City of Mountain View
Rental Housing Committee Meeting
June 27, 2024, Agenda Item Questions

Item 3.2: CSFRA/MHRSO Amendments

Q: To what extent does the RHC have the ability to amend the text and/or regulations of the CSFRA and MHRSO? Are there parts that can only be changed by a ballot initiative and other parts where the RHC is free to amend by a vote of the committee?

A: The CSFRA is a charter amendment by ballot initiative and became effective in December 2016. The CSFRA provisions can only be changed by a ballot initiative. Regulations can be adopted and amended by the RHC as assigned by the CSFRA in the following Sections: The RHC shall:

- Section 1709(d)(2): Establish rules and regulations for administration and enforcement of this Article.
- Section 1709(e): Issue and follow such rules and regulations as will further the purposes of this Article.

Item 5.1: Appeal Hearing

Q: To what extent are court cases where the defendant is another California jurisdiction (like San Francisco or Berkeley) applicable to what is decided by the hearing officers based on the text of the CSFRA or MHRSO? Could such court cases strike down parts of the CSFRA/MRSFO? Do such cases set precedent for rent control ordinances in other jurisdictions?

A: The level at which a court case is decided is more relevant than the jurisdiction of the defendant. Typically, Superior Court decisions are viewed as persuasive, while Appellate Court decisions and California Supreme Court decisions are binding on Hearing Officers. It is possible that a court case in which another jurisdiction is a defendant could strike down aspects of the CSFRA or MHRSO if the other jurisdiction's law that is being challenged has similar or identical provisions to the MHRSO or CSFRA.

Q: Please explain what is meant by "strict liability standard" and how it is or is not applicable to the CSFRA/MHRSO? Are any actions of the hearing officer governed by a strict liability standard?

A: "Strict liability" standard is a legal standard that holds a defendant liable for damages caused by their actions regardless of their mental state or intent. Respondent argues that the Hearing Officer applied a "strict liability" standard to Landlord's actions because she ignored evidence of the Landlord's attempts to address or correct certain issues. In this case, the Hearing Officer did not look at Respondent's intent or mental state; she merely looked at whether the condition persisted even after the Landlord had been provided a reasonable opportunity to correct the condition.

Q: What should have been the landlord's response to a tenant who continually and willfully violated Mountain View's Anti-Smoking Ordinance? Did the landlord have the right or duty to evict the tenant for this smoking violation? If not, what recourse did the landlord have?

A: The Landlord has several options for a response. One of them is indeed eviction for repeated violations of the smoking ordinance. Other actions could include providing air purifiers to the

Petitioner or moving the offending tenant to another unit, which might have resolved the issue more quickly.

Q: What action could the landlord have taken to ensure that the migrating ducks did not use the pool?

A: Both the Hearing Officer's decision and the Tentative Appeal Decision list several other measures that the Landlord could have attempted, including, but not limited to, installation of a pool cover, installation of a pool arm, installation of a motion activated sprinkler system, using reflective items that make it difficult for the ducks to land, providing a ramp so that the ducklings could leave the pool, and continued treatment of the pool with chemical deterrents. Also, it is important to note that the Landlord did not provide any support for their assertion that vector control, etc. told them they could not do anything to remove the ducks.

Q: Did the appellant/landlord actually file for an extension of time? Or was this just added to the list of appeals without actually requesting an extension.

A: The Hearing Officer's Written Decision was served on all parties on March 21, 2024, by mail and email. Landlord's representatives requested an extension of time to file their Appeal Request on March 27, 2024, by email to Rent Stabilization Division staff. On March 28, 2024, Rent Stabilization staff informed the Landlord's representative that the CSFRA Regulations provide the RHC with the sole discretion to accept late appeals, but only upon finding that the untimely appeal request is supported by good cause and that the postponement serves the interest of justice. They were informed the RHC could address the Landlord's request for extension at the next available RHC meeting. However, in the event the RHC denies the late appeal request, and no timely appeal has been filed, there is a risk that the appeal may not be heard by the RHC.

Q: What's with the big time jump and second hearing?

A: After the initial Hearing, the first Hearing Officer required additional time to draft the Decision, upon which Rent Stabilization Division staff issued parties a Notice of Extension of the decision deadline on June 6, 2023. Due to further delays, a second Hearing Officer was assigned, who reviewed the existing record and determined further Hearing would be necessary. Consequently, the record was reopened, and a second Hearing was conducted with the parties on December 20, 2023.

Q: Is it the burden of the petitioner to prove non-action on the part of the respondent? (Rent reduction for parking lot lights)

A: No. As further detailed in the Tentative Appeal Decision, the burden of the Petitioner is to demonstrate that it is more likely than not true that (1) the untenantable condition exists or existed on the premises and (2) that Landlord had notice of the condition and a reasonable opportunity to correct the condition.

Q: What was the opportunity to demonstrate that the trash issue was discontinuous, e.g. proof that action was taken that eliminated the problem for a given period of time between the ones supported by direct evidence, like bills for extra bulk pickups.

A: The Landlord might have submitted photos or videos of the common areas to demonstrate that the trash issue was discontinuous. The Landlord also could have provided testimony that the issue was

discontinuous, but in fact, the Landlord's representatives testified that they continue to deal with the trash issue on a daily basis.

Q: Can we get examples of decisions deemed arbitrary and later upheld in this or other jurisdictions?

A: Staff is not aware of any decisions deemed arbitrary that were later upheld in Mountain View and does not know whether such decisions exist from other jurisdictions.

Q: Is a landlord allowed to reject a tenant because they're addicted to nicotine?

A: This could be the case. Nicotine addiction is not considered a disability such that a tenant would receive "protected" status.

Q: Findings of Fact 10: For the $1000 rollback amount, do we have records of a mediation that they might be referring to?

A: The Hearing Officer's 10th Finding of Fact refers to the refund owed from Landlords to Tenants for any overpayments received from Tenants between December 23, 2016, the effective date of the CSFRA, through the date the Tenants' rents were rolled back to the rates in effect on October 19, 2015. The only record is the notice from the Landlord to the Tenant, dated April 12, 2018. (This is Petitioner's Exhibit 19 in the record.) Based on City records, other tenants filed petitions in fiscal year 2018-2019 regarding undue tenant hardship, and some of those Decisions referenced the roll back requirement, however, the affected unit subject to the immediate Appeal Hearing was not a party to those petitions.

Q: Could requiring lighting of parking lots conflict with a Dark Skies ordinance (were Council to enact one)?

A: The requirement to provide adequate lighting arises out of state law. If the City Council were to enact an ordinance that conflicts with the state habitability laws, then the state law would take preempted (i.e., trump) the local law.

Q: Is there a citation for common areas being counted as an additional room for purposes of rent valuation?

A: As staff has previously shared with the RHC, there is no singular or established methodology or standard for calculating a rent reduction due to habitability and/or reduction in Housing Services.

Q: **"**Respondent need not submit a One-Time Utility Adjustment Petition for the Affected Unit." They should still submit one saying they're exempt, right?

A: The One-Time Utility Adjustment Petition for Property Owners will be a property-wide petition, so this property owner will still submit a One-Time Utility Adjustment Petition. However, they may not allocate a one-time adjustment of rent to this unit if the Hearing Officer's Decision is upheld regarding this ruling. They will be able to indicate that this unit is exempt based on the petition.

Q: Assuming that we ignore the Utilities are Rent aspect, would the rent increases have been correct otherwise, given the discrepancy between the amount of rent actually paid and the amount the Respondent said was the actual rate?

A: The first AGA increase that was imposed was on September 1, 2018. That notice stated that the Petitioner's existing rent of $1,465.00 would be increased by 7 percent, including a 3.4 percent banked increase from 2017 and the 2018 AGA. If we are to ignore that the utilities should have been part of the Base Rent, then all of the parties agree that $1,465 was the correct rent on October 19, 2015. Therefore, the 2018 rent increase and the subsequent increases were correct.

However, the Landlord was still not authorized to increase Petitioner's rent in 2018 or anytime thereafter because they did not provide Petitioner with the correct refund for overpayment between June 1, 2016, and April 30, 2017, and therefore were not in substantial compliance with the CSFRA.

Q: What would 2.5% of 20% (0.5%) of the rent of all 40 units on the property be? Is it more than 20% of the rent of the Affected Unit? (Feel free to ignore this one if it's not easy to calculate from the rent registry)

A: Based on the rent rates currently entered in the rent portal for Mayfield Apartments, the total rent collectible this year for all 40 units is $90,108. A 1/40th fraction, or 0.5%, of the total rent collectible equals $4,505.40. These calculations incorporate the $1,530 lawful rent rate decided by the Hearing Officer for the affected unit as opposed to the rate landlords entered in the rent portal for the affected unit: $1,732. The average rent charged to other units at the property is $2,252.70.

Q: Are we allowed to ask the Appellant and Respondent before the hearing whether they have read the Hearing Officer Decision and Tentative Appeal Decision in their entirety?

A: This question may be asked upon the start of parties making their presentation, or during the time allocated in the hearing schedule for questions to the appellant and respondent.