

DATE: July 18, 2022

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 21220008

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 related to failure to maintain habitable premises and decrease in housing services related to various maintenance and repair issues in the apartment as well as the Tenant's request to replace a roommate. The hearing on the petition was held on April 20, 2022. The Landlord appealed the decision filing a timely appeal received by the Rental Housing Committee (RHC) on May 25, 2022. A relevant timeline is provided below for reference.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
March 22, 2022	RHC accepted petition regarding 1802 Higdon Avenue, Unit 2, Petition No. 21220008
April 7, 2022	Prehearing telephone conference held
April 7, 2022	Written Summary of Prehearing Conference and the Hearing Officer's Request for Documents served on parties
April 20, 2022	Hearing held
April 20, 2022	Hearing closed and Hearing Record closed
May 16, 2022	Hearing decision delivered
May 25, 2022	Appeal submitted by Appellant-Landlord
July 18, 2022	Appeal hearing before RHC

The Petition raised several issues related to the condition of the apartment, including a subfloor in the bathroom that was “squishy,” a toilet that leaked, cracks in the ceiling in the living room and bedroom, mold, deteriorated carpet, and that the Landlord would not allow the tenant to replace a roommate.

The Hearing Decision addresses each of the issues raised in the Petition as well as the legal arguments raised by both the Tenant and Landlord at the hearing and in written submissions. The Decision concludes that rent reductions are owed to the Tenant for the subfloor in the bathroom because it is hazardous, the leaking toilet, and cracks in the ceiling. The Decision found the Tenant had not met her burden of proof with regard to the mold issue, the condition of the carpet, and the Tenant had not made a request to replace her roommate in accordance with the RHC regulations. Therefore, the Tenant is not entitled to reduction in rent as a result of the Landlord’s refusal to allow subletting.

Appellant-Landlord raised three issues on appeal:

1. The reduction in rent for the bathroom floor should not be effective until three months after the Decision, and there should not be a reduction in rent for the cracks in the ceiling because it was either caused by the tenant or not the result of water leaks from upstairs.
2. Appellant-Landlord also raised issues regarding subletting and the addition of a roommate even though the Decision did not award the Tenant any downward adjustment on this basis.
3. Finally, the Appellant-Landlord claims the Decision reflects bias and is unfair.

As described in Section C of this report, each of the appeal elements is discussed in the Tentative Appeal Decision.

All parties are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Decision were due on July 13, 2022. 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 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.

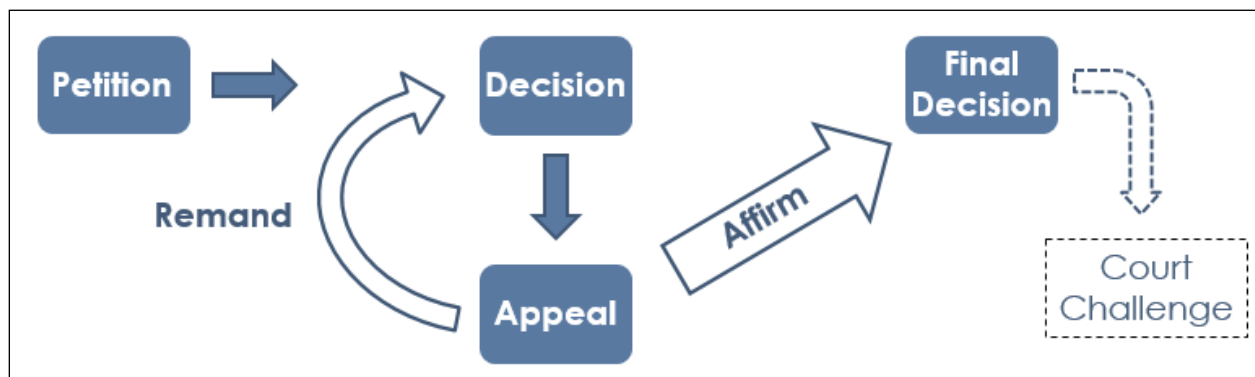
Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached 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 for Hearing Officers' review. Appeals define the scope of RHC review of the Hearing 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—Appeal Elements

The Tentative Appeal Decision recommends affirming the Decision in its totality.

1. The Decision found the Appellant-Landlord had notice of the conditions in the bathroom at least as early as December 2021 and that it was reasonable to allow the Appellant-Landlord 90 days to make significant progress on the repair of the subfloor condition. However,

because the Appellant-Landlord had not commenced any repairs, the Decision determined the Tenant was entitled to a reduction of rent commencing March 1, 2022 and continuing until the building inspector approved the repairs. The Decision makes similar findings with regard to the ceiling. As a result of these two conditions, the Decision finds the Tenant is entitled to a rent reduction of \$320.50 per month until the repairs are completed and approved by the building inspector. The evidence in the record supports the findings and conclusions of the Decision.

2. The Appellant-Landlord also raises issues regarding the Tenant's request to replace a roommate. However, the Decision finds the Tenant had not made a proper request for a roommate and the Tenant has not met her burden of proof with regard to the subletting issue, so no downward adjustment was awarded. However, the Decision does discuss the standards for subletting. Because the Decision does not award the Tenant a downward adjustment related to the subletting issue, there is no basis for the Appellant-Landlord to appeal this portion of the Decision.
3. Finally, the Appellant-Landlord raised issues of bias and fairness citing to the fact the subleasing issue was allowed to be addressed, the Tenant's witness was allowed to testify, the Hearing Officer asked a question about the Appellant-Landlord's intent to convert the garage to an Accessory Dwelling Unit (ADU), and the Appellant-Landlord's testimony was distorted. A review of the record does not support Appellant-Landlord's assertions regarding bias.

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. Code § 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.

Schedule of Appeal(s) of Hearing Decision(s)

- Public Comment Period applicable for all Appeals on the agenda

Appeal Hearing (CSFRA Petition No. 21220008)

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 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 upholding the Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Decision will be final.

PUBLIC NOTICING—Agenda posting.

KMT-AvD/JS/8/CDD/RHC895-07-18-22M-1

- Attachments:
- 2022.07.08 Tentative Appeal Decision (Petition 21220008)
 - 2022.05.16 Decision of Hearing Officer
 - 2022.05.25 Appellant-Landlord Appeal of Decision
 - 2022.07.13 Appellant-Landlord Response to Tentative Appeal Decision