



MEMORANDUM

Rent Stabilization Program
Community Development Department

DATE: June 28, 2021
TO: Rental Housing Committee
FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Anky van Deursen, Program Manager
SUBJECT: Appeal of Decision Regarding Petition 2021001

RECOMMENDATION

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.

BACKGROUND

This is an appeal hearing regarding a tenant petition for downward adjustment of rent based on rent increases exceeding the annual general adjustment allowed under the Community Stabilization and Fair Rent Act (“CSFRA”). A preliminary hearing on the Respondent's Motion to Dismiss was held on November 20, 2020. The Hearing Officer denied Respondent's Motion to Dismiss in a decision issued on December 7, 2020. Evidentiary hearings on the petition were held on January 28, 2021 and March 3, 2021. The Hearing Officer issued a decision on April 17, 2021. The Respondent appealed the decision filing a timely appeal received by the RHC on April 28, 2021. A relevant timeline is provided below for reference.

Table 1: Relevant Timeline

Date	Action
August 20, 2020	Petitioner files petition regarding the entire property located at 240 Monroe Drive (2021001).
October 13, 2020	Prehearing Telephone conference held.

Date	Action
October 14, 2020	Written Order and Summary of Prehearing Conference served on parties.
November 20, 2020	Hearing on Respondent's Motion to Dismiss held.
December 7, 2020	Hearing Officer decision on Motion to dismiss issued.
December 23, 2021	Prehearing telephone conference held.
January 28, 2021	Hearing opened.
February 12, 2021	Record on hearing to close and last date for the parties to submit closing arguments.
February 12, 2021	Posthearing telephone conference held to discuss additional evidence submitted prior to record being closed.
February 12, 2021	Hearing Officer issues a posthearing order reopening hearing for limited purpose.
March 3, 2021	Additional evidentiary hearing held.
March 12, 2021	Hearing Officer issues posthearing order setting March 12, 2021, as deadline for parties to submit closing statements.
March 17, 2021	Record is closed.
April 17, 2021	Hearing Officer decision issued.
April 28, 2021	Respondent files appeal.

The Petition claims that the property owner has imposed rent increases on the Petitioner that exceed the annual general adjustment. Petitioner rents the entire property consisting of 72 rental units from the property owner, pursuant to the terms of a Master Lease, for the purposes of renting the dwelling units and creating a religious community. Petitioner has rented the property for over 30 years. Although many of the residents are members of the Petitioner's church, not all residents are church members.

The Petition raised novel issues regarding the application of the CSFRA to a master lease. The Respondent filed a motion to dismiss claiming that the Master Lease between Petitioner and the Property Owner was not subject to the CSFRA. In December 2020, the Hearing Officer issued a decision finding that the Master Lease was subject to the CSFRA based on an analysis of the CSFRA and its purposes.

After overruling Respondent's motion to dismiss, the Hearing Officer held an evidentiary hearing on the factual issues raised in the Petition regarding the rent increases. The original evidentiary hearing was held on January 28, 2021. All parties were represented by counsel and presented evidence regarding the rent increases and certain rent credits that occurred.

The Hearing Officer left the record open for the parties to submit additional evidence after the completion of the January 28, 2021 hearing. Petitioner submitted a declaration from the former property manager to which Respondent objected. The Hearing Officer held a posthearing conference with the parties and their counsel to address Respondent's objection and reopened the hearing for the limited purpose of allowing testimony from the former property manager. A continued evidentiary hearing was held on March 3, 2021, and the record was closed on March 17, 2021. The Hearing Officer issued a decision on April 17, 2021.

The April decision found that the property owner/Respondent imposed rent increases that exceeded the annual general adjustments and awarded the Petitioner a refund of \$190,229.22 based on the Hearing Officer's review of the evidence submitted, including evidence regarding the rent credits.

The Respondent appealed the Decision, including the Hearing Officer's decision that the CSFRA is applicable to the Master Lease. The Respondent did not appeal any of the Hearing Officer's factual findings regarding rent paid, rent increases, and rent credits.

The Respondent raised 12 issues in the appeal, all of which are addressed in the Tentative Decision. The 12 issues can be summarized as follows:

1. The Property Owner was not afforded due process because the Petition was served on the Property Manager.
2. The Master Lease is not subject to the CSFRA because the Property is not a rental unit; the Master Lease does not call for payment of rent; the Master Lease is not a Rental Housing Agreement; the Petitioner is not a tenant; the Property Owner and the Respondent are not landlords; and the Property Owner and the Respondent do not provide housing services.

3. The Petitioner cannot be a tenant, as defined in the CSFRA, because the Petitioner has a legal and equitable interest in the Property.
4. The Petitioner has waived or is estopped from requesting a rent reduction.
5. Respondent is not obligated to register the Property.
6. Respondent is entitled to the one-time 2.6% bankable rent increase because Respondent was in substantial compliance with the CSFRA.
7. Respondent is entitled to claim a rent increase to offset the rent refund and reduction.

All parties are entitled to respond to the Tentative Appeal Decision. Responses to the tentative decision are due on June 23, 2021, after the publication of this report. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

ANALYSIS

A. Role of the RHC

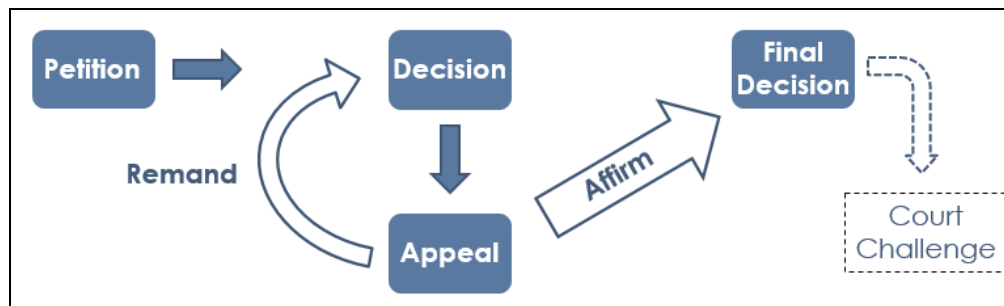
The role of the RHC is not to reweigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal "*de novo*," pursuant to Regulation Chapter 5, Section H.5.a. *De novo* review would require the RHC to open the hearing record and hold a new, formal hearing. Staff does not recommend *de novo* review for this appeal. Thus, the RHC's role will be to determine whether the appealed elements of the Hearing Officer's 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 information in the Hearing Officer's review. Appeals define the scope of the RHC's review of the decision. The portions of the decision that were not appealed by any party are considered final. The 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. A summary graphic visualizing the appeal procedure is provided below.



Graphic 1: Visualization of Appeal Procedure

C. Tentative Appeal Decision

The Tentative Appeal Decision recommends affirming both the December Decision issued by the Hearing Officer, finding that the CSFRA is applicable to the Master Lease, and the April Decision, finding that the Petitioner was overcharged rent and entitled to a refund and setting the maximum rent.

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.

Agenda Item 5.1: Appeal(s) of Hearing Officer Decision(s)	
• Public Comment Period applicable for all Appeals on the agenda	
Appeal Hearing (CSFRA Petition No. 2021001)	
Staff Report and Presentation	
Respondent Presentation of Argument	10-minute maximum
Petitioner Presentation of Argument	10-minute maximum
Respondent Presentation of Rebuttal	5-minute maximum
Petitioner Presentation of Rebuttal	5-minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Respondent	
RHC Question and Answer with Petitioner	
RHC Deliberations and Decision	
• 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 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 Tentative Appeal Decision recommends affirming the Decisions in their entirety. If the RHC accepts the Tentative Decision, the Decision will be final and cannot be further appealed to the RHC.

PUBLIC NOTICING – Agenda posting.

KMT-AvD/JS/4/CDD/RHC
895-06-28-21M

- Attachments:
1. Tentative Appeal Decision (Petition 2021001)
 2. December 7, 2020 Decision of Hearing Officer
 3. April 17, 2021 Decision of Hearing Officer
 4. Respondent Appeal of Decision
 5. Respondents’ Response to Tentative Decision