

Rental Housing Committee  
**Second Tentative Appeal Decision**

Petition No. 18190025

The Rental Housing Committee of the City of Mountain View (the "**RHC**") finds and concludes the following:

**I. Summary of Proceedings**

The RHC accepted and consolidated three petitions for downward adjustment of rent regarding two units owned by Linda Curtis and Larry Voytilla (collectively, "**Appellant-Landlord**").

The RHC accepted petition numbers 18190025 and 18190026 regarding unlawful rent and failure to maintain habitable premises and/or decreased housing services or maintenance for unit 8 located at 857 Park Drive ("**Unit 8**") on August 31, 2018 from Annemarie Wilson. The RHC accepted petition number 18190033 regarding unlawful rent for unit 5 located at 855 Park Drive ("**Unit 5**") on September 18, 2018 from another Tenant.<sup>1</sup>

On September 28, 2018, the RHC provided notice to Annemarie Wilson and the other Tenant (collectively, "**Respondent-Tenants**") and to Appellant-Landlord that petition numbers 18190025, 18190026, and 18190033 (collectively, the "**Petitions**") were consolidated into one hearing, which was scheduled for October 12, 2018 before Hearing Officer E. Alexandra DeLateur (the "**Hearing Officer**").

Appellant-Landlord timely requested a postponement of the October 12, 2018 hearing date, which was granted by the Hearing Officer. The hearing was rescheduled for November 30, 2018. On November 29, 2018, Appellant-Landlord requested a second postponement, which request was denied by the Hearing Officer. The Hearing Officer presided over a public hearing on November 30, 2018 in which Appellant-Landlord and Respondent-Petitioners participated. The hearing was recorded and is available as a part of the administrative record.

With deference to Appellant-Landlord's second postponement request, the Hearing Officer ordered the record remain open after the hearing concluded, to allow the parties to submit additional information and argument until December 7, 2018. On December 6, 2019, Appellant-Landlord requested the hearing record remain open until December 14, 2018 because Appellant-Landlord retained legal counsel. The Hearing Officer granted Appellant-Landlord's request: Appellant-Landlord was allowed to submit new evidence until December 14 and Respondent-Tenants were given an opportunity to respond. The hearing record was closed on December 24, 2018.

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<sup>1</sup> Petitions 18190026 and 18190033 were subsequently resolved and are no longer relevant to this Second Tentative Appeal Decision.

The Hearing Officer decision, dated January 23, 2019 was delivered on or about that date. An amendment to the decision, dated February 6, 2019, revising the calculations related to Unit 5, was delivered on or about that date (collectively, the "**Decision**").

A timely appeal of the Decision was received from Appellant-Landlord on February 8, 2019. A hearing of the appeals was held before the RHC on March 4, 2019, which resulted in the affirmation, modification, and remanding of various aspects of the Decision. Specifically, the RHC provided direction to the Hearing Officer, "to determine whether and to what extent Petitioner Wilson's housing services were reduced from those painting-related housing services she was to receive as stated in the 2015 lease[;]" and the Petition and Decision were therefore returned to the jurisdiction of the Hearing Officer ("**RHC Guidance**").

The Hearing Officer, based on the Petition record that was closed as of December 24, 2018, revised the outcome of the Petition in a "**Decision On Remand**" dated April 16, 2019. A timely appeal of the Decision was received from Appellant-Landlord dated May 6, 2018.

## **II. Procedural Posture**

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H.5.a provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

## **III. Appealed Elements of Hearing Officer Decision**

Regulation Chapter 5 section H.1.a states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section III of this Appeal Decision identifies the elements of the Decision that are subject to appeal by the Appellant-Landlord. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The only issue subject to remand related to a decrease in housing services alleged by Respondent-Tenant in the initial Petition. In short, the Order of Remand requested the Hearing Officer review and revise the discussion in the Decision of the evidence presented (Decision, Section IV.B), the analysis of evidence presented, (Decision Section V.C), and the conclusion (Decision, Section VI.4.d) regarding the claim of reduced housing services based on painting of the unit.

The Hearing Officer did not open the record. The Decision On Remand reviews evidence in the record and provides clarification and additional discussion of the evidence, analysis of the evidence, and revised legal conclusion. Ultimately, the Decision On Remand finds that housing services were decreased based on the parties' agreement, "in their testimony that the unit had not been repainted in its entirety during Ms. Wilson's tenancy." The Decision On Remand then effectively affirms the valuation for the reduction in housing services identified in the initial Hearing Officer Decision.

A. Appellant-Landlord Appeal Element: Painting of Unit 8

The Appellant-Landlord contests the Decision On Remand. Appellant-Landlord appeals the Hearing Officer's choice not to re-open the record and accept new evidence regarding the painting of Unit 8, as well as the conclusion of the Decision On Remand.

**IV. Decision Regarding Appealed Elements**

A. Appellant-Tenant Appeal Elements: Painting of Unit 8

Appellant-Landlord's first appeal asserted the same issue. Specifically, Appellant-Landlord stated that the unit was repainted in 2015 and provided "checks [that] were unavailable to Landlord at the time of the hearing but have been recovered since."

In its second appeal, Appellant-Landlord argues, "good cause exists to consider and admit [new] evidence . . ." Similar to the first appeal, Appellant-Landlord does not explain why or how the checks were unavailable during the extensive initial proceedings period. As noted above, the hearing was postponed by the Hearing Officer at the request of Appellant-Landlord, during which time Appellant-Landlord could presumably have retrieved necessary evidence or contracted with a representative to do the same.

Notwithstanding the first postponement, Appellant-Landlord requested a second postponement one day prior to the rescheduled hearing. Instead of postponing the hearing, the Hearing Officer left the record open after the hearing to allow for the submission of any additional evidence or argument that was not prepared prior to the rescheduled hearing.

One day prior to the closing of the record, Appellant-Landlord requested a third postponement to allow newly-hired counsel to provide additional evidence and argument. Appellant-Landlord's counsel requested the record remain open for an additional week, and the request was granted by the Hearing Officer.

Appellant-Landlord's second appeal states that "good cause exists on the basis that [Appellant-Landlord] are both disabled and elderly and had a difficult time collecting the evidence needed to present their case during the hearing and while the record was open."

Regulation Chapter 5 section D.2 discusses "good cause for postponement" and considers the following to be good cause:

"a. Illness of a party, party's representative, or material witness to a party's case;

"b. Travel beyond the San Francisco Bay Area;

"c. Any other reason that would make it impractical to appear on the scheduled date, including, but not limited to, unforeseen circumstances or verified

prearranged plans which cannot be changed. Mere inconvenience or difficulty in appearing cannot constitute 'good cause.'"

On its own, Appellant-Landlord's age does not appear to be relevant to considerations of good cause. Appellant-Landlord's alleged disability may be relevant to Appellant-Landlord's ability to appear on the scheduled date and otherwise prepare and present Appellant-Landlord's case.

Although the second appeal does not explain why or how the alleged disability precluded Appellant-Landlord from retrieving and producing the new evidence, the first two postponement requests from Appellant-Landlord were supported by two letters from Dr. Robert Huang of 701 Mountain View Ear, Nose, & Throat. The first letter, dated October 9, 2018, indicates a potentially acute condition that may be less-acute in three weeks' time. The second letter, dated November 29, 2018, indicates an indefinite period of recovery.

Undoubtedly, the documented medical condition would negatively impact Appellant-Landlord's ability to personally retrieve evidence, and personally prepare and present a response the Respondent-Tenant's Petition. Moreover, the changing recovery period would likewise hinder Appellant-Landlord's personal involvement in case preparation and presentation.

However inconvenient and difficult, the documented medical condition does not appear to be an unforeseen circumstance for the nearly four-month period between September 6, 2018 (when Respondent-Tenant mailed Appellant-Landlord the Petition including the claim for decreased housing services) and December 24, 2018 (when the record was closed by the Hearing Officer). In addition, when Appellant-Landlord hired counsel to represent Appellant-Landlord against Respondent-Tenants, counsel's postponement request was granted in full by the Hearing Officer.

Regulation Chapter 5 section 4.b states, in part: "The appeal shall be based on the Hearing Record, and the Rental Housing Committee shall neither hear nor find facts beyond those presented to the Hearing Officer, unless a majority of the Rental Housing Committee determines that a De Novo Hearing shall be conducted."

The second appeal does not provide new evidence or argument why the hearing record should be opened to allow additional evidence relating to Respondent-Petitioner's claims of decreased housing services. Rather, the second appeal appears to reiterate the arguments used to support its first two postponement requests. These arguments already resulted in one postponement of the initial hearing date and one extension to submit additional evidence and argument; the same arguments do not justify a third prolonging of the resolution to the Petition.

The Hearing Officer's resolution of the Petition in the Decision On Remand ultimately resulted in the same outcome: an award for Respondent-Tenant for decreased housing services. Notwithstanding the conclusion, the Decision On Remand demonstrates that the Hearing Officer adhered to the RHC Guidance by thoroughly reviewing the evidence in the record and then revising the discussion of the evidence presented, the analysis of evidence presented, and the conclusion. Beyond requesting the acceptance of new evidence, Appellant-Landlord offers no argument supporting a request to reverse or otherwise reject the Decision On Remand.

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Accordingly, because the second appeal does not support a finding of good cause to hold a de novo review or to instruct the Hearing Officer to reopen the record, and because there is no other independent rationale to support Appellant-Landlord's request to reverse the Decision On Remand, the second appeal is denied and the Decision On Remand is affirmed.

**V. Conclusion**

As detailed above, the RHC denies Appellant-Landlord's appeal of the Decision On Remand.