

CITY OF MOUNTAIN VIEW

**DECISION AFTER HEARING PURSUANT TO THE COMMUNITY STABILIZATION
AND FAIR RENT ACT**

Rental Housing Committee Case Nos.:	18190025 (Unit #8 - Tenant Petition A) 18190026 (Unit #8 - Tenant Petition B) 18190033 (Unit #5 - Tenant Petition A) <i>Consolidated Matter</i>
Address and Units of the Rental Property:	857 Park Dr. #8 855 Park Dr. #5
Petitioner Tenant Name(s):	Andrew Halprin (Unit #5) Annemarie Wilson (Unit #8)
Respondent Landlord Names(s)	Linda Curtis Larry Voytilla
Hearing Officer:	E. Alexandra DeLateur
Date of Hearing:	November 30, 2018
Date Hearing Record Closed:	December 24, 2018
Date of Decision:	January 23, 2019
Date of Mailing:	(See Attached Proof of Service)

I. STATEMENT OF THE CASE [*Procedural history of the case*]

1. On August 31, 2018, the City of Mountain View notified Petitioner Annemarie Wilson and the Landlord/Property Manager of 855/857 Park Dr. that her two Tenant Petitions for Downward Rent Adjustment (Form A) and (Form B), 18190025 and 18190026, respectively, had been formally accepted.
2. On September 18, 2018, the City of Mountain View notified Andrew Halprin and the Landlord/Property Manager of 855/857 Park Dr. that his Tenant Petition for Downward Rent Adjustment (Form A) 18190033 had been formally accepted.
3. On September 28, 2018, a notice consolidating the three petitions and setting the Hearing for October 12, 2018 was served on all parties by the Hearing Administrator.
4. Prior to the October 12th Hearing date, a written request for postponement was made by Respondent Landlords. Upon a review of the request and supporting documentation, the Hearing Officer found good cause to postpone the Hearing which was re-noticed for November 30, 2018.

5. A continued consolidated hearing in the matter of the three above-referenced tenant petitions was held on November 30, 2018 at 10:00 a.m. before E. Alexandra DeLateur, assigned hearing officer in the case.
6. Landlords did not file a written response to the petitions in advance of either the original or the continued hearing dates.
7. On November 29, 2018 at 11:53 a.m., Landlords requested a second continuance of the hearing which was heard as a preliminary matter at the beginning of the hearing on November 30th and denied. The hearing on the consolidated petitions was held. In accordance with the Regulations, all parties were offered the opportunity to present evidence and arguments in support of their positions. However, considering the Landlords' arguments that they needed more time to respond to the petitions, the hearing officer issued a verbal order to keep open the hearing record for one week, to December 7, 2018, to allow them to present additional evidence pertinent to these consolidated petitions.
8. During the period the record was held open, Petitioner Wilson provided additional documentation to the hearing officer to support her Petition B.
9. By letter dated December 6, 2018, the law firm of Pahl & McCay notified the CSFRA administrator that it had been retained by Landlords and requested the hearing record be held open for an additional week, until December 14, 2018, in order to effectively assist Landlords in providing additional documentation. The hearing officer granted the request and also allowed the petitioners a week to provide responses to the landlords' evidence, until December 21, 2018. As of December 24, 2018, the record was deemed complete and closed with all evidence presented admitted into the record for consideration.

II. PRELIMINARY MATTERS

Landlords Linda Curtis and Larry Voytilla requested a continuance of the November 30, 2018 continued hearing on the grounds that Ms. Curtis was suffering from a malady that would prevent her from speaking. [See Hearing Officer's Exhibit 9]. She produced a letter from her physician indicating that full recovery may take several months. [See Respondents' Exhibit 1] At the hearing, the hearing officer questioned Ms. Curtis about alternatives for presenting evidence such as, whether she could write responses, whether Mr. Voytilla or someone else could respond based on books and records, etc. Ms. Curtis whispered answers to Mr. Voytilla and the hearing officer and wrote some notes on paper to respond. Piecing together the testimony of both Landlords, it appeared that Ms. Curtis was the person knowledgeable about the rental units and had access to information that Mr. Voytilla claimed not to have. Ms. Curtis allegedly could not write due to arthritis in her hands and could not read properly due to unique problems with her vision and eyeglasses. The Landlords flatly refused to propose a work-around to allow the hearing process to go forward as required by the Regulations.

Ms. Curtis raised arguments that the phone messages, emails, and first-class mail notices of the hearing on November 30th did not reach them until two days prior to the scheduled hearing. According to the Landlords, the phone numbers on file were not working for periods of time and the computer was offline for several months but was working on November 29th when Ms. Curtis sent the request for a continuance to Emily Hislop. They further asserted that their mail carrier had consistently failed to make sure their mail was secure in their mail box, which is above a trash can. So, mail which falls out of the mail box is lost in the trash. Additionally, they testified that they were out of state for extended periods of time on family matters which made it difficult, if not impossible, to keep up with the business of managing the property.

It should be noted that in addition to the communication and other challenges described above, the Landlords requested postponements or continuances on three separate occasions. Approximately two days prior to the initial October hearing date, the originally assigned hearing officer was presented with evidence in support of postponement which she determined to be credible and constituted good cause to grant a continuance to the end of November. In requesting a second continuance the day before the November hearing date, the evidence presented to this hearing officer was found to be not credible and therefore was not good cause to grant an additional postponement. However, the record remained open after the hearing to allow for additional submissions by the party requesting a continuance. In support of the third request, after the hearing, the Landlords submitted evidence requesting a continuance as they had retained counsel. The hearing officer found that retention of counsel was good cause to extend the period during which the record remained open.

The Landlords' failure to prepare for the hearing created the appearance of disregard for their tenants and the CSFRA. Furthermore, it would have been unfair to the Petitioners to delay a hearing for another two to three months. The Petitioners had prepared and filed their Petitions with the City with an expectation of a speedy process, arranged to take time off work to appear at the hearing, and were required by the Regulations to continue to pay rent that they believed to be unlawful while waiting for the matter to be heard. Therefore, the request for a continuance of the hearing was denied.

III. APPEARANCES

Petitioner(s): Andrew Halprin (unit #5) and Annemarie Wilson (unit #8) (Tenants" or "Petitioners")

Respondent(s): Landlords Linda Curtis and Larry Voytilla, Curtis and Voytilla Properties ("Landlords" or "Respondents")

No counsel or representatives appeared for any of the parties at the hearing. Subsequently, Lerna Kazazic, Esq. of the law firm Pahl & McCay was retained by Landlords. Ms. Kazazic submitted arguments and evidence on their behalf prior to the closing of the hearing record.

IV. EVIDENCE

The Evidence List is attached hereto as Appendix 1. All evidence listed and presented at Hearing was accepted. The following evidence was submitted after the Hearing:

Hearing Officer Exhibits

Exhibit 11 – Representative Authorization Form executed by Respondent Landlord on December 5, 2018.

Exhibit 12 - Hearing Officer’s Post-Hearing Order dated December 7, 2018.

Petitioner Exhibits

Exhibit 4 – Email responses from Wilson dated December 18 and 19, 2018

Exhibit 5 – Halprin’s response provided December 21, 2018

Respondent Exhibits

Exhibit 4 - Pahl McKay letter December 6, 2018 requesting additional time

Exhibit 5- Pahl McKay letter dated December 14, 2018 with additional evidence and arguments

A. Evidence Presented Re: Unlawful rents (Petition A for Unit #5 and Unit #8)

The petitioners presented detailed records and calculations in support of their Petitions A—downward adjustment of rent. Mr. Halprin and Ms. Wilson presented copies of leases, notices of rent increases, letters, copies of checks, photos, and other supporting documentation to their testimony that they experienced several unlawful rent increases since the CSFRA went into effect. Petitioners testified as to unmet maintenance requests and habitability concerns verified by the reports from the City’s Building Code Enforcement records. The landlords, Ms. Curtis and Mr. Voytilla, presented no documentary evidence to support their assertions that the rent increases were proper under the CSFRA. Their sworn testimony was that many records were lost and that they were overwhelmed by personal possessions which had unfortunately come to them following deaths in their families. The Landlords’ testimony was constrained by Ms. Curtis’ alleged issues with speaking and writing¹. She appeared to have significantly more knowledge about the management of the units than Mr. Voytilla but did not reference any ledgers, files, or other records at the hearing. Regardless of her alleged medical constraints, it is not credible that she could not access any of her business records to present at the hearing. Once counsel was involved on behalf of the Landlords, counsel submitted a summary of rents received without any supporting evidence of the source of this information. For the most part, the summary agrees with the evidence presented by the petitioners, with the exception of Ms.

¹ Despite Landlords asserting that Ms. Curtis had difficulty writing due to arthritis, the Hearing Officer observed Ms. Curtis writing several pages of notes on her note pad throughout the Hearing.

Wilson's September 2017 missing rent check characterized as a failure to tender rent and December 2018 rent listed as \$1,680 rather than the correct amount of \$1,860.00.

B. Evidence Presented Re: Habitability and Maintenance issues (Petition B Unit #8)

Ms. Wilson enumerated three habitability issues and three maintenance/decreases in housing services in her Petition-B for a downward adjustment of rent. The habitability issues were 1) a broken bathroom window, 2) a living room window that does not lock, and 3) missing smoke alarms in the kitchen and bedroom. The maintenance/decreases in housing services were 1) overdue need for paint (painting had been promised in a 2015 lease), 2) overdue carpet replacement, and 3) loss of a previously included parking space. In support of her petition, Ms. Wilson presented copies of her leases for her unit, her testimony, texts, photos, information on building code violations and inspections, and a witness, Mr. Halprin. Ms. Wilson testified that she had requested that these issues be resolved on multiple occasions without receiving satisfactory responses. Petitioner testified as to unmet maintenance requests and habitability concerns verified by the reports from the City's Building Code Enforcement records. Landlords did not present any documentation in response to the petition, except for a printed flyer from the internet from a company stating that the average life of a professional paint job is seven to ten years and photos of Ms. Wilson's apartment to show that the paint and carpet are in good condition. They testified that their handyman responded to some requests for maintenance, other repairs were too expensive, and that Ms. Wilson had chosen not to use her parking space of her own accord.

V. DISCUSSION

A. Discussion Re: Petitioner Halprin's Petition A Unit #5

Petitioner Halprin has met his burden of proof to show that Landlords collected unlawful rents under the CSFRA. The base rent that Mr. Halprin was paying on October 19, 2015 is \$1,425. The Landlords attempted to raise the rent effective April 1, 2017 (\$1,425 to \$1,800), November 1, 2017 (\$1,425 to \$1,521.90 but later adjusted to \$1,473), and October 1, 2018 (\$1,473 to \$1,566). Mr. Halprin had to explain to Ms. Curtis about her duty to roll back the rents in May 2017 and she complied. Mr. Halprin produced copies of checks for April 1, 2017 through December 1, 2018.

Regarding Mr. Halprin, the Landlords' written response dated December 14, 2018 from their attorneys acknowledges that the rent increases in April 2017 and October 2018 were improper; however, the Landlords maintain that the rent increase effective November 1, 2017 was proper and Mr. Halprin should have paid, and should continue to pay, \$1,473 per month. This is incorrect. The Notice of Rent Increase dated September 1, 2017 attempted to increase the rent from \$1,425 to \$1,521.90 based on an increase of 6.8%, double the allowed 3.4% 2017 AGA. The Landlords asserted it was their belief that they could raise the rent 3.4% for 2016 as well as 3.4% for 2017 as a "catch up" since the tenants had not received a rent increase in a long time. It was Mr. Halprin who told Landlord that they themselves may not create an allowable AGA for 2016, since that is a duty assigned to the Rental Housing Committee and that they were only

entitled to the AGA for 2017 which results in a monthly rent of \$1,473. The Landlords agreed to accept \$1,473 but that does not mean that they were entitled to it.

In light of the evidence presented, there are multiple grounds to challenge the rent increase to \$1,473. The evidence shows that the Landlords attempted to raise the rent more than once in a twelve-month period. This action is prohibited by the CSFRA at Section 1707(b) which allows only one rent increase to be imposed in a 12-month period. The Landlords raised the rent in April 2017 to \$1,800 which Mr. Halprin paid for one month but received a credit for the overpayment in November 2017. In May 2017, they attempted to convince Mr. Halprin that they did not want to implement the roll back provisions of the CSFRA. This is tantamount to a rent increase in violation of the CSFRA (collection of unlawful rent) although they ultimately complied with the roll back requirements for this unit. Then, in November 2017, they attempted to increase the rent again, only seven months from the April rent increase. At the time that the rent increase was implemented in November 2017, the Landlords were out of compliance with the CSFRA in several ways, which are discussed below. Furthermore, in August of 2018, Mr. Halprin contacted the City to ask if the Landlords had filed an “Online Filing of Copy of Notice of Banked Rent Increase” within seven days of serving Notice of Banked Rent Increase on the tenants on August 2, 2018. According to the City’s email response dated August 20, 2018, the City had not received the form for his unit and more than seven days had passed. [See Petitioners’ Exhibit 2]

Evidence was presented that they failed to implement the rent roll back for *all* tenants as set forth in the testimony of Ms. Wilson who did not receive a roll back as required. The noncompliance as to Ms. Wilson’s rent roll back makes the Landlords noncompliant with the CSFRA, whether or not other tenants received the required roll back of rents. The notice for rent increase dated September 1, 2017 was not in conformity with the rent increase limits of the CSFRA in that the Landlords attempted to double the 3.4% AGA without authority. Furthermore, evidence was presented that the property was the subject of building code violations, including health and safety issues regarding fire escape routes and access for emergency personnel. Although the record of violations spans a long period of time, the testimony, City records, and photographs presented show that, within the past year and a half, the Landlords have allowed the outside hallways, walkways and parking area to be cluttered and dangerous. [See Hearing Officer’s Group Exhibit 10]. They are not entitled to effect rent increases under the CSFRA while building code violations remain outstanding.

Section 1707(f) provides that rent increases are not permitted when any of the following conditions exist:

“...No Rent increase shall be effective 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.”

As discussed above, the Landlords are not entitled to raise rents on multiple grounds, including failure to substantially comply with the CSFRA and Regulations and the failure to maintain the premises in compliance with the health and safety building codes.

The calculations for lawful rent are as follows and detailed on Appendix 2: for April 2017 through December 2018, the lawful rent is twenty-one months of rent at \$1,425 per month or \$29,925 while Mr. Halprin actually paid \$31,164 (\$1,425 for April 2017 with the later credit, \$1,473 for 17 months, and \$1,566 for 3 months per the testimony and copies of checks) for an overpayment of \$1,239. Therefore, the excess amounts paid (\$1,239) must be refunded to Mr. Halprin in rental unit #5 in two (2) monthly rent credits of \$619.50 for February and March 2019. I did not receive evidence of the amount of rent paid for January 1, 2019; however, if Landlords received \$1,566 for January, they must credit an additional \$141 towards the March 1, 2019 rent.

B. Discussion Re: Petitioner Wilson’s Petition A Unit #8

Petitioner Wilson has met her burden of proof to show that Landlords collected unlawful rents under the CSFRA. The base rent that Ms. Wilson was paying on October 19, 2015 was \$1,450. The Landlords attempted to raise the rent for Ms. Wilson’s unit effective April 1, 2017 (\$1,450 to \$1,800) and July 1, 2018 (\$1,800 to \$1,860). Ms. Wilson’s rent was never rolled back to her base rent of \$1,450 after April 1, 2017 despite the Landlords’ knowledge about the CSFRA requirements from speaking with Mr. Halprin and being sent other communications from the City. Ms. Wilson produced copies of checks for April 1, 2017 through December 1, 2018, including a carbon copy of the check for September 1, 2017. She proved that she has paid rent every month at issue, except that Ms. Wilson’s rent check for September 2017 was tendered, but never cashed by the Landlords. She attempted to resolve the matter without any luck according to her text records. For the purposes of this petition, there is no evidence that rent was *received* for that month despite her efforts to track the payment.

A further consideration is that several years ago, Ms. Wilson and Ms. Curtis entered into an agreement that Ms. Wilson would water plants and do some cleaning in the common areas in exchange for a rent credit of \$200 per month. This agreement is continued in the March 2017 lease and was in effect in April 2017, the starting month subject to this Petition. Although the Landlords assert that Ms. Wilson ceased watering or failed to meet her obligations to earn the rent credit earlier in 2018, their testimony is not supported by any documentation, witnesses, or other evidence. According to the sworn testimony of Ms. Wilson and Mr. Halprin, she discharged her duties through August 2018 and did not receive any complaints or termination

notices regarding her duties prior to August. I conclude that she was entitled to the rent credit of \$200 per month from April 2017 through August 2018.

Landlords have conceded in their response dated December 14, 2018 that they imposed rent increases effective April 1, 2017 and July 1, 2018 that did not comply with the CSFRA. The Landlord's counsel argued that the disagreement about the \$200 rent credit for Ms. Wilson's gardening efforts should be compromised so that she does not receive the benefit of that credit for the full period April 1, 2017 through August 1, 2018 but I disagree with that conclusion, as previously stated.

The calculations for lawful rent amounts are as follows and on Appendix 3: Ms. Wilson's lawful rent was \$1,450 per month from April 1, 2017 through December 1, 2018 which is 21 months, or \$30,450, including September 2017. She presented proof that she paid a total of \$36,260 of consideration in checks and labor (excluding September 2017 rent which was not *received*), resulting in an overpayment of \$5,810. This overpayment amount must be refunded to Ms. Wilson in three (3) monthly rent credits of \$1,450 for February, March, and April 2019 and payment to Ms. Wilson in the amount of \$1,460 due within thirty (30) days of this decision becoming final.

C. Discussion Re: Petitioner Wilson's Petition B Unit #8

Failure to maintain habitable premises: 1) a broken bathroom window, 2) a living room window that does not lock, and 3) missing smoke alarms in the kitchen and bedroom.

Among the requirements for a dwelling unit to be deemed habitable under Civil Code Section 1941.1 is "(1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors."

1. The testimony and photos presented by all the witnesses proved that there was a broken pane of glass in Ms. Wilson's bathroom window since 2016. When asked to fix it, the Landlords used clear tape to secure it. Ms. Wilson testified that water would enter the unit through the crack when it rained. The landlords stated that the water was condensation rather than a leak of water from the outside into the unit. They further stated that the building was old, the pane expensive to fix, and that the problem was solved by the tape. Expense is not an acceptable excuse for failure to maintain the premises. The broken pane needs to be fixed in a permanent and appropriate way in order to discharge a lessor's duty to his/her tenants. The Landlords' written response offers that the Landlords have agreed to fix the problem by the end of February 2019. This is a fine start to addressing the problem but does not excuse the extended time when the Landlords refused to properly resolve the issue. The Petitioner is required to value the loss of use/benefit under the CSFRA, RHC Regulations Chapter 4, Section F.3. Ms. Wilson was unsure how to value the impact of the broken window for two years but estimated a 20% reduction in rent.

2. Ms. Wilson testified that since 2015, the living room window has been in a state where it would not lock from the inside of the unit. Secure doors and windows are a basic

requirement for habitability. Although the Landlords explained that the window can be shut from the outside and is a second story window, this does not meet the legal requirements for a habitable unit. Again, the Landlords' willingness to provide a new crank for this window is appropriate; however, it does not mitigate the months or years that Ms. Wilson lived in the unit without one. Ms. Wilson was unsure how to value the impact of the unlockable window for two years but estimated a 1% reduction in rent.

3. The smoke alarm issue has been resolved according to the testimony of all parties. This decision does not address the original dispute despite some testimony that was presented at the hearing.

Decreases in maintenance/decreases in housing services: 1) overdue interior paint (painting had been promised in a 2015 lease), 2) overdue carpet replacement, and 3) loss of a previously included parking space.

1. The parties agree that some rooms within Ms. Wilson's unit were painted while others were not. Ms. Wilson moved into the unit in 2007, eleven years prior to the hearing. She produced photos to show the condition of the paint and so did the Landlords. They also presented a print out of a flyer from RentPrep online which states that "a professional paint job should last seven to ten years." The flyer goes on to describe two factors in the life of paint job: the professional application and the quality of the paint. Neither of these factors was discussed in this hearing. According to the Landlords, if there is no obvious need for repainting, they need not repaint. However, their own evidence suggests that the *best* professional paint job lasts ten years. Eleven years have passed without painting Ms. Wilson's unit. More to the point, however, is the evidence that Ms. Wilson negotiated with the Landlords in 2015 for a written promise to paint her unit as an inducement to enter into a new lease. The "Fixed-Term Residential Lease" dated March 4, 2015 and signed by Ms. Wilson and the Landlords, states on page 2, paragraph 11, in part, "Tenants acknowledge that they have examined the premises, including appliances, fixtures, carpets, drapes, and paint, and have found them to be in good, safe, and clean condition and repair, except as noted here: repairs to be made: 1) replace refrigerator handle on main door 2) Paint apt. again soon." Over three years ago, Ms. Wilson expressed in her written lease that she desired the apartment to be repainted. Landlords agreed to paint by signing the lease but did not do it. Now, in their written response, Landlords have offered to honor their promise in the 2015 lease. Ms. Wilson has shown that she did not receive the benefit of her bargain to pay rent under the lease. Ms. Wilson was unsure how to value the impact of the failure to re-paint the unit for three years but estimated a 10% reduction in rent.

2. The Petitioner and Landlords presented evidence that the carpet in Ms. Wilson's unit is the original carpet from the commencement of her tenancy in 2007. She testified that she had been verbally promised carpet replacement over the years, but it had never been done. Although carpet has a varied useful life, her carpet is at least eleven years old. The photos presented by the parties show a wall-to-wall pinkish carpet with no obvious tears, holes, or stains. It is difficult to determine the wear of a carpet from photos. The Landlords assert that, absent a visible blemish or safety concern, there is no need to replace it. Ms. Wilson argued that

old carpet harbors unhealthy residue of dirt and allergens which affect health and enjoyment of the premises. She was unsure how to value the impact of the ongoing failure to replace the carpet for years but estimated a 10% reduction in rent.

3. The asserted loss of use of the assigned parking space is contested. Ms. Wilson has shown that she had use of the same parking space over the years as a service included as part of her rent. A tree grew nearby that ultimately reached branches over her space. She testified that she did not like the needles and sap that fell onto her car but only took action once she acquired a newer vehicle. At that point, she asked the Landlords for a different parking space, received none, and elected to park on the street despite some potential negative effects of street parking in the neighborhood. Ultimately, Mr. Voytilla parked a vehicle in the assigned space for Ms. Wilson. Landlords testified that they could not remove the tree as it was a heritage tree, had offered a sort of tent covering to protect Ms. Wilson's car from the debris and sap, and never prevented her from using her assigned space. This situation requires a balancing of interests. The Petitioner is entitled to use a parking space according to her leases. When does a parking space become unusable to a reasonable person? How much must a landlord do to maintain the nature of an outdoor parking space? Once Ms. Wilson complained to the Landlords about her concerns, they say that they attempted to find a cover of sorts that would shield her car from the falling needles and sap. It is unclear if Ms. Wilson actually tried such a cover or rejected the idea. She raised the option of an alternative parking space which the Landlords apparently rejected. There was testimony and photos of Mr. Voytilla's vehicle in the space assigned to Ms. Wilson. He explained that she wasn't using it, so he parked one of several vehicles owned by the Landlords in the space. There was no testimony that Ms. Wilson had been offered a different parking spot in return. The Landlords have argued that the space was not taken from Ms. Wilson. Rather, she simply decided not to use it. This argument begs the question of whether it was constructively taken from her, either by the tree's needles and sap, or by Mr. Voytilla's vehicle. Ms. Wilson estimated the value of the reduction in services at \$25-\$30 per month.

VI. CONCLUSION

The Hearing Officer having reviewed the files, arguments of counsel, and good cause appearing, It is hereby ordered that:

1. On Mr. Halprin's Petition A Unit #5, \$1,239 must be refunded to Petitioner in two (2) monthly rent credits of \$619.50 for February and March 2019; if Landlords received \$1,566 for January 2019, they must credit an additional \$141 towards the March 1, 2019 rent. These credits must be issued immediately upon this decision being final and are enforceable against any successor in interest to Landlords. See amounts and payment schedule in Appendix 2. The lawful rent for his unit #5 is \$1,425 per month.
2. On Ms. Wilson's Petition A, Unit #8 \$5,810 must be refunded to Petitioner in three (3) monthly rent credits of \$1,450 for February, March, and April 2019 and payment to Ms. Wilson in the amount of \$1,460 due within thirty (30) days of this decision being final; if Landlords received \$1,860 for January 2019, Landlords must credit an additional \$410 towards the May 1, 2019 rent. These credits must be issued immediately upon this

decision being final and are enforceable against any successor in interest to Landlords. See amounts and payment schedule in Appendix 3. The lawful rent for her unit #8 is \$1,450 per month.

3. In the event that either Petitioner or the Landlords terminate the Petitioners' tenancies prior to application of the rent credits ordered in this decision, the Petitioners shall be entitled to a money judgment in the amount of the unapplied rent credits in a Small Claims action to enforce this decision.
4. On Ms. Wilson's Petition B Unit #8, the Petition is granted and the Petitioner is entitled to payment of the following within thirty (30) days of this decision being final as further detailed in Appendix 4:
 - a. \$2,102.50 for living in the unit with the broken bathroom window from September 2016 through January 2019 at the rate of \$72.50 per month (5% of the lawful rent set forth above of \$1,450 per month);
 - b. \$536.50 for living with a living room window that does not lock properly for January 2016 through January 2019 at a rate of \$14.50 per month (1% of the lawful rent set forth above of \$1,450 per month);
 - c. No recovery on the smoke detector issue as the matter was deemed resolved by the parties;
 - d. \$3,335.00 for the overdue painting of Petitioner's unit from March 2015 through January 2019 at rate of \$72.50 per month (5% of the lawful rent set forth above of \$1,450 per month); and
 - 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 Landlords shall provide Ms. Wilson with an alternative parking space or she will be entitled to an additional rent credit of \$30.00 per month starting February 1, 2019, which shall be applied to future rent owed (after the credits for February, March, and April have been applied) until the lack of parking space is cured.
5. Once Landlords have complied with the provisions of this Decision and, are otherwise in compliance with CSFRA as required by Section 1707(f), they may implement one or more available AGAs as a rent increase on Tenant Petitioners, provided that a twelve-month period passes from the last attempted rent increase effective October 1, 2018 as set forth in Section 1707(b)². Any such increase must comply with the CSFRA and Chapter 7 of the regulations and any other provision of law.

Dated: January 23, 2019



² Section 1707(b) states "**One Rent Increase Per year.** No more than one Rent increase per twelve-month period may be imposed on a Tenant." The Landlords imposed the last rent increase effective October 1, 2018. Although challenged and determined invalid, it is nonetheless an imposition of a rent increase. To hold otherwise invites inappropriate or unlawful rent increases.

CITY OF MOUNTAIN VIEW
RENTAL HOUSING COMMITTEE
EVIDENCE LIST

Rental Housing Committee Case Number(s): 18190025, 18190026,
18190033
Address of Rental Property: 857 Park Dr. #8, 855 Park Dr. #5
Date of Hearing: 11/30/2018
Hearing Officer: Sandra DeLateur

Marked and Accepted Into Evidence

HEARING OFFICER Exhibits		9/Req for Postponement #2 10 Group-Code Insp. Reports	
1	Petition A - Halprin		
2	Petition A - Wilson		
3	Petition B - Wilson		
4	Consolidated A+B Notice for A - Halprin - orig		
5	Request for Postponement #1 - 10/9/18		
6	Email re granted postponement - 10/11/18		
7	Consol. Ntc to all - 11/19		
8	Req for docs 11/26		
Petitioner Exhibits No.		Respondent Exhibits No.	
1	Wilson - photos cracked window	1	Letter from doc 11/29/18 re Ms. Curtis
2	Halprin's response to HO doc request.	2	Group photos of Ms WJ apt - recent 4/18 weeks
3	Wilson's group of recent checks	3	Printout from online re: paint.
4		4	
5		5	
6		6	
7		7	

855 Park Dr. #5 - RHC Petition No. 18190033

Mth & Yr of Rent Payment	Amt of Total Rent Paid	Base Rent + Allowable AGAs	Payment in Excess of Base Rent by Petitioner
April 2017	\$ 1,800.00	\$ 1,425.00	\$375.00
May 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
June 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
July 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
August 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
September 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
October 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
November 2017 [^]	\$ 1,473.00	\$ 1,425.00	\$48.00
<i>credit</i>	\$ (375.00)		\$ (375.00)
December 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
January 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
February 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
March 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
April 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
May 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
June 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
July 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
August 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
September 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
October 2018	\$ 1,566.00	\$ 1,425.00	\$141.00
November 2018	\$ 1,566.00	\$ 1,425.00	\$141.00
December 2018	\$ 1,566.00	\$ 1,425.00	\$141.00
Total			\$1,239.00

[^] Adjustment of \$375 was made to credit the April 17, 2017 rent charged that was in excess of Base Rent. Petitioner paid \$1098 as rent for November 2017.

PAYMENT SCHEDULE

February 2019 Rent Credit	\$ 619.50
March 2019 Rent Credit	\$ 619.50
	<u>\$ 1,239.00</u>

IF LANDLORDS RECEIVED \$1566 AS RENT FOR JANUARY 2019, FURTHER PAYMENT AS FOLLOWS:

March 2019 ADDITIONAL Rent Credit	\$ 141.00
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857 Park Dr. #8 - RHC Petition No. 18190025

Mth & Yr of Rent Payment	Amt of Total Rent Paid	Base Rent + Allowable AGAs	Payment in Excess of Base Rent by Petitioner
April 2017*	\$1,700.00	\$ 1,450.00	\$250.00
May 2017*	\$1,800.00	\$ 1,450.00	\$350.00
June 2017*	\$1,800.00	\$ 1,450.00	\$350.00
July 2017*	\$1,800.00	\$ 1,450.00	\$350.00
August 2017*	\$1,800.00	\$ 1,450.00	\$350.00
September 2017^*	\$0.00	\$ 1,450.00	(\$1,450.00)
October 2017*	\$1,800.00	\$ 1,450.00	\$350.00
November 2017*	\$1,800.00	\$ 1,450.00	\$350.00
December 2017*	\$1,800.00	\$ 1,450.00	\$350.00
January 2018*	\$1,800.00	\$ 1,450.00	\$350.00
February 2018*	\$1,800.00	\$ 1,450.00	\$350.00
March 2018*	\$1,800.00	\$ 1,450.00	\$350.00
April 2018*	\$1,800.00	\$ 1,450.00	\$350.00
May 2018*	\$1,800.00	\$ 1,450.00	\$350.00
June 2018*	\$1,800.00	\$ 1,450.00	\$350.00
July 2018*	\$1,860.00	\$ 1,450.00	\$410.00
August 2018	\$1,860.00	\$ 1,450.00	\$410.00
September 2018	\$1,860.00	\$ 1,450.00	\$410.00
October 2018	\$1,860.00	\$ 1,450.00	\$410.00
November 2018	\$1,860.00	\$ 1,450.00	\$410.00
December 2018	\$1,860.00	\$ 1,450.00	\$410.00
Total			\$ 5,810.00

*The \$200 rent credit for Petitioner's watering and cleaning services as discussion in Decision Sec. V.B. are included in the rent amount paid in this chart.

^Petitioner submitted a rent check, but it was never cashed by Respondents.

PAYMENT SCHEDULE

Due from Landlord to Petitioner 30 days from Final Decision	\$	1,460.00
February 2019 Rent Credit	\$	1,450.00
March 2019 Rent Credit	\$	1,450.00
April 2019 Rent Credit	\$	1,450.00
	\$	<u>5,810.00</u>

IF LANDLORDS RECEIVED \$1860 AS RENT FOR JANUARY 2019, FURTHER PAYMENT AS FOLLOWS:

May 2019 Rent Credit	\$	410.00
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APPENDIX 3

857 Park Dr. #8 - RHC Petition No. 18190026

Reduced Service/Maintenance or Habitability Issue	Amt of Reduction in Rent per month	Time Period	Total Reduction
Broken Bathroom Window	\$72.50	Sept. 2016 - Jan 2019 (29 months)	\$2,102.50
Window with failed lock	\$14.50	Jan. 2016 - Jan. 2019 (37 months)	\$536.50
Overdue Painting	\$72.50	Mar. 2015 - Jan. 2019 (46 months)	\$3,335.00
Loss of Parking Space	\$25.00	Aug. 2017 - Jan. 2019 (18 months)	\$450.00
			<u>\$6,424.00</u>

PAYMENT SCHEDULE

Due from Landlord to Petitioner 30 days from Final Decision \$6,424.00

CITY OF MOUNTAIN VIEW
AMENDMENT TO
DECISION AFTER HEARING PURSUANT TO THE COMMUNITY STABILIZATION
AND FAIR RENT ACT

Rental Housing Committee Case Nos.:	18190033 (Tenant Petition A) <i>Consolidated Matter</i>
Address and Units of the Rental Property:	855 Park Dr. #5
Petitioner Tenant Name(s):	Andrew Halprin (Unit #5)
Respondent Landlord Names(s)	Linda Curtis Larry Voytilla
Hearing Officer:	E. Alexandra DeLateur
Date of Hearing:	November 30, 2018
Date Hearing Record Closed:	December 24, 2018
Date of Decision:	January 23, 2019 (<i>as part of a consolidated matter with 18190025 and 18190026</i>)
Date of Amendment:	February 6, 2019
Date of Mailing:	(See Attached Proof of Service)

Subsequent to the written decision referenced above was served on all parties, Petitioner Halprin promptly notified the CSFRA administration that there was an error in the calculation of the amounts he paid in excess of the lawful rents relating to his Petition No. 18190033. Mr. Halprin also provided additional evidence in the form of copies of checks for the period April 2017 through October 2017, which had not been provided as part of the Petition or hearing evidence. The reported error was in favor of the Respondent Landlords and the Hearing Officer thanks Mr. Halprin for bringing the issue to her attention so that the decision could be amended. Therefore, the following amends the original Decision as to the specific sections noted and all sections regarding Petition Nos. 18190025 and 18190026 remain unchanged:

IV. Evidence

In addition to the evidence listed in Appendix 1 and Section IV. of the original decision, the Hearing Officer re-opened the Hearing Record for the sole purpose of accepting the following evidence in support of this Amendment to Decision:

Petitioner Exhibit 6 – Petitioner Halprin’s email of January 27, 2019 to CSFRA staff with check copies and spreadsheet attached.

Petitioner Exhibit 6 is admitted into evidence as evidence against interest and as consistent with the chart listing Petitioner’s rent paid and received in Respondents’ Exhibit 5.

V. Discussion Re: Petitioner Halprin’s Petition A Unit #5.

Amended First Paragraph:

Petitioner Halprin has met his burden of proof to show that Landlords collected unlawful rents under the CSFRA. The base rent that Mr. Halprin was paying on October 19, 2015 is \$1,425. The Landlords attempted to raise the rent effective April 1, 2017 (\$1,425 to \$1,800), November 1, 2017 (\$1,425 to \$1,521.90 but later adjusted to \$1,473), and October 1, 2018 (\$1,473 to \$1,566). Mr. Halprin had to explain to Ms. Curtis about her duty to roll back the rents in May 2017 and she complied. Mr. Halprin produced copies of checks for October 1, 2015, November 1, 2015, April 1, 2017, and November 1, 2017 through December 1, 2018. After issuance of the original decision, Mr. Halprin submitted copies of the checks for April 1, 2017 through October 1, 2017 to show that the amount of rent paid for those months was overstated by \$48 per month. Mr. Halprin paid \$1,425.00 per month during that period, rather than \$1,473.00 per month as stated in the original decision.

Amended Last Paragraph:

The calculations for lawful rent are as follows and detailed on Appendix 2: for April 2017 through December 2018, the lawful rent is twenty-one months of rent at \$1,425 per month or \$29,925 while Mr. Halprin actually paid \$31,164 (See Amended Appendix 2 for monthly amounts) which are verified per the testimony and copies of checks. Therefore, Petitioner Halprin paid \$951.00 in excess of the lawful rent for the period. Therefore, the excess amounts paid (\$951.00) must be refunded to Mr. Halprin in rental unit #5 in two (2) monthly rent credits of \$475.50 for February and March 2019. No evidence was received regarding the amount of rent Mr. Halprin paid for January 1, 2019; however, if Landlords received \$1,566 for January, they must credit an additional \$141 towards the March 1, 2019 rent.

VI. CONCLUSION

The Hearing Officer having reviewed the files, arguments of counsel, and good cause appearing, It is hereby ordered that:

Amended Paragraph 1:

On Mr. Halprin’s Petition A Unit #5, \$951.00 must be refunded to Petitioner in two (2) monthly rent credits of \$475.50 for February and March 2019; if Landlords received \$1,566 for January 2019, they must credit an additional \$141 towards the March 1, 2019 rent. If Landlords received \$1,566 for February 2019, they must credit an additional \$141 towards the April 1, 2019 rent. These credits must be issued immediately upon this decision being final and are enforceable

against any successor in interest to Landlords. See amounts and payment schedule in the attached amended Appendix 2. The lawful rent for his unit #5 is \$1,425 per month.

Paragraph 5 (remains the same):

Once Landlords have complied with the provisions of this Decision and, are otherwise in compliance with CSFRA as required by Section 1707(f), they may implement one or more available AGAs as a rent increase on Tenant Petitioners, provided that a twelve-month period passes from the last attempted rent increase effective October 1, 2018 as set forth in Section 1707(b)^{1*}. Any such increase must comply with the CSFRA and Chapter 7 of the regulations and any other provision of law.

Dated: February 6, 2019


E. Alexandra DeLateur, Hearing Officer

* Section 1707(b) states “**One Rent Increase Per year.** No more than one Rent increase per twelve-month period may be imposed on a Tenant.” The Landlords imposed the last rent increase effective October 1, 2018. Although challenged and determined invalid, it is nonetheless an imposition of a rent increase. To hold otherwise invites inappropriate or unlawful rent increases.

855 Park Dr. #5 - RHC Petition No. 18190033

Mth & Yr of Rent Payment	Amt of Total Rent Paid	Base Rent + Allowable AGAs	Payment in Excess of Base Rent by Petitioner
April 2017	\$ 1,800.00	\$ 1,425.00	\$375.00
May 2017	\$ 1,425.00	\$ 1,425.00	\$0.00
June 2017	\$ 1,425.00	\$ 1,425.00	\$0.00
July 2017	\$ 1,425.00	\$ 1,425.00	\$0.00
August 2017	\$ 1,425.00	\$ 1,425.00	\$0.00
September 2017	\$ 1,425.00	\$ 1,425.00	\$0.00
October 2017	\$ 1,425.00	\$ 1,425.00	\$0.00
November 2017 [^]	\$ 1,473.00	\$ 1,425.00	\$48.00
<i>credit</i>	\$ (375.00)		\$ (375.00)
December 2017	\$ 1,473.00	\$ 1,425.00	\$48.00
January 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
February 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
March 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
April 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
May 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
June 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
July 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
August 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
September 2018	\$ 1,473.00	\$ 1,425.00	\$48.00
October 2018	\$ 1,566.00	\$ 1,425.00	\$141.00
November 2018	\$ 1,566.00	\$ 1,425.00	\$141.00
December 2018	\$ 1,566.00	\$ 1,425.00	\$141.00
Total			\$951.00

[^] Adjustment of \$375 was made to credit the April 17, 2017 rent charged that was in excess of Base Rent. Petitioner paid \$1098 as rent for November 2017.

PAYMENT SCHEDULE

February 2019 Rent Credit	\$ 475.50
March 2019 Rent Credit	\$ 475.50
	\$ 951.00

IF LANDLORDS RECEIVED \$1566 AS RENT FOR JANUARY

March 2019 ADDITIONAL Rent Credit	\$ 141.00
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