



MEMORANDUM

CSFRA, Community Development Department

DATE: June 24, 2019

TO: Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Justin D. Bigelow, Special Counsel to the Rental Housing Committee
Anky van Deursen, Program Manager

SUBJECT: Second Appeal of Decision on Remand Regarding Petition 18190025

RECOMMENDATION

Consider the second Tentative Appeal Decision and either accept the second Tentative Appeal Decision or modify the second Tentative Appeal Decision with instructions to staff citing appropriate evidence in the record.

BACKGROUND

This is the second appeal hearing regarding one tenant petition for downward adjustment of rent based on an alleged failure to maintain habitable premises and reduction in housing services. The hearing on the petition was held on November 30, 2018. The record was kept open until December 24, 2018, and the hearing officer decision was delivered on January 23, 2019. A revised hearing officer decision was delivered on or about February 6, 2019. The landlord appealed the decision, which was heard by the Rental Housing Committee (RHC) on March 4, 2019 and resulted in the affirmation, modification, and remanding of various aspects of the decision.

The hearing officer did not reopen the record but reevaluated the evidence in the record and revised the written decision in a "Decision on Remand" dated April 16, 2019. The landlord filed a timely appeal of the Decision on Remand, which was scheduled to be heard by the RHC on June 24, 2019. A relevant timeline is provided below for reference.

Table 1: Relevant Timeline

Date	Action
August 31, 2018	RHC accepted two petitions regarding Unit 8 (18190025, 18190026)
September 18, 2018	RHC accepted one petition regarding Unit 5 (18190033)
September 28, 2018	RHC consolidated hearing for all three petitions; hearing scheduled for October 12, 2018; notice sent to all parties
October 10, 2018	Landlord requests postponement of hearing for "two to three months"
October 12, 2018	Hearing officer grants landlord request for postponement of hearing
November 19, 2018	Notice sent to all parties of new hearing date scheduled for November 30, 2018
November 29, 2018	Landlord requests second postponement of hearing
November 30, 2018	Hearing held, hearing officer denies second request for postponement and conducts hearing leaving record open until December 7, 2018 for submission of additional documents instead of postponing hearing
December 6, 2018	Landlord requests hearing record remain open until December 14 to allow newly hired counsel to assist landlord; hearing officer grants requests and allows submission of new evidence until December 14 and allows submission of briefing until December 24, 2018
December 24, 2018	Hearing record closed after additional information submitted by both appellant-landlord and respondent-tenants
January 23, 2019	Hearing decision delivered
February 6, 2019	Amendment to decision regarding Unit 5 delivered
February 8, 2019	Appeal submitted by appellant-landlord
March 4, 2019	Appeal hearing before RHC
March 12, 2019	Appeal decision and RHC direction to hearing officer on remand
April 16, 2019	Decision on Remand issued by hearing officer
June 24, 2019	Second appeal from landlord scheduled before RHC

The RHC remanded only one issue to the hearing officer, as summarized in the quote from the direction to hearing officer on remand, below:

“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”

As noted above, the hearing officer did not open the record to address this issue. The Decision on Remand reviews the evidence in the record; provides clarification, additional discussion, and analysis of that evidence; and provides a 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 reaffirms the valuation for the reduction in housing services identified in the initial hearing officer decision.

Appellant-landlord appealed one element of the Decision on Remand, as described in the “Tentative Appeal Decision—Appeal Element” section of this report and as discussed in greater detail in the second Tentative Appeal Decision.

ANALYSIS

Role of the RHC

The role of the RHC is not to reweigh 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. Thus, the RHC’s role will be to determine whether the appealed element of the hearing officer’s Decision on Remand is 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.

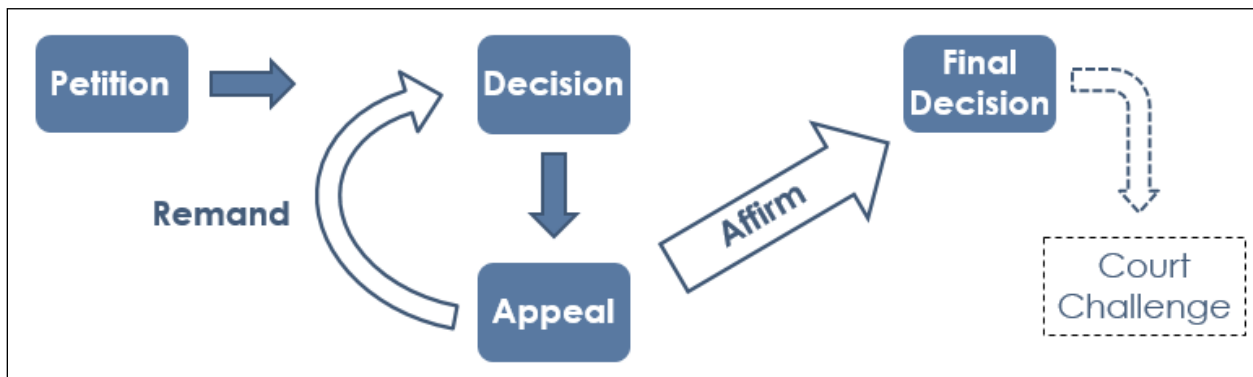
Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached 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.

Review: Affirming and/or Remanding the Appealed Element of the Decision After Remand

Petitions define the scope of information hearing officers review. Appeals define the scope of RHC review of the decision. The portions of the decision that were not appealed by any party are considered final. The second Tentative Appeal Decision reviews only those portions of decision that were appealed by the parties.

The process for an appeal can result in multiple appeal hearings before the RHC if a decision is remanded to the hearing officer, which is the case here. A summary graphic visualizing the appeal procedure is provided below.

Figure 1: Visualization of Appeal Procedure



Tentative Appeal Decision – Appeal Element

The second Tentative Appeal Decision recommends affirming the Decision on Remand for two reasons. First, 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. Second, the second appeal offers no other independent rationale to support appellant-landlord’s request to reverse the Decision on Remand. Each issue is briefly discussed below.

The second appeal requests the RHC either accept additional evidence during the appeal, or order the Hearing Officer to reopen the record and accept it. In support of this request, the second appeal states that the landlords are “both disabled and elderly and had a difficult time collecting the evidence needed to present their case.” The same general arguments were raised previously: (1) requesting a postponement of the initial hearing date (which was granted); (2) requesting postponement of the rescheduled hearing date (which was denied, although the hearing officer left the record opened after the hearing to allow for the submission of additional evidence and argument in

deference to the second request); and (3) requesting a further extension of time to allow for the submission of additional evidence (which was granted).

Because the same general arguments were previously raised and resulted in a postponement of the hearing and multiple extensions to allow for the submission of additional evidence and argument, and because the final extension was requested by appellant-landlord’s legal counsel and that request was granted in full, the same arguments do not support a fourth request to prolong the resolution of the petition.

The second appeal also appears to request reversal or rejection of the hearing officer’s valuation of the decrease in housing services. However, the second appeal provides no additional argument or discussion of the proper valuation of housing services beyond the request to submit new evidence. Without an independent rationale or reason in support of the request to alter the Decision on Remand, the Decision on Remand should be affirmed.

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. Section 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.

Agenda Item 7.1 Appeal(s) of Hearing Officer Decision(s)

- Public comment period applicable for all appeals on the agenda

Appeal Hearing (CSFRA Petition Nos. 18190025, 18190026, 18190033)	
Staff Report and Presentation	
Appellant-Landlord Presentation of Argument	10-minute maximum
Respondent-Tenant Presentation of Argument	10-minute maximum
Appellant-Landlord Presentation of Rebuttal	5-minute maximum
Respondent-Tenant Presentation of Rebuttal	5-minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Landlord	
RHC Question and Answer with Respondent-Tenants	
RHC Deliberations and Decision	

Conclude Agenda Item

FISCAL IMPACT

Adoption of the second Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a hearing officer decision to the RHC (as opposed to directly appealing to the courts) is to ensure that 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 second Tentative Appeal Decision recommends affirming the hearing officer's Decision on Remand, in which case the initial Decision and Decision on Remand would be considered a final ruling and could be challenged in court.

PUBLIC NOTICING – Agenda posting.

KMT-JDB-AVD/DJ/6/RHC
898-06-24-19M-1

- Attachments:
1. Second Tentative Appeal Decision (Petition 18190025)
 2. HO Decision on Remand
 3. Direction to HO on Remand (Petitions 18190025, 18190026, and 18190033)
 4. First Tentative Appeal Decision (Petitions 18190025, 18190026, and 18190033)
 5. Original HO Decision (Petitions 18190025, 18190026, and 18190033)