

CITY OF MOUNTAIN VIEW

DECISION AFTER HEARING PURSUANT TO

THE COMMUNITY STABILIZATION AND FAIR RENT ACT

Rental Housing Committee Case Nos.:	21220012 (Tenant Petition B)
Address and Units of the Rental Property:	184 Centre St. #6
Petitioner Tenant Name(s):	Steven Goldstein
Respondent Landlord Names(s)	David Avny
Hearing Officer:	E. Alexandra DeLateur
Date of Hearing:	September 20, 2022
Date Hearing Record Closed:	September 20, 2022
Date of Decision:	October 20, 2022
Date of Mailing:	(See Attached Proof of Service)

I. STATEMENT OF THE CASE [*Procedural history of the case*]

1. On or about May 25, 2022, the City of Mountain View notified Petitioner Steven Goldstein that his Tenant Petition for Downward Rent Adjustment (Form B), RHC No. 21220012, had been formally accepted. The Petition alleges that Petitioner is entitled to a downward adjustment in rent due to “failure to maintain habitable premises” or “reduction in housing services or maintenance.”
2. The hearing on the Petition was originally scheduled for July 27, 2022.
3. E. Alexandra DeLateur is the duly appointed hearing officer in this matter (“Hearing Officer”).
4. On July 8, 2022, the Hearing Officer held a telephonic Prehearing Conference in this matter and a subsequent Order and Summary dated July 8, 2022, was served on the parties. As part of the Order, both parties were permitted to submit briefs regarding whether the doctrine of *res judicata* should apply to either bar this Petition from going to hearing or, alternatively, narrow the issues that would be heard.
5. On July 8, 2022, Petitioner submitted an email request for a postponement of the hearing due to concerns regarding the availability of his witnesses. An Order was issued denying that request for a postponement on July 11, 2022.

6. The parties both submitted briefs on the *res judicata* issue which were considered by the Hearing Officer. An Order was issued dated July 21, 2022, limiting the scope of the hearing on the Petition to evidence available after July 28, 2021 that relates to the complaints in the current Petition.
7. On July 25, 2022, Petitioner submitted an email request for postponement of the hearing based on his letter to the Rental Housing Committee ("Committee") and the City of Mountain View ("City") requesting a reasonable accommodation for a recently diagnosed disability. The Committee's and City's assessment of the Petitioner's request for reasonable accommodation required additional review and could not be completed prior to the July 27th hearing date; therefore, an Order dated July 26, 2022, was issued postponing the hearing to August 10, 2022. Another Order dated August 8, 2022, was issued *sua sponte* postponing the hearing to September 20, 2022
8. On or about August 24, 2022, the Hearing Officer was notified that the Chair of the Committee had, pursuant to authority delegated by the Committee, responded to Petitioner denying his request for a reasonable accommodation.
9. The Respondent submitted a Representative Authorization Form and the law firm of Pahl & McCay represented the Respondent at the prehearing and at the hearing.
10. A hearing was held on September 20, 2022, at 10:00 a.m. before E. Alexandra DeLateur, assigned Hearing Officer in the case. After both parties presented their arguments and evidence, the hearing officer asked whether either party desired to bring additional evidence or submit further briefs in support of their arguments. Neither party requested to hold open the hearing record for additional evidence or briefing and the hearing officer closed the record at the conclusion of the hearing.

II. APPEARANCES

Petitioner(s): Steven Goldstein (Tenant" or "Petitioner")

Respondent(s): David Avny, Owner and Eric Stephenson, Esq. of Pahl & McCay ("Landlord" or "Respondent")

John Carr, Senior Building Inspector, City of Mountain View

JoAnn Pham, Analyst I, Rent Stabilization Program, City of Mountain View

Anky van Deursen, Rent Stabilization Program Manager, City of Mountain View

III. EVIDENCE PRESENTED

The Evidence List is attached hereto as Attachment A. Not all evidence listed was accepted into the record. Respondent objected to evidence that was already considered in the prior case that was heard on July 28, 2021, and the subject of a Decision by Hearing Officer Derek Chandler dated September 7, 2021. The parties briefed the issue of whether the doctrine of *res judicata* should apply to limit the hearing of this Petition or to require dismissal of this Petition. Pursuant to the Third Pre-hearing Order dated July 21, 2022, the Hearing Officer limited the scope of this hearing.¹ Significant portions of the evidence submitted by Petitioner were excluded on that basis and other evidence was not relevant to the instant situation. A description of the relevant testimony and documentary evidence will be summarized below. In order to provide context, however, this decision does refer to some evidence provided that dates prior to the July 28, 2021 hearing for a previous petition.

The Petition itself summarized the basis of Petitioner's request for a downward adjustment of rent as "The repaired balcony is not up to code even though approved by the City of Mountain View." Petitioner presented four main arguments in support of his Petition B in his documents and testimony.

1. Deck: Petitioner described a deck which he believes is not sturdy and does not conform to building standards. He questioned the structural integrity of the deck based on information he supplied from the National Association of Certified Home Inspectors ("NACHI") which speaks to diagonal supports and underside diagonal bracing beams to safely bear the deadweight load when a deck is more than six feet above ground. He alleges that the Respondent did work without permits and that Respondent performed some work with permits which was not properly inspected and signed off by the City of Mountain View Building Department.

Petitioner concedes that Respondent hired Peter von Clemm of von Clemm Construction to replace some boards on his deck (unit 6) and for a neighboring unit (unit 7). Petitioner submitted several videos which he took to illustrate that those boards are showing splitting and that some older boards show cracking and splitting as well. He argues that Respondent has refused to add the diagonal supports below the deck per the recommendation from NACHI and that these diagonal support beams are critical for the integrity of the deck. Petitioner also testified that the floorboards bend and creak when he walks on them, so he does not use his deck. He stated that the building was built in the 1960s or 1970s and was not designed for the distribution of the deadweight

¹ Petitioner filed a brief asserting that the Decision after Hearing in RHC consolidated Nos. 20210021 & 20210022 ("2021 Decision") should not cause the doctrine of *res judicata* to apply for a many reasons which essentially attack the validity of the 2021 Decision. None of these arguments lead to a conclusion that the decision should be invalidated for the purposes of the doctrine of *res judicata* as this Hearing Officer has no authority to delve into the validity of the prior decision but could only analyze the elements of the doctrine of *res judicata*, assuming that the underlying decision was valid and proper.

load that it now supports. He testified that he feels vulnerable to a possible collapse of the deck. He has provided copies of emails between himself, the Respondent, and the City staff regarding his complaints about his deck.

Petitioner submitted several articles and video clips regarding incidents of building collapses, most of which were not relevant to this property due to the subject building's age, mode of construction, size, alterations, and other distinguishing characteristics.

2. Cracks in the walkway: Petitioner testified as to his observations of cracks in an open-air walkway that leads to rental units on the second floor of the property. He believes the walkway needs repair beyond the repairs that the Respondent has performed. He stated that the Respondent merely painted over cracks and has not had the walkway inspected properly for structural integrity. He is concerned that the walkway may collapse. He has provided copies of emails between himself, the Respondent, and the City staff regarding his complaints about the walkway.
3. Floor of his Unit: At the hearing, Petitioner described hearing lots of cracking, creaking, and other noises inside his Unit and feeling as if his floor is sinking when he walks on it. He argues that the floor is unstable. He asserted that the area is subject to shaking that undermines the stability of the floor and other structures in the property. He submitted an email that the garbage trucks shake the building twice a week as they drive by. He testified that other residents moved out of their unit (#7), and it was renovated over a period of about three weeks to repair the floor, among other things.
4. Reduction in the Assessed Value of the Property: Petitioner presented evidence of the change in the assessed value of the entire property known as 184 Centre St. to show a reduction in the rental value of his own Unit for the purposes of CSFRA 1710(b) and (c). He submitted copies of information from the County Assessor's website showing the change in assessments over recent years. He argues that all tenants of the property should have their rents adjusted downward² based on the change in assessed value from \$4.95 million at the time of purchase to \$3.85 million more recently.

In an email message, Petitioner also submitted portions of a prior decision after hearing for a landlord petition, RHC No.17180006 dated July 11, 2018 ("2018 Decision") for the proposition that the Respondent has not maintained the property in good condition and that this alleged lack of maintenance has caused the building to diminish in value.

² This Petition was filed solely by Petitioner Goldstein. It is not consolidated with any other tenant petition related to the same property. Therefore, the Hearing Officer has limited authority to grant or deny relief to the Petitioner only.

5. Evidence related to the Request for Accommodation: Petitioner submitted a number of personal medical records in support of his request for accommodation. Those records are not relevant to the merits of the Petition and those records will not be part of the record of this hearing in order to preserve their confidential nature.
6. Evidence of rent payments: Petitioner submitted bank records to show the details of rent payments. The bank records are protected personal information and will not be made public. Petitioner also submitted proof of Verification of Program Participation in the California Covid-19 Rent Relief Program.

Respondent presented evidence in response and summarized as follows:

- A. Deck: Respondent argues that the Petitioner brought this same evidence and arguments regarding his deck as part of a prior tenant petition which was heard on July 28, 2021, and he should not be able to re-litigate the same issue when nothing has changed since the decision by Mr. Chantler for RHC Nos. 20210021 and 20210022, consolidated, (“2021 Decision”) became final. Respondent’s position is that Petitioner did not timely appeal the prior decision and is attempting to end-run the 2021 decision in favor of Respondent and that Petitioner has not presented new or different evidence.

Respondent submitted a copy of a Building Inspection Division General Permit Application for the property (undated) stating the scope of work as “Remove and replace decking material to repair surface rot and imperfections as necessary.” The testimony was that the City building inspector followed up and signed off on the repairs done. Petitioner concedes that the City approved the repairs in error, but Respondent submits that the City’s approval was proper.

Respondent submitted two letters from Mr. Peter Von Clemm of Von Clemm Construction dated June 15, 2021, and July 21, 2022. Mr. Clemm is a licensed general contractor. The 2021 letter explained the process of replacing redwood floorboards forming the surfaces of the decks for Units 6 and 7. He stated that the owner had asked him to replace all the redwood boards even though only a few boards showed beginning signs of rot. He further stated that the work was done pursuant to a permit and signed off by the City’s building inspector. The 2022 letter explained that his inspection of the wood boards on Petitioner’s deck about a year later had shown “minimal signs of aging” since their installation approximately one year prior to the inspection. He also opined that the “underlying support structure” would last for decades with minimal routine maintenance of painting and inspection of the metal flashings that direct water away from the joints.

Respondent called Mr. John Carr, senior building inspector for the City of Mountain View, as a witness to present testimony and documents to show that Respondent obtained a permit and the City signed off on the replacement of the redwood floor boards. Mr. Carr's email to Petitioner dated March 25, 2021 was also submitted where Mr. Carr stated that "[T]here is nothing wrong with the structure of this deck."

- B. Cracks in the walkway: Respondent presented testimony from Mr. Carr and documentation from Mr. Clemm and Mr. Carr to show that the walkway was maintained and was not in need of a further inspection or repairs. Per the Respondent's witnesses, Respondent painted over minor cracks that will not affect the integrity of the walkway.
- C. Floor of his Unit: Respondent argues that the flooring in Petitioner's Unit was not a complaint in the Petition and, therefore, is outside the scope of the hearing. Furthermore, Respondent offered the testimony of Mr. Avny and Mr. Carr regarding the permits and repairs for the neighboring unit to show that Respondent worked in cooperation with the City and obtains permits as required for work on the property.
- D. Reduction in the Assessed Value of the Property: Respondent argues that the value of the entire property for tax assessment purposes does not correspond with, or affect, the "loss of rental value" clause in CSFRA 1710(b) and (c). Additionally, Respondent argues that the reduction in an assessed value can be caused by many factors, not simply a "lack of maintenance" which Petitioner alleges caused the diminution in value since Respondent purchased the property.
- E. Evidence of rent payments: Respondent provided its ledger of Petitioner's rent payments from July 2021 to July 2022.

IV. ANALYSIS

The Hearing Officer submits that the legal analysis has the following steps in order to determine if Petitioner has proven his entitlement to relief by a preponderance of the evidence as governed by CSFRA 1710(b) and 1710(c) and Regulations Chapter 5, Section G:

- A. Based on the evidence presented at the hearing, has Petitioner met his burden of proof under CSFRA 1710(b) and (c) as follows:
 - a. Did the petitioner specify the conditions alleged to contribute to the failure to maintain the rental unit in habitable condition or a decrease in housing services or maintenance?

- b. Did the Petitioner demonstrate that the landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the petition?
 - c. Did the Petitioner incur a loss in rental value attributable to the landlords' failure to maintain the rental unit in habitable condition or a decrease in housing services or maintenance?
- B. What, if any, damages are due to Petitioner?

V. DISCUSSION

- A. **(b) Did the petitioner specify the conditions alleged to contribute to the failure to maintain the rental unit in habitable condition or a decrease in housing services or maintenance?**

Habitability: CSFRA 1710(b)(1) states that “[F]ailure to maintain a Rental Unit in compliance with governing health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17930.10, constitutes an increase in Rent.”

In order to meet his burden of proof, CSFRA 1710(b)(2) states, “[A] Tenant Petition filed pursuant to this Subsection must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition...”

Petitioner argues that his complaints about the deck, walkway, and floor have not been addressed over a period of years. However, at issue at this hearing, is whether the Respondent has failed to maintain the deck, walkway, and Petitioner’s floor in a habitable condition since the last hearing on July 28, 2021. Has he presented new evidence of a failure to maintain a habitable premises?

Petitioner’s complaints largely remain the same; however, Petitioner submitted several videos taken by him since the 2021 Decision. The videos that are relevant show the Petitioner’s deck floorboards, the underside of the deck, and the supports holding it up. The videos showing other portions of the property, such as the deck for Unit 11, are not relevant to this decision. Petitioner’s video from March 2021 was presented to show the cracks in the redwood floorboards and support beams. The video from July 2022 was presented to show the condition of the deck approximately one year later. It shows that the redwood floorboards have developed some cracks and that some support beams (mostly painted) have some cracks. Petitioner describes these cracks and splits as “significant” and “dangerous.”

He testified that he observed more cracks and splitting in the wood on the deck and in the support beams over time. He also testified as to his feeling that the property was shaking, making noises, and falling apart. He stated in writing and in his testimony that he feels vulnerable in using his deck, so he does not use it. He uses the walkway as required but worries about its integrity. He also testified that his floor feels like it is unstable and may give way. Overall, he testified that the building is in worse condition now than it was a year ago.

Under California law, the concept of habitability refers to conditions fit for the occupation of human beings to avoid dangerous or unhealthy conditions. As stated in CSFRA 1710(b)(1), Landlords must substantially comply with housing and building codes and standards that materially affect a tenant's safety and health. The evidence presented shows that the Petitioner's Unit is not unfit for occupation due to dangerous conditions such as gas leaks, unsafe electric wiring, vermin or insect infestations, lack of water or heat, lack of locks, etc. Petitioner presented evidence to show that 1) there were cracks and splits in some deck boards and supports, 2) diagonal supports are missing under the deck, 3) the outdoor walkway has cracks, and 4) his floor inside the Unit is not solid because it makes noises when he walks on it and seems to flex under the weight of a person. None of these complaints amount to an inability to occupy his Unit as a matter of habitability. In fact, the City of Mountain View building department has inspected the work to replace the floorboards on the Petitioner's deck and signed off, approving the completed work. Petitioner did not submit any outstanding code violation reports for this Unit in his documents or at the hearing. Petitioner failed to present that there is an applicable building code section that requires the Respondent to perform the work to install the diagonal support beams or diagonal underside deck supports. Mr. Carr's email dated March 25, 2021 to Petitioner explains that the City does not consider the deck supports to be a violation of any building code despite the Petitioner's insistence that there are violations according to NACHI's recommendations.³

Likewise, Petitioner has not brought any evidence that the cracks in the outside walkway are more serious than presumed by Respondent and the City. No code violation report has been presented to support Petitioner's statements that the walkway is unsafe.

The testimony regarding Petitioner's floor being unstable does not amount to a question of habitability.

While Petitioner seeks to compel the Respondent to engage a third party, neutral inspector to report their findings regarding the deck and the walkway, there is no authority to compel Respondent to do so. Respondent has been put on notice that Petitioner is concerned but there is no evidence that a contractor or building inspector has either recommended or required such an inspection or report. The City's building inspectors have personally walked onto the

³ NACHI is an organization dedicated to helping private home inspectors operate successful businesses. No evidence was presented to show why their report discussing deck inspections is correct and reliable on the subject.

property in the past regarding the permitted work to the decks for units 6 and 7 plus the more recent work to renovate unit 7. There is no testimony or document that shows that these experts are concerned about the decks collapsing or the building floor giving way. Therefore, there is insufficient evidence to find Petitioner met his burden to show a failure to maintain a habitable premises.

Reduction in Housing Services or Maintenance: CSFRA 1710(c) states that “[A] decrease in Housing Services or maintenance, or deterioration of the Rental Unit beyond ordinary wear and tear, without a corresponding reduction in Rent, is considered an increase in Rent....The Petition must specify the circumstances allege[sic] to constitute an decrease in Housing Services or maintenance...”

CSFRA 1702(h) defines “housing services”:

“Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, right to have a specified number of occupants, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.”

“Maintenance” is not specifically defined in the CSFRA. However, Petitioner does not point to other specific housing services listed in the definition of Housing Services. He rests his arguments on a reduction in general “maintenance” due to the Respondent’s failure to hire a private inspector and perform structural work on the deck and walkway that meets the NACHI recommendations.

Petitioner’s evidence relies on three main arguments to show a decrease in maintenance and/or housing services. First, Petitioner alleges that a 2018 Decision held that Respondent was performing less maintenance since purchasing the property than the tenants had received from the prior owner. The 2018 Decision does not enlighten us regarding the current state of the property. Additionally, this hearing is limited to new and relevant evidence post-July 28, 2021. Whatever the holding in the 2018 Decision, it is too remote to be useful to this analysis.

The second main argument to show a decrease in maintenance stems from the Respondent’s failure to perform the type of inspection and repairs that Petitioner has seen recommended online by NACHI. Petitioner makes great leaps of logic as part of his argument here. Petitioner misconstrues the Respondent’s failure to meet his (Petitioner’s) standards for maintenance as the yardstick by which landlords are measured. Although NACHI may recommend a sound practice, Petitioner has not shown why the NACHI recommendations apply to any building in Mountain View or to this property specifically. Petitioner is not an expert in construction or

building maintenance. He did not show that he holds any special license or has any relevant training to do any testing, recommend any specific repairs, or determine that work was not done according to the applicable building codes. Although wooden beams do split or crack, Petitioner's opinion that the beams on his deck have "significant" or "dangerous" splitting and cracking is not supported by anyone with appropriate training or knowledge to come to this conclusion.

The standards are set by the governing statutes and rules at the federal, state, and local level. The City of Mountain View has its municipal Building Codes and employs experts, like Mr. Carr, to enforce them. The state of California licenses contractors to ensure that competent persons perform work on buildings, like Mr. Clemm.⁴ The Respondent showed that he responds to maintenance requests, specifically by replacing the redwood floor boards on the decks for units 6 and 7. Mr. Clemm's letters and Mr. Carr's testimony support Respondent's efforts continue to respond and do necessary work around the property. The cracks in the walkway were inspected and repaired by the Respondent. There was no evidence presented that the floor in Petitioner's Unit was the subject of an unaddressed maintenance request rather than Petitioner's general demand to have an inspection done on the building. Simply stated, the repairs to the decks and the walkway did not meet Petitioner's opinion of what should happen. The 2021 Decision held that Petitioner had not met his burden up to the time of that hearing. Based on the evidence presented, there has been no material change to the state of the decks, walkway, or floor during the time following the hearing on July 28, 2021.

Third, Petitioner argues that the decrease in the assessed value of the entire building over time shows a lack of maintenance because, otherwise, the value would not be less than it was when the Respondent purchased it. As pointed out by the Respondent, there are many factors that affect the value of an income producing residential property. Based on the evidence presented, it is impossible to conclude that lack of maintenance was the main or overriding factor in the reduction in the assessed value.

Furthermore, in context, the language in CSFRA 1710(b) and (c) regarding loss in rental value is based on an examination of the value of what a tenant receives in exchange for the rent they pay to the landlord. The tenant is entitled to use of their rental unit and to receive certain services negotiated at the time the tenancy commenced and the landlord is entitled to receive the agreed amount of rent. For instance, a tenant whose kitchen was flooded from another tenant overflowing the bathtub upstairs may be able to argue for a reduction in rent for the time they could not use their kitchen. The tenant who finds the laundry machines broken may claim that the laundry services they previously enjoyed have been decreased and, therefore, a

⁴ Petitioner stated repeatedly that a contractor "cannot certify his own work" as a reason to discredit Mr. Clemm's 2022 letter regarding the state of redwood floorboards and supports. Mr. Clemm's opinion is provided as a licensed contractor who knew what work was done. There is no "certification," but Mr. Clemm may provide an educated opinion.

downward adjustment in rent is warranted. Per his testimony, the only portion of the Unit that Petitioner does not use regularly is his deck. He is not comfortable using it. However, it appears that the deck is safe to use, and Petitioner chooses not to use it. He has not shown a specific service that Respondent has decreased. Petitioner has not shown a reduction in maintenance or housing services by a preponderance of the evidence.

In conclusion, Petitioner has failed to meet his burden of proof to show that there was either (1) a failure to maintain a habitable premises or (2) a decrease in housing services or maintenance since July 28, 2021.

(b) Did the Petitioner demonstrate that the landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the petition?

The analysis above makes this inquiry moot since there is no condition under either CSFRA 1710 (b) or (c) which will give rise to a downward rent adjustment.

(c) Did the Petitioner incur a loss in rental value attributable to the landlords' failure to maintain the rental unit in habitable condition or a decrease in housing services or maintenance?

The analysis above makes this inquiry moot since there is no condition under either CSFRA 1710 (b) or (c) which will give rise to a downward rent adjustment.

B. What, if any damages are due to Petitioner?

Based on the above analysis, the Petitioner is not awarded any downward adjustment of rent.

VI. CONCLUSION

The Hearing Officer having reviewed the documentary evidence, heard the arguments of the parties, and good cause appearing,

It is hereby ordered that the Petitioner's request for a downward rent adjustment is denied.

Dated: October 20, 2022

/s/ E. Alexandra DeLateur
E. Alexandra DeLateur, Hearing Officer

Rental Housing Committee Case Nos.: 21220012 (Tenant Petition B)

ATTACHMENT A: DOCUMENT LIST 184 Centre St. #6, Mountain View, CA

Hearing Officer's Exhibits:

- HO-1 City of Mountain View Tenant Petition B for Unlawful Rent based on Failure to Maintain Habitable Premises or Decrease in Housing Services or Maintenance dated May 24, 2022, assigned RHC no. 21220012, along with all attachments including
- a. the petition worksheets
 - b. printout of Property Tax Assessment for Parcel 158-04-034 as of May 25, 2022
 - c. email thread from Petitioner dated April 8, 2022
 - d. email from Petitioner dated March 20, 2022 referencing the NACHI recommendations for diagonal supports for decks or balconies more than six feet above ground
 - e. email from Petitioner dated March 12, 2022 with links to videos which Petitioner created regarding the decks plus narrative about his walls cracking, the neighbor's floor sinking and general stress on the property
 - f. an email from Petitioner dated March 11, 2022 including links to videos of wood bending, cracking, and splitting problems (not Petitioner's deck)
 - g. email from Petitioner dated April 23, 2022 regarding filing the instant Petition and describing cracks in the supports, including video links to a video he made and a link to the NACHI website
 - h. email from Petitioner dated February 13, 2022 regarding concerns about the wood floor panels on the deck failing due to the coefficients of thermal expansion
 - i. article "Inspecting a Deck, Illustrated" by Nick Gromicko published through NACHI
 - j. Balcony Building Permit to "remove and replace decking material to repair surface rot and imperfections as necessary" for Units 6 & 7
 - k. A copy of the decision following a landlord petition for an upward rent adjustment, RHC no. 17180006 dated July 11, 2018.
- HO-2 Notice of Submission and Proof of Service on Respondent David Avny, dated May 25, 2022
- HO-3 Notice of Acceptance of Petition dated May 25, 2022
- HO-4 Proof of Service of: Notice of Withdrawal of Tenant Petition A: Unlawful Rent, Follow-up Notice re Tenant Petition B: Unlawful Rent for Failure to Maintain Habitable Premises or Decrease in Housing Services or Maintenance, CSFRA Hearings Information Sheet,

Representative Authorization Form, and Blank Response Form on both Petitioner and Respondent dated May 25, 2022

- HO-5 Notice of Prehearing and Hearing Date dated June 14, 2022, served on all parties, setting the Prehearing on July 8, 2022 and the hearing on July 27, 2022
- HO-6 Respondent's Authorized Representative Form dated May 13, 2022, from David Avny appointing Lerna Kazazic, Esq. of Pahl & McCay to represent the Respondent in this matter
- HO-7 Prehearing Order dated July 8, 2022 summarizing the results of the Prehearing conference
- HO-8 Second Prehearing Order dated July 11, 2022 denying the Petitioner's request for a postponement of the hearing based on his witnesses unavailability and difficulties in testifying for an online hearing
- HO-9 Third Prehearing Order dated July 21, 2022, ruling on the Respondent's motion to apply the doctrine of *res judicata*, ultimately limiting the scope of the hearing
- HO-10 Fourth Prehearing Order dated July 26, 2022 granting a postponement of the hearing pursuant to Petitioner's request to the City of Mountain View for a reasonable accommodation due to his recently diagnosed disability
- HO-11 Fifth Prehearing Order dated August 8, 2022 pursuant to the Hearing Officer's *sua sponte* determination that the hearing could not go forward until a decision on Petitioner's request for a reasonable accommodation had been made

Petitioner/Tenant's Exhibits in addition to those attached to the Petition:

- T-1 Brief re: res judicata issue, undated/submitted to the City July 10, 2022
- T-2 Videos taken by Petitioner of the decks, topside and underside
- T-3 Three Day Notice to Petitioner dated May 7, 2022, copy of a certified mail receipt card signed on May 27, 2022, and a print out regarding the CSFRA petition pending on June 8, 2022
- T-4 Home Inspection Report for the property known as 184 Centre St. Mountain View, California dated September 2, 2015
- T-5 Email from Petitioner dated February 27, 2022 regarding the garbage truck shaking the property twice a week
- T-6 Copies of two certified mail receipts dated May 25, 2022

- T-7 Email from Petitioner to the CSFRA program dated June 12, 2022 regarding the Three Day Notice and Respondent's failure to acknowledge the Petition
- T-8 Notice of Hearing Officer Written Decision dated September 10, 2021 and Decision for RHC consolidated nos. 20210021 and 20210022 by Derek Chantler dated September 7, 2021
- T-9 Email from Petitioner re: res judicata issue dated July 10, 2022 objecting to the name error in the prior 2021 Decision
- T-10 Email from Petitioner re: res judicata issue dated July 14, 2022 objecting to the author of the prior 2021 Decision
- T-11 Response to the Respondent's submission, undated/submitted to the City July 19, 2022, but starting with the sentence, "Let me address each part of the response the city received; the first attachment titled Stevens Email 205212021" along with attachments
- T-12 Copies of bank account records for Petitioner's account with Bank of America from May 27, 2017 through March 29, 2021 [248 pages of documents with private information]
- T-13 Copies of Petitioner's medical records from various medical providers regarding his recent diagnosis of a disability giving rise to his request for a reasonable accommodation from the City of Mountain View to assist him with the hearing on the Petition. [14 pages of private information]
- T-14 Email from Petitioner dated July 23, 2022 regarding submission of payment records and his request that any award of rent reduction be matched with the payor, including the rental assistance payments
- T-15 Email from Petitioner dated July 24, 2022 at or around 5:08 a.m. regarding his proposed witness, who was moving to Redding and suffering from vertigo, possibly becoming unable to testify at the hearing
- T-16 Email from Petitioner dated July 24, 2022 at or around 2:26 p.m. regarding his witness who was moving to Redding (Ms. Dian Davidson) suffering from vertigo was now in hospital
- T-17 Email from Petitioner dated July 25, 2022 regarding his new diagnosis and his assertion that he will need some assistance at the hearing
- T-18 Email from Petitioner dated July 25, 2022 formally requesting a reasonable accommodation at the hearing due to his disability

- T-19 Email from Petitioner dated July 27, 2022 regarding shortcomings of Peter von Clemm's letter of July 21, 2022 and objecting to its submission into evidence as late
- T-20 Secured Taxes Payment History printout regarding the property known as 184 Centre St. Mountain View, California, printed June 9, 2022
- T-21 Assessment History for 184 Centre St. Mountain View, California printed July 8, 2022

Respondent/Landlord Exhibits:

- LL-1 Petitioner's amended 2021 Petition A for a downward adjustment of rent dated June 21, 2021
- LL-2 Decision for RHC consolidated nos. 20210021 and 20210022 by Derek Chantler dated September 7, 2021
- LL-3 Email from Petitioner to the City building inspectors dated March 29, 2021 regarding his observations regarding the integrity of decks on the property and the repairs to the decks for units 6 and 7 (forwarded to the program June 23, 2022)
- LL-4 Email from attorney with Respondent's Witness List dated July 13, 2022
- LL-5 Email exchange between Petitioner and Respondent dated March 25 and March 29, 2021 regarding the repairs to the decks for units 6 and 7
- LL-6 Email from Petitioner to the City inspector James Olsen regarding inspecting the balcony/decks supports dated January 6, 2021 (also included in LL-12)
- LL-7 Email from Petitioner to the Mountain View City Council dated June 22, 2021 regarding the rent relief application by Petitioner and Respondent's response to it
- LL-8 Letter from Peter von Clemm dated June 15, 2021 regarding an inspection of the balconies/decks for units 6 and 7
- LL-9 Letter from Peter von Clemm dated July 21, 2022 regarding a re-inspection on May 10, 2022 after the work was done to replace boards on the decks for units 6 and 7
- LL-10 Brief re: res judicata issue dated July 19, 2022
- LL-11 Excel spreadsheet of rent payments for Unit 6 and source of payments from July 2021 to July 2022
- LL-12 Email thread (multiple messages) between Petitioner and City Building Inspectors (James Olsen and John Carr) dated January 6, 2021, March 22, 2021, and March 25,

2021, regarding the permit and work done to replace wood on the decks for units 6 and 7