



RENTAL HOUSING COMMITTEE REPORT

DATE: February 22, 2024

CATEGORY: Appeal Hearing

DEPT.: Housing Department,
Rent Stabilization Division

FROM: Anky van Deursen, Program Manager
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the Rental Housing Committee
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TITLE: **Appeal of Hearing Officer Decision
Petition No. C23240026**

RECOMMENDATION

To 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 to support the changes.

BACKGROUND

The appeal arises out of a tenant hardship petition (“Petition”) requesting relief from the “banked portion” of five percent (5%) of a total ten percent (10%) rent increase. The hearing on the Petition was held on November 29, 2023, and the Hearing Officer’s decision was issued on January 11, 2024 and served on the parties on the same date.

Table 1: Relevant Timeline

Date	Action
July 15, 2022	Petition accepted regarding 511 Central Avenue, Apt. T, Petition No. 21220016.
October 7, 2022	Hearing decision delivered in Petition No. 21220016.
October 11, 2022	Appeal submitted by appellant-landlord in Petition No. 21220016.
November 15, 2022	Appeal hearing before the Rental Housing Committee in Petition No. 21220016; tentative appeal decision affirmed, upholding the hearing decision in its entirety.
October 9, 2023	Petition accepted regarding 511 Central Avenue, Apt. T, Petition No. 23240026.
November 15, 2023	Prehearing conference held with the parties.

Date	Action
November 16, 2023	Written summary of prehearing conference and the Hearing Officer's Request for Documents served on parties.
November 29, 2023	Hearing held.
December 12, 2023	Hearing closed and hearing record closed.
January 11, 2024	Hearing decision delivered.
January 18, 2024	Appeal submitted by appellant-landlord.
February 22, 2024	Appeal hearing before RHC.

The petition requested relief from a banked rent increase on the basis that the tenant's household income does not exceed 100% of the median household income for Santa Clara County as adjusted for a household size of one according to the California Department of Housing and Community Development.

The Hearing Officer determined the tenant's household is comprised of one adult residing in the property. The tenant's total gross income for the 12 months preceding the petition was less than \$126,900, which is 100% of the applicable annual Area Median Income (AMI) for a household of one in Santa Clara County. Pursuant to CSFRA Regulations Chapter 7, Section C.6, the tenant was entitled to relief from the banked 2022 Annual General Adjustment (AGA) of 5%.

The Hearing Officer Decision also explained that Appeal Decision in a previous Petition for the same address 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. Landlord charged Tenant monthly Rent from December 2022 through September 2023 in the amount of \$1,444.58, which Tenant paid. However, there was no evidence in the record that there was a valid written Notice of Rent Increase at any time between December 20, 2022 and August 29, 2023, when the banked rent increase notice was served.

Based on the foregoing, the Hearing Officer concluded in the current case that the landlord could not implement the banked increase but could implement the 2023 AGA of 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. In addition, the decision ordered the landlord to refund the tenant \$28.25 per month for the 10-month period from December 2022 through September 2023 because the landlord overcharged the tenant based on the December 2022 appeal decision. The landlord was also required to refund the tenant: (a) \$101.44 per month for the three-month period from October to December 2023, since the petitioner overpaid rent during those months; and (b) for any overpayments for January 2024 and subsequent months.

The appellant-landlord raised the following two issues on appeal:

1. The Hearing Officer abused its discretion in determining that the base rent to which the AGA should be applied was \$1,416.25 because this exceeded the scope of the petition.
2. Even if the Hearing Officer was authorized to inquire into the correct base rent for the unit, the Hearing Officer erred in determining that the lawful rent at the time of the petition was \$1,416.25 because the parties had reached an agreement about the rent in accordance with the order in the Hearing Officer's decision in Petition No. 21220016, dated October 6, 2022 ("October 2022 Decision").

All other elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section C of this report. All parties to the appeal are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Appeal Decision were due on February 20, 2024. The appellant-landlord filed a response to the Tentative Appeal Decision on February 15, 2024 ("Appellant's Response").

The Appellant's Response raises the following additional issue:

- The rules requiring a rent increase notice to be provided are being implemented inconsistently from one decision to another, leading to confusion about what the appellant must do in order to comply with the decisions.

Staff has addressed the Appellant's Response in Section D of this report. To the extent that any additional responses are received from the parties, staff may provide a supplement to this report addressing the responses.

ANALYSIS

A. Role of the Rental Housing Committee

The role of the Rental Housing Committee (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 because there is sufficient evidence in the record on which the RHC may base its decision.

For questions of law (including statutory interpretation), the RHC must exercise its independent judgment without assuming that the Hearing Officer's ruling is correct or affording deference to the Hearing Officer's interpretation. Even though the RHC exercises

its independent judgment, its review is still based on the evidence in the record for the petition hearing.

For questions of fact, 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 the Hearing Officer's review. Appeals define the scope of RHC review of the Hearing Decision. The portions of the Hearing Decision that were not appealed by any party are considered final. The Tentative Appeal Decision reviews only those portions of Hearing Decision that were appealed by the parties.

The process for an appeal can result in multiple appeal hearings before the RHC if a Hearing Decision is remanded to the Hearing Officer. A summary graphic visualizing the appeal procedure is provided below.

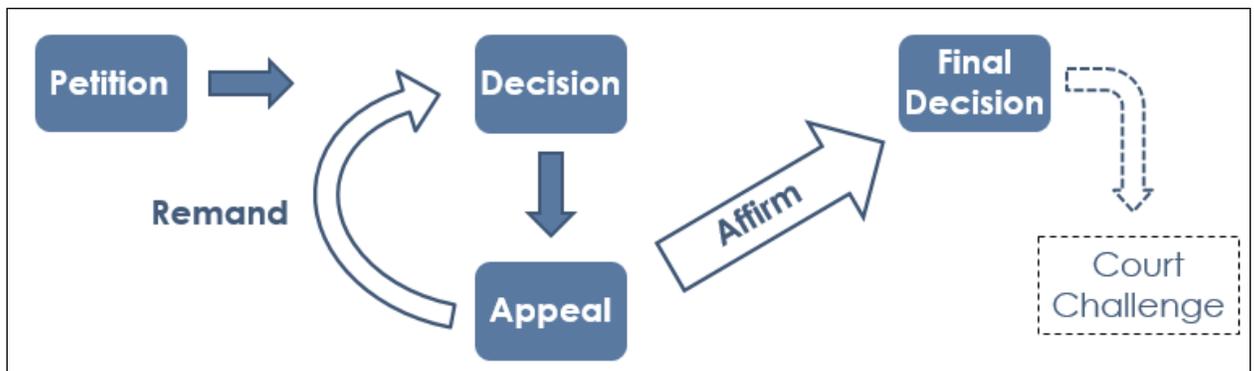


Figure 1: Visualization of Appeal Procedure

C. Tentative Appeal Decision—Appeal Elements

The Tentative Appeal Decision recommends affirming the Hearing Decision in its totality. In summary:

1. The Hearing Officer did not abuse their discretion in determining that the base rent to which the AGA should be applied was \$1,416.25. CSFRA Regulations Chapter 7, Section C.6.c, authorizes Hearing Officers in tenant hardship petitions not only to prohibit implementation of a requested rent increase, but also to provide for such other relief to the tenant that furthers the purposes of the CSFRA. Further, there is nothing in the CSFRA or the Regulations prohibiting a Hearing Officer from raising an issue *sua sponte*; in fact, judicial bodies generally have the authority to raise new an issue and grant relief beyond what is requested, especially where the resolution of the new issue is necessary to resolve the questions presented about the claims raised.
2. The Hearing Officer did not err in determining that the lawful rent for the unit at the time of the petition was \$1,416.25, and that this is the amount to which the 5% AGA for 2023 should be applied. While there may have been an agreement between the parties providing that the rent would be \$1,444.58, such agreement was invalid based on the nonwaiverability provision in Section 1713 of the CSFRA. Because the substance of said agreement between the parties was illegal, the appellant-landlord could not request that the Hearing Officer enforce their terms.

D. Reply to Appellant's Response

As noted above, the Appellant's Response raises an additional issue about the consistency of the application of certain rules across petition decisions. Specifically, the appellant alleges that the Hearing Officer decision in the current petition (No. C32340026) does not require that the appellant serve a notice of rent increase to implement the 5% AGA for 2023, whereas the Tentative Appeal Decision is interpreting the October 2022 Decision as requiring the landlord to serve a written notice of rent increase for the 2% AGA increase allegedly imposed in December 2022. However, the appellant's argument does not take into consideration the ways in which the circumstances differ between the October 2022 Decision and the current Hearing Officer decision. These include:

- The landlord did not serve a proper rent increase notice at any time after the October 2022 Decision imposing the 2% increase that went into effect in December 2022. On the other hand, in the instant petition, the landlord served a valid written rent increase notice for the 10% increase on August 29, 2023. The tenant merely challenged the amount of the banked increase based on tenant hardship.

- The 2% increase imposed in December 2022 was done so via an agreement between the parties, which is expressly prohibited by the terms of CSFRA Section 1713. On the other hand, in the instant situation, the Hearing Officer has issued an order altering, and thereby superseding, the valid rent increase notice served in August.
- Finally, the October 2022 Decision neither made mention of subsequent rent increases nor provided that the Hearing Officer was allowing the 2% increase to be imposed without the additional noticing required by the landlord. In the instant case, the Hearing Officer Decision explicitly provides that: “Although the hearing officer submits that the entire Notice of Rent Increase dated August 29, 2023, could be invalidated, this decision takes the position that the hearing officer has discretion to correct and allow the 2023 AGA as recalculated.”

For the foregoing reasons, while the appellant’s additional argument is well-heard, it does not change staff’s recommendation that the RHC adopt the Tentative Appeal Decision as currently written.

It is also worth noting that if there is ever confusion or disagreement about whether a party has properly complied with a hearing decision, the CSFRA Regulations provide that either of the parties to the petition may request a compliance hearing before a Hearing Officer to receive a formal determination. This process was and remains available to the appellant if there continues to be confusion about how to comply with any decision to which the appellant is a party.

E. 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 (Cal. 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. C23240026)	
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	

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 Decision to the RHC (as opposed to directly appealing to the courts) is to ensure that Hearing 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 Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

PUBLIC NOTICING—Agenda posting.

AVD/KG/6/HSN/RHC
847-02-22-24SR-2

- Attachments:
1. Tentative Appeal Decision for Petition No. C23240026
 2. Decision of Hearing Officer (January 11, 2024)
 3. Appellant-Landlord Appeal of Decision (January 18, 2024)
 4. Appellant-Landlord's Response to Tentative Appeal Decision (February 15, 2024)