CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

HEARING OFFICER ORDER PURSUANT TO

THE COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA)

Rental Housing Committee Case No.:	**2021001**
Address and Units of Rental Property:	**240 Monroe Drive Mountain View, CA 94040**
Petitioner Tenant Name:	**Ananda Church of Self-Realization, Inc.**
Respondent Property Manager Name:	**Enlightened Investments, Inc., Arminda Fisher, Manager**
Date of Hearing: Place of Hearing:	**November 20, 2020 Online via Zoom**
Date of Order:	**December 7, 2020**
Date of Mailing:	**See attached Proof of Service**
Hearing Officer:	**Barbara M. Anscher**

I. Procedural Posture

The property at issue (the "Property") consists of 72 apartments and common areas on a 4.74-acre parcel and is known as the Ananda Community.[1]

Tenant-Petitioner Ananda Church of Self-Realization of Palo Alto ("Tenant," "Petitioner," the "Church") is a non-profit public benefit corporation organized for religious or charitable purposes under the laws of the State of California. (*See* Exhibit 4 of Landlord Motion to Dismiss the Rent Petition for 240 Monroe Drive Mountain View, dated October 20, 2020.) The Church has a Temple and Teaching Center in Palo Alto at a separate location from the Ananda Community.[2] Landlord

[1] *See*, https://www.anandapaloalto.org/ananda-community

[2] *See*, https://www.anandapaloalto.org/

is a group of individuals and entities which own the Property as tenants-in-common (the "TIC") under a Tenancy-in-Common Agreement, dated January 1 , 2015 (the "TIC Agreement") (See Exhibit D to Petition.)[3] Property Manager Arminda Fisher of Enlightened Investments, Inc. ("Property Manager," or "Respondent") has been granted authority by Landlord to sign leases between Landlord and Tenant and to receive notices under those leases. *See, e.g*., Exhibits B and H to Petition.

Tenant filed a Petition on August 20, 2020, alleging that Landlord had unlawfully raised the rent under the CSFRA. Property Manager filed a Response on August 31, 2020. A pre-hearing conference was held on October 13, 2020, at which time Property Manager's attorney stated that Property Manager was not authorized to engage in litigation on behalf of Landlord and that Landlord could not join in the petition process because it was not properly served. In a Hearing Officer's Ruling and Requests Pursuant to the RHC Regulations Chapter 5(C)(4), dated October 14, 2020, the Hearing Officer determined that Property Manager could properly receive service for Landlord and that Landlord could participate in the petition process simply by responding to the Petition.

Landlord has not responded on its own behalf to the Petition, and Property Manager has filed a motion to dismiss, alleging that this particular case is not governed by the CSFRA.

II. Attendance at the Hearing

Jon R. Parsons, Esq., Parsons Law Firm, on behalf of Respondent Enlightened Investments, Inc.

Brian Skarbek, Esq., Law Offices of Todd Rothbard, on behalf of Petitioner Ananda Church of Self-Realization of Palo Alto

Patricia Black, City of Mountain View

Emily Hislop, Project Sentinel

III. Evidence Entered into the Record

[3] While it has been alleged that the TIC formed in approximately 1989, no earlier version of the TIC Agreement has been filed.

Hearing Officer's Exhibit 1:

Petition A: Downward Rent Adjustment – Unlawful Rent as Defined by the Community Stabilization and Fair Rent Act (CSFRA), and the following exhibits thereto:

A. Master Lease 240 Monroe Drive, Mountain View, California, dated September 15, 1989
B. Revised Master Lease 240 Monroe Drive, Mountain View, California, dated December 15, 2012
C. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2015
D. Extracts from Tenancy in Common Agreement for 240 Monroe Drive, Mountain View, California, dated January 1, 2015
E. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2016
F. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2017
G. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2018
H. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2019
I. Letter Re Applicability of CSFRA to Master Tenancy of 240 Monroe Street, dated May 22, 2020
J. Rent Checks 240 Monroe Street, Mountain View

Hearing Officer's Exhibit 2:

Community Stabilization and Fair Rent Act (CSFRA) Tenant Petition Response Notice, Attachment Thereto and the following Exhibits:

A. Revised Master Lease 240 Monroe Drive, Mountain View, California, dated December 15, 2012
B. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated December 15, 2013
C. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2014

D. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2015
E. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2016
F. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2017
G. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2018
H. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2019
I. Renewed Revised Master Lease 240 Monroe Drive, Mountain View, California, dated September 1, 2020

Hearing Officer's Exhibit 3:

Respondent's Motion to Dismiss the Rent Petition for 240 Monroe Drive, Mountain View, dated October 20, 2020

Hearing Officer's Exhibit 4:

Exhibits to Respondent's Motion to Dismiss the Rent Petition for 240 Monroe Drive, Mountain View

Exhibit 1 Master Lease dated 9-15-1989

Exhibit 2 Master Lease dated 8-1-2006

Exhibit 3 Master Lease dated 12-15-2012 with annual renewals

Exhibit 4 Restated Articles of Incorporation for the Church 3-8-2007

Exhibit 5 Statement of Information of the Church 3-26-2019

Exhibit 6 Letter from attorney E. David Marks, Esq. dated 10-10-2019

Exhibit 7 Email from David Praver dated 10-10-2019

Exhibit 8 Three exemplary emails on rent adjustments

8A email to Williams dated 6-15-2016

8B email to Bonin dated 7-21-2018

8C email from Chidambar dated 7-28-202

Exhibit 9 Email with Operation Golden Palace Newsletter 9-23-2020

Hearing Officer's Exhibit 5:

RHC Petition No. 2021001; Opposition to Motion to Dismiss, dated October 27, 2020

Hearing Officer's Exhibit 6:

Reply in Support of Motion to Dismiss the Rent Petition for 240 Monroe Drive, Mountain View, dated November 2, 2020

IV. Issues Presented

Whether the CSFRA applies to a Master Lease between Tenant and Landlord covering 72 apartment units which are sublet by Tenant to dwellers of those units.

V. Facts

In 1989, Landlord entered into a lease, titled Master Lease 240 Monroe Avenue Mountain View, California (the "1989 Master Lease"), with the Fellowship of Inner Communion of Palo Alto, also known as the Ananda Community (hereinafter, also referred to as the "Church," "Tenant," "Petitioner").[4] The 1989 Master Lease provided that the Landlord would lease the Property to the Church for the purpose of creating a religious community in which members of the church would live, and it specifically recognized that the Church would sublease residential units to sublessees. *See*, Exhibit 1 to Respondent's Motion to Dismiss. As indicated above, the Property consists of 72 apartments with various common spaces. The 1989 Master Lease was amended on August 1, 2006, December 1, 2011, and December 15, 2012, each of which amended master lease superseded the prior one. The 2012 Master Lease now governs.

Sometime prior to entering into the 1989 Master Lease, Landlord purchased the Property, holding title as tenants-in-common. The original tenancy-in-common agreement has been superseded by the 2015 TIC agreement, which states in its

[4]The Church's name appears to have changed between 1989 and 2006; however, neither of the parties has asserted that the entity in the 1989 Master Lease differs from Tenant-Petitioner Ananda Church of Self-Realization.

Recitals that "D. The Co-Tenants intend the Property, except for Co-Tenant occupied Units, be maintained and used for the purpose of providing housing for the members of the Ananda Church of Self-Realization ("the Church") for so long as the Church desires to lease the property, pursuant to a Master Lease whereby the Church is the sole tenant and Sub-lessor of the Property, entitled to lease the Units at the Property giving priority to Church members as church-affiliated premises." *See*, Petition Exhibit D.

The 2012 Revised Master Lease in its recitals states that "the Owners have purchased the real property located at 240 Monroe Drive, Mountain View, California (the "Premises") consisting of 72 multi-unit dwellings" and that "Ananda is a religious organization which desires to acquire and operate dwellings and associated structures and amenities for noncommercial religious purposes." In Paragraph 7, it states: "Ananda represents and warrants that it intends to establish, operate and maintain a religious community for the benefit of Ananda Church. It is the intent of Ananda to have the Premises occupied solely by members of the Ananda Church and to provide services, facilities and amenities designed to promote and enhance the religious activities and objectives of the Ananda Church…[but] Ananda will rent dwelling units to third parties who are not members of the Ananda Community" until such time as "Ananda is able to have the Premises occupied only by members of the Ananda Community." The same paragraph of the 2012 Master Lease states that religious activities of the Church are "not for commercial purposes, and the use of the Premises is intended not to be a business establishment." Paragraph 7 also says that the Master Lease is to be construed "by reference to these intentions and objectives." Paragraphs 4, 11 and 14 of the Master Lease provide that any profit that the Church obtains from collecting rent from the subtenants is to be used for the operation and maintenance of the Property.

The Property is currently sublet to members of the Church as well as non-members. Although the Church's goal over the past 31 years has been to rent all of the Rental Units to members, the residents are only about 60 percent Church members. All but one Board member of the Church lives on the Property.

Each year since 2013, the Church and Landlord (through Property Manager) have signed an addendum to the 2012 Master Lease, called a "Renewed Revised Master Lease," setting forth the rent for that year. Tenant alleges in its Petition

that starting in September 2018, Landlord has increased the rent above the lawful increases allowed by the CSFRA. Property Manager argues that there should not even be an evidentiary hearing on Tenant's Petition because the CSFRA does not apply to this situation.

VI. Discussion

Property Manager argues that the CSFRA does not control the Landlord-Tenant relationship between Landlord and the Church. Property Manager states that the relationship between Landlord and Tenant is an "arms-length business-to-business relationship" concerning property where Tenant "operates an apartment complex." *See*, Respondent's Motion to Dismiss, page 1. Thus, in Property Manager's perspective, Tenant is a commercial business and by definition cannot be covered by an ordinance that controls the renting out of residential property. Property Manager further argues that Tenant, as a non-profit corporation, cannot "reside"[5] in any of the apartments on the Property and instead operates out of an office in Palo Alto. Property Manager believes that because the CSFRA governs residential property, it only applies to property in which a tenant "resides," and thus reasons that a corporate entity cannot be a tenant under the CSFRA. Offering proof that the Church is a business, Property Manager asserts that the Church has in the past filed fictitious business name statements for Ananda Community and Ananda Community of Palo Alto with the Secretary of State's Office, that the Church's checks which it uses to pay Landlord say "Ananda Church of Self-Realization/Ananda Apartments" on them, and that its business is called Ananda Apartments or the Ananda Community. Property Manager says that the Church has the "twin business purposes of renting apartments to the public while attempting to convert the Property into a religious community." *See*, Respondent's Motion to Dismiss, page 2. Property Manager also argues that Tenant is solely responsible for maintaining and leasing the Property, which shows that Landlord does not provide housing services and thus is not a residential landlord. Property Manager asserts that the Church is not the sort of vulnerable tenant contemplated by the CSFRA because it has an ownership interest of approximately 6.5 percent in the TIC. Property Manager also claims that the Church believes it is a third-party beneficiary of the TIC Agreement, thus

[5] This is the term used by Landlord. It is not found in the relevant definitions of the CSFRA.

precluding it from having the status of tenant under the CSFRA (See Exhibits 6, 7 and 9 to the Motion to Dismiss). Property Manager also argues that applying the CSFRA to Landlord impairs its contractual relationship with Tenant.

Tenant argues that the Property is a "Rental Unit" as that term is defined in the CSFRA. Tenant states that the definition of Rental Unit in the CSFRA broadly covers all residential rental property (unless otherwise exempted)[6] regardless of whether the tenant lives or intends to live in the Rental Unit. In other words, the CSFRA focuses on how the property is used, i.e. as residential rental property, not on who uses it that way. Tenant concludes that under the Master Lease, Tenant rented residential real property and thus it falls within the CSFRA. Tenant points out that under Section 1702(u) of the CSFRA, the broad definition of Tenant covers anyone entitled to "the use or occupancy" of a Rental Unit rather than requiring that a tenant be a person who resides at the premises. Tenant also argues that Landlord's rent increases since 2018 have been designed to circumvent the purpose of the CSFRA, i.e., that if the Church is not a Tenant protected under the CSFRA, Landlord ultimately can cause the Church to vacate the Property (or be evicted) because it can no longer pay the rent, leaving Tenant's subtenants also vulnerable to eviction under California Code of Civil Procedure §1161(2) if they cannot pay the higher rents demanded by Landlord. Tenant additionally points out that since it cannot pass on Landlord's rent increases to the subtenants, who are protected by the CSFRA, Tenant cannot afford to perform necessary maintenance and repairs on the Property. Tenant also argues that the fact that the Church is a non-profit corporate entity is irrelevant because the drafters would have put in a limitation with respect to non-profit corporations if they had intended that exclusion. Additionally, Tenant asserts that its potential status as a third-party beneficiary does not eliminate protections under the CSFRA since Tenant is still renting the Property at the rate set by the Landlord and has no control over that rate, just like any other tenant.

The analysis of whether the CSFRA applies to this situation must begin with the language of the ordinance itself.[7] CSFRA § 1702(s) and Chapter 2, Section (s) of the Regulations define a "Rental Unit" as "Any building, structure, or part thereof,

[6] Neither party has argued than any exemptions apply.

[7] People v. Fenton, 20 Cal App. 4th 965, 968-969 (1993); Swift v. County of Placer, 153 Cal. App. 3d 209, 213 (1984); Cal. Code Civ. Proc. §1858 et seq.

or land appurtenant thereto, or any other rental property rented or offered for rent for residential purposes, together with all Housing Services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the Tenant." As Tenant has pointed out, the language of this section is very broad. It covers all rental property rented or offered for rent for residential purposes, including buildings, structures, parts of buildings or structures, or simply land appurtenant to buildings or structures or parts of buildings or structures.[8] To fit within this definition, it is only required that a tenant rent the property, or a landlord offer the property for rent, for residential purposes. Thus, as Tenant has argued, the focus of this section of the CSFRA is on the nature of the use of the rental property, not on who the tenant is or who the landlord is.

Neither party has argued that the property is *not* being used for residential purposes. Indeed, Landlord has argued that Tenant is not covered by the CSFRA because Tenant is a commercial enterprise which cannot "reside" at the Property and that Tenant would need to "reside" there because the Property is residential property. No one has contested that the Property consists of 72 apartment units with appurtenant common areas. No one has contested that the Master Lease describes the Property as "consisting of 72 multi-unit *dwellings*." (emphasis added) Thus, the Property qualifies as residential property for the purposes of the CSFRA.

During oral argument, Property Manager's attorney suggested that the Property could be characterized as commercial property as between Landlord and Tenant and residential property as between Tenant and its subtenants. Property Manager confuses the *relationship* between Landlord and Tenant with the *nature* of the Property. Regardless of Tenant's relationship with Landlord, the use of the Property does not change; it is always residential property. The recitals to the TIC Agreement make this clear: "The Co-Tenants intend the Property, except for Co-Tenant occupied Units, be maintained and used for the *purpose of providing housing* for the members of the Ananda Church of Self-Realization." (emphasis added) Additionally, if one reads the Master Lease, the relationship between Landlord and Tenant cannot honestly be characterized as "an arms-length

[8] As stated earlier, no one has suggested that this case fits within any of the clear exemptions set out in CSFRA §1703.

business to business relationship". The Master Lease makes it clear in no uncertain terms that the Church, a religious nonprofit, is *not* engaged in a commercial enterprise.

The definition of "Tenant" under the CSFRA is also broad: "A tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a Rental Housing Agreement or this Article to the *use or occupancy* of any Rental Unit." Section 1702(u); Regulations Ch. 2, section (u) (emphasis added). A Tenant under the CSFRA is someone entitled to the use *or* occupancy of a Rental Unit.

Neither "use" nor "occupancy" is synonymous with "reside," the term that Property Manager argues is required for a tenant to be covered by the CSFRA. The fact that the Church cannot physically "reside" in the Property does not preclude it from being a Tenant under the CSFRA because it is entitled to the use of the Property and also to the occupancy of the Property under the Master Lease. As Tenant explained in its moving papers, the definition of "occupancy" simply is "taking possession of property and use of the same." Black's Law Dictionary, 973 (5th Edition, 1979) Possession is defined in part as "[t]hat condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons." Blacks' Law Dictionary, *supra*, 1047. Possession is about having rights to something, not about the way in which one exercises those rights. Thus, possession of a residential property does not *require* that one reside in it, only that one has the right to its use as above all others. In entering into the Master Lease, Landlord gave the Church the right to both use and occupy the Property for its purpose of subleasing the apartments thereon to subtenants. Thus, the Church qualifies as a Tenant under the CSFRA.[9]

The definition of "Rental Housing Agreement" under the CSFRA is consistent with the definition of "Tenant": "An agreement, oral, written, or implied, between a

[9] Neither party has argued that Tenant is not a "person" as set out in the CSFRA definition. There is a clear thread in American legal thought that attributes "personhood" to corporations, meaning that corporations are given some of the rights and responsibilities enjoyed by natural persons. Thus, corporations have the right to enter into contracts and to sue and be sued. *See*, Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819). Corporations have even been held to have rights under the Fourteenth Amendment (*see*, Pembina Consolidated Silver Mining Co. v. Pennsylvania, 125 U.S. 181 (1888)) and under the First Amendment (Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014)), (Citizens United v. Federal Election Commission, 558 U.S. 310 (2010)). Thus, the use of "person" in the definition of "Tenant" would not preclude its application to Petitioner.

Landlord and Tenant for *use or occupancy* of a Rental Unit and for Housing Services." CSFRA §1702(q); Regulations Chapter 2, section (q). (emphasis added). Landlord posits that Housing Services are a key element in its favor in this case: the argument is that Landlord does not provide housing services under the Master Lease, and thus the Master Lease is not a "Rental Housing Agreement." Landlord misreads the CSFRA. Nowhere does it say that, if a landlord does not provide housing services in connection with a Tenant's use or occupancy of residential rental property, that residential rental property is not covered by the CSFRA. The definition of "Rental Unit" covers residential rental property "together with all Housing Services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the Tenant." Housing Services are appurtenant to the residential rental property rather than the other way round. Additionally, the Master Lease does in fact include the provision of housing services. For example, paragraphs 14.1 (e), (f) and (g) set out Landlord's responsibility to maintain items such as the roofs, plumbing and electricity for the buildings as a whole. If the roofs caved in or the electricity in the hallways and foyers was cut off, that would be considered a loss of housing services.

Property Manager also argues that the definition of "Landlord" in the CSFRA precludes application of the Ordinance. Landlord is defined as "An owner, lessor, sublessor or any other person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, predecessor, or successor of any of the foregoing." CSFRA §1702(j); Regulations Ch. 2, §(j). Property Manager argues that the rent payments from Tenant to Landlord are not for the use and occupancy of a Rental Unit because the definition of a Rental Unit requires that the Church "reside" in the Property. Since the definition of "Rental Unit" has already been addressed and deemed to cover the situation at issue here, this argument need not be considered. While Property Manager has not addressed the use of the conjunctive "use and occupancy" rather than the disjunctive "use or occupancy," it can be stated that the conjunctive form provides the Landlord with the full panoply of rights that landlords need in order to rent properties. They need to be able to offer use *and* occupancy because, as pointed out by Tenant, otherwise they would not be able to offer tenancies at all but merely licenses.

With respect to Property Manager's arguments that Tenant is not covered by the CSFRA because it owns a 6.5% interest in Landlord's TIC and because it is allegedly a third-party beneficiary of the TIC agreement, neither of these situations prevent the Property and Tenant from being covered by the CSFRA. Having a very minor ownership interest in a Tenancy-in-Common obviously has had no impact on Tenant's position vis-à-vis Landlord because Tenant does not have enough of an interest to affect Landlord's policies and actions. If it did, it would have prevented the rent increases and this case would not exist. Similarly, the alleged third-party beneficiary status only exists as an assertion, not an established fact. Even so, it would not take away Tenant's status as a Tenant under the CSFRA or the residential nature of the Property as required for the CSFRA.

Property Manager also suggested in its moving papers that applying the CSFRA to the Master Lease would impair the obligation of contracts under Article I, §10 of the United States Constitution, although it did not elaborate on exactly how the impairment would occur.[10] It has been established that rent control laws are not unconstitutional because they impair existing contractual relationships. *Berman v. Downing*, 184 Cal. App. 3d Supp 1 (1986); *Interstate Marina Development Co. v. County of Los Angeles*, 155 Cal. App. 3d 435, 449 (1984); *Rue-Ell Enterprises, Inc. v. City of Berkeley*, 147 Cal. App.3d 81 (1983). In *Rue-Ell Enterprises*, the Court set out a three-part test: (1) whether the legislative enactment has in fact operated as a substantial impairment of a contractual relationship; (2) if so, whether the state has "'a significant and legitimate public purpose behind the regulation'"; (3) and if so, "whether the adjustment of the rights and duties of the contracting parties is based upon 'reasonable conditions' and is 'of a character appropriate to the public purpose justifying [the legislation's] adoption" *Rue-Ell*, 147 Cal. App. 3d at 87-88, quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1 at 22.

In determining whether there has been a substantial impairment of the contractual relationship, one looks to the reasonable expectations of the parties at the time of contracting and "'whether the industry the complaining party has entered has been regulated in the past'." *Berman v. Downing*, 184 Cal. App.3d Supp. at 6, quoting *Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400, 411 1983. Landlord has failed to demonstrate substantial impairment.

[10] Respondent did not refer to rights under Article 1, §9 of the California Constitution, although the analysis is the same as for the United States Constitution.

Indeed, the Record demonstrates just the opposite. The Recitals to the TIC Agreement state as follows:

"E. The Co-Tenants share a common interest in, and relationship with, the Church, and understand that the Master Lease provided to the Church results in the Property being used for less than its highest and best valuation, and restricts future use of the Property for the period that the Church maintains the Master Lease in place.

"F. The Co-Tenants share personal and business connections with the other Co-Tenants, are familiar with the Church and its operations, intend to hold their Interests for other than purely economic reasons, and do not intend to necessarily maximize the profits available to Co-Tenants through utilization of the Property." *See*, Petition Exhibit D.

Thus, the reasonable expectations of Landlord is *not* to maximize profits but rather to support the Church in the development of its community. As to whether the industry of renting out residential real property has been regulated in the past, rent control has existed in the San Francisco Bay Area for over 40 years and had been in place in the area for at least 10 years when the TIC was formed and the first Master Lease was entered into. Thus, it cannot be concluded that there was a substantial impairment of a contractual relationship in this case.

Even if there were a substantial impairment, the Ordinance has the significant and legitimate public purpose of "controlling excessive rent increases and arbitrary evictions… while ensuring Landlords a fair and reasonable return on their investment." CSFR §1700. The method it uses to address these problems, like many similar ordinances, is to allow cost of living increases, with a petition process for Landlords who believe that an annual cost of living increase does not afford them a fair rate of return. See, CSFRA §1706. These are reasonable conditions designed to effectuate the important public purpose of the CSFRA. Thus, Property Manager's argument that the Ordinance impairs the contractual relationship between Landlord and Tenant fails.

In determining whether the CSFRA applies to the Church, it is important to also consider the policy behind the CSFRA. The Ordinance's recitals are very clear in expressing the desire to keep residents of Mountain View housed. For example, in "Findings," it states:

"WHEREAS, in the absence of city regulation or rental amounts, rent increases or residential evictions, tenants in the City of Mountain View have expressed that they are being displaced as a result of evictions or their inability to pay excessive rent increases and must relocate, but as a result of the housing shortage are unable to find decent, safe and healthy housing at affordable rent levels; and that some renters attempt to pay requested rent increases, but as a consequence must expend less on other necessities of life, such as food, transit, and healthcare; and

"WHEREAS, the foregoing housing and economic conditions create a detrimental effect on substantial numbers of renters in the City and are a threat to the public health, safety and welfare, and a particular hardship for senior citizens, persons on fixed incomes, families with children, and other vulnerable tenants"

CSFRA §1701(o), (p).

This raises the question of what will happen to the subtenants of Tenant if Tenant has to continue to pay the rent increases required by Landlord without being able to pass them on to the subtenants, who are without question covered by the CSFRA. The general rule of law is that the subtenants have no privity of contract with Landlord, so if Tenant is evicted for nonpayment, the subtenants have no right to remain absent payment of the full amount of the rent owed by Tenant. *See*, *Scott v. Mullins*, 211 Cal. App.2nd 51 (1962); *Syufy Enterprises v. City of Oakland*, 104 Cal.App.4th 869, 885 (2002); Cal. Code Civ. Proc. §1161(2). Thus, if the Church is squeezed out of the Master Lease due to rent increases, the subtenants of approximately 72 units in all probability will be squeezed out also. This wholesale displacement of tenant households runs counter to what the CSFRA is trying to accomplish.

Additionally, under the Master Lease, the Church is required to take whatever is left over after it pays rent to Landlord and use those net profits for the maintenance and operation of the Property. Because of the rent increases over the last several years, Tenant has less and less to spend on maintaining the Property. This forced deferred maintenance is also contrary to the policy of the CSFRA, which is concerned that Mountain View residents have "decent, safe and healthy housing."

Order

For the foregoing reasons, Respondent Landlord's Motion to Dismiss is denied.

IT IS SO ORDERED:

Barbara M. Anscher, Hearing Officer

Dated: December 7, 2020