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February 27, 2019

VIA ELECTRONIC AND U.S. MAIL

City of Mountain View
Rental Housing Committee
P.O. Box 500
Mountain View, CA 94039

Re: Supplemental Written Response to Tentative Appeal Decision

Dear Rental Housing Committee:

This letter shall serve as the supplemental written material provided, pursuant to the Community Stabilization and Fair Rent Act Interim Hearing Procedure Regulations ("Regulations") Chapter 5, Paragraph 3(b), in response to the Tentative Appeal Decision for Petition Nos. 18190025, 18190026, and 18190037, regarding the rental property located at 855-857 Park Drive in Mountain View, California.

The Appellant-Landlords are Two Elderly Disabled Individuals who Reside on the Property and Were Previously Unrepresented by Counsel

In order for the Rental Housing Committee to fairly evaluate good cause for re-opening the record to consider documentary evidence of work performed at the property (discussed further below), it is important for the Committee to understand the background of the Appellant-Landlords and the Property in question. Ms. Curtis and Mr. Voytilla are two elderly disabled individuals who purchased the Property in 2007. These two seniors live on the Property and personally handle all day-to-day operations of the Property with the help of a repair person who also lives onsite and who completes many of the maintenance requests of other residents. Since their purchase, they have invested hundreds of thousands of dollars in improving the Property, which is also their home, including the installation of solar panels to lower the energy bills of the residents. While other landlords were increasing rental rates significantly year after year, they

did not do so. Instead, they maintained their tenants' rents at levels that remain significantly below market rate.[1]

These long-term residents of Mountain View were blindsided by the passing of the CSFRA. While they understood the need to comply with the Ordinance, they were consistently provided with the wrong information about raising rents and the process of doing so. Some of the information came from City staff and Ms. Curtis and Mr. Voytilla did not seek the guidance of legal counsel until after the hearing date, when they realized the strenuous and burdensome procedure with which they were dealing.

The underlying hearing decision and the Tentative Appeal Decision both seem to be based in large part on the Committee's apparent frustration with the procedural aspects of scheduling the hearings. The postponement of the hearings and the requests to continue the original hearing date, however, were not for the purpose of impeding the CSFRA or for any ill-willed intentions, as both the Hearing Officer's Decision and the Tentative Appeal Decision suggest. Rather, Ms. Curtis, who primarily handles the documentation regarding the Property and is the person best suitable to respond to questions regarding the Property, had severe problems with her vocal cords and was under doctor's instructions to refrain from speaking as much as possible. The two were overwhelmed with the process, unprepared (as both were dealing with recent deaths in the family and taking care of the heavy and time consuming burdens associated therewith) and were in essence asking for a disability-related accommodation from the City allowing them to continue the hearing to have sufficient time to prepare and present their case, which additional time was due to their disabilities. Rather than accommodating the disability-related requests of these seniors, the Hearing Officer determined that the "evidence presented to [her] was found to not be credible and therefore was not good cause to grant an additional postponement." The evidence to which the Hearing Officer was referring is a letter from a medical doctor from the Palo Alto Medical Foundation stating that Ms. Curtis was under strict orders to refrain from using her vocal cords, as of November 29, 2018, one day before the hearing. A copy of the letter is enclosed herewith as Exhibit A. No basis was given for challenging the "credibility" of the doctor's note and no information was provided as to why the note did not sufficiently verify the disability or the needed accommodations.

Due to their disabilities and the City's failure to provide them with an appropriate and medically necessarily accommodation of continuing the hearing a second time (the original

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[1] According to various real estate sources, such as Zillow and Trulia, the average rent for a two-bedroom unit in Mountain View is about $3,500. Both units at issue in this proceeding are currently paying rent less than half of this amount reinforcing to Ms. Curtis and Mr. Voytilla the axiom that no good deed goes unpunished.

hearing date was October 12 and was postponed to November 30), Ms. Curtis and Mr. Voytilla were significantly prejudiced in this process. Had the City allowed a further continuance, Ms. Curtis and Mr. Voytilla would have been much better prepared at the original hearing and represented by legal counsel who could have assisted them in a more orderly presentation of evidence, which they clearly needed since the decision does not accurately reflect what occurred at the property. For example, in the Hearing Officer's Decision is the statement that the rents were never rolled back as required under the Ordinance. This is only partially true. It is true the rents were never rolled back, but that was not a violation because there was nothing to roll back. This was brought up to the Hearing Officer during the hearing [855-857 Hearing Tape, 57:00], but apparently completely disregarded by the Hearing Officer and misstated entirely in the Hearing Officer's Decision. The amount of rent that the tenants in both Unit 5 and Unit 8 were paying at the time the Ordinance passed was the same amount that they were paying in October 2015, consistent with the Appellants-Landlords' reasonable rent setting practices since their acquisition.

While Ms. Curtis and Mr. Voytilla clearly did not understand the CSFRA when they attempted to raise the rents of Unit 5 and Unit 8 to bring the rates ever so slightly closer to market, while still being drastically below rates of comparable units, it was not because of any flagrant disregard for the law as the Tentative Appeal Decision indicates. The two now understand that this was not allowed under the CSFRA and, therefore, are not contesting the return of any of the collected increased rent awarded in the underlying decision.

Contested Elements of Tentative Appeal Decision

As stated in the Tentative Appeal Decision, six elements of the Hearing Officer's Decision were appealed. Five of these elements were for Unit 8: the reimbursement for payment of rent, the painting of the unit, and the valuation of automobile parking, the bathroom window, and the living room window. One of these elements was for unit 5: the reimbursement for payment of rent, which Appellants are not pursuing. Appellants **are not** contesting the remaining issues including the reimbursement for payment of rent for Unit 5 and Unit 8 and the valuation of automobile parking for Unit 8.

Appellants **are** contesting the following relating to Unit 8:

- $3,335 for the painting of the unit from March 2015 through January 2019 at the rate of $72.50 per month – 5% of the lawful rent

- $2,102.50 for the cracked window in the bathroom from September 2016 through January 2019 at the rate of $72.50 per month – 5% of the lawful rent

- $536.50 for the living room window that did not lock properly from January 2016 through January 2019 at the rate of $14.50 – 1% of the lawful rent

Unit 8: The Painting of the Unit

Good Cause Exists to Reopen the Record and Consider the 2015 Paint Checks

The Tentative Appeal Decision states, in sum, that the checks that were submitted as part of the appeal will not be considered and the record will not be reopened because no good cause was demonstrated to do so even though, as discussed below, the checks clearly demonstrate the award was over-reaching. The Tentative Appeal Decision states that the purposes of the CSFRA include the controlling of "excessive rent increase and arbitrary evictions to the greatest extent allowable under California law, *while ensuring Landlords a fair and reasonable return on their investment and guaranteeing fair protections for renters, homeowners, and businesses*" [emphasis added]. Appellant-Landlords are a mom and pop business that consists of two disabled elderly individuals. Ms. Curtis and Mr. Voytilla purchased the Property in 2007, shortly before the fall of the market. They have invested significantly in the Property and kept rents low for their renters, in the interest of keeping things fair for everyone. Due to their age, disabilities, and lack of understanding of the administrative process, Ms. Curtis and Mr. Voytilla were unaware of the documentation that should be provided and had trouble locating some of this documentation and evidence in time. There was no intention to "impede the purposes of the CSFRA," as is so boldly stated in the Tentative Appeal Decision.

Based on their disability and confusion, which was the cause of their inability to prepare properly for this process and obtain the checks in time, good cause should be found to reopen the record regarding this matter and consider the checks in the appeal process which were ultimately from the bank shortly after the record was closed on December 14, 2018. One can only imagine that the Rental Housing Committee would find good cause were a tenant in this same situation and the Committee should be treating both landlords and tenants equally in all hearing and appeals proceedings. Should the Rental Housing Committee fail to find good cause to reopen the record and accept these checks into evidence, the Rental Housing Committee itself would be impeding the purposes of the CSFRA in guaranteeing fair protections for not only renters, but homeowners and businesses as well.

The Checks Provided Demonstrate that Unit 8 Was Painted in 2015

The checks that were provided along with the appeal submitted by Appellant-Landlords demonstrate that the unit was painted in 2015, after the signing of the 2015 Lease Agreement. The Hearing Officer's Decision states that "the parties agree that some rooms within Ms. Wilson's unit were painted while others were not" and then immediately contradicts itself shortly after by stating that the unit was not painted for eleven years.

Ms. Wilson testified during the hearing that the unit was repainted in 2015 but that the "kitchen, living room, bedroom and closets were not painted" at that time. Ms. Wilson offered no evidence to demonstrate that areas of the unit were not painted, other than her verbal testimony. As stated in the Regulations, "Tenants have the burden of proving the existence of housing service reductions [...]." [Regulations, Chapter 5, G.2.] Appellant-Landlords contend and maintain that the entire unit was painted in 2015, with the exception of the closets and one accent wall in the kitchen (which Ms. Wilson requested to remain unpainted because of the color, which can be seen in the photo provided to the Hearing Officer during the hearing and enclosed herewith at Exhibit B). The August 8, 2015 checks that have been provided demonstrate that the paint for Unit 8 cost a total of $199.52 and that the paint job itself was $800 (which included Unit 8 and two walls of Laundry Room).

Further, Appellant-Landlord was able to reach out to Central Bay Painting and obtain records of the 2015 paint job. The enclosed document, labelled Exhibit C, are the notes that Central Bay Painting has maintained since 2015 demonstrating that the interior of the unit was painted. Failure to consider this evidence would be highly prejudicial and inherently unfair towards Ms. Curtis and Mr. Voytilla.

An Award of 5% for the Paint Issue is Punitively High

Even if the Rental Housing Committee refuses to consider the checks and high probative evidence, an award of a 5% reduction in rent from 2015 to date is a punitively high when taken into consideration along with everything else provided as part of the unit which altogether must have a collective value of 100% of the rent. Even if Ms. Wilson's testimony is found to be credible and only parts of the unit were painted as she had alleged, this award does not serve to compensate Ms. Wilson for her alleged, yet false, "service reduction," but rather to punish Ms. Curtis and Mr. Voytilla. Surely, this is not the intention of the CSFRA or the Rental Housing Committee.

Further, it is questionable whether the Committee even has jurisdiction over this issue. The Hearing Officer's decision bases the 5% award on the contention that Ms. Wilson did not receive the "benefit of her bargain to pay rent under the lease," but there was no finding that the paint was otherwise inadequate or that the CSFRA gives the hearing officer the authority to enforce lease terms.

Unit 8: The Living Room Window

According to Ms. Wilson's Testimony During the Hearing, The Living Room Window Issue was Rectified in "earlier [in the] year" in 2018.

The Hearing Officer awarded Unit 8 $536.50 for a living room window that did not lock properly between January 2016 through January 2019 at a rate of 1% per month. According to Ms. Wilson's own testimony during the hearing, this issue was resolved in August 2018. To summarize, Ms. Wilson states that the window was unable to close and lock shut between 2016 and 2018. In response to the Hearing Officer's question of when this issue was resolved, Ms. Wilson states that it was fixed in August 2018. Ms. Wilson further states that this was an inconvenience and when the Hearing Officer asked her if this gave her any safety concerns, she stated no. [Park 855-857 Hearing Audio, 71:27-75:30]. The awarded amount should be adjusted from the alleged start date of January 2016 until the date that Ms. Wilson stated the issue was fixed, August 2018.

Unit 8: The Cracked Window Pane

The Hearing Officer awarded Unit 8 $2,102.50 for a cracked bathroom window pane from September 2016 through January 2019 at a rate of 5% per month (the same value awarded for painting the unit). Appellant-Landlords are appealing the amount of the award of 5% per month. The Tentative Appeal Decision states that the "Appellant-Landlord offers an irrelevant analogy to challenge the valuation and mischaracterizes the valuation issue with respect to housing code violations." The Tentative Appeal Decision further states that "[m]ore severe housing code violations should be valued differently when compared to less-severe violations" and that it is "beyond the scope of the Decision and this Tentative Appeal Decision to determine the value of each window, roof, or kitchen." The Tentative Appeal Decision then affirms the 5% awarded in the Hearing Officer's Decision.

The reasoning used in the Tentative Appeal Decision is not only illogical, but can be perceived as a desire to use the CSFRA as a tool to impose punitive damages on disabled elderly landlords rather than compensate tenants for actual reductions in service. If a broken window pane is worth 5% of rent, then 80% of the rent is for windows alone. Unit 8 has 7 windows, three with three panes of glass, two with two panes of glass, and one with one pane of glass. Collectively, there are 16 panes of glass in this unit. If each one of these windows had a crack in it, under the decision, this would collectively add up to an 80% award in rent reduction. Leaving only 20% for doors, kitchen appliances, the roof, the flooring, heat, water, the bathroom functions, etc. There is no logical justification for a 5% rent reduction for a crack in the window, unless the intent is to impose punitive awards. The reduction of this award is not a request based on a simple "apparently dissatisfaction," as the Tentative Appeal Decision so dismissively states, but rather on logic and the purpose of the CSFRA, which include fairness to *both* the a tenant and a landlord and must take into consideration everything that is provided in connection with a rental. For these reasons, the Appellant-Landlords are requesting that the award be adjusted to 1% in the interest of fairness to both the tenant and the landlord.

Conclusion

Appellant-Landlords are requesting reevaluation of three of the affirmed elements of the Hearing Officer's Decision, as found in the Tentative Appeal Decision. The Rental Housing Committee should modify or overturn those elements for the reasons stated above. The award should be reduced accordingly.

Sincerely,

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Lerna Kazazic

LK:KKM/t
Enclosures