



MEMORANDUM

Community Development Department, CSFRA

DATE: February 22, 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 Petitions 2021002, 2021003, 2021005, 2021006, 2021008, and 2021009

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 six tenant petitions for downward adjustment of rent related to decreased housing services and amenities that were removed or decreased as a result of the COVID-19 pandemic and the failure of the landlord to timely respond to requests for maintenance. The petitions were consolidated. The hearing on the petition was opened on November 20, 2020 and, after over two hours, was continued to December 1, 2020, at which time the hearing was completed and the record was closed. The Hearing Officer decision was delivered on December 31, 2020. The landlord appealed the decision, filing a timely appeal received by the Rental Housing Committee (RHC) on January 11, 2021. A relevant timeline is provided below for reference.

Table 1: Relevant Timeline

Date	Action
October 12, 2020	RHC accepted six petitions regarding Units 4112, 2326, 412, 414, 416, 2011, and 2013 (2021002, 2021003, 2021005, 2021006, 2021008, and 2021009).
October 29, 2020	RHC consolidated hearing for all six petitions; hearing scheduled for November 20, 2020; notice sent to all parties.
November 6, 2020	Prehearing telephone conference held.

Date	Action
November 9, 2020	Written Order and Summary of Prehearing Conference served on parties.
November 17, 2020	Supplemental Prehearing Summary and Order issued.
November 20, 2020	Hearing opened.
December 1, 2020	Hearing continued.
December 1, 2020	Hearing closed and hearing record closed.
December 31, 2020	Hearing decision delivered.
January 11, 2021	Appeal submitted by appellant-landlord.
February 22, 2021	Appeal hearing before RHC.

All of the petitions raise similar issues, but two of the petitions, Petition 20210005 related to Unit 414 and Petition 20210009 related to Unit 2013, each raise one issue unique to that petition.

The decision addresses each of the issues raised in the petitions as well as the legal arguments raised by both the tenants and landlords at the hearing and in written submissions. The decision concludes that rent reductions are owed to the tenants for a reduction in benefits and services related to the withdrawal or reduction of certain services addressing the COVID-19 pandemic. Additionally, the decision awards rent reductions to all of the tenants for a reduction in services resulting from a lack of responsiveness on the part of the landlord to maintenance requests. The decision also awards a rent reduction to the petitioner in Unit 414 because of valet trash services that were determined to be deficient and a rent reduction to the petitioner in Unit 2013 for a reduction in services related to an inability to use the grassy areas for gatherings.

The appellant-landlord appealed six elements of the decision, requesting a reversal of the awarded rent reductions for: the loss of pool access, the loss of access to the fitness center and hot tub, access to the lawn and surrounding areas, valet trash service as it relates to Unit 414, lack of management response to maintenance issues, and loss of use of the grassy recreation area as it relates to Unit 2013. As described in Section C of this report, each of the six appeal elements is discussed in the Tentative Appeal Decision.

All parties are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Appeal Decision were due on February 17, 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 Regulations, 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 Hearing Officer’s 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 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.

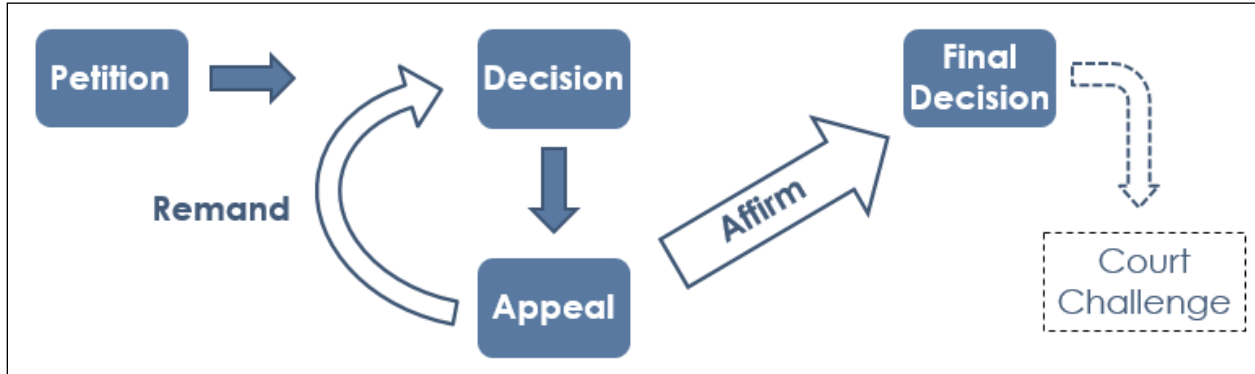


Figure 1: Visualization of Appeal Procedure

C. Tentative Appeal Decision – Appeal Elements

The Tentative Appeal Decision recommends affirming the decision with respect to two of the elements appealed, remanding the decision to the Hearing Officer for further consideration with respect to two of the items appealed, and reversing the Hearing Officer with respect to two of the items appealed.

The table below summarizes the six elements of the decision appealed by the appellant-landlord. The letter/number combination in the left-most column identifies the section in Part V of the Tentative Appeal Decision that discusses that element of the appeal.

Table 2: Summary of Appeal

Issue/Appeal Element		Tentative Decision
B.1	Loss of access to pool – all units	Denying appeal request and affirming decision granting a rent reduction to all petitioners for the loss of pool access of \$140 to \$170 per month between June 4, 2020 and September 30, 2020.
B.2	Loss of access to fitness center and hot tub – all units	Granting the appeal request and remanding the issue to the Hearing Officer to determine whether the appellant-landlord could have reopened the fitness center and, if so, to determine the value of the rent reduction based solely on the loss of the fitness center.
B.3	Lack of access to the lawn and surrounding areas	Denying appeal request and affirming the decision granting a rent reduction to all petitioners for the loss of access to the lawn and surrounding areas of \$60 to \$75 per month between June 4, 2020 and September 30, 2020.

Issue/Appeal Element		Tentative Decision
B.4	Valet trash service – Unit 414	Granting the appeal request in part and remanding the decision to the Hearing Officer solely to establish the appropriate measurement for determining when the housing service has been restored or the fee eliminated.
B.5	Lack of management response to maintenance request – all units	Granting the appeal request and reversing the decision with respect to the rent reduction awarded for lack of management response to maintenance issues.
B.6	Loss of use of grassy recreation area – Unit 2103	Granting the appeal request and reversing the decision with respect to the rent reduction awarded for loss of use of the grassy recreation area.

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 (Government 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.

Table 3: Proposed Appeal Hearing Schedule

Agenda Item 5.1, Appeal(s) of Hearing Officer Decision(s)	
<ul style="list-style-type: none"> Public Comment Period applicable for all appeals on the agenda. 	
Appeal Hearing (CSFRA Petition Nos. 2021002, 2021003, 2021005, 2021006, 2021008, and 2021009)	
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-tenant	
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 reversing in part and affirming in part the Hearing Officer's decision and also remands portions of the decision to the Hearing Officer for further consideration. If the Tentative Appeal Decision is accepted by the RHC, the decision will not be final until the remanded decision is issued, in which case the remanded decision could be further appealed to the RHC.

PUBLIC NOTICING – Agenda posting.

KMT-AVD/JS/6/CDD/RHC
814-02-22-21M

- Attachments:
1. Tentative Appeal Decision (Petitions 2021002, 2021003, 2021005, 2021006, 2021008, and 2021009)
 2. Decision of Hearing Officer, As Amended
 3. Appellant-Landlord Appeal of Decision