

Tentative Appeal Decision  
Petition 23240026

Rental Housing Committee  
**Appeal Decision**

Petition 23240026

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

**I. Summary of Proceedings**

On October 9, 2023, Tenant Rondeline Williams ("**Petitioner**") filed a tenant hardship petition (the "**Petition**") (Exhibit #1a) related to the property located at 511 Central Avenue, Apt ■, Mountain View ("**Property**"). The Property is owned by Shoreline Village LLC, which has been represented in the petition proceedings by Stephen Welter, the manager of the LLC ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On November 3, 2023, a notice of hearing was issued with a hearing date scheduled for November 29, 2023 at 10:00AM.

The Petition requested relief from a banked rent increase of five percent (5%) on the basis of undue tenant hardship. Specifically, the Petitioner claimed tenant hardship on the basis that her household income does not exceed one hundred percent (100%) of the median household income for Santa Clara County as adjusted for a household size of one (1) according to the California Department of Housing and Community Development. As such, the Petitioner sought relief from the "banked" portion of five percent (5%) of a total ten percent (10%) rent increase, in accordance with the authorization in the Community Stabilization and Fair Rent Act ("**CSFRA**") and its implementing Regulations.

On November 15, 2023, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Petitioner and Respondent (through its authorized representative Mr. Welter) 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 November 16, 2023. (Exhibits #4 and #5).

The hearing was held on November 29, 2023. The hearing record was held open until the close of business on December 12, 2023 for submission of additional evidence requested by the Hearing Officer. The Hearing Officer issued a decision on January 11, 2024 ("**HO Decision**"). The Hearing Officer's Decision was served on the parties on January 11, 2024.

A timely appeal of the Decision was received from the Respondent on January 18, 2024 ("**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. Based on a Notice of Rent Increased dated August 29, 2023, Respondent sought to raise Petitioner's rent, from \$1,444.58 to \$1,588.50, effective October 1, 2023. The proposed rent increase includes the Annual General Adjustment (AGA) for 2023 of five percent (5%) and the banked AGA for 2022 of five percent (5%).

2. Petitioner filed the Petition under the CSFRA for relief on October 9, 2023, within ten (10) days of the effective date of the rent increase and paid the proposed increased rent for the months of October, November and December 2023.

3. Petitioner's household is comprised of one (1) adult residing in the Property. Petitioner's total gross income for the twelve (12) months preceding the Petitioner was less than \$126,900, which is 100 percent of the applicable annual Area Median Income (AMI) for a household of one (1) in Santa Clara County. Pursuant to CSFRA Regulations Chapter 7, Section C.6, Petitioner was entitled to relief from the banked 2022 AGA of five percent (5%).

4. The Appeal Decision in Petition No. 21220016, which was decided on November 15, 2022, and served on the Parties on December 20, 2022 ("**December 2022 Appeal Decision**"), determined that the proper Base Rent for Petitioner's tenancy was \$1,416.25. Respondent charged Petitioner monthly Rent from December 2022 through September 2023 in the amount of \$1,444.58, which Petitioner paid. There was no evidence in the record that there was a written Notice of Rent Increase at any time between December 20, 2022, and August 2023.

5. Based on the foregoing, pursuant CSFRA Section 1707(d), Respondent could not implement the banked increases but could implement the 2023 AGA of five percent (5%) for the correctly calculated, lawful monthly rent of \$1,487.06, beginning October 1, 2023, and continuing thereafter until there is a lawful change in the Rent.

6. In addition, Respondent was required to refund Petitioner \$28.25 per month for the 10-month period from December 2022 through September 2023 because Respondent overcharged Petitioner based on the November 2022 Appeal Decision. Respondent was also required to

refund Petitioner (a) \$101.44 per month for the three-month period from October to December 2023, since Petitioner overpaid Rent during those months, and (b) for any overpayments for January 2024 and subsequent months.

### **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 two issues on appeal.

**A. The Hearing Officer abused her discretion by determining the Base Rent to which the AGA should be applied.** Respondent effectively argues that the Hearing Officer exceeded the scope of the petition by determining not only whether the Petitioner was entitled to relief from the banked 2022 AGA, but also whether the Base Rent to which the increase was being applied was correct. Respondent contends that the Hearing Officer should not have inquired into the legality of the monthly rental amount because the Petition "did not include any comments, concerns or questions about the rental amount, past or present" and because there "is precedent limiting the hearing officer decision to only what is addressed in the petition."

**B. The Hearing Officer erred in determining that the lawful Rent, at the time of the Petition, was \$1,416.25.** The Hearing Officer's decision in Petition No. 21220016, dated October 6, 2022 ("**October 2022 Decision**"), stated that "The Parties shall calculate the exact amount demanded and retained by Respondents and an appropriate refund or rent credit shall be issued to Ms. Williams within thirty (30) days of the date of this decision." Based on the foregoing, the Parties coordinated, and the rent and credits were agreed upon and implemented by both Parties as directed in the October 2022 Decision.

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

**A. Hearing Officer Did Not Abuse Her Discretion by Determining the Correct Rent to which the AGA Should be Applied.**

Respondent first argues that the Hearing Officer abused her discretion by exceeding the scope of the Petition and inquiring into the lawful Rent for the Property at the time that the Petition was filed. However, Respondent's argument not only fails to address the connection between the determination of the valid rent increase and the lawful Rent, but also misrepresents the breadth of the Hearing Officer's authority to decide issues related to the tenant hardship determination.

For one, the CSFRA Regulations do not limit a Hearing Officer's discretion in tenant hardship petitions as narrowly as Respondent indicates. Of relevance here, CSFRA Regulations Chapter 7, Section C.6 provides as follows:

- "6. Relief from Hardship. Upon demonstrating the existence of one (1) or more hardship conditions identified in Subsection (C)(2), a Hearing Officer shall consider the Tenant household's hardship condition as one (1) factor when determining whether and to what extent any of the potential relief identified by this Subsection (C)(6) is appropriate. Any relief granted under this Subsection (C)(6) must be documented by the Decision of a Hearing Officer granting an adequately supported Tenant hardship AK/6/CDD/RHC 896-05-22-23R-Chapter 7 7 of 11 Petition. No relief granted under this Subsection (C)(6) shall be applied so as to deprive a Landlord from the ability to earn a fair return.
- a. Prohibit Implementation of Requested Rent Increase. In accordance with CSFRA Section 1707(d), a Hearing Officer may restrict or prohibit the ability of a Landlord to impose one (1) or more accumulated or banked AGAs.
- b. Phase-In Period. Notwithstanding CSFRA Section 1707(b), which precludes more than one (1) Rent increase per twelve (12) month period, a Hearing Officer may authorize a phase-in period for a proposed Rent increase, during which period Rent is increased incrementally from month to month until the full Rent increase is in effect, which incremental increase shall be considered one (1) increase effective on the first date that increased Rent is due for purposes of CSFRA Section 1707(b).
- c. Other Relief. A Hearing Officer may provide for such other relief that ensures fairness and furthers the purposes of the CSFRA to a Tenant household that would experience a hardship if the proposed Rent increase were imposed based on the qualifying condition of the household."

Based on the foregoing, a Hearing Officer in a tenant hardship petition has the authority not only to prohibit the implementation of one (1) or more banked AGAs, but also to "provide such other relief that ensures fairness *and furthers the purpose of the CSFRA* to a Tenant household that would experience a hardship if the proposed Rent increase were imposed...." (CSFRA Regulations, Ch. 7, Section C.6.c. (emphasis added).) Among the purposes of the CSFRA is "controlling excessive rent increases" by prohibiting a landlord from charging "Rent in an amount that exceeds the sum of the Base Rent plus any *lawful* Rent increases actually implemented pursuant to" the CSFRA. (CSFRA §§ 1701; 1707(a).) Therefore, the Hearing Officer was well within her authority to determine the Petitioner's lawful Rent because such a determination would ensure fairness and further the purpose of the CSFRA by preventing an excessive rent increase.

Respondent's argument, in part, hinges on the belief that there "is precedent limiting the hearing officer decision to only what is addressed in the petition." Respondent points to the October 2022 Decision as an example of this precedent. First, it is important to note that neither the CSFRA nor the Regulations establish that Hearing Officer's decisions have any precedential value. In fact, the practice thus far has been that Hearing Officers are not bound by prior decisions.

Perhaps more importantly, there is nothing in the CSFRA or the Regulations limiting a Hearing Officer's ability to raise an issue *sua sponte* (i.e., on its own even where none of the parties to the matter have raised the issue). It is an established rule that a judicial body may *sua sponte* raise a new issue and grant relief beyond what is requested. (See Cal. Code of Civ. Pro. § 576 ("Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order."); Code of Civ. Pro. § 580(a) ("The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue.").)

As noted in the statutory language, such action by the judicial body is favored where resolution of the new issue is necessary to resolve the questions presented about the claims pleaded. In the instant case, the Hearing Officer raised the issue of Petitioner's lawful Rent because it was a critical factor in her determination of the dollar amount of the lawful Rent increase that could be imposed by Landlord. She provided the Parties with an opportunity to submit evidence regarding the issue, including leaving the hearing record open for approximately two weeks after the hearing to allow submission of any records or notices of rent increases for the Property. Upon review of the evidence and determination that the Rent upon which the Respondent sought to impose the AGA was not the lawful Rent for the Property, the Hearing Officer granted the Petitioner additional relief consistent with the case made by Petitioner by establishing the lawful Rent and ordering a refund of any overpayments by Petitioner. The Hearing Officer was well within her discretion in resolving this related question and granting the additional relief.

**B. Respondent's Interpretation of the October 2022 Decision is Incorrect.**

Respondent also argues that even if the Hearing Officer was authorized to investigate further issues, the rental amount of \$1,444.58 was the lawful Rent for the Property at the time of the Petition because the Parties had agreed on this amount as the Rent. Respondent's argument relies on a mistaken interpretation of the language in the October 2022 Decision.

The October 2022 Decision concludes, in relevant part, "The Parties shall calculate the exact amount demanded and retained by Respondents and an appropriate refund or rent credit shall be issued to Ms. Williams within thirty (30) days of the date of this decision." Respondent interprets this language to mean that the Parties were to determine the correct Base Rent for the Property. However, Respondent is mistaken. The October 2022 Decision directed the Parties to determine the exact amount of the rent refund to which the Petitioner was entitled. It did not direct the Parties to determine the correct Base Rent for the Property. Although not in Section VII of the

October 2022 Decision, the Hearing Officer had already concluded in the prior section that “The Base Rent for the property is correctly calculated as One Thousand Four Hundred Sixteen Dollars and Twenty-Five Cents (\$1,416.25) per month. (See October 2022 Decision, Section VI, page 7:22-23.) The conclusion regarding the lawful Base Rent in the October 2022 Decision was reinforced by the November 2022 Appeal Decision. The November 2022 Appeal Decision explicitly concluded, in relevant part, that 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 (\$1416.25) per month.” As such, Respondent is incorrect that either the October 2022 Decision or the November 2022 Appeal Decision authorized the Parties to establish a different Base Rent for the Property than \$1,416.25.

Even if it was unclear from the language of both decisions that the correct Base Rent was \$1,416.25, the Parties could not enter into an agreement waiving any of the Petitioner’s rights under the CSFRA. The CSFRA expressly prohibits waiver of any rights under the Act, stating that “Any provision of a Rental Housing Agreement, whether oral or written, which purports to waive any provision of this Article established for the benefit of the Tenant, shall be deemed to be against public policy and shall be void.” (CSFRA § 1713; *see also* CSFRA § 1702(q), defining Rental Housing Agreement as “[a]n agreement, oral, written, or implied, between a Landlord and Tenant for use or occupancy of a Rental Unit and for Housing Services.”) This prohibition on waiver extends to the Petitioners’ right to a valid written notice of Rent increase for the two percent (2%) Rent increase that Respondent alleges the \$1,444.58 amount reflects. Because the substance of the alleged agreement between the Parties setting the Rent at \$1,444.58 is illegal pursuant to the CSFRA, Respondent cannot request that either the Hearing Officer or the Rental Housing Committee enforce the provisions of any such agreement. (See Civ. Code §§ 1596; 1597; *see also MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.* (2005) 36 Cal.4th 412, 435; *Sixells, LLC v. Cannery Bus. Park* (2008) 170 Cal.App.4th 648; *Espinoza c. Calva* (2008) 169 Cal.App.4th 1393.) Petitioner’s purported acquiescence to the terms of the agreement regarding the rental amount for the Property does not make the agreement enforceable. (See *Black Hills Invs., Inc. v. Albertson’s, Inc.* (2008) 146 Cal.App.4th 883 (holding party to illegal contract cannot render it enforceable by ratification).)

Based on the foregoing, the Hearing Officer did not err in concluding that the lawful Rent upon which the AGA could be imposed was \$1,416.25 at the time of the Petition and Hearing.

## **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 (\$1416.25) per month. The Petitioner is also entitled to a rent refund of \$28.25 per month for the ten-month period from December 2022 through September 2023.

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2. Respondent may impose the 2023 AGA of 5 percent on the Base Rent of One Thousand Four Hundred and Sixteen Dollars and Twenty-Five Cents (\$1416.25), for an allowable, lawful monthly rent of One Thousand Four Hundred Eighty-Seven Dollars and Six Cents (\$1,487.06) beginning October 1, 2023, and continuing thereafter until there is a lawful change in the Rent. Petitioner is entitled to a rent refund of \$101.44 for the three-month period from October through December 2023 as well as any overpayments for January 2024, February 2024, and subsequent months until Respondent adjusts the Rent to comply with this Decision.