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March 28, 2024

memorandum

To
Mountain View Rental Housing Committee

From
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Nazanin Salehi, Special Counsel to the Rental Housing Committee

RE
Appeal of Hearing Officer's Decision Re: Petition Nos. C22230050 and C22230051

RECOMMENDATION

To consider the Tentative Appeal Decision and either accept the Tentative Appeal Decision or modify the Tentative Appeal Decision with instructions to staff citing appropriate evidence in the record to support the changes.

BACKGROUND

The instant appeal arises out of two tenant petitions for downward adjustment of rent (“Petitions”) based on unlawful rent and failure to maintain a habitable premises. The hearing on the Petitions was held on October 4, 2023. The Hearing Officer’s Decision was issued on February 1, 2024 (“HO Decision”) and served on the parties the same day.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
May 26, 2023	RHC accepted Petition Nos. C22230050 and C22230051
September 12, 2023	Pre-hearing telephone conference held
September 21, 2023	Written Summary of Pre-hearing Conference and the Hearing Officer's Request for Documents served on parties
October 4, 2023	Hearing held and closed
October 10, 2023	Hearing Record closed

<u>Date</u>	<u>Action</u>
February 1, 2023	HO Decision delivered
February 1, 2023	HO Decision served on the Landlord and Tenant
February 15, 2024	Appeal submitted by Appellant-Landlord
March 18, 2024	Tentative Appeal Decision issued
March 28, 2024	Appeal hearing before the Rental Housing Committee

The first Petition requested a rent rollback and rent refund on the basis that the Landlord’s predecessor-in-interest failed to roll back Petitioners’ rent upon the effective date of the Community Stabilization and Fair Rent Act (“CSFRA”) and thereafter improperly imposed the 2018 Annual General Adjustment. In addition, the unlawful rent petition claimed that the Landlord had charged unlawful rent by collecting payment for renters’ insurance and imposing a transaction fee for the payment of rent via an online portal. The second Petition requested a rent refund and ongoing rent reduction on the basis that Landlord had (1) failed to maintain the property in a habitable condition based on a water leak in one of the bedrooms, and the carport dripping “tar” onto vehicles and (2) had improperly reduced maintenance of the common areas (specifically landscaping) without a corresponding decrease in the rent.

The Hearing Officer determined that Petitioners had met their burden of proof that Respondent (and its predecessor) had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because (a) Respondent’s predecessor failed to roll back Petitioner’s rent from \$1,850.00 to the Base Rent of \$1,700.00 upon the effective date of the CSFRA and (b) thereafter imposed the 2018 Annual General Adjustment of 3.6 percent on the incorrect Base Rent.

In addition, the Hearing Officer concluded that Respondent was responsible for its predecessor’s improper collection of \$15.00 per month for the period from May 1, 2019 through January 2022 for renters insurance because Respondent’s predecessor had failed to seek or obtain approval from the Rent Stabilization Program prior to providing this additional Housing Service in exchange for the additional charge; however, Respondent was not liable for its predecessor’s implementation of a \$1.95 per month service charge for the months of January 2017 through June 2022 connected with the tenant’s online rental payments because Petitioner failed to demonstrate that she was required to pay rent via the online service or was not able to pay rent in another manner.

As it relates to the second Petition, the Hearing Officer determined Landlord was liable for a reduction in the habitability of the Property for the period from November 2022 through the date of the decision based on the water intrusion and the resulting damage

that made the second bedroom in the unit unusable. Petitioners had demonstrated that they had provided Respondent with notice of and a reasonable opportunity to cure the water intrusion and consequential damage, but Respondent had failed to take adequate action to address the condition (even after being cited by the City's code enforcement). Since the bedroom constituted approximately one-fourth of the livable area in the unit, a 25 percent per month, or \$425.00, reduction in rent was justified for the period beginning December and continuing until such time that the Respondent demonstrated they had adequately addressed the issue. The HO Decision also concluded that Petitioner had met their burden of proof that there was a reduction in housing services due to Respondent's elimination of the gardening and landscaping services and awarded a \$50 per month reduction for the period from September 2022 through the date of the decision, and continuing until such time that the services were reinstated.

Lastly, the Hearing Officer found that despite the condition of the deteriorating carport, Respondent was not liable for a failure to maintain habitability and/or reduction in housing services because the carport was not a habitable space and Petitioner had not demonstrated that they were unable to use the carport to park their vehicle(s).

Appellant-Landlord raised the following five issues on appeal:

- A. The Hearing Officer abused her discretion in omitting Landlord's clarification letter from the hearing record.
- B. Landlord mistakenly failed to include one of the documents requested by the Hearing Officer and should be permitted to submit it for consideration on Appeal.
- C. The Hearing Officer abused her discretion by invalidating the imposition of the 2018 Annual General Adjustment of 3.6 percent.
- D. The Hearing Officer erred in concluding that the Landlord and its predecessor in interested demanded and accepted unlawful Rent for the Property.
- E. The Hearing Officer erred or abused her discretion in determining that the Rent for the Property should be reduced by \$450 per month based on the Landlord's failure after notice to comply with the warranty of habitability.

All other elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section C of this report below. All parties to the Appeal are entitled to respond to the Tentative appeal Decision. Responses to the Tentative Appeal Decision were due on March 25, 2024. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

ANALYSIS

A. Role of the RHC

The role of the RHC is not to re-weigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal "*de novo*" pursuant to Regulation Chapter 5, Section H.5.a. *De novo* review would require the RHC to open the hearing record and hold a new, formal hearing. Staff does not recommend *de novo* review for this appeal, because there is sufficient evidence in the record on which the Committee may base its decision.

For questions of law (including statutory interpretation), the RHC must exercise its independent judgment without assuming that the Hearing Officer's ruling is correct or affording deference to the Hearing Officer's interpretation. Even though the RHC exercises its independent judgment, its review is still based on the evidence in the record for the petition hearing.

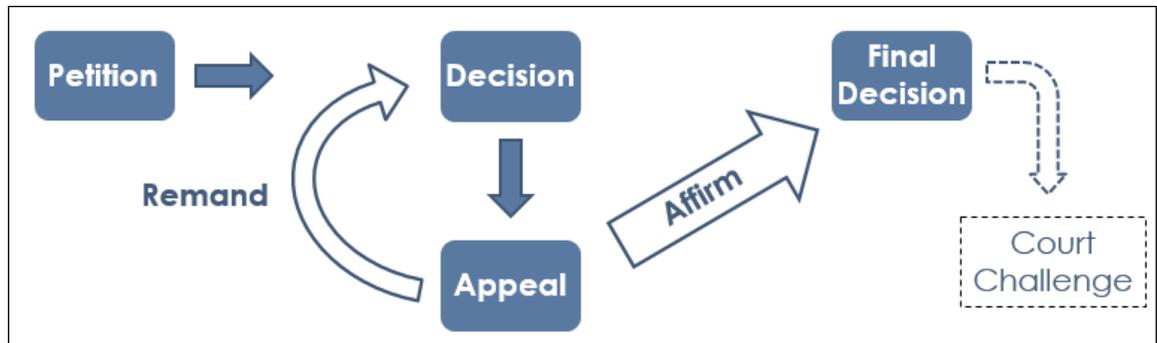
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and appeal court: the trial court drafts a decision after weighing all the evidence and the appeal court reviews the decision to verify whether the decision was adequate. Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does not mean that RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the hearing.

B. Review: Affirming, Reversing and/or Remanding the Appealed Element of the Decision After Remand

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

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

Graphic 1 Visualization of Appeal Procedure



Tentative Appeal Decision - Appeal Elements

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

- A. Appellant-Landlord alleges that the Hearing Officer abused her discretion by excluding its untimely submitted clarification letter. Landlord argues that the Hearing Officer should have allowed submission of the letter because it addressed issues that Landlord was unable to address at the hearing due to time constraints. However, CSFRA Regulations, Ch. 6, Section E.6 provide that provide that at a petition hearing, “Petitioner and other affected parties may offer any documents, testimony, written declarations, or other evidence that, *in the opinion of the Hearing Officer*, is credible and relevant to the requested rent adjustment.” Therefore, the Hearing Officer had discretion to admit or omit the evidence and determined that it was not relevant because it was unsworn, addressed matters that Landlord had the opportunity to testify about or did testify about at the hearing, and would unfairly prejudice the Tenant.
- B. Appellant-Landlord states that it failed to provide the Transfer Disclosure Statement requested by the Hearing Officer and seeks to submit the document for consideration on Appeal. However, Landlord has neither demonstrated an excusable error or mistake that would justify reopening the Hearing record to admit the document nor established that the evidence is of the type that would change the outcome of the petition if considered. Landlord was in possession of the Transfer Disclosure Statement at the time of the Hearing, was provided additional time after the Hearing to submit the document and failed to do so.
- C. Appellant-Landlord contends that the Hearing Officer abused her discretion in concluding the 2018 AGA was improperly imposed, stating conclusively that the decision to invalidate the 2018 AGA is “subjective, unfair, and unreasonable.” The Hearing Officer’s Decision is supported by law because CSFRA Section 1706(a) provides “no Landlord shall charge Rent in an amount that exceeds the

sum of the Base Rent plus any lawful Rent increases actually implemented pursuant to” the Act. Since the Landlord’s predecessor-in-interest failed to rollback the Tenant’s Rent upon the effective date of the CSFRA, the subsequent imposition of the 2018 AGA was invalid both because Landlord’s predecessor was not in substantial compliance with the CSFRA and the Regulations at the time of the increase and because the increase was imposed on the incorrect Base Rent of \$1,850.00.

- D. Appellant-Landlord next argues that the Hearing Officer erred in concluding that Respondent had demanded and accepted unlawful Rent because it should not be liable for the unlawful actions of its predecessor. CSFRA Section 1714(a) states that “a Landlord who demands, accepts, receives or retains any payment of Rent in excess of the lawful Rent shall be liable to the Tenant in the amount by which the payment or payments have exceeded the lawful Rent” and “the Rent shall be adjusted to reflect the lawful Rent pursuant” to the CSFRA and the Regulations. The CSFRA defines “Landlord” as “[a]n owner, lessor, sublessor or any other person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, *predecessor, or successor of any of the foregoing.*” (CSFRA § 1702(j).) Therefore, under the CSFRA, a Landlord owes a Tenant a duty to refund any overpayment of Rent in excess of the maximum lawful Rent for said Unit, even if those overcharges were collected by a predecessor Landlord.
- E. Lastly, Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion in holding that Landlord failed to adequately address the water intrusion in the second bedroom after being provided notice and a reasonable opportunity to cure. At the Hearing, the Landlord did not deny the existence of the condition, their knowledge of the condition, or having been provided a reasonable opportunity to cure; rather, Landlord provided a series of arguments to justify its failure to adequately address the issue, including that it planned to remove the rental unit from the market and that the required repairs may have been structural and may have required a licensed contractor. None of Landlord’s justifications are sufficient to excuse them of their duty to maintain a habitable premises for the remainder of the Petitioner’s tenancy. Moreover, there is sufficient evidence in the record to support the Hearing Officer’s conclusions, including that the Landlord had been directed by the City to address the same condition and undertake the same repairs that the Tenant was requesting.

D. Appeal Hearing Procedure

Each party to the appeal will have an opportunity to present their arguments to the RHC and respond to the other party's presentation. As noted above, the parties are not to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals (Gov. § 54954.3(a)). Finally, RHC members may have questions for staff and/or the parties. The following schedule for the appeal hearing is proposed to facilitate the orderly participation of all parties.

Schedule of Appeal(s) of Hearing Decision(s)

- Public Comment Period applicable for all Appeals on the agenda

Appeal Hearing (CSFRA Petition Nos. C22230050 and C22230051)

Staff Report & Presentation

Appellant-Landlord Presentation of Argument	10 minute maximum
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Respondent-Tenant Presentation of Argument	10 minute maximum
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Appellant-Landlord Presentation of Rebuttal	5 minute maximum
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Respondent-Tenant Presentation of Rebuttal	5 minute maximum
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RHC Question and Answer with Staff

RHC Question and Answer with Appellant-Landlord

RHC Question and Answer with Respondent-Tenants

RHC Deliberations and Decision

- Conclude Agenda Item

FISCAL IMPACT

Adoption of the Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a Hearing Decision to the RHC (as opposed to directly appealing to the courts) is to ensure that Hearing Decisions are legally defensible, and so the appeal process to the RHC reduces the overall risk of legal liability and litigation expenses. As discussed above, the Tentative Appeal Decision recommends upholding the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

PUBLIC NOTICING — Agenda posting

ATTACHMENTS

March 28, 2024

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1. Tentative Appeal Decision for Petition Nos. C22230050 and C22230051
2. Decision of Hearing Officer (February 1, 2024)
3. Appellant-Landlord Appeal of Decision (February 15, 2024)