.

6. How often do we rebid contracts? I'm specifically curious for Project Sentinel - while I think we are definitely planning to renew this year, I wonder if we should be rebiding that contract this fiscal year since it seems it has been 5-ish years since the bid was initially done.

There are no specific guidelines around re-issuing RPFs, but it is certainly an option to do a new RFP next year, bearing in mind that when the first RFP was issued Project Sentinel was the only agency sending in a proposal.