

Tentative Appeal Decision  
Petition 21220016

Rental Housing Committee  
**Tentative Appeal Decision**

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The Rental Housing Committee of the City of Mountain View (the "**RHC**") finds and concludes the following:

**I. Summary of Proceedings**

On July 15, 2022, Tenant Rondeline Williams ("**Petitioner**") filed a petition for a downward adjustment of rent based on unlawful rent (the "**Petition**") (Petitioner's Exhibit #1) related to the property located at 511 Central Avenue, Apt T, Mountain View ("**Property**"). The Property is owned by Agate Bay LLC, the parent company of Shoreline Village Apartments, which has been represented in the petition proceedings by Steven Welter, the manager of the LLC, and Ms. Reeta Rao, the regional property manager under CBW Properties Inc. ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On August 10, 2022, a notice of hearing was issued with a hearing date scheduled for September 8, 2022 at 10:00 AM.

The Petition requested a rent reduction on the basis that Respondent imposed the Annual General Adjustment ("**AGA**") for 2021 and 2022 on the incorrect Base Rent. The Petition alleged that Respondent's calculation of the Base Rent failed to take into consideration rent concessions that were provided by Respondent during the initial term of the Petitioner's tenancy of the Property. As such, the Petition asserted that the effective AGA imposed by Respondent exceeded the AGAs permitted by the Community Stabilization and Fair Rent Act ("**CSFRA**").

On August 24, 2022, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Petitioner and Respondent (through its authorized representatives Mr. Welter and Ms. Rao) were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing. In addition, Petitioner indicated at the time of the pre-hearing conference that she would submit any additional documents in advance of the hearing. A Notice of Hearing Officer's Written Order and Summary of Pre-Hearing Conference and Notice of the Hearing were served on the Parties on August 24, 2022. (Hearing Officer's Exhibits #4 and #5).

The hearing was held on September 8, 2022. The hearing record was closed on September 8, 2022. The Hearing Officer issued a decision on October 6, 2022 ("**HO Decision**"). The Hearing Officer's Decision was served on the parties on October 7, 2022.

A timely appeal of the Decision was received from the Respondent on October 11, 2022 ("**Appeal**").

**Procedural Posture**

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

**II. Summary of Hearing Officer Decision.**

The Hearing Officer issued a detailed decision on the Petition summarizing the evidence and making findings of fact and conclusions of law.

The Hearing Officer found the following:

1. The one-month rent concession that Respondent provided Petitioner for the month of June 2021 did not fall within the exception contained in CSFRA Regulation Chapter 2 section (b)(2)(i) for rent concessions offered in the first month of the initial term of the tenancy because it was in fact applied to the second month of Petitioner's tenancy.

2. Pursuant to the provisions of CSFRA Regulation Chapter 2 section (b)(2)(i), the Base Rent for the Property was the total rent actually paid by the Petitioner over the course of the initial lease term (\$16,955.00) divided by the length of the initial lease term (12 months), amounting to a Base Rent of One Thousand Four Hundred and Sixteen Dollars and Twenty-Five Cents (\$1,416.25).

3. Upon expiration of the initial lease term, Petitioner requested a 12-month lease renewal for the Property to begin on May 1, 2022. In June 2022, Respondent and Petitioner signed the lease renewal with an increased monthly rent of One Thousand Five Hundred Seventy-Five Dollars (\$1,575.00), amounting to a two percent (2%) increase over the original lease rent – not the correctly calculated Base Rent – of One Thousand Five Hundred Forty-Five Dollars (\$1,545.00). Less than a month later, Respondent served Petitioner with a notice that her rent would be increased to One Thousand Six Hundred Fifteen Dollars (\$1,615.00) beginning September 1, 2022. Respondent had calculated this new rent by applying the five percent (5%) AGA for 2022 to the original lease rent, amounting to a new lease rent of One Thousand Five Hundred Seventy-Five Dollars (\$1,575.00).

4. Both rent increases that Respondent attempted to impose after May 1, 2022 were based on the incorrect calculation of the Base Rent, and were therefore greater than the permitted AGA for 2021 and 2022. As such, the rent increases were invalid under the CSFRA.

5. Based on the foregoing, the Petitioner was entitled to a downward adjustment of rent due and a rent refund based on the Respondent's demand and retention of rent in excess of that permitted by the CSFRA. The Parties were to calculate the exact amount demanded and retained

by Respondents and Respondents were to provide an appropriate refund or rent credit to the Petitioner within thirty (30) days of the date of the HO's Decision.

### **III. Appealed Elements of Hearing Officer Decision**

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section III of this Appeal Decision identifies the elements of the Decision that are subject to appeal by the Respondent. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Respondent raises only one issue on appeal.

A. **CSFRA Regulation Chapter 2 section (b)(2)(i) is not applicable to the petition.** Respondent argues that the Hearing Officer made an error of law by applying the provisions of Regulation Chapter 2 section (b)(2)(i) to the petition. Specifically, Respondent asserts that, based on the discussions of the Rental Housing Committee at its July 18, 2022 meeting, the "new" definition of Base Rent in Regulation Chapter 2 section (b)(2)(i) was to go into effect on September 1, 2022. Because this petition discusses concessions that were provided before September 1, 2022, Respondent argues that Regulation Chapter 2 section (b)(2)(i) should not have been applied to the facts of the petition.

### **IV. Decision Regarding Appealed Elements**

A. **Hearing Officer Did Not Err in Applying Regulation Chapter 2 section (b)(2)(i).**

Respondent first argues that the Hearing Officer erred in considering and applying Regulation Chapter 2 section (b)(2)(i). In support of this argument, Respondent submits that the Rental Housing Committee, when considering the adoption of Regulation Chapter 2 section (b)(2)(i) at its July 18, 2022 meeting, decided that the regulation would not go into effect until September 1, 2022. In essence, Respondent claims that because the RHC intended the regulation to go into effect on September 1, 2022, the regulation should not have been applied to the rent concessions and increases in the instant petition that were provided prior to that date.

Respondent's argument both wrongly assumes the intent of the Committee and wrongly states the effective date of the regulation. Therefore, the Hearing Officer did not err in considering both Regulation Chapter 2 section (b)(2)(i) and Regulation Chapter 2 section (b)(2)(ii) in reaching their decision.

Paragraphs (i) and (ii) of Regulation Chapter 2 section (b)(2) were adopted by the Committee on July 18, 2022. Paragraphs (i) and (ii) clarified the existing definition of "Base Rent" in Regulation Chapter 2 section (b)(2), which is applicable to *any tenancy commencing after October 19, 2016*. Petitioner's tenancy commenced on May 1, 2021; therefore, the "Base Rent" definition in Regulation Chapter 2 section (b)(2) is applicable.

Respondent is correct that the Committee discussed a September 1, 2022 date at the July 18, 2022 meeting. However, the Committee did so in the context of how concessions provided before or after that date would be treated for the purposes of downward adjustment of rent petitions. Simultaneous with the adoption of Regulation Chapter 2 section (b)(2)(i) and Regulation Chapter 2 section (b)(2)(ii), the Committee also adopted Regulation Chapter 4 section (G)(6) to place certain limitations on a Tenant's ability to collect back rent where the Tenant files an unlawful rent petition related to rent concessions. Regulation Chapter 4 section (G)(6) reads as follows:

- "6. Limitations on Unlawful Rent Petitions. Where a Petition for an Individual Rent Adjustment would reduce rent based on the alleged collection of unlawful Rents related to "rent concessions," as that term is defined in Chapter 2 of these Regulations, the following limitations shall apply:
- a. For rent concessions provided for a Tenancy that commenced before September 1, 2022, a Tenant shall be entitled to a rollback to the Base Rent and a refund of only the Rent that was overpaid within one (1) year prior to the date of the filing of the Petition.
  - b. For rent concessions provided for a Tenancy that commenced on or after September 1, 2022, the Tenant shall be entitled to a rollback to the Base Rent and a refund of any Rent that was overpaid, subject to applicable statutes of limitations in State law.
  - c. A former Tenant may file a Petition for an Individual Rent Adjustment based on alleged collection of unlawful Rent related to "rent concessions" so long as the Petition is filed within six (6) months of the date that the Tenant vacated the Rental Unit."

Construed together, Regulation Chapter 2 sections (b)(2)(i)-(ii) and Regulation Chapter 4 section (G)(6) clearly indicate that the Committee intended for the amendments to apply not only to rent concessions offered for tenancies commencing on or after September 1, 2022, but also to rent concessions offered for tenancies that commenced between October 19, 2015 and September 1, 2022. However, for tenancies that fall within the latter category – including Petitioner's tenancy of the Property – the Landlord is liable for a refund of only the rent overpaid within one (1) year prior to the date of the filing of the Petition.

Applying these rules to the instant case, Hearing Officer correctly concluded that the Petitioner was entitled to a downward adjustment of rent to the corrected Base Rent as well as a refund of any Rent that had been overpaid since May 1, 2022. The rent refund ordered by the Hearing Officer fell within the one-year lookback period authorized by Regulation Chapter 4 section (G)(6) for tenancies that commenced between October 19, 2015 and September 1, 2022.

**B. Respondent's Claim Misstates the Effect of Regulation Chapter 2 section (b)(2)(i).**

In addition to the claim that the regulations were not applicable to the rent concessions in the instant case, Respondent also asserts that Regulation Chapter 2 section (b)(2) adopted a new definition of "Base Rent" and therefore City Staff "'changed the rules' many months or years AFTER decisions had been made and those decisions were made following the rules in place at that time." Once again, Respondent's assertion misstates both the intent and the effect of the Committee's adoption of Regulation Chapter 2 section (b)(2).

CSFRA § 1702(b) provides that the definition of "Base Rent" for tenancies commencing after October 19, 2015 "shall be the initial rental rate charged upon initial occupancy, provided that amount is not in violation of [the CSFRA] or any provision of state law." The Act further clarifies that the "term 'initial rental rate' means *only the amount of Rent actually paid by the Tenant* for the initial term of the tenancy." CSFRA § 1702(b)(2) (emphasis added). CSFRA Regulation Chapter 2, section (b)(2) adopts and restates the CSFRA definition of "Base Rent" verbatim. Therefore, since the inception of the CSFRA, the Base Rent for tenancies commencing after October 19, 2015 has been the amount of rent actually paid by the Tenant during the initial term of the tenancy.

Regulation Chapter 2 section (b)(2)(i) provides additional clarification of the existing and already applicable definition of Base Rent. To be exact, Regulation Chapter 2 section (b)(2)(i) is intended to provide both Landlords and Tenants with guidance about how Base Rent has always been and should be calculated where rent concessions are provided during the initial term of the tenancy. Therefore, in adopting Regulation Chapter 2 section (b)(2)(i), the Committee neither enacted a new definition of Base Rent nor "changed the rules." The Committee merely expressed the "rules" that were already being applied to tenancies commencing after October 19, 2015.

**V. Conclusion**

As detailed above, the RHC denies the appeal in its entirety and affirms the Decision in its entirety:

1. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of One Thousand Four Hundred and Sixteen Dollars and Twenty-Five Cents (\$1,416.25) per month.

2. The Petitioner is also entitled to a rent refund based on Respondent's demand and retention of rent in excess of that permitted by the CSFRA. The Parties shall calculate the exact amount improperly demanded and retained by Respondent and an appropriate refund or rent credit shall be issued to Petitioner within thirty (30) days of the date of this decision.