Rental Housing Committee
Tentative Appeal Decision

Petition Nos. 18190025, 18190026, and 18190037

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

I. Summary of Proceedings

The RHC accepted and consolidated three petitions for downward adjustment of rent regarding two units owned by Linda Curtis and Larry Voytilla (collectively, "**Appellant-Landlord**").

The RHC accepted petition numbers 18190025 and 18190026 regarding unlawful rent and failure to maintain habitable premises and/or decreased housing services or maintenance for unit 8 located at 857 Park Drive ("**Unit 8**") on August 31, 2018 from Annemarie Wilson. The RHC accepted petition number 18190033 regarding unlawful rent for unit 5 located at 855 Park Drive ("**Unit 5**") on September 18, 2018 from Andrew Halprin.

On September 28, 2018, the RHC provided notice to Annemarie Wilson and Andrew Halprin (collectively, "**Respondent-Tenants**") and to Appellant-Landlord that petition numbers 18190025, 18190026, and 18190033 (collectively, the "**Petitions**") were consolidated into one hearing, which was scheduled for October 12, 2018 before Hearing Officer E. Alexandra DeLateur (the "**Hearing Officer**").

Appellant-Landlord timely requested a postponement of the October 12, 2018 hearing date, which was granted by the Hearing Officer. The hearing was rescheduled for November 30, 2018. On November 29, 2018, Appellant-Landlord requested a second postponement, which request was denied by the Hearing Officer. The Hearing Officer presided over a public hearing on November 30, 2018 in which Appellant-Landlord and Respondent-Petitioners participated. The hearing was recorded and is available as a part of the administrative record.

With deference to Appellant-Landlord's second postponement request, the Hearing Officer ordered the record remain open after the hearing concluded, to allow the parties to submit additional information and argument until December 7, 2018. On December 6, 2019, Appellant-Landlord requested the hearing record remain open until December 14, 2018 because Appellant-Landlord retained legal counsel. The Hearing Officer granted Appellant-Landlord's request: Appellant-Landlord was allowed to submit new evidence until December 14 and Respondent-Tenants were given an opportunity to respond. The hearing record was closed on December 24, 2018.

The Hearing Officer decision, dated January 23, 2019 was delivered on or about that date. An amendment to the decision, dated February 6, 2019, revising the calculations related to Unit 5, was delivered on or about that date.

A timely appeal of the Decision was received from Appellant-Landlord on February 8, 2019.

II. Procedural Posture

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

III. Appealed Elements of Hearing Officer Decision

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section III of this Tentative Appeal Decision identifies the elements of the Decision that are subject to appeal by the Appellant-Landlord. The Tentative Appeal Decision regarding each appealed element is provided in Section IV of this Tentative Appeal Decision.

The Appellant-Landlord contests six elements of the Decision, which are identified as Appeal elements A.1 through A.6, below. Appeal elements A.1 through A.5 pertain solely to Unit 8 and element A.6 pertains solely to Unit 5. Relevant information from the Decision and appeal for each contested element is provided below.

A. Appellant-Landlord Appeal Elements

1. Unit 8: Services for Partial Payment of Rent

Section V, subsection B of the Decision describes an agreement between Ms. Wilson and Appellant-Landlord through which part of the monthly rent for Unit 8 would be paid by providing services to Appellant-Landlord. Specifically, "Ms. Wilson would water plants and [perform] some cleaning in the common areas in exchange for a rent credit of $200 per month." (Decision Section V.B, page 7.) The Decision states that the agreement was in effect and fulfilled from April 2017 through August 2018, and so concludes that Ms. Wilson is "entitled to the rent credit of $200 per month from April 2017 through August 2018."

Appellant-Landlord states, "in the calculation of rent credit, the hearing officer awards petitioner $200/month through January 2019." Appellant-Landlord requests that the Decision be revised to ensure the $200 per month credit not apply in September, October, November, and December of 2018 and January 2019.

2. Unit 8: Painting of Unit

Section V, subsection C ("Decreases in maintenance/decreases in housing services") part 1 of the Decision discusses the duration of Ms. Wilson's tenancy and a written agreement between Ms. Wilson and Appellant-Landlord to repaint Unit 8. The written agreement to repaint the unit is one component of a lease renewal dated March 4, 2015. (Decision Section V.C, Decreases in maintenance part 1, page 9.) The Decision concludes that the apartment was not repainted as

agreed and so provides Ms. Wilson with an award for reduced housing services. (Decision Section VI.4.b.)

Appellant-Landlord states that the unit was repainted in 2015 and provides "checks [that] were unavailable to Landlord at the time of the hearing but have been recovered since." Appellant-Landlord appears to request the award for reduced housing services based on the disputed failure to paint the unit be reversed.

3. Unit 8: Valuation of Automobile Parking

Section V, subsection C ("Decreases in maintenance/decreases in housing services") part 3 of the Decision discusses the use of a parking space associated with Unit 8. The Decision describes that the rent paid for Unit 8 includes the right to use a designated parking space under a tree, from which needles and sap fall onto the space. The Decision summarizes that after Ms. Wilson acquired a newer vehicle, she was dissatisfied with the designated space and requested a different space; when no other space was available, Ms. Wilson parked on the street. The Decision notes an apparent offer by Appellant-Landlords to install "a sort of tent covering to protect Ms. Wilson's car from debris and sap" but notes, "[i]t is unclear if M.s Wilson actually tried such a cover or rejected the idea." (Decision Section V.C decreases in maintenance part 3, page 10.) The Decision states that Appellant-Landlord began parking its own vehicle in the parking space associated with Unit 8. The Decision concludes with an award to Ms. Wilson for reduced housing services based on the parking space.

Appellant-Landlord states, "There was not reduction in service, rather [Ms. Wilson] decided not to use her parking space." Appellant-Landlord further states, "Landlords concede that Mr. Voytilla had started parking in the vacant spot once Petitioner refused to use it, had Petitioner expressed any interest in using the space, Landlord would have immediately removed his vehicle." Appellant-Landlord appears to request the award for reduced housing services based on the parking space be reversed.

4. Unit 8: Bathroom Window

Section V, subsection C ("Failure to maintain habitable premises") part 1 of the Decision discusses a broken bathroom window. Specifically, the Decision states that the evidence "proved there was a broken pane of glass in Ms. Wilson's bathroom window since 2016" and that when asked to fix the window, Appellant-Landlord "used clear tape to secure it." (Decision Section V.C failure to maintain part 1, page 8.) The Decision indicates that Appellant-Landlord declined further repairs, noting that "the building was old, the pane expensive to fix, and that the problem was solved by the tape." (Decision Section V.C failure to maintain part 1, page 8.) The Decision concludes that the broken bathroom window warrants repair beyond clear tape; the Decision provides Ms. Wilson an award of five percent (5%) of the lawful rent based on the broken window. (Decision Section VI.4.a.)

Appellant-Landlord contests whether the crack in the window constitutes a failure to maintain habitable premises and specifically contests the valuation of the impact of the cracked window as five percent of lawful rent (5%). Appellant-Landlord states that, "The window, even while cracked, provided sufficient waterproofing and did not affect Petitioners use of the bathroom or temperature regulation of the bathroom." Appellant-Landlord further states that in comparison to the parking space award of $25 per month, the five percent (5%) valuation for the cracked window is excessive. Appellant-Landlord argues that if an award for the broken window is warranted, the value should be one percent (1%) of lawful rent.

5. Unit 8: Living Room Window

Section V, subsection C ("Failure to maintain habitable premises") part 1 of the Decision discusses the inability to lock a living room window "since 2015." The Decision indicates that Appellant-Landlord is willing to provide a new crank for the window. The Decision concludes that the inability to lock the window is compensable as a failure to maintain habitability and so provides an award of one percent (1%) of the lawful rent to Ms. Wilson from March 2015 through January 2019.

Appellant-Landlord "contest[s] the award on the grounds that Petitioner did no[t] inform [Appellant-Landlord] of issues with her window until the time of the hearing."

6. Unit 5: Unlawful Rent

Section V, subsection A discusses the petition regarding unlawful rent for Unit 5. The Decision, as amended, provides the relevant rental history for Unit 5. On October 19, 2015 the monthly rent was $1,425. Appellant-Landlord raised the rent to $1,800 effective April 1, 2017, which amount was paid by Mr. Halprin for one month before the rent was returned to $1,425 per month. Appellant-Landlord attempted to raise the rent to $1,521.90 and thereafter to $1,473 per month, each effective November 1, 2017; Mr. Halprin paid $1,473 per month effective November 1, 2017. Appellant-Landlord attempted to raise the rent from $1,473 to $1,566 effective October 1, 2018.

The Decision rejects each attempted rent increase. First, the Decision states that attempts to raise rent more than once in a twelve-month period is prohibited by CSFRA section 1707(b). (Decision Section V.A, page 6.) Second, the Decision states that Appellant-Landlord was, "out of compliance with the CSFRA in several ways" including: failure to implement the rent rollback for all tenants, demands for unlawful rent amounts, and building code violations for which statement the Decision cites an August 7, 2018 Fire Life Safety Notice of Inspection document that identifies violations. (Decision Section V.A, page 6, citing Hearing Officer Exhibit 10.) Finally, the Decision notes that it appears Appellant-Landlord did not file the Online Filing of Copy of Notice of Banked Rent Increases within seven days of serving Mr. Halprin with a notice of rent increase that purportedly included a banked increase.

The Decision concludes that the lawful rent for Unit 5 is $1,425 per month and that Mr. Halprin is entitled to a refund for overpayment of rent totaling $951.[1]

Appellant-Landlord "contest[s] the award of $1,239 that was awarded to Petitioner on the grounds that Landlords believe they were in substantial compliance with the provisions of the [CSFRA]."

IV. Tentative Decision Regarding Appealed Elements

As a preliminary matter, appeal elements A.1 through A.5 pertain solely to Unit 8 and element A.6 pertains solely to Unit 5.

A. Appellant-Tenant Appeal Elements

1. Unit 8: Services for Partial Payment of Rent

Appendix 3 to the Decision provides calculations regarding the unlawful payment of rent for Unit 8. Appendix 3 acknowledges the services as a component of the payment of rent via an asterisk and accompanying note. No asterisks are included for August, September, October, November, or December 2018, indicating that the service component of the rental payment did not apply to total calculation of "Payment in Excess of Base Rent by Peititioner."

However, an error was discovered with respect to the payment of rent in September 2017. Ms. Wilson provided evidence that check number 1123 was drafted for a rent payment of $1,600 for September 2017. It is uncontested that the check was not received. Appendix 3 to the Decision concludes that the failure to receive the check resulted in a complete nonpayment of the lawful rent (e.g. Ms. Wilson would owe $1,450 for July 2017). That conclusion fails to acknowledge the asterisk indicating that services for partial payment of rent were rendered for September 2017. Therefore Ms. Wilson should only pay the outstanding balance of the lawful rent owed for September 2017. That is, Ms. Wilson should pay $1,450 dollars, less $200 for services rendered as partial payment, resulting in an outstanding balance of lawful rent totaling $1,250 for September 2017.

Accordingly, Appellant-Landlord's request for clarification of Appendix 3 and request that the services rendered as a partial payment of rent apply to rental payments for April 2017 through July 2018 is granted. The Decision is thus **modified** and restated in Exhibit 1 to apply the partial payment based on services, reducing the outstanding balance of lawful rent due for September 2017 from $1,450 to $1,250.

2. Unit 8: Painting of Unit

[1] The original Decision, dated January 23, 2019, incorrectly miscalculated the overpayment as $1,239, which error was corrected in Appellant-Landlord's favor when the error was identified by Mr. Halprin. The Decision identifies total unlawful rent paid to be $951 in the amendment to the Decision dated February 6, 2019.

The Decision states, "The parties agree that some rooms within [Unit 8] were painted while others were not." (Decision Section V.C, Decreases in maintenance part 1, page 9.) Appellant-Landlord in its appeal proposes to offer new evidence (two checks) and now asserts that "Petitioner did in fact have her unit repainted in 2015, as promised by her lease." Notably, Appellant-Landlord states, "These checks were unavailable to Landlord at the time of the hearing but have been recovered since." Appellant-Landlord provides no further explanation why or how the checks were unavailable during the proceedings, and fails to offer details or argument on why good cause exists to accept additional evidence.

Section I (Summary of Proceedings) of this Tentative Appeal Decision and Section II (Preliminary Matters) of the Decision, summarize Appellant-Landlord's numerous requests for extensions and postponements of the administration of the CSFRA and the Petitions. As noted in the sections above, while not all requests were granted, the record was open and Appellant-Landlord was able to submit evidence and argument since the Petitions were filed and the closing of the record (August 31, 2018 through December 24, 2018).

Repeated requests for postponement by respondents to petitions, whether the respondent is a landlord or tenant, impedes the purposes of the CSFRA to control excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring Landlords a fair and reasonable return on their investment and guaranteeing fair protections for renters, homeowners, and businesses (*see* CSFRA section 1700).

Based on the Appeal submitted by Appellant-Landlord, there is no evidence to support a conclusion that good cause exists to reopen the record (*see* Regulation Chapter 5, Sections D and H.4). Accordingly, Appellant-Landlord's request to submit new evidence is denied. Appellant-Landlord offered no argument regarding the valuation of the painting of Unit 8, and so the Decision is **affirmed**.

3. Unit 8: Valuation of Automobile Parking

The Decision concludes that the "loss of the designated parking space from August 2017 through January 2019" constituted a reduction in housing services, which were valued at $25 per month. The Decision further orders that, "The Landlords shall provide Ms. Wilson with an alternative parking space or she will be entitled to an additional rent credit of $30 per month starting February 1, 2019 . . . until the lack of a parking space is cured.

Appellant-Landlord state there was no reduction in housing services. However, the Decision and Appellant-Landlord's appeal both acknowledge that Appellant-Landlord physically occupied the parking space designated for Unit 8 with Appellant-Landlord's vehicle(s). Physically precluding the use of the parking space designated for Unit 8, whether or not the space is "used" or "occupied" by the tenant of Unit 8 constitutes a reduction in housing services. Although the Decision does not designate a valuation of the parking space from August 2017 through January 2019 on a daily basis, such that Appellant-Landlord and Respondent-Tenant could purport to identify which days the parking space was occupied by Appellant-Landlord, the valuation appears consistent with a preponderance of the evidence in the record. That is, evidence in the record could support a valuation greater than $25 per month for the parking space and so the

lesser valuation presumably accommodates those days when Ms. Wilson could have, but chose not to park in the space.

Appellant-Landlord further asserts that "Landlord would have immediately removed his vehicle" upon notice. Although this offer cannot redress past reductions in housing services, it can address future potential reductions in housing services. To be clear: the only reduction in housing services related to the automobile parking space occurred when either: (a) Appellant-Landlord physically occupied the space designated for Unit 8, or (b) Appellant-Landlord's actions indicated that the space designated for Unit 8 was no longer designated as such. Whether Respondent-Tenant Wilson physically occupies the parking space with an automobile or otherwise depends on the terms of the rental agreement. There is no evidence in the record indicating that the condition of the parking space changed significantly since the beginning of Ms. Wilson's tenancy (other than its use by Appellant-Landlord).

Therefore, Appellant-Landlord's appeal is denied with respect to the valuation of the parking space, but is granted to the extent that the Decision must be modified to acknowledge the condition of the parking space. To that effect, the Decision is **modified**; Section VI.4.e is deleted in its entirety and replaced with the following text:

e. $450.00 for the loss of the designated parking space from August 2017 through January 2019 at the rate of $25 per month. The Landlord shall ensure Ms. Wilson may use the parking space designated for Unit 8 in accordance with the applicable rental agreement (e.g. she or her guest(s) may park in the space, she may leave it vacant, etc…). Any agreement for other uses, such as subleasing the parking space to another person or returning the space to Landlord, are beyond the scope of this Decision but may be regulated by the rental agreement. If Landlord continues to occupy the parking space, it will be considered a permanent reduction in housing services and Ms. Wilson's rent for Unit 8 shall be permanently reduced by $30 per month.

4. Unit 8: Bathroom Window

All parties agree that the bathroom window is cracked, which crack is covered with clear tape. Appellant-Landlord submits as new evidence a photo of the cracked window with its Appeal that appears to be included in the record as Petitioner's Exhibit 1. The Decision concludes that the broken bathroom window constituted a failure to maintain habitable premises, which was valued at five percent (5%) of the lawful rent or $72.50 per month.

Appellant-Landlord challenges and principally argues that the valuation is disproportionate to the valuation of the parking space in the context of a reduction of housing services. Appellant-Landlord posits the hypothetical: If "a minor crack in a window is truly worth 5% [then] what is each window worth, [or] the roof, or use of the kitchen?"

As a preliminary matter, City Code section 25.58, subsection 'r' identifies a broken window as a violation. California Civil Code section 1941.1(a)(1) also identifies unbroken windows as an affirmative standard for habitability. Appellant-Landlord offers an irrelevant analogy to

challenge the valuation and mischaracterizes the valuation issue with respect to housing code violations.

First, the valuation of reduction in housing services as compared to the valuation of a failure to maintain habitable premises based on housing code violations is unhelpful and irrelevant. As noted in section IV.A.3 above, the valuation of a reduction in housing services is fact-specific and may be informed by a variety of factors, such as a tenant's willful abandonment of a housing service. In contrast, failure to maintain habitable premises is the sole responsibility of landlords. Landlords and tenants alike must communicate regarding maintenance issues. However, as stated in the Decision, Appellant-Landlord was aware of the broken window, attempted to replace the broken window, and ultimately resolved to leave the broken window based on the placement of clear tape.

Second, valuation of individual housing code violations are not a simple math problem in which the sum of all housing violations add up to rent. More severe housing code violations should be valued differently when compared to less-severe violations. It is beyond the scope of the Decision and this Tentative Appeal Decision to determine the value of each window, roof, or kitchen.

Appellant-Landlord relies on the analogy to the reduction in housing services (automobile parking space), and the implication that individual valuations for individual violations should add up to some unspecified number and then suggests the award should be reduced to one percent (1%) of lawful rent. Other than Appellant-Landlord's apparent dissatisfaction with the valuation, there is no reason to reduce the award for the failure to maintain habitable premised based on the broken window from five to one percent. Appellant-Landlord's request is denied and the Decision is **affirmed**.

5. Unit 8: Living Room Window

The Decision concludes that the failure to maintain a living room window that locks properly from January 2016 through January 2019 constitutes a failure to maintain habitable premises in accordance with the CSFRA and provides a valuation of one percent (1%) of lawful rent ($14.50) for each month the issue existed.

Appellant-Landlord, "contest[s] the award on the grounds that Petitioner did no[t] inform [Appellant-Landlord] of the issues with her window until the time of the hearing." Appellant-Landlord's statement in its appeal contradicts Appellant-Landlord's testimony during the Hearing (*see* the audio recording of the hearing at 1:26:38 through 1:27:43).[2] Specifically, Appellant-Landlord stated during the hearing that the window closed but wouldn't latch and noted the its location on the second floor were relevant to any security concerns; Appellant-Landlord can be heard stating "when she told us about it" on the audio recording. Appellant-Landlord's provides no explanation for changing testimony through its Appeal and so Appellant-Landlord's request regarding the living room window is denied and the Decision is **affirmed**.

[2] Notably, the audio recording of the hearing includes new concerns regarding the living room window, raised for the first time during the hearing at approximately 1:18:30. The Hearing Officer acknowledged that these issues were new and not the subject of the Petition.

6. Unit 5: Unlawful Rent

Appellant-Landlord challenges the award for unlawful rent to Mr. Halprin, "on the grounds that Landlords believe they were in substantial compliance with the provisions of the [CSFRA]." Whether or not Appellant-Landlord subjectively believes they substantively complied with the CSFRA is irrelevant.

The Decision enumerates multiple violations of the CSFRA pertaining to Unit 5 and Unit 8, including: unlawfully demanding, accepting, receiving, and retaining multiple payments in excess of the lawful Rent applicable to those units (*see* CSFRA section 1714(a)); and the persistence of housing code violations. The Tentative Appeal Decision need not restate in detail each failure to comply with the CSFRA. CSFRA section 1707(f) expressly precludes landlords from imposing a rent increase if the landlord:

1. Has failed to substantially comply with all provisions of this Article and all rules and regulations promulgated by the Committee; or

2. Has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10; or

3. Has failed to make repairs ordered by a Hearing Officer, the Committee, or the City.

Appellant-Landlord has offered no new information to refute the finding that Appellant-Landlord is not in compliance with the CSFRA. Appellant-Landlord's request is denied and the Decision is **affirmed**.

V. Conclusion

As detailed above, the RHC grants in part and denies in part Appellant-Landlord's appeal of the Decision.

A.1 The Appellant-Landlord's request for clarification on the services rendered as partial payment of rent is granted. The Decision of the Hearing Officer calculating unlawful rent received for Unit 8 is **modified** as restated in Exhibit 1 to this Tentative Appeal Decision.

A.2 The Appellant-Landlord's request to admit new evidence is denied for lack of good cause. The Decision regarding the painting of Unit 8 is **affirmed**.

A.3 The Appellant-Landlord's request regarding the valuation of automobile parking for Unit 8 is granted in part and denied in part. The valuation provided in the Decision is affirmed, but the discussion of future use of the automobile parking space is **modified**; Section VI.4.e is deleted in its entirety and replaced with the text provided in section IV.A.4 of this Tentative Appeal Decision.

A.4 The Appellant-Landlord's request regarding the valuation of the broken bathroom window in Unit 8 is denied. The valuation of the bathroom window in the Decision is **affirmed**.

A.5 The Appellant-Landlord's request regarding the inability to lock the living room window in Unit 8 is denied and the Decision is **affirmed**.

A.6 The Appellant-Landlord's request to reverse the finding of unlawful rent for Unit 5 is denied; the Decision is **affirmed**.

Unit 8

Accordingly, the Decision of the Hearing Officer is affirmed in part and modified in part as it pertains to Ms. Wilson and Unit 8. Respondent-Tenant Wilson is entitled to a net award of $6,010.00 for unlawful rent paid in excess of the lawful rent of $1,450 per month, which unlawful rent was received between April 2017 and December 2018. Respondent-Tenant Wilson is further entitled to a refund of any unlawful rent paid in excess of $1,450 per month for January and February 2019. To that end, the resolution of Petition 18190025, as stated in Decision section VI.2, is deleted in its entirety and restated as follows:

> On Ms. Wilson's Petition A (Unit 8), $6,010 must be refunded to Petitioner in three (3) monthly credits of $1,450 for March, April, and May 2019, and payment to Ms. Wilson in the amount of $1,660 is due within thirty (30) days of this decision being final; if Landlord received more than $1,450 for January and/or February 2019 rent, then such overpayment shall be equally divided and applied as rent credit toward rent in June and July 2019. The rent credits and payment due, as described in this paragraph, are effective and enforceable when this decision is final. The lawful rent for Unit 8 is $1,450 per month.

Unit 5

Accordingly, the Decision of the Hearing Officer, as amended on February 6, 2018, is affirmed as it pertains to Mr. Halprin and Unit 5.