

JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP
ATTORNEYS AT LAW

WILLIAM L. McCLURE
JOHN L. FLEGEL
DAN K. SIEGEL
JENNIFER H. FRIEDMAN
MINDIE S. ROMANOWSKY
DAVID L. ACH
GREGORY K. KLINGSPORN
NICOLAS A. FLEGEL
KRISTINA A. FENTON
KIMBERLY J. BRUMMER
CAMAS J. STEINMETZ
PHILIP S. SOUSA

BRITTNEY L. STANDLEY
JOSEPH H. FELDMAN
AMELIA S. FORSBERG

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
www.jsmf.com

OF COUNSEL
KENT MITCHELL

RETIRED
JOHN D. JORGENSEN
MARGARET A. SLOAN
DIANE S. GREENBERG

DECEASED
MARVIN S. SIEGEL
(1936 - 2012)
JOHN R. COSGROVE
(1932 - 2017)

June 24, 2024

VIA ELECTRONIC MAIL <patricia.black@mountainview.gov>

Rental Housing Committee
City of Mountain View
298 Escuela Avenue
Mountain View, CA 94040

**Re: Respondent's Response to Tentative Appeal Decision
Petition Nos. C22230019 and C22230025**

To the Committee Members,

This letter will serve as the Respondent's written response to the Tentative Decision issued as to its appeal of the the above-referenced petitions. The undersigned will also appear at the scheduled June 27, 2024 hearing on behalf of Respondent.

The Tentative Decision upholds each and every one of the fifteen issues we raised as to the Hearing Officer Decision. We urge the Committee to look closely at the Hearing Officer's decision in light of the issues raised in our appeal, and not solely rely on the Tentative Decision. Moreover, we urge the Committee to consider our appeal in light of the total magnitude of the award to the Petitioner – which orders Respondent to provide nearly \$35,000 in rent refunds, or nearly two full years of rent. An award of such magnitude should only be justified in extraordinary circumstances, and we submit that the issues raised by the Petitions, while not unimportant, do not come close to justifying two years' worth of rent.

Attached as exhibits to this letter are several published Decisions of the San Francisco Residential Rent Stabilization and Arbitration Board. While obviously not binding on this Committee or on Mountain View, San Francisco's Board has been in existence for many decades and has significant experience with applying its rent control ordinance, which Mountain View clearly took as a model when drafting and enacting the CSFRA. The attached Decisions show how dramatically the Hearing Officer in this case departed from common sense application of rent reduction provisions. Specifically:

Exhibits A & B are two Decisions where, as here, the tenant complained of smoking by other residents. In these cases, as in this case, the landlord responded by investigating the

complaint and taking steps to remind tenants of the no-smoking policy, but could not completely eliminate smoking because the other tenants denied violating the policy. In Exhibit A, the Administrative Law Judge (“ALJ”) determined that, because the landlord took reasonable steps, the tenant was not entitled to any rent reduction at all. Likewise, in Exhibit B, the ALJ determined that, in part because of the landlord’s communications to the tenants and posting of outdoor no smoking signs were reasonable and that the tenant was therefore not entitled to a reduction in rent. In this case, the HO took evidence that the landlord made repeated communications, including personal visits, to the tenants who were suspected of smoking. The HO did not only not credit this effort, but dismissed it as irrelevant, and arbitrarily reduced the rent by ten percent without any explanation of why this was appropriate or justified, awarding more than eight thousand dollars to Petitioner. (Decision at p. 51.)

Exhibits C & D are two Decisions where, as here, the tenant raised the issue of overflowing or unsanitary garbage areas at their residence. In both cases, the ALJs found that the tenant had established a reduction in services because the landlord had not met its obligations. But in one Decision, the award was a 2% reduction in rent; and in the other, the award was a 1.2% reduction. In this case, without presenting any rationale, the Hearing Officer awarded a reduction of 20% of the common area valuation.

Fundamentally, the Hearing Officer in this case abused her discretion. Throughout the Tentative Decision, the Committee relies on the assertion that the CSFRA Regulations provide “broad authority” to the Hearing Officer to make conclusions regarding the facts and to apply values to the rent reductions authorized by the CSFRA. But, as explained in our Appeal, here the Hearing Officer did not explain how or why she came to the values and “damages” that she imposed on Respondent. The Hearing Officer decided that the Common Area was “worth” a fifth of the rent amount, without any basis in the record for doing so, and then relied on that arbitrary valuation to apply rent reductions totaling 65% of that (arbitrary) Common Area value.

This series of arbitrary findings, presented without explanation in the Hearing Officer Decision, resulted in the imposition of a fundamentally unfair result upon Respondent. While the Hearing Officer has broad discretion, that discretion is not unlimited, and it is part of this Committee’s responsibility to ensure that the CSFRA and its Regulations are implemented with fairness and regularity, not by the arbitrary decisions of individual Hearing Officers made without reference to record facts. The Appeal should be upheld and the case returned to a different Hearing Officer.

Very truly yours,



Gregory K Klingsporn

Exhibit A

smoking

1 Law Construed:

2 Rules and Regulations Sections: 10.10(a); 11.18

3 Ordinance Sections: 37.2(g); 37.2(r); 37.8(b)(2)(A); 37.8(f)(1)

4 Index Codes: G22; G69; G82.1

5 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

6 **CITY AND COUNTY OF SAN FRANCISCO**

7 IN RE: [REDACTED]

CASE NO. T210783

8 [REDACTED],

HEARING: AUGUST 16, 2022

RECORD CLOSED: OCTOBER 11, 2022

9 TENANT PETITIONERS,

10 and

DECISION

11 [REDACTED],

12 LANDLORD RESPONDENT.

13 **INTRODUCTION**

14 This case involves a tenant petition filed on September 22, 2021 and amended on
15 October 4 and 15, and on November 10, 22 and 29, 2021, alleging a substantial decrease in
16 housing services without a corresponding reduction in rent.

17 A mediation session was held on January 11, 2021, but the case was not settled. A
18 remote arbitration hearing was scheduled for July 6, 2022 and was administratively postponed. A
19 rescheduled remote hearing was held on August 16, 2022. The following persons appeared at the
20 remote hearing: [REDACTED] and [REDACTED], tenant petitioners; and [REDACTED],
21 property manager for the landlord respondent. At the hearing, the parties had full opportunity to
22 present relevant evidence and argument, and those who testified did so under oath.

23 The record initially closed on August 16, 2022. On October 11, 2022, the tenant petitioner
24 [REDACTED] submitted a letter addressed to the Rent Board with a copy of a Three Day Notice to Quit
25 addressed to tenant petitioner [REDACTED] and all occupants of the subject unit [REDACTED]
26 which had been served on the tenants by the landlord. In the interest of justice and a complete
27 record, the record was re-opened to receive the tenants' submission. The record again closed on
28 October 11, 2022.

1 FINDINGS OF FACT

2 1. The building is located at [REDACTED] in San Francisco. The building
3 contains eight residential units. There are no commercial units. Landlord [REDACTED] has
4 owned the property since approximately 1954. The property is managed by [REDACTED] of
5 Lingsch Realty.

6 2. The tenants' petition states that the subject unit [REDACTED] was rented in 1957.
7 The tenants' current monthly rent is \$716.58.

8 Smoking in unit [REDACTED]

9 3. The tenants testified that the subject unit [REDACTED] is on the top floor adjacent to unit [REDACTED]
10 that is currently occupied by three other tenants. The tenants testified as follows:

11 a. Beginning on August 15, 2021, the date the occupants of unit [REDACTED] moved in, all three
12 of the occupants have been constantly smoking cigarettes in and around unit [REDACTED], including the
13 back porch of unit [REDACTED], which smoke has invaded the tenant petitioner's unit. (Tenant Pre-
14 hearing Submissions, rcvd. 7/27/22, p. 3; and rcvd. 8/12/22, p. 3-4)

15 b. The occupants of [REDACTED] were also smoking marijuana, but not as regularly as they were
16 smoking cigarettes.

17 c. The building is supposed to be a non-smoking building, but the occupants of unit [REDACTED]
18 do not obey the building rules or the San Francisco smoking ordinance, and continue to smoke
19 outside of their unit. (Tenant Pre-hearing Submission, rcvd. 12/21/21; p. 5)

20 d. The tenants posted a no-smoking sign inside their dining room window directed at and
21 visible by the occupants of unit [REDACTED], but the smoking continues. There are no posted building
22 signs prohibiting smoking. (Tenant Pre-hearing Submission, rcvd. 8/12/22, p. 1-2)

23 e. The tenants further testified that the occupants of unit [REDACTED], which is directly below the
24 subject unit also smoke cigarettes each morning and the smoke migrates to the tenant
25 petitioner's unit.

26 f. Tenant petitioner [REDACTED] further testified that his doctor had prescribed an inhaler for the
27 tenant's use because the cigarette smoke affects the tenant. (Tenant Pre-hearing Submission,
28

1 rcvd. 7/27/22, p. 4)

2 g. Tenant petitioner [REDACTED] testified further that the tenant petitioners were getting sick from
3 the cigarette and marijuana smoke from unit [REDACTED], and the smoke comes into her room from unit
4 [REDACTED] even if the windows in unit [REDACTED] are closed. Two months ago, the woman in unit [REDACTED] was
5 smoking inside her unit, but holding her hand and the cigarette outside the window.

6 4. The tenants submitted logs of the smoking, pictures of the neighboring tenants and a
7 picture of the no-smoking sign posted in their dining room to the Rent Board, but the tenants were
8 not sending the same information to the landlord or the property manager. (Tenant Pre-hearing
9 Submission, rcvd. 8/12/22, p. 1-7)

10 5. The landlord's property manager testified as follows:

11 a. The property manager has asked the tenant petitioners to submit logs of the dates that
12 the smoking is occurring so that the landlord has evidence of the smoking. The property manager
13 has talked to the tenants in unit [REDACTED], who deny smoking, and the landlord cannot establish that
14 the tenants in [REDACTED] are smoking because it is the tenant petitioners' word against the other
15 tenants' denial. Without evidence, the landlord cannot do anything about the smoking. On
16 October 6, 2021, the property manager sent a letter to all the tenants in the building advising that
17 smoking was not allowed in the common areas or around the building entrance, operable doors
18 and vents or in the units with leases written in the last ten years. (Tenant Pre-hearing
19 Submission, rcvd. 12/24/21, pg. 4)

20 b. The property manager asked the building handyman to walk the building in May and
21 June 2021 to look for smoking violations in the building, but no smoke or noise was found.

22 c. On June 27, 2022, the property manager wrote to tenant petitioner requesting that the
23 tenant keep a log of improper noise or smoking so that the property manager could follow up with
24 the neighbors. (Tenant Pre-hearing Submission, rcvd. 8/12/22, p. 6) The property manager
25 further testified that a December 2021 handwritten log prepared by the tenant petitioners and
26 submitted in a pre-hearing submission to the Rent Board was never sent to the landlord's
27 property manager, who saw the log for the first time at the subject hearing on August 16, 2022.

1 (Tenant Pre-hearing Submission, rcvd. 12/24/21, p. 2-3)

2 d. The property manager further testified that with the pictures that have now been
3 submitted in this case by the tenant petitioners, the landlord has enough evidence to give the
4 tenants in unit [REDACTED] a Three-Day Notice regarding the smoking.

5 Loud noise in the building/behavior by tenants in unit [REDACTED]

6 6. Tenant petitioner [REDACTED] testified that that the tenants in unit [REDACTED] have had a live band
7 playing music in their unit between 6:00-8:00 p.m., and on July 24, 2022, the band played from
8 11:00-11:30 p.m., which disturbed the tenant petitioners. Tenant petitioner [REDACTED] testified that
9 the tenant petitioners did not notify the landlord or the property manager about the live band
10 performances. The tenant testified that the tenants in unit [REDACTED] are making loud noises around
11 the building when they empty bottles and beer boxes into the recycling bin between 9:30-10:00
12 p.m. The tenant further testified that on one occasion, the tenants in [REDACTED] completely filled up the
13 recycling bin so there was no room for anyone else to add anything to the bin. Tenant [REDACTED]
14 further testified that he is sensitive to loud noises, and that fire department sirens scare him. The
15 tenant testified that one of the tenants in unit [REDACTED] leaves the two metal gates to the garage
16 open. The tenant testified that he does not drive and does not park in the garage, which is
17 occupied by the tenants in units [REDACTED] and [REDACTED], but claimed that leaving the gates open is
18 disrespectful to the other building tenants.

19 7. The property manager testified that there is a three foot high gate between the building
20 and sidewalk that does not lock, and that each of the garages have their own keypad to unlock
21 the garage doors. The manager further testified that there is a gated area under the stairs, which
22 is locked and a locked gate to the tradesmen's entrance that also locks. The manager has
23 spoken to the tenants about closing the gates, but it is not a security issue at this time. The
24 manager further testified that she cannot address a problem unless the tenants help her by giving
25 her notice or by providing information about the problem so that the landlord's attorney can
26 address. The manager testified that the tenants' recent photos received at the hearing are a great
27 help.

1 8. The property manager testified that garbage bins and recycling is available during
2 regular hours and that the landlord comes to the building on Wednesdays, before the
3 garbage/recycling pickup on Thursdays, to sort the recycling, clean the area and flatten boxes
4 before the pickup.

5 9. The landlord submitted a copy of a January 21, 2022 letter from the landlord's attorney
6 to the tenants in the neighboring unit [REDACTED], which stated:

7 I wish to thank Mr. [REDACTED] for taking the time to speak with me this morning
8 regarding neighbor relations at the building, and in particular [REDACTED] complaints
9 about smoking in your unit.

10 Mr. [REDACTED] denied that there is anyone smoking in your unit at this time. But he also
11 expressed a desire to cooperate and stated that you will be mindful of [REDACTED]'s
12 complaints, and that you will not smoke in your unit.

13 (Landlord Pre-hearing Submission, rcvd. 8/16/22, p. 2) On June 17, 2022, the property manager
14 wrote to tenant petitioner [REDACTED] regarding the tenants in unit [REDACTED] complaining about ongoing
15 nighttime noise caused by Mr. [REDACTED]'s roommate [tenant petitioner [REDACTED]]. (Tenant Pre-hearing
16 Submission, rcvd. 8/12/22, p. 7) Mr. [REDACTED] denied that Ms. [REDACTED] was causing noise
17 disturbances.

18 10. On October 10, 2022, tenant petitioner [REDACTED] wrote to the Rent Board, but not to the
19 property manager or landlord, advising that complaints about tenant petitioner [REDACTED] from the
20 other building neighbors were not true and that the landlord has not taken steps to correct the
21 smoking problem. (Tenant Post-hearing Submission, rcvd. 10/11/22) The tenant attached a
22 recent October 7, 2022 Three Day Notice to Quit from the landlord's attorney addressed to the
23 tenant petitioners, which alleged that Ms. [REDACTED], Mr. [REDACTED]'s subtenant/roommate, was
24 repeatedly yelling at the neighbors, harassing them and calling them names, which was an
25 alleged nuisance in building. (Tenant Post-hearing Submission, rcvd. 10/11/22, p. 3) The notice
26 further alleged prior similar conduct by Ms. [REDACTED] that disturbed the quiet enjoyment of the
27 premises of the tenants at [REDACTED] for which the landlord had previously given the tenant
28 petitioner and Ms. [REDACTED] a curable Three Day Notice to Quit.

No working toilet

1 11. At the hearing, the tenant petitioners withdrew their claim that the toilet in the subject
2 unit was not working.

3 **CONCLUSIONS OF LAW**

4 1. At all times relevant to this petition, the tenants' unit was within the jurisdiction of the
5 Rent Board, [Ordinance Section 37.2(r)]

6 Decreased housing services

7 2. The tenants properly filed a petition for a reduction of base rent claiming that the
8 landlord, without a corresponding reduction in rent, substantially decreased housing services,
9 including any service added after commencement of the tenancy and for which additional
10 consideration was paid when it was provided, or failed to provide housing services reasonably
11 expected under the circumstances or failed to provide a housing service verifiably promised by
12 the landlord prior to commencement of the tenancy. [Rules and Regulations Section 10.10(a)]
13 The tenants has the burden of proof. [Ordinance Section 37.8(b)(2)(A); Rules and Regulations
14 Section 11.18]

15 3. Housing services are those services provided by the landlord connected with the use or
16 occupancy of a rental unit including, but not limited to, repairs, replacement, maintenance,
17 painting, light, heat, water, elevator service, laundry facilities and privileges, janitor service, refuse
18 removal, furnishings, telephone, parking, rights permitted the tenants by agreement, including the
19 right to have a specific number of occupants, whether express or implied, and whether or not the
20 agreement prohibits subletting and/or assignment, and any other benefits, privileges or facilities.
21 [Ordinance Section 37.2(g)]

22 Smoking in the building

23 4. A unit free from second-hand cigarette or marijuana smoke is a housing service
24 reasonably expected under the circumstances and one that is connected with the use or
25 occupancy of a rental unit. [Ordinance Section 37.2(g)] A landlord's failure to reasonably respond
26 to complaints regarding second-hand smoking, if proven, may constitute a substantial decrease in
27 housing services warranting a reduction in base rent. However, such is not the case here.

1 live music was occurring in unit [REDACTED] or giving the landlord a reasonable opportunity to respond
2 to the tenant petitioner's complaints, which were denied by the tenants' neighbors. Moreover,
3 there was some evidence that the neighboring tenants were complaining to the landlord's
4 property manager regarding noise and unruly behavior by one of the tenant petitioners.

5 Based on all of the evidence, the undersigned Administrative Law Judge finds that the
6 tenants failed meet their burden of proving that the neighboring tenants were repeatedly making
7 noise other than normal apartment noise, that the tenants' timely notified the landlord and/ or
8 property manager of the noise problem and failed to meet their burden of proving that the landlord
9 failed to reasonably respond to the tenants' complaints. Based on the foregoing, no rent reduction
10 is warranted at this time.

11 **ORDER**

12 Wherefore, all the evidence having been heard and considered, it is the order of this
13 Administrative Law Judge that:

- 14 1. Petition T210783 as amended is denied.
- 15 2. This Decision is final unless specifically vacated by the Rent Board following appeal to
16 the Board. Appeals must be filed no later than 15 calendar days from the date of the mailing of
17 this Decision, on a form available from the Rent Board. [Ordinance Section 37.8(f)(1), emphasis
18 added] If the fifteenth day falls on a Saturday, Sunday or legal holiday, then the appeal may be
19 filed with the Rent Board on the next business day.

20
21 Dated: December 8 2022.

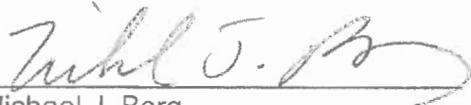
22 
23 Michael J. Berg
24 Administrative Law Judge
25
26
27
28

Exhibit B

1 Law Construed:
2 Ordinance Sections: 37.2(g)&(r); 37.8(e)(7); 37.8(f)(1)
3 Rules and Regulations Sections: 10.10(a); 11.18
4 Index Codes: A37; G19; G22; G69; G82.1

5 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

6 **CITY AND COUNTY OF SAN FRANCISCO**

7	IN RE: [REDACTED])	CASE NO. T210567
8	[REDACTED],)	
9	TENANT PETITIONER,)	HEARING: DECEMBER 7, 2021
10	and)	RECORD CLOSED: DECEMBER 14, 2021
11	ROMEL 2400 VAN NESS, LLC.,)	DECISION
12	LANDLORD RESPONDENT.)	

13 **INTRODUCTION**

14 This case involves a tenant petition filed on July 8, 2021 and amended on July 8, and
15 August 16, 2021, alleging that the tenant received an unlawful rent increase and requesting a
16 determination of the tenant's lawful rent, and alleging a substantial decrease in housing services
17 without a corresponding reduction in rent.

18 A hearing on the petition was held on December 7, 2021. The following persons
19 appeared at the hearing: [REDACTED] tenant petitioner; and [REDACTED], property
20 manager for the landlord respondent. At the hearing, the parties had full opportunity to present
21 relevant evidence and argument, and they did so under oath.

22 The record was held open until December 14, 2021 for both parties to submit additional
23 evidence, which was timely received. The record closed on December 14, 2021.

24 **FINDINGS OF FACT**

25 1. The building is located at [REDACTED] in San Francisco and has **thirty**
26 **residential units** and no commercial units. The landlord respondent, [REDACTED] 2400 Van Ness
27 LLC., has owned the property since approximately 2009.

28 2. The subject tenancy in unit [REDACTED] commenced on May 20, 2019, pursuant to a written

1 rental agreement at an initial base rent of \$2,495.00. (Tenant Post-hearing Submission, rcvd.
2 12/7/21, p. 2) Unit [REDACTED] is a one-bedroom, one-bathroom unit on the third floor in the building.

3 Unlawful rent increase

4 3. On January 21, 2021, the tenant emailed the landlord's rental agent and requested
5 that the base rent for the subject unit be reduced by \$600.00 per month from \$2,495.00 to
6 \$1,895.00 because: the median rents for one-bedroom apartments in the neighborhood had
7 decreased by 24%, many neighborhood units have been vacant for 6+ months and the subject
8 unit had not been renovated and lacked amenities available in other rental listings. (Attachment
9 to Petition, p. 5) The tenant testified that one-bedroom units in the subject building were being
10 rented for \$1,795.00 per month.

11 4. On February 22, 2021, the rental agent advised the tenant that the building ownership
12 had agreed to lower the tenant's rent to \$1,895.00 "with the signing of a new lease. Please
13 advise and I will have that drafted up for you if acceptable." (Attachment to Petition, p. 6) On the
14 same day, the tenant requested that the new lease be sent to her and requested that the new
15 lease apply to the tenant's March 2021 rent, which the rental agent agreed to do. (Attachment to
16 Petition, p. 7-9)

17 5. By March 29, 2021, the new lease had still not been prepared. The tenant testified
18 that she did not receive the new lease agreement until on or about May 11, 2021, and for the
19 first time learned that the \$600.00 rent reduction to \$1,895.00 was only a temporary, one-year
20 reduction, commencing on March 1, 2021 and expiring on February 28, 2022. (Attachment to
21 Petition, p. 18) As a result of the rent reduction only lasting one year, the tenant refused to sign
22 the new lease, but continued to pay the reduced rent of \$1,895.00. The rental agent advised
23 that the \$600.00 credits that reduced the tenant's rent to \$1,895.00 would only apply if the
24 tenant signed the new lease. (Attachment to Petition, p. 17)

25 6. The landlord's property manager testified that the delay in getting the new agreement
26 to the tenant was caused by the pandemic and understaffing in the property manager's office.
27 The property manager further testified that the tenant's rent ledger showed that the tenant owed

1 a balance of \$6,000.00 (\$600.00 per month for 10 mos. from March 1, 2021 through December
2 31, 2021). At the hearing, the property manager then stipulated and agreed on behalf of the
3 owner that the \$1,895.00 rent decrease was a market rate decrease, which was a permanent
4 decrease commencing March 31, 2021, and further stipulated that the proposed new lease did
5 not need to be signed by the tenant to obtain the permanent rent reduction. The tenant
6 stipulated that the permanent rent decrease to \$1,895.00 was effective on March 1, 2021 rather
7 than in February 2021 as she had requested in one of her emails.

8 Decreased housing services

9 Noise complaint-neighbors screaming, threatening each other, slamming doors/windows

10 7. The tenant petitioner testified that she is a therapist, who has been working from her
11 unit. The tenant's August 16, 2021 petition alleges a decrease in housing services in part:
12 "Noise Complaint-Neighbors screaming, threatening each other, slamming doors/windows." The
13 tenant testified that the noise problem mostly came from the tenants in unit [REDACTED], below the
14 tenant petitioner's unit, and a few times from other units. The tenant described the noise from
15 unit [REDACTED] as frequent nighttime arguments, in which the tenant petitioner could hear one or the
16 other tenant in unit [REDACTED] threaten each other with physical harm and throw items at each other.
17 The arguments lasted from twenty minutes to one hour. The tenant petitioner testified she was
18 concerned about the safety of one of the tenants that was being threatened, and she and other
19 tenants in the building have called the police.

20 8. The tenant petitioner further testified as follows:

21 a. The noise problem started in May 2021, but at first, the tenant did not know which
22 tenants were causing the noise.

23 b. The tenant complained to [REDACTED], an employee of the property manager, in a
24 June 4, 2021 email about tenants screaming at each other for 30+ minutes, including threats
25 and pleas, originating from a unit on the third floor on May 2, 2021. (Attachment to Petition, p. 1)
26 The email included a description of the same or similar noise on May 12, 2021, and the police
27 were called for a wellness check to the unit across the hall [on the third floor] from the tenant

1 petitioner, which was not unit # [REDACTED]. The email included a description of the same or similar noise,
2 including slamming windows and items being thrown, originating in a unit on the first or second
3 floor on May 23, 2021 and June 2, 2021. The tenant further testified that at that time, she and
4 the landlord did not know which unit was causing the noise problem. Ms. [REDACTED] replied to the
5 tenant petitioner the same day and asked whether the tenant petitioner knew which specific unit
6 "these" are coming from so we can address them? (Attachment to Petition, p. 1)

7 c. On June 29, 2021, the tenant petitioner emailed Ms. [REDACTED] as follows: on June 25,
8 2021 at 10:30 p.m., screaming neighbors and slamming windows noise originated on the
9 second or first floor, on June 28, 2021 at 10:15 p.m. screaming neighbors and slamming items
10 originated from the unit below the tenant petitioner, and also on June 28, 2021 at 11:05 p.m.
11 screaming neighbors originating on the second or first floor. (Attachment to Petition, p. 2)

12 d. On July 19, 2021, the tenant petitioner emailed the property manager to again
13 complain about noise and second hand smoke. The email addressed to [REDACTED], [aka [REDACTED]
14 [REDACTED]] provided dates from July 2, 2021 through July 17, 2021 regarding the neighbors
15 below the tenant's unit screaming yelling, slamming/hitting doors/frames/windows and other
16 objects, and stated in part:

17 1. Late Saturday night, police conducted a welfare check on Apt [REDACTED]. Someone
18 in apartment [REDACTED] threatened to shoot someone else in the apartment. There
19 were violent sounds (slamming doors, hitting things, yelling) coming from Apt
[REDACTED]. The noise and shaking of the walls woke me up in the middle of the night.

20 2. Police conducted another welfare check on Sunday morning on Apt [REDACTED].

21 Please take appropriate actions to investigate and resolve these issues by the
22 end of July.

23 (Tenant Post-hearing Submission, rcvd. 12/7/21, p. 1-2) Mr. [REDACTED] did not respond to the
24 tenant's July 19, 2021 email.

25 e. On approximately July 26, 2021, the tenant learned from a police visit to unit [REDACTED] that
26 the screaming, threatening and throwing noises were coming from unit [REDACTED] below unit [REDACTED].

27 f. The tenant petitioner heard arguments from unit [REDACTED] in October and for five days in

1 November 2021. The last time there was a noise disturbance from unit [REDACTED] was on November
2 30, 2021. The tenant petitioner did not notify the landlord of these incidents because [REDACTED]
3 [REDACTED] told the tenant petitioner that it was difficult to take tenants to court, and because the
4 tenant petitioner felt like the property manager's employee was not communicating with the
5 other tenants about the noise problems or responding to the tenant petitioner's emails.

6 9. Property manager [REDACTED] testified he takes noise problems and domestic
7 dispute complaints very seriously, and during that time in 2021, his office was very understaffed
8 with only three employees instead of eighteen to deal with the problems in multiple buildings.
9 Mr. [REDACTED] testified that during the pandemic his office had received more complaints from
10 therapists in their buildings than from any other occupation, and that other property managers
11 were also receiving noise complaints.

12 10. On June 30, 2021, Mr. [REDACTED] emailed the tenant in response to her June 29,
13 2021 complaints asked, "What is the address and unit number please? What unit is the smoke
14 coming from? What unit is the screaming coming from. This will all help for us to find out who is
15 causing these issues," even though the tenant identified the unit below her as the source of the
16 noise in her June 29, 2021 email to the landlord. (Attachment to Petition, p. 2-3)

17 11. Mr. [REDACTED] further testified as follows:

18 a. On or about October 14, 2021, Mr. [REDACTED] received a noise complaint from
19 another tenant about the tenants in unit [REDACTED]. On October 15, 2021, the assistant property
20 manager wrote to the tenants in unit [REDACTED] regarding drunkenness in the common area, banging
21 on tenants' doors, yelling and the police being called. (Landlord Post-hearing Submission, rcvd.
22 12/8/21, p. 3) The letter quoted the house rules provision regarding noise in unit [REDACTED]'s lease and
23 advised the tenants to keep the noise down during the hours of 10:00 p.m. to 8:00 a.m., and
24 stated, "It is a nuisance when we find that tenants are disturbed by other tenants in the building
25 due to issues such as banging on doors and yelling." The tenant petitioner was not advised that
26 the tenants in unit [REDACTED] had been warned regarding noise. This October 15, 2021 letter was the
27 only action taken by the property management company regarding the noise complaints by the

1 tenant petitioner about the noise from unit [REDACTED]

2 b. On or about October 14, 2021, Mr. [REDACTED] reached the female tenant from unit
3 [REDACTED] when she was at the airport, and she told Mr. [REDACTED] that she was vacating the unit
4 because of domestic violence. Mr. [REDACTED] assumed that the noise problems from unit [REDACTED]
5 were now over because one of the tenants in that unit was going to move out, and Mr.
6 [REDACTED] had not received any more emails from the tenant petitioner regarding noise after the
7 July 19, 2021 email. Mr. [REDACTED] further testified that he did not respond to the tenant
8 petitioner's July 19, 2021 email. Regarding the tenant petitioner's testimony that the noise
9 problems from unit [REDACTED] continued through the end of November 2021, Mr. [REDACTED] testified
10 that he can't do anything about the noise if the tenant petitioner does not notify him. Mr.
11 [REDACTED] expressed his shock that the woman tenant in unit [REDACTED] had not moved.

12 Secondhand/drifted smoke

13 12. The tenant's petition alleged a decrease in housing services caused by
14 "Secondhand/drifted smoke; The smoke originated from somewhere outside." The tenant
15 testified that secondhand smoke was coming from outside the building or in the building's
16 stairwell. The tenant complained to the [REDACTED], an employee of the property manager in a
17 June 4, 2021 email about eight incidents of secondhand drifted cigarette and marijuana smoke
18 starting on May 28, 2021 through June 2, 2021, and informed the Ms. [REDACTED] that the smoking
19 resulting in the smoke entering the subject unit. (Attachment to Petition, p. 1) The email further
20 stated that the smoke originated from somewhere outside. Ms. [REDACTED] replied to the tenant
21 petitioner the same day and asked whether the tenant petitioner knew which specific unit
22 "these" are coming from so we can address them? (Attachment to Petition, p. 1)

23 13. On June 30, 2021, the tenant notified the property manager through an email to Ms.
24 [REDACTED] about twenty incidents of secondhand/drifted cigarette and marijuana smoke, some on
25 the first floor, in the hallway and in the building. (Attachment to Petition, p. 2) The email also
26 stated that the smoke odor enters the tenant petitioner's unit and originated from somewhere
27 outside, unless otherwise indicated. On June 30, 2021, Mr. [REDACTED] emailed the tenant and

1 asked, "What unit is the smoke coming from?" (Attachment to Petition, p. 2-3)

2 14. On July 19, 2021, the tenant emailed Mr. [REDACTED] that she did not know where the
3 smoke was coming from, but continued even after the landlord posted "no smoking" notices in
4 May 2021, and further advised of three additional secondhand smoke incidents originating
5 outside the building, the last one occurring on July 4, 2021. (Tenant Post-hearing Submission,
6 rcvd. 12/7/21, p. 1) The landlord did not respond to the tenant petitioner's email.

7 15. The tenant testified that she wanted the landlord to post "no smoking" signs on the
8 outside of the building on the tenant's side of the building and in the stairwell. Signs are posted
9 on the other side of the building. The tenant further testified that she is now keeping her
10 windows closed as much as possible, which keeps the smoke out.

11 16. After the hearing, the landlord submitted copies of Memos regarding no smoking
12 sent to all residents of the subject building on July 7, 2020, March 11, 2021, May 24, 2021 and
13 September 15, 2021. (Landlord Post-hearing Submission, rcvd. 12/7/21, p. 2-5) The July 7,
14 2020, March 11, 2021 and September 15, 2021 Memos provided in pertinent part:

15 It has come to our attention that cigarette/marijuana smoke has been
16 emanating into the common area hallways of the building. There is to be no
17 smoking on or about the premises at any time.

18 Please note that as per San Francisco Health Code, smoking is not allowed
19 in the building, and cigarette smoke is not allowed to escape into the common
20 areas of the building or into the units above and/or around you.

21 Please adhere to the rules and regulations of your lease, and San Francisco
22 Health Code.

23 (Landlord Post-hearing Submission, rcvd. 12/7/21, p. 2-3 & 5) The May 24, 2021 Memo to all
24 residents contained the above warning, and included the following:

25 We have been advised that the cigarette smoke has entered the building
26 through windows and doors on the Green Street side of the building. Please do
27 not smoke on or about the premises or near the windows or doors of the
28 building.

(Landlord Post-hearing Submission, rcvd. 12/7/21, p. 4)

17. In addition to the Memos to all the residents about not smoking in the building, the

1 same Memo was sent directly to: the tenants of unit [REDACTED] on November 11, 2021, the tenants of
2 unit [REDACTED], unit [REDACTED] and unit [REDACTED] on November 23, 2021. (Landlord Post-hearing Submission,
3 rcvd. 12/8/21, p. 4-8)

4 Noise complaint-loud music/loud TV

5 18. The tenant testified that the loud music/loud TV noise was different from any noise
6 coming from the downstairs unit [REDACTED]. In the June 4, 2021 email to the landlord's representative
7 Ms. [REDACTED] about screaming and threats noise, the tenant petitioner also complained about loud
8 music/loud television for several hours overnight from a unit on the fourth floor on May 4, 15 and
9 27, 2021. (Attachment to Petition, p. 1) Ms. [REDACTED] responded on the same day and asked the
10 tenant petitioner if she knew which unit "these" are coming from so we can address them.
11 (Attachment to Petition, p. 1) The tenant did not know which unit the noise was coming from at
12 that time.

13 19. On June 29, 2021, in the same email from the tenant petitioner to Ms. [REDACTED]
14 regarding secondhand smoke and screaming neighbors, the tenant complained about loud
15 music originating from a unit below her on the first or second floor on June 17 and 21, 2021, and
16 loud music originating from the unit above her on the fourth floor. (Attachment to Petition, p. 2)
17 The tenant did not identify the specific units. Mr. [REDACTED] responded on June 30, 2021 and
18 asked the tenant, What is your address and unit number, What unit is the smoke coming from,
19 and What unit is the screaming coming from? "This will all help for us to find out who is causing
20 these issues. (Attachment to Petition, p. 3)

21 20. The tenant's July 19, 2021 email to Mr. [REDACTED] also mentioned loud music being
22 played after 10:00 p.m. on July 2, 8-10, 13, 15-17, 2021 by the tenants in the unit below.
23 (Tenant Post-hearing Submission, rcvd. 12/7/21, p. 1) The landlord did not respond to this
24 email. The tenant testified that she was referring to unit [REDACTED] as the unit below her unit, and
25 testified that the loud music on the fourth floor came from unit [REDACTED], but the loud music is less
26 frequent now, and if it occurs during the day, the tenant petitioner can block out the noise with a
27 noise machine or earphones.

1 stipulated that the decrease was permanent, and that the tenant did not have to sign a new
2 lease to continue with the permanent rent reduction.

3 Based on all of the evidence, the undersigned Administrative Law Judge finds that the
4 \$600.00 rent reduction in this case was based on market conditions resulting in a new
5 agreement under the terms and conditions of the original lease. Therefore, the \$600.00
6 reduction of the base rent to \$1,895.00 is determined to be a permanent rent reduction,
7 commencing on March 1, 2021, and the landlord may not restore the reduction.

8 Decreased housing services

9 4. The tenant properly filed a petition for a reduction of base rent claiming that the
10 landlord, without a corresponding reduction in rent, substantially decreased housing services,
11 including any service added after commencement of the tenancy and for which additional
12 consideration was paid when it was provided, or failed to provide housing services reasonably
13 expected under the circumstances or failed to provide a housing service verifiably promised by
14 the landlord prior to commencement of the tenancy. [Rules and Regulations Section 10.10(a)]
15 The tenant has the burden of proof. [Ordinance Section 37.8(b)(2)(A); Rules and Regulations
16 Section 11.18]

17 5. Housing services are those services provided by the landlord connected with the use
18 or occupancy of a rental unit including, but not limited to, repairs, replacement, maintenance,
19 painting, light, heat, water, elevator service, laundry facilities and privileges, janitor service,
20 refuse removal, furnishings, telephone, parking, rights permitted the tenant by agreement,
21 including the right to have a specific number of occupants, whether express or implied, and
22 whether or not the agreement prohibits subletting and/or assignment, and any other benefits,
23 privileges or facilities. [Ordinance Section 37.2(g)]

24 Noise complaint-neighbors screaming, threatening each other, slamming doors/windows

25 6. Peaceful and quiet enjoyment of a rental unit is a housing service connected with the
26 use or occupancy of the rental unit, and one reasonably expected under the circumstances.
27 [Ordinance Section 37.2(g)] The landlord's failure to provide quiet enjoyment, if proven, may

1 constitute a substantial decrease in housing services warranting a reduction in base rent.

2 7. The evidence established that night time domestic screaming, threats of violence,
3 slamming doors and windows and playing loud music was occurring frequently in unit [REDACTED] below
4 the tenant's unit, which disturbed the tenant petitioner's sleep and quiet enjoyment of her unit
5 and resulted in frequent police visits to unit [REDACTED]. The evidence established that the noise
6 problems commenced in May 2021, and the landlord was notified of the repeated noise
7 problems on June 4, 2021, but at that time the tenant petitioner could not identify the source of
8 the noise for the landlord. On June 29, 2021, the tenant notified the landlord that on June 28,
9 2021 the screaming neighbors and slamming originated in the unit below the tenant petitioner's
10 unit. The evidence further established that on July 19, 2021, the tenant again identified the
11 source of the noise for the landlord, which included someone in the unit threatening to shoot
12 another occupant of unit [REDACTED]. The noise problem continued through November 30, 2021, even
13 though the landlord wrote one letter to the tenants of unit [REDACTED] on October 15, 2021 about their
14 behavior in the common area.

15 Based on all of the evidence, the undersigned Administrative Law Judge finds that the
16 frequent nighttime, alarming noise emanating from unit [REDACTED] interfered with the tenant petitioner's
17 quiet enjoyment of her unit and constituted a substantial decrease in housing services
18 warranting a reduction in the tenant's base rent. It is determined that value of this housing
19 service is \$300.00 per month. Therefore, the landlord respondent is liable to the tenant
20 petitioner for the sum of \$1,500.00 (\$300.00 x approximately 5 months from June 29, 2021
21 through November 30, 2021) for rent reductions corresponding with decreased housing
22 services.

23 No determination is made regarding any noise complaints regarding unit [REDACTED] that may
24 have occurred after the hearing in this case. If the tenant believes that a substantial decrease in
25 housing services has occurred arising out of noise emanating from unit [REDACTED] after December 7,
26 2021, the tenant may file a new tenant petition requesting a determination.

1 Secondhand/driftng smoke

2 8. Maintaining a non-smoking policy within a multi-unit residential building is a housing
3 service connected with the use or occupancy of a rental unit and reasonably expected under the
4 circumstances. [Ordinance Section 37.2(g)] Permitting cigarette smoking in the units and/or in
5 the common areas of a multi-unit hotel in violation of the building's non-smoking policy, may,
6 under some circumstances, constitute a substantial decrease in housing services, warranting a
7 reduction in base rent.

8 9. The evidence established that the landlord maintained a non-smoking policy in the
9 subject building and that smoking was occurring inside and outside of the building and entering
10 through the tenant petitioner's open windows. The evidence further established that the landlord
11 was somewhat responsive to the tenant petitioner's complaints regarding smoking outside the
12 building. The landlord notified all of the tenants generally, including certain tenants specifically,
13 of the non-smoking policy in the building and had posted no-smoking signs in some areas on
14 the outside of the building. The evidence further established that the tenant could mitigate the
15 smoke intrusion from the outside by closing her windows when it occurred.

16 Based on all of the evidence, the undersigned Administrative Law Judge finds that the
17 tenant failed to meet her burden of proving that smoking outside the subject building constituted
18 a substantial decrease in housing services. Accordingly, a reduction in base rent is not
19 warranted at this time.

20 Noise complaint-loud music/loud TV from units other than unit [REDACTED]

21 10. Peaceful and quiet enjoyment of a rental unit is a housing service connected with the
22 use or occupancy of the rental unit, and one reasonably expected under the circumstances.
23 [Ordinance Section 37.2(g)] The landlord's failure to provide quiet enjoyment, if proven, may
24 constitute a substantial decrease in housing services warranting a reduction in base rent.

25 11. The evidence established that the tenants in unit [REDACTED] were playing loud music in
26 addition to creating other noise disturbances in unit [REDACTED], which interfered with the tenant
27 petitioner's quiet enjoyment. This complaint was addressed above in paragraphs 6-7 of the

1 Conclusions of Law. The evidence further established that loud music/loud television noise was
2 occurring in other units in the building, but the tenant petitioner was generally unable to identify
3 the unit(s) that were creating the loud music for the landlord to specifically address the problem,
4 except for unit [REDACTED] but the loud music is less frequent now, and if it occurs during the day, the
5 tenant petitioner can block out the noise with a noise machine or earphones.

6 Based on all of the evidence, the undersigned Administrative Law Judge finds that the
7 tenant failed to meet her burden of proving that loud music from unit(s) other than unit [REDACTED],
8 which was addressed above, constituted a substantial decrease in housing services.
9 Accordingly, a reduction in base rent is not warranted at this time.

10 ORDER

11 Wherefore, all the evidence having been heard and considered, it is the order of this
12 Administrative Law Judge that:

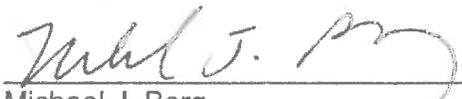
- 13 1. Petition T210567 as amended is granted in part and denied in part.
- 14 2. The tenant's current lawful base rent is \$1,895.00, which is a permanent market
15 base rent reduction from \$2,495.00, commencing March 1, 2021.
- 16 3. The landlord respondent is liable to the tenant petitioner for the sum of \$1,500.00 for
17 noise originating in unit [REDACTED] (\$300.00 x approximately 5 months from June 26, 2021 through
18 November 30, 2021) for rent reductions corresponding to the decrease in housing services. If
19 the landlord does not refund this amount to the tenant within fifteen days of the mailing of this
20 Decision, the tenant may offset it against future rent. [Ordinance Section 37.8(e)(7)]
21 Alternatively, if the landlord does not refund the overpayments to the tenant within fifteen days
22 of the mailing of this Decision, the tenant may bring an action in civil court to collect the balance
23 owed.
- 24 4. If the landlord files a timely appeal of this Decision, the tenant may not offset any
25 overpayments unless and until permitted to do so pursuant to the Rent Board's action on
26 appeal. However, the base rent of \$1,895.00 shall remain in effect pending any appeal.

- 27 5. This Decision is final unless specifically vacated by the Rent Board following appeal

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to the Board. Appeals must be filed no later than 15 calendar days from the date of the mailing of this Decision, on a form available from the Rent Board. [Ordinance Section 37.8(f)(1), emphasis added] If the fifteenth day falls on a Saturday, Sunday or legal holiday, the appeal may be filed with the Board on the next business day.

Dated: April 18, 2022



Michael J. Berg
Administrative Law Judge

Exhibit C

garbage bin

1 Law Construed:

2 Rules and Regulations Sections: 10.10(a); 11.18

3 Ordinance Sections: 37.2(g)&(r); 37.8(b)(2)(A); 37.8(e)(7); 37.8(f)(1)

4 Index Codes: G10, G19, G20, G27, G66, G80

5 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

6 **CITY AND COUNTY OF SAN FRANCISCO**

7 IN RE: [REDACTED]

CASE NO. T210695

8 [REDACTED]; [REDACTED]; and [REDACTED]
9 [REDACTED]

HEARING: NOVEMBER 10, 2021

TENANT PETITIONERS,

DECISION

and

11 [REDACTED],

12 LANDLORD RESPONDENT.

13 **INTRODUCTION**

14 This case involves a tenant petition filed on August 25, 2021 and amended on
15 September 13, 2021 and September 22, 2021, alleging a substantial decrease in housing
16 services without a corresponding reduction in rent.
17

18 A mediation session was scheduled for November 10, 2021, at which time an arbitration
19 was held since all parties did not agree to mediate. The following people appeared at the
20 November 10, 2021 arbitration hearing by audio/video conference: [REDACTED] and
21 [REDACTED], tenant petitioners; [REDACTED], attorney representative for the tenants;
22 and [REDACTED], landlord respondent. At the hearing, the parties had full opportunity to
23 present relevant evidence and argument under oath.

24 **FINDINGS OF FACT**

25 1. The building is located at [REDACTED] in San Francisco and
26 has three residential units. The subject unit is a three-bedroom apartment with two and a half
27 bathrooms. The landlord has owned the property for approximately two years.
28

1 2. The tenancy commenced on January 1, 2021, pursuant to a written rental
2 agreement with an initial **monthly rent of \$6,800.00** – which amount is the current monthly rent.
3 The tenants also pay a monthly utility charge of \$150.00 pursuant to the rental agreement.
4 (Attachment to Petition, pages 17-36)

5 Decreased Housing Service Claims

6 3. In the amended petition, the tenants allege the following decreased housing
7 service claims: (1) broken lock to front gate; (2) inadequate trash/recycling collection; (3) car lift
8 broken/leaking fluid; and (4) broken light fixture in kitchen.

9 4. Gate Lock. The building has a security gate in front of the entry door, which
10 provides access to building common areas and to the apartment doors for the subject unit and
11 the unit located on the second floor. The ground floor unit has its own separate entrance.
12 Tenant ██████ testified that the lock for the gate stopped working sometime in July 2021.

13 5. On July 25, 2021, ██████, an occupant of the apartment on the second floor,
14 sent an email to the landlord and reported that “the lock on the front gate seems to be broken
15 again.” (Attachment to Petition, page 4) During the next several weeks, Mr. ██████ made
16 additional email inquiries about the status of needed repairs to the gate lock. (Attachment to
17 Petition, pages 3-4)

18 6. On August 17, 2021, tenant ██████ sent an email to the landlord inquiring when
19 repairs would be made to the gate and on August 19, 2021, ██████ sent an email to the
20 landlord stating that the broken lock on the security gate presented a “safety hazard.” The
21 landlord responded to the email from ██████ and informed him that a locksmith inspected
22 the lock but was unable to fix it. The landlord also informed Mr. ██████ that the broken gate lock
23 “is not a safety hazard as there is an inside door with locks.” (Attachment to Petition, page 3)
24 That same day, tenant ██████ also sent an email to the landlord stating that the broken security
25 gate lock “is indeed a safety issue.” (Attachment to Petition, page 3) The gate lock was repaired
26 on or about August 24, 2021.

27 7. The tenants testified that when the gate lock was broken, they had concerns
28

1 about building security because sometimes the front entry door gets left unlocked when guests
2 leave the building because the front door does not lock automatically and must be locked with a
3 key upon exiting the building. They also testified that delivered packages were vulnerable to
4 theft when the gate lock was broken because packages from Amazon and other vendors are
5 typically left in the area between the front gate and the front door upon delivery.

6 8. The landlord testified that the broken gate lock did not present a safety or
7 security concern because the front door has a functioning lock and the two apartments
8 accessed through interior common areas also have functioning locks on the doors. The landlord
9 further testified that the gate lock was fixed in a reasonable period of time given the fact that it is
10 difficult to get vendors to respond to maintenance requests as a result of Covid-19.

11 9. The tenants seek a monthly rent reduction of \$2,200.00 for this claim.

12 10. Inadequate Trash/Recycling Collection. The building has one trash bin, one
13 recycling bin, and one compost bin which are stored in the entry area between the security gate
14 and front door, and Recology services the building with collection once a week. Tenant [REDACTED]
15 testified that shortly after moving into the subject unit, the tenants discovered that the trash and
16 recycling bins often filled up to capacity within a day or two after collection.

17 11. On February 7, 2021, about a month after the tenancy commenced, the landlord
18 sent an email to the tenants reminding them to keep the trash and recycling area clean and to
19 take the bins out on Monday evenings for Tuesday morning collection. The email also states
20 that the landlord cleaned the area where the bins were stored and moved the bins from the
21 entry area to the side of the building. (Attachment to Petition, page 13) On February 8, 2021,
22 tenant [REDACTED] sent an email to the landlord, which states:

23 "We agree that the garbage is a problem. We do take it out every week
24 but the amount for garbage generated by three units is more than one
25 trash receptacle can handle. We need an additional trash can to handle
the garbage.

26 I believe that the area you moved the trash cans to is the fire escape. You
27 cannot block the fire escape with trash cans, that's dangerous and
28 probably a fire code violation."

1 (Attachment to Petition, page 13) Tenant [REDACTED] testified that the landlord moved the bins back
2 to the entry area sometime after receiving his email because the bins blocked the emergency
3 egress at the side of the building.

4 12. On Tuesday February 9, 2021, the tenants informed the landlord that the trash
5 and recycling bins were already full even though there was trash collection that morning, and
6 the tenants requested the landlord to get additional bins or service to address the problem.
7 (Attachment to Petition, page 11) The tenants testified that they routinely requested the landlord
8 to either get additional bins or additional service, which requests the landlord refused.

9 13. On June 8, 2021 and June 14, 2021, the tenants sent emails to the landlord
10 again requesting additional bins. On June 14, 2021, the landlord responded as follows:

11 "As I explained to you guys earlier, these are the max bins which are for a
12 three unit apartment building, anything more than this you need to take it
13 offsite or keep a trash bin in your apartment."

14 (Attachment to Petition, page 10) Tenant [REDACTED] testified that he contacted Recology to
15 inquire about the possibility of getting extra bins and he was informed that additional bins could
16 be obtained for an additional service cost.

17 14. The tenants testified that the entry area to the building is often filled with trash
18 and recycling, which is both smelly and an eyesore. They further testified that the landlord
19 offered no assistance to deal with the excessive overflow of trash and recycling.

20 15. On or around August 20, 2021, the tenants contacted the Department of Building
21 Inspection (DBI) regarding the accumulation of trash and debris at the entry area to the building.
22 On August 27, 2021, DBI issued a Notice of Violation (NOV) in Complaint No. 202181371 for
23 various housing code violations including "recycling and trash blocking door" causing an egress
24 obstruction. (Attachment to 9/13/21 Amended Petition, page 1) The Department of Building
25 Inspection re-inspected the property on October 7, 2021, at which time the violation for trash
26 accumulation at the entry area was abated.

27 16. Tenant [REDACTED] testified that although the landlord cleaned the entry area before
28 the re-inspection by DBI, the area continues to be filthy. The tenants submitted copies of

1 photographs of the entry area that were taken on August 22, 2021 and October 31, 2021, all of
2 which show overflowing bins and accumulated trash in the entry area. (Tenant 11/3/21Pre-
3 Hearing Submission, pages 2-5 &14-15) The landlord testified that an over-accumulation of
4 trash was never a problem before the tenants moved in, and the landlord believes that the
5 tenants accumulate too much trash and recycling because they routinely have overnight guests
6 at the property. The landlord also testified that the entry area is sometimes dirty because the
7 tenants are not properly maintaining the area.

8 17. The tenants seek a monthly rent reduction in the amount of \$150.00 for this
9 claim.

10 18. Car Lift. The tenants' portion of the garage has a mechanical car lift to enable
11 the parking of two cars where there would otherwise be only one parking space. The rental
12 agreement provides for parking and includes the following parking-related provision: "Tenant will
13 be responsible for operating Mechanical lift in Garage and Landlord will not be responsible for
14 any damage caused by the same." (Attachment to Petition, page 25)

15 19. Tenants [REDACTED] and [REDACTED] each has a car. Prior to the commencement of the
16 tenancy and in response to an email inquiry from tenant [REDACTED] regarding parking, the landlord
17 informed the tenant that the garage "has a mechanical lift and enables to park two cars at the
18 spot." (Attachment to Petition, page 14)

19 20. Tenant [REDACTED] showed a video at the hearing, which he took in late December
20 2020 before the tenancy commenced. In the video, the landlord is in the garage with tenants
21 [REDACTED] and [REDACTED], and the landlord can be seen and heard explaining to the tenants that the lift
22 accommodates a second car in the space. Tenant [REDACTED] testified that during approximately the
23 first week of the tenancy, the landlord demonstrated to the tenants how the car lift worked (but
24 without a car on it) because the tenants wanted to be assured that it functioned properly.

25 21. On January 10, 2021, the tenants sent an email to the landlord, which states in
26 relevant part:

27 "We were examining the car lift today and noticed that it is leaking
28 hydraulic fluid. We noticed some drops on the hose and touched it with a
paper towel, it showed up orange on the paper.

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We are unable to use the lift in this state as that would be very dangerous. The usage of the car lift is a valuable part of the lease, so please let us know as soon as possible what you would like to do about this. (Repair or discount on rent.)”

(Attachment to Petition, page 14) That same day, the landlord responded with several emails, the first of which states in pertinent part:

“First of all we never advertised 2 car lease spaces. We have always advertised one car space so there is no question of any discount on rent. It was working perfectly fine which we checked when I was there last week the oil may be there from our checking last week.”

(Attachment to Petition, page 14) The second email from the landlord states:

“I never said working lift either in advertisements or in person. Check our Zillow advertisement. It only talks about one car spot yes did mention it has mechanical lift but you operate at your own liability as is called out in lease too where its not owner liability.”

(Attachment to Petition, page 14)

22. The tenants testified that the lift is still leaking fluid and they have never used it because the landlord has refused to have it inspected and/or repaired. The tenants submitted copies of photographs showing fluid on one of the lift’s cables. (Tenant 11/3/21Pre-Hearing Submission, pages 6-13) The landlord testified that he has not had the lift inspected or repaired because the lift is not part of the lease and it was never promised to the tenants that they would be able to use it.

23. Tenant [REDACTED] testified that he parks his car in the garage and tenant [REDACTED] parks on the street because they have concerns about using the lift without any inspections or repairs to ensure its safety. He further testified that parking spaces in the neighborhood are currently renting for \$300.00 to \$400.00 per month. The tenants seek a monthly rent reduction in the amount of \$450.00 for this claim based on the reasoning that a parking space located at the premises would have more value than a parking space at another property.

24. Kitchen Light Fixture. The kitchen has recessed lighting and several hanging light fixtures. On June 14, 2021, the tenants informed the landlord that one of the hanging fixtures was not working even though the tenants tried to change the light bulb. The tenants

1 again reported the problem on June 23, 2021, at which time the landlord informed the tenants
2 that the light fixture was not his responsibility because it is an "operating issue." (Attachment to
3 Petition, page 9)

4 25. The August 27, 2021 Notice of Violation in Complaint No. 202181371 includes a
5 violation for the non-functioning light fixture. (Attachment to 9/13/21 Amended Petition, page 1)
6 The light fixture had not yet been repaired at the time of the hearing on November 10, 2021, and
7 the violation was still outstanding.

8 26. The landlord testified that he purchased an "expanded home warranty" for the
9 subject unit for the repair and/or replacement of appliances and electrical fixtures and the
10 kitchen light at issue is covered under the warranty. He further testified that although he gave
11 the tenants the information about how to use the home warranty, the tenants did not cooperate
12 and the landlord therefore had to make arrangements to have the fixture repaired, which repair
13 was scheduled for November 15, 2021.

14 27. The tenants seek a monthly rent reduction in the amount of \$200.00 for this
15 claim. The landlord argued that the kitchen light fixture is purely decorative, provides little light,
16 and does not constitute a housing service.

17 CONCLUSIONS OF LAW

18 1. At all times relevant to this petition, the subject rental unit is within the jurisdiction
19 of the Rent Board. [Ordinance Section 37.2(r)]

20 Decreased Housing Service

21 2. The tenants properly filed a petition for a reduction of base rent claiming that the
22 landlord, without a corresponding reduction in rent, substantially decreased housing services or
23 failed to provide housing services reasonably expected under the circumstances or failed to
24 provide a housing service verifiably promised by the landlord prior to commencement of the
25 tenancy. [Rules and Regulations Section 10.10(a)] The tenants have the burden of proof.
26 [Ordinance Section 37.8(b)(2)(A); Rules and Regulations Section 11.18]

27 3. Housing services are defined as those services provided by the landlord
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1 connected with the use or occupancy of a rental unit including, but not limited to: repairs;
2 replacement; maintenance; painting; light; heat; water; elevator service; laundry facilities and
3 privileges; janitor service; refuse removal; furnishings; telephone; parking; rights permitted the
4 tenant by agreement, including the right to have a specific number of occupants, whether
5 express or implied, and whether or not the agreement prohibits subletting and/or assignment;
6 and other benefits, privileges, or facilities. [Ordinance Section 37.2(g)]

7 4. Security Gate Lock. A properly maintained and functioning security gate is a
8 housing service connected with the use or occupancy of the tenants' rental unit, and one
9 reasonably expected under the circumstances. [Ordinance Section 37.2(g)] Based on all the
10 evidence, the undersigned Administrative Law Judge finds that the broken lock on the security
11 gate constituted a substantial decrease in housing services warranting a reduction of base rent.
12 The value of this housing service is determined to be \$500.00 per month.

13 5. Based on all the evidence, the landlord is liable to the tenants for the sum of
14 \$500.00 for rent reductions corresponding with this decreased housing service for the period
15 from July 25, 2021, when the broken lock was first reported to the landlord, through August 24,
16 2021, when the lock was repaired (\$500.00 x 1 mo. = \$500.00). The landlord's argument that
17 the broken gate lock did not present a security concern is rejected. The very purpose of the gate
18 is to provide additional security for the building, which was compromised when the lock did not
19 work. Additionally, the landlord's argument that the security gate was repaired in a reasonable
20 period of time is rejected, and the landlord's failure to fix the lock for a period of one month
21 constitutes a substantial decrease in housing services.

22 6. Inadequate Trash/Recycling Collection. A properly maintained trash and
23 recycling area is a housing service connected with the use or occupancy of the tenants' rental
24 unit, and one reasonably expected under the circumstances. [Ordinance Section 37.2(g)] Based
25 on all the evidence, the undersigned Administrative Law Judge finds that the condition of the
26 storage area for trash and recycling bins constituted a substantial decrease in housing services
27 warranting a reduction of base rent. The value of this housing service is determined to be
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1 \$150.00 per month, which is the amount requested in the petition.

2 7. The landlord is therefore liable to the tenants for the sum of \$1,200.00 for rent
3 reductions corresponding with this decreased housing service for the period from February 8,
4 2021, when the tenants first reported that the trash and recycling service was insufficient and
5 requested additional bins or service, through October 7, 2021, when the Department of Building
6 Inspection abated the NOV pertaining to the condition of the trash and recycling area (\$150.00 x
7 8 mos. = \$1,200.00). *20% of rent* Based on all of the evidence, it is determined that an ongoing rent
8 reduction is not warranted for this claim at this time because the DBI abated the pertinent
9 violation pertaining to trash and recycling storage, there is no evidence that the tenants reported
10 any further problems with the trash/recycling area since the violation was abated, and no
11 evidence was presented as to whether the location of the trash/recycling area is in violation of
12 the San Francisco Public Works Code, which specifically governs trash and recycling bin
13 storage.

14 8. Car Lift. A properly maintained car lift is a housing service connected with the
15 use or occupancy of the tenants' rental unit, and one reasonably expected under the
16 circumstances. [Ordinance Section 37.2(g)] Based on all the evidence, the undersigned
17 Administrative Law Judge finds that the condition of the car lift constitutes a substantial
18 decrease in housing services warranting a reduction of base rent. The value of this housing
19 service is determined to be \$400.00 per month.

20 9. The landlord is therefore liable to the tenants for the sum of \$4,280.00 for rent
21 reductions corresponding with this decreased housing service for the period from January 10,
22 2021, when the tenants informed the landlord that the car lift was leaking fluid, through
23 November 30, 2021 (\$400.00 x 10.7 mos. = \$4,280.00). The landlord's argument that the car lift
24 is not a housing service because it is not part of the rental agreement and because the landlord
25 never promised the tenants that they could use it is rejected. The evidence clearly established
26 that the tenants were informed about the lift and its use before the tenancy commenced and the
27 lease specifically states that the landlord "will not be responsible for any damage caused" by
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1 use of the lift. The tenants' base rent shall continue to be reduced by \$400.00 per month until
2 such time as the lift is inspected and/or repaired and its safe operation is professionally verified.
3 If the lift is inspected/repaired and its safe use is professionally verified after the date this
4 Decision is issued, the landlord must give the tenants proper written notice of rent increase
5 under Civil Code §827 before restoring the rent by the corresponding rent reduction of \$400.00
6 per month. If the lift is inspected/repaired and its safe use is professionally verified prior to the
7 date of this Decision, the parties shall adjust the amount of the rent reduction accordingly.

8 10. Kitchen Light Fixture. Properly maintained kitchen lighting is a housing service
9 connected with the use or occupancy of the tenants' rental unit, and one reasonably expected
10 under the circumstances. [Ordinance Section 37.2(g)] Based on all the evidence, the
11 undersigned Administrative Law Judge finds that the condition of the kitchen light fixture
12 constitutes a substantial decrease in housing services warranting a reduction of base rent. The
13 value of this housing service is determined to be \$200.00 per month, the amount requested in
14 the petition.

15 11. The landlord is therefore liable to the tenants for the sum of \$1,100.00 for rent
16 reductions corresponding with this decreased housing service for the period from June 14,
17 2021, when the tenants informed the landlord that the light fixture was not working, through
18 November 30, 2021 ($\$200.00 \times 5.5 \text{ mos.} = \$1,100.00$). The tenants' base rent shall continue to
19 be reduced by \$200.00 per month until such time as the light fixture is repaired, and the August
20 27, 2021 violation for the condition of the light fixture is abated by the DBI. If the light fixture is
21 repaired and the violation is abated after the date this Decision is issued, the landlord must give
22 the tenants proper written notice of rent increase under Civil Code §827 before restoring the
23 rent by the corresponding rent reduction of \$200.00 per month. If the light fixture was repaired
24 and the violation was abated prior to the date of this Decision, the parties shall adjust the
25 amount of the rent reduction accordingly.

26 **ORDER**

27 Wherefore, all the evidence having been heard and considered, it is the order of this
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1 Administrative Law Judge that:

2 1. Petition T210695, as amended, is granted.

3 2. The landlord respondent is liable to the tenants for the sum of \$7,080.00 for the
4 following decreased housing services: (1) \$500.00 for the broken security gate lock for the
5 period from July 25, 2021 through August 24, 2021 ($\$500.00 \times 1 \text{ mo.} = \500.00); (2) \$1,200.00
6 for the condition of the recycling and trash area for the period from February 8, 2021 through
7 October 7, 2021 ($\$150.00 \times 8 \text{ mos.} = \$1,200.00$); (3) \$4,280.00 for the condition of the car lift
8 from January 10, 2021 through November 30, 2021 ($\$400.00 \times 10.7 \text{ mos.} = \$4,280.00$); and
9 (4) \$1,100.00 for the condition of the broken kitchen light fixture from June 14, 2021 through
10 November 30, 2021 ($\$200.00 \times 5.5 \text{ mos.} = \$1,100.00$). If the landlord does not refund this
11 amount to the tenants within 15 calendar days of the date this Decision is mailed, the tenants
12 may offset it against future rent. [Ordinance Section 37.8(e)(7)] If the tenants cannot collect all
13 or any portion of this amount through rent offsets, the tenants may bring an action in civil court
14 to collect the balance owed. However, if the landlord files a timely appeal of this Decision, the
15 tenants may not offset any amount against future rents or bring an action in civil court to
16 collect any amount unless and until permitted to do so pursuant to the Rent Board's final
17 action on appeal. [Ordinance Section 37.8(f)(1)] All other aspects of this Decision, including
18 the monthly rent reduction of \$600.00, shall remain in effect pending any appeal.

19 3. The tenant's monthly rent is reduced by \$600.00 as follows: (1) \$400.00 for the
20 condition of the car lift until such time as the lift is inspected and/or repaired and its safe
21 operation is professionally verified; and (2) \$200.00 for the condition of the broken kitchen light
22 fixture until such time as the fixture is repaired and the August 27, 2021 housing code violation
23 is abated by the DBI. If the housing services were restored and any outstanding violations
24 were abated before the date of this Decision, then the parties shall make the appropriate
25 adjustments without any ongoing rent reduction. If the housing services are restored and any
26 outstanding violations are abated after the date of this Decision, the landlord must give the
27 tenants a written notice of rent increase that complies with Civil Code §827 in order to increase
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the rent by the corresponding rent reductions.

California Civil Code §827 requires service of a 30-day notice of rent increase if the increase, either by itself or combined with any other rent increase in the one year period before the effective date, is no more than 10%. Section 827 requires service of a 90-day notice of rent increase if the increase, either by itself or combined with any other rent increase in the one year period before the effective date, is more than 10%. If the rent increase notice is served by mail, the required notice period must be extended by an additional five days.

4. This Decision is final unless specifically vacated by the Rent Board following appeal to the Board. Appeals must be filed no later than 15 calendar days from the date of the mailing of this Decision, on a form available from the Rent Board. [Ordinance Section 37.8(f)(1), emphasis added] If the fifteenth day falls on a Saturday, Sunday or legal holiday, the appeal may be filed with the Board on the next business day.

Dated: November 29, 2021


Peter Kearns
Administrative Law Judge

Exhibit D

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1 Law Construed:

2 Rules and Regulations Sections: 10.10(a); 11.18

3 Ordinance Sections: 37.2(g); 37.2(r); 37.8(b)(2)(A); 37.8(e)(7); 37.8(f)(1)

4 Index Codes: G10; G11; G15; G62; G73; G94

5 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

6 **CITY AND COUNTY OF SAN FRANCISCO**

7 IN RE: [REDACTED]

CASE NO. T220520

8 [REDACTED]

HEARING: NOVEMBER 22, 2022

RECORD CLOSED: NOVEMBER 30, 2022

9 TENANT PETITIONER,

10 and

DECISION

11 [REDACTED],

12 LANDLORD RESPONDENT.

13 **INTRODUCTION**

14 This case involves a tenant petition filed on April 27, 2022 and amended on September 8
15 and October 3, 2022, alleging a substantial decrease in housing services without a corresponding
16 reduction in rent.

17 A remote consolidated arbitration hearing with Case No. T220519 for the same property
18 was held on November 22, 2022. The following persons appeared remotely at the hearing: [REDACTED]
19 [REDACTED], the tenant petitioner; and [REDACTED], the landlord respondent. At the hearing, the parties had
20 full opportunity to present relevant evidence and argument, and they did so under oath.

21 After the undersigned Administrative Law Judge (ALJ) described the hearing procedures
22 and the order of testimony and proof at the beginning of the hearing, the landlord testified by
23 telephone regarding the ownership and layout of the property. When the tenant commenced
24 testifying regarding moving into the property, the landlord interrupted the tenant's direct testimony
25 and the ALJ's questions to the tenant and began shouting in a loud, angry, mostly unintelligible
26 voice about the landlord being unable to access the tenant's room. The landlord's interruption
27 immediately prevented the tenant from testifying. The landlord continued to shout over the
28 telephone with other complaints about the tenant that were undecipherable. The landlord would

1 not stop shouting despite repeated requests to stop by the ALJ. The landlord continued with the
2 total, complete interruption of the hearing for several minutes and then hung up without any
3 notice or stated reason. The ALJ requested that his clerk attempt to reach the landlord by
4 telephone, but the landlord did not answer the clerk's telephone call to the telephone number
5 used by the landlord to call into the hearing. The ALJ delayed the hearing until 2:40 p.m. to see if
6 the landlord would call back into the hearing, but the landlord did not call back, and the hearing
7 was completed without a further appearance by the landlord.

8 On November 30, 2022, after the record closed on November 22, 2022, the tenant
9 submitted additional evidence. In the interests of justice and a complete record, the record was
10 opened to receive the tenant's submission. The record closed on November 30, 2022.

11 FINDINGS OF FACT

12 1. The property is located at [REDACTED] in San Francisco. The landlord testified
13 that the subject building is a three bedroom, 1 1/2 bath, single-family house. The landlord further
14 testified that she lives in the subject building and has rented out two other bedrooms in the house
15 to two unrelated tenants, including the tenant petitioner, who each occupy their own bedroom and
16 share the kitchen, bathrooms and common areas with the landlord. There are no commercial
17 units. The landlord has owned the property since 2019. Before abandoning the hearing, the
18 landlord claimed that her property was a single-family dwelling exempt from the Rent Board's
19 jurisdiction.

20 2. Tenant petitioner [REDACTED] testified that he rented one bedroom in the subject property
21 for his exclusive use from the landlord pursuant to a written rental agreement with the landlord,
22 commencing August 1, 2019, at an initial base rent of \$1,180.00. (Tenant Post-hearing
23 Submission, rcvd. 11/30/22, p. 3) The rental agreement provided in part: "Clause 9. Utilities.
24 Tenant will pay all utility charges, except for the following, which will be paid by landlord _____."
25 (Tenant Post-hearing Submission, rcvd. 11/30/22, p. 4) Nothing has been added to the blank
26 space after "landlord." The tenant testified that the current rent for the tenant's room is \$1,188.20
27 per month.

1 Related Rent Board Case

2 3. On April 27, 2022, the tenant also filed a petition in Case No. T220519 alleging that the
3 landlord imposed an improper utility passthrough and an improper water revenue bond
4 passthrough. A separate Decision will issue in that case.

5 WIFI service

6 4. The tenant credibly testified that at the time he moved into the bedroom at the
7 commencement of the tenancy on August 1, 2019, the landlord provided WIFI service to the
8 tenant for his use as part of his rent and gave him the password for the service so that the tenant
9 could connect to the Internet through the landlord's WIFI service. The tenant testified that he
10 continued to use the WIFI service until March 1, 2020, when the landlord abruptly and without
11 notice cut off the WIFI service, which prevented the tenant from connecting to Internet. The
12 tenant further testified that he texted the landlord about the loss of service, but the landlord did
13 not respond. When the tenant personally asked the landlord about the loss of service, the
14 landlord became angry when the tenant asked for the restoration of the service. The tenant
15 testified that since March 2020, he has had to use his cell phone as a dedicated "hot spot" to
16 connect to the Internet, which required the tenant to buy a \$168.00 per month T-Mobile hot spot
17 plan rather than a \$120.00 per month plan. (Tenant Post-hearing Submission, rcvd. 11/30/22, p.
18 6) The landlord's WIFI has not been restored.

19 5. The tenant testified that the landlord also cut off the service for the other tenant in the
20 house. The tenant submitted a May 12, 2022 written statement from [REDACTED], who
21 stated in pertinent part as follows:

22 I am a tenant at [REDACTED], San Francisco CA 94122. I moved in here
23 around February 2020 as a tenant and has (sic) lived here till today...

24 I asked her [the landlord] for cable service before I moved in. She verbally agreed,
25 but we did not put the agreement in writing. I received cable service for about 9
26 months. Then, one day she told me it was too expensive and canceled the cable
27 service till today. I consider this bait and switch.

28 (Tenant Pre-hearing Submission, rcvd. 10/3/22, p. 8)

1 Tenant mailbox

2 6. The tenant testified the building has a mail slot in one of the building's door, which has
3 a metal mailbox behind the door to catch the landlord's mail and the tenants' mail that is delivered
4 through the mail slot. The tenant credibly testified that when he moved into the building, the
5 landlord gave him a key to the mail slot door so he could access the mailbox behind the door to
6 collect his mail. The tenant further testified that on September 2, 2021, the landlord, without
7 notice to the tenant, abruptly installed a padlock on the mail slot door, which prevented both
8 tenants in the building from unlocking the door to access their mail delivered to the box through
9 the mail slot. The tenant submitted a picture of the mail slot door with the padlock in place on the
10 door. (Tenant Pre-hearing Submission, rcvd. 10/3/22, p. 10) The tenant testified that every time
11 he complains to the landlord about the loss of the mail box, she "goes berserk." The tenant further
12 testified that he had to rent a post office mailbox for his mail. The tenant submitted a \$38.00
13 postal receipt for the mailbox rental for September 2022. The landlord has not restored use of the
14 mailbox in the building to the tenant.

15 Trash removal

16 7. The tenant credibly testified that at the commencement of his tenancy, the landlord had
17 three unlocked bins located outside the building. The landlord provided the tenant with refuse
18 removal, which service was in the landlord's name, as part of his rent even though the rental
19 agreement provided that the tenant would pay for all utility charges. There was no evidence that
20 the landlord ever provided the tenant with her scavenger bills or directly invoiced the tenant for
21 the tenant's portion of the trash removal costs for the building. The tenant placed his trash,
22 recycling and compost in the bins until August 15, 2022 when the landlord padlocked the bins to
23 the building so that the scavenger company could not pick up and empty the bins. The tenant
24 claimed that the landlord locked up the bins because the tenant had prevailed in Small Claims
25 Court against the landlord. The tenant submitted a picture of one of the locked up bins. (Tenant
26 Pre-hearing Submission, rcvd. 10/3/11, p. 11) The tenant further testified that the bins are full and
27 no additional items can be placed in the bins, which are not being emptied by the scavenger

1 company. The tenant testified that he now has to place his trash in small bags and empty the
2 trash in the public bin at the nearby street corner. The landlord has not restored the trash bins for
3 use by the tenant.

4 **CONCLUSIONS OF LAW**

5 1. The first issue for determination is whether the tenant's unit is within the Rent Board's
6 jurisdiction. Before abandoning the hearing, the landlord claimed that her property was a single-
7 family dwelling exempt from the Rent Board's jurisdiction. However, the evidence established that
8 the landlord had created three separate dwelling units in the house, two of which were occupied
9 by unrelated tenants, including the tenant petitioner, and that the house was no longer used as a
10 single-family dwelling. Based on all of the evidence, the undersigned Administrative Law Judge
11 finds that at all times relevant to this petition, the tenant's unit was within the jurisdiction of the
12 Rent Board. [Ordinance Section 37.2(r)]

13 **Decreased housing services**

14 2. The tenant properly filed a petition for a reduction of base rent claiming that the
15 landlord, without a corresponding reduction in rent, substantially decreased housing services,
16 including any service added after commencement of the tenancy and for which additional
17 consideration was paid when it was provided, or failed to provide housing services reasonably
18 expected under the circumstances or failed to provide a housing service verifiably promised by
19 the landlord prior to commencement of the tenancy. [Rules and Regulations Section 10.10(a)]
20 The tenant has the burden of proof. [Ordinance Section 37.8(b)(2)(A); Rules and Regulations
21 Section 11.18]

22 3. Housing services are those services provided by the landlord connected with the use or
23 occupancy of a rental unit including, but not limited to, repairs, replacement, maintenance,
24 painting, light, heat, water, elevator service, laundry facilities and privileges, janitor service, refuse
25 removal, furnishings, telephone, parking, rights permitted the tenant by agreement, including the
26 right to have a specific number of occupants, whether express or implied, and whether or not the
27 agreement prohibits subletting and/or assignment, and any other benefits, privileges or facilities.

1 [Ordinance Section 37.2(g)]

2 WIFI service

3 4. WIFI service provided by the landlord that allows a tenant to connect to the Internet is a
4 housing service connected with the use or occupancy of the rental unit, and one reasonably
5 expected under the circumstances. [Ordinance Section 37.2(g)] Termination of WIFI service
6 provided by the landlord may constitute a substantial decrease in housing services warranting a
7 reduction in base rent.

8 5. In this case, the evidence established that when the tenant moved into the building, the
9 landlord provided WIFI service to the tenant as part of his rent, and that on March 1, 2020, the
10 landlord terminated the service without notice and without a reduction in the tenant's base rent.

11 Based on all the evidence, the undersigned Administrative Law Judge finds that the
12 termination of WIFI service constitutes a substantial decrease in housing services. The value of
13 this housing service is determined to be \$50.00 per month, the amount sought in the petition.
14 Therefore, the landlord respondent is liable to the tenant petitioner for the sum of \$1,800.00
15 (\$50.00 x 36 months from March 1, 2020 through February 28, 2023) for rent reductions
16 corresponding with this decreased housing service. The tenant's base rent of \$1,188.20 shall
17 continue to be reduced by \$50.00 per month from March 1, 2023 until such time as the landlord
18 restores the housing service by restoring the WIFI service for use by the tenant.

19 Tenant mailbox

20 6. A landlord provided mailbox for the tenant's use is a housing service connected with the
21 use or occupancy of a rental unit and one that is reasonably expected under the circumstances.
22 [Ordinance Section 37.2(g)] Termination of the tenant's access to the building mailbox
23 constitutes a substantial decrease in housing services, warranting a reduction in base rent. The
24 evidence established that at the commencement of the tenancy, the tenant was given a key to the
25 building door to access the mailbox behind the door mail slot, and that on September 2, 2021, the
26 landlord abruptly padlocked the door, which blocked the tenant's access to the mailbox and
27 preventing him from collecting his mail. Based on all of the evidence, the undersigned

1 Administrative Law Judge finds the landlord's termination of the tenant's access to the mailbox by
2 padlocking the mail slot door constituted a substantial decrease in housing services. The value of
3 this housing service is determined to be \$35.00 per month, the amount sought in the petition.
4 Therefore, the landlord respondent is liable to the tenant petitioner for the sum of \$630.00 (\$35.00
5 x approximately 18 months from September 2, 2021 through February, 2023) for rent reductions
6 corresponding with this decreased housing service. The tenant's base rent of \$1,188.20 shall
7 continue to be reduced by \$35.00 per month from March 1, 2023 until such time as the landlord
8 restores the housing service by providing the tenant access to the mailbox behind the mail slot
9 door.

10 Trash removal

11 7. Trash removal is a housing service connected with the use or occupancy of the rental
12 unit, and one reasonably expected under the circumstances. [Ordinance Section 37.2(g)]
13 Termination of trash removal services, may under some circumstances, constitute a substantial
14 decrease in housing services warranting a reduction in base rent. The evidence established that
15 the landlord provided trash removal service, which was in the landlord's name, to the tenant from
16 the inception of the tenancy to August 15, 2022, when the landlord stopped providing the service
17 by locking up the cans or ceasing the trash removal pick-up. There was no evidence the tenant
18 could obtain trash removal services directly from the scavenger company, and no evidence that
19 the landlord ever provided the tenant with copies of the scavenger company's billings or billed the
20 tenant his pro rata share of the trash removal costs paid by the landlord. Based on all of the
21 evidence, the undersigned Administrative Law Judge finds that the landlord's actions to lock-up
22 the bins or cease the collection of the trash services, constituted a substantial decrease in
23 housing services. The value of this housing service is determined to be \$15.00 per month, the
24 amount sought in the petition. Therefore, the landlord respondent is liable to the tenant petitioner
25 for the sum of \$97.50 (\$15.00 x approximately 6.5 months from August 15, 2022 through
26 February 28, 2023) for rent reductions corresponding with this decreased housing service. The
27 tenant's base rent of \$1,188.20 shall continue to be reduced by \$15.00 per month from March 1,
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1 2023 until such time as the landlord restores the housing service by providing trash removal
2 services to the tenant.

3 **ORDER**

4 Wherefore, all the evidence having been heard and considered, it is the order of this
5 Administrative Law Judge that:

6 1. Petition T220520 as amended is granted.

7 2. The landlord respondent is liable to the tenant petitioner in the total sum of \$2,527.50
8 WIFI service-\$1,800.00 (\$50.00 x 35 months from March 1, 2020 through February 28, 2023),
9 mailbox-\$630.00 (\$35.00 x approximately 18 months from September 2, 2021 through February
10 28, 2023) and trash removal-\$97.50 (\$15.00 x approximately 6.5 months from August 15, 2022
11 through February 28, 2023) for rent reductions corresponding to the decreases in housing
12 services. If the landlord does not refund this amount to the tenant within fifteen days of the
13 mailing of this Decision, the tenant may offset it against future rent. [Ordinance Section
14 37.8(e)(7)] Alternatively, if the landlord does not refund the amount to the tenant within fifteen
15 days of the mailing of this Decision, the tenant may bring an action in civil court to collect the
16 balance owed.

17 3. The tenant's reduced base rent beginning March 1, 2023 is \$1,088.20 per month. This
18 amount equals the \$1,188.20 base rent minus \$50.00 for the WIFI service and minus \$35.00 for
19 the mailbox access and minus \$15.00 for trash removal. The tenant's base rent shall continue to
20 be reduced by the above amounts for each month until the landlord restores the housing services
21 as described above. If the landlord restores the housing services after the date of this Decision,
22 the landlord must give the tenant a proper written notice of rent increase pursuant to Civil Code
23 Section 827 in order to increase the rent by the \$100.00 amount for the restored decreased
24 housing services.

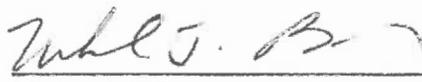
25 4. Rent Ordinance Section 37.15 requires owners to report certain information about their
26 units to the Rent Board in order to obtain a license to impose annual and/or banked rent
27 increases. This requirement applies to increases that are effective on or after July 1, 2022 for
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1 buildings with ten or more residential units. For condominium units and buildings with less than
2 ten residential units, the requirement applies to rent increases that are effective on or after March
3 1, 2023. Any annual and/or banked rent increase purporting to be effective while the landlord is
4 unlicensed shall render the entire rent increase null and void. [Rules & Regulations Section
5 13.14] The landlord may fulfill their reporting requirements and obtain a rent increase license by
6 visiting the Rent Board's Housing Inventory Portal.

7 The landlord must also give the tenant a proper notice of rent increase under Civil Code
8 §827 before increasing the rent. [Ordinance Section 37.3(b)(2); Rules and Regulations Section
9 4.10(a)] Section 827 requires service of at least 30 days' written notice of rent increase if the
10 increase is 10% or less. Section 827 requires service of a ninety (90) day notice of rent increase if
11 the increase is more than 10%. If the rent increase notice is served by mail, the required notice
12 period must be extended by an additional five days.

13 5. If the landlord files a timely appeal of this Decision, the tenant may not offset any
14 amount or pursue an action in Civil Court to collect the amounts owed unless and until permitted
15 to do so pursuant to the Rent Board's action on appeal. [Ordinance Section 37.8(f)(1)] 6. This
16 Decision is final unless specifically vacated by the Rent Board following appeal to the Board.
17 Appeals must be filed no later than 15 calendar days from the date of the mailing of this Decision,
18 on a form available from the Rent Board. [Ordinance Section 37.8(f)(1), emphasis added] If the
19 fifteenth day falls on a Saturday, Sunday or legal holiday, then the appeal may be filed with the
20 Rent Board on the next business day.

21
22 Dated: February 7, 2023

23 
24 _____
25 Michael J. Berg
26 Administrative Law Judge
27
28