

M David Kroot
Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
Dianne Jackson McLean
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
William F. DiCamillo
Amy DeVaudreuil
Barbara E. Kautz
Rafael Yaquián
Celia W. Lee
Dolores Bastian Dalton
Joshua J. Mason
Jeffrey A. Streiffer
Elizabeth R. Klueck
Jhaila R. Brown
Gabrielle B. Janssens
Benjamin Funk
Rye P. Murphy
Aileen T. Nguyen
Katie Dahlinghaus
Matthew S. Heaton
Brandon V. Stracener
Dori Kojima
Nazanin Salehi
Erin C. Lapeyrolerie
Minda Bautista Hickey
Jocelyn A. Portales
Colleen A. Wisel
Thomas J. Levendosky
Estrella M. Lucero

Los Angeles
213 627-6336
San Diego
619 239-6336
Goldfarb & Lipman LLP

June 12, 2025

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 No. 24250033

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 Hearing Record to support the changes.

BACKGROUND

The instant appeal arises out of a petition for downward adjustment of rent ("Petition") based on failure to maintain a habitable premises and decrease in Housing Services. The Hearing on the Petition was held on February 19, 2025. The Hearing Officer's Decision was issued and served on the parties on April 17, 2025. ("HO Decision").

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
November 15, 2024	RHC accepted Petition No. <u>C24250033</u>
January 15, 2025	Notice of Hearing and Pre-Hearing Conference served on the Parties.
January 24, 2025	Pre-hearing telephone conference held.

January 27, 2025	Summary of Pre-hearing Conference Call and Order served on parties; Hearing rescheduled.
February 19, 2025	Hearing held.
February 19, 2025	Hearing Officer's Post-Hearing Order issued.
March 4, 2025	Notice of Post-Hearing Order served on the parties.
March 6, 2025	Hearing Record closed.
April 17, 2025	Hearing Officer's Decision issued and served on the parties.
May 2, 2025	Appeal filed by Respondent-Landlord.
June 2, 2025	Tentative Appeal Decision issued and served.
June 12, 2025	Appeal hearing before the Rental Housing Committee.

The Petition requested a downward adjustment of rent on the basis that the Landlord (Respondent) had failed to maintain Petitioners' unit in a habitable condition in violation of the Community Stabilization and Fair Rent Act ("CSFRA"). Specifically, the Petition alleged that (1) there was mold and moisture in the bedrooms of the Affected Unit; (2) there was mold and/or mildew and defective caulking in the bathroom of the Affected Unit; (3) the windows in the Affected Unit were improperly replaced and sealed; (4) there were various plumbing issues, including sewer pipes clogging, bathtub failing to drain properly, and toilet clogging; (5) the electrical circuitry in the Affected Unit was insufficient and resulted in unsafe circuit failures; (6) the water heater made excessive noise; and (7) the wall furnace did not work. The Hearing Officer determined that Petitioners had met their burden of proof – to demonstrate by a preponderance of the evidence – that:

1. The moisture and mold conditions in the bedrooms of their unit violated the warranty of habitability, and that Respondent failed to correct the conditions in a timely and sufficient manner after receiving notice of the conditions;

2. There was mold growth and defective caulking in the bathroom of the Affected Unit and Respondent failed to address the mold and caulking in a manner that would have prevented the mold and mildew from growing back after cleaning;
3. The plumbing in the Affected Unit was not maintained by Respondent as required by California law;
4. The electrical circuitry in the Affected Unit was insufficient, creating a potential safety hazard, and Respondent failed to remedy the condition in a reasonable time after being notified by Petitioners; and
5. Respondent delayed in addressing the excessive noise caused by the water heater and provided inadequate repairs, resulting in a decrease in Housing Services.

Based on the foregoing, the Hearing Officer granted the following:

1. For the moisture and mold issues in the bedrooms, a thirty-four percent (34%), or total rent refund of \$6,255.56, for the periods from December 27, 2023 through May 31, 2024 and November 1, 2024 through January 4, 2025 (which was the date on which Petitioners vacated their unit).
2. For mold and defective caulking in the bathroom, a two and one-half percent (2.5%) rent reduction, or total rent refund of \$1,366.21, for the period from late August 2023 through January 4, 2025.
3. For the various plumbing and sewer issues, a seven percent (7%) rent reduction, or total rent refund of \$1,364.57, for the period from May 13, 2023 through November 5, 2023.
4. For the insufficient and unsafe electrical circuitry, an eight-and-one-half percent (8.5%) rent reduction, or total rent refund of \$4,915.08, for the period from August 3, 2023 through January 4, 2025.
5. For the excessive noise caused by the water heater and inadequate repairs, a seventeen percent (17%) rent reduction, or total rent refund of \$372.35, for the period from April 26, 2023 through May 16, 2023.

The Appellant-Landlord raised the following five issues on appeal:

- A. The Hearing Officer improperly awarded rent reductions for issues that were not pled in the Petition – excessive noise from the water heater and bathtub clogging. Awards based on unpled claims violate both due process and the CSFRA Regulations, which require tenants to specify the conditions forming the basis of their Petition.

- B. The Hearing Officer erred or abused her discretion in awarding a rent reduction and refund based on mold and moisture in the Petitioners' unit. All evidence in the record supporting Petitioners' claims was anecdotal, and the record demonstrates that Respondent took reasonable steps to investigate and remediate the issue after it was reported, including roof repairs, cleaning gutters, and multiple inspections.
- C. The Hearing Officer erred or abused her discretion in awarding a rent reduction based on the sewer and drainage conditions. There were no credible complaints of sewer issues after the main sewer backup was resolved via hydrojetting on November 5, 2023. Further, Petitioners admitted that they stopped reporting the clogging of the bathtub after August 2023. A tenant's decision to stop reporting problems precludes a finding of continuing habitability violations.
- D. The Hearing Officer erred or abused her discretion by awarding a rent reduction of 15 percent for the electrical circuit failures. The CSFRA does not permit rent reductions based on stale complaints that were not pursued or corroborated.
- E. The Hearing Officer's rent reductions were arbitrary and excessive because she assigned separate rent reductions for interconnected or intermittent issues. There was no clear explanation of how the Hearing Officer calculated the value of each condition's impact on rent. If not entirely reversed, the rent reductions should be significantly reduced based on the limited duration of the cited issues.

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 June 9, 2025. 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 Hearing 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 Hearing Record for the Petition hearing.

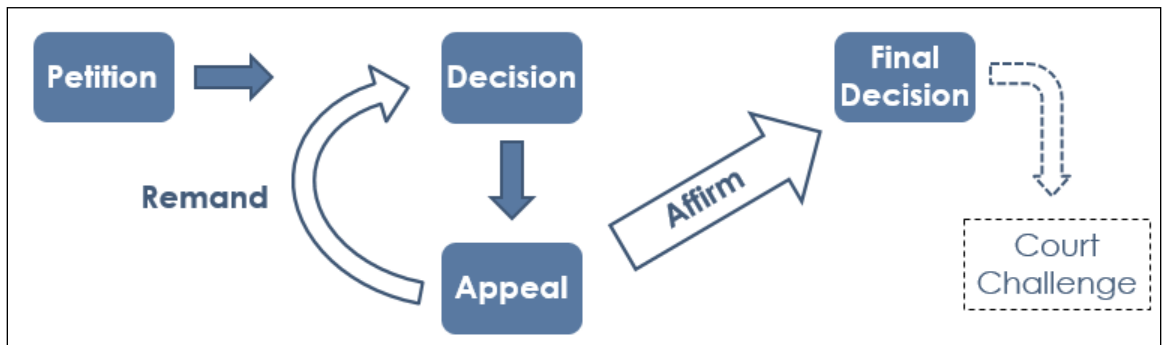
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and an appeal court: the trial court drafts a decision after weighing all the evidence, and the appeal court reviews 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 the 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 Elements of the Decision After Remand

Petitions define the scope of the Hearing Officer's review. Appeals define the scope of RHC's 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 the 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



C. Tentative Appeal Decision – Appeal Elements

The Tentative Appeal Decision recommends affirming the HO Decision in its entirety. In summary:

- A. Appellant-Landlord alleges that the Hearing Officer improperly considered and awarded rent reductions for conditions – bathtub clogging and excessive noise from the water heater – that were not “pled” in the Petition in violation of the CSFRA Regulations and constitutional procedural due process requirements. Neither the regulations nor the CSFRA itself forecloses a tenant from either further elaborating

on the issues raised in the petition or raising additional issues at the hearing. Moreover, the record demonstrates that the Petitioners did raise these issues in their pre-hearing petition submissions. Appellant also waived any objection to the consideration of these issues because the Hearing Officer listed off the issues that were raised in the petition at the beginning of the hearing and Landlord's legal counsel confirmed that these issues were raised by the petition and would be considered at the hearing. Finally, the requirements of due process were satisfied because Landlord was afforded an opportunity to present evidence on these conditions and an opportunity to cross-examine Petitioners on their testimony regarding these issues at the hearing. Therefore, the Hearing Officer's consideration of these issues was not improper.

B. Appellant-Landlord also argues that the Hearing Officer erred or abused her discretion in awarding a rent reduction for the following conditions: (1) moisture, mold and mildew in the Affected Unit; (2) sewer and drainage issues in the Affected Unit; and (3) insufficient and unsafe electrical circuitry in the Affected Unit.

1. The Hearing Officer's factual findings regarding the moisture, mold and mildew in the Affected Unit are supported by substantial evidence in the record.
 - a. Even if Petitioners' testimony of the conditions were merely anecdotal, the fact that they were supported by photographic evidence of moisture and mold is a valid reason for the Hearing Officer to afford these descriptions greater weight.
 - b. Additionally, Petitioners' photographs and testimony were also corroborated by the City's Multifamily Housing Program Inspection Report.
 - c. Testimony from the Landlord's representatives on this issue was inconsistent and therefore unreliable.

Moreover, nothing in the CSFRA prohibits a Hearing Officer from awarding a rent reduction where the Landlord has taken steps to correct the condition but has been unsuccessful. Landlord fails to put forth any new authorities that would support its argument that the Hearing Officer erred or abused her discretion by finding that its efforts – namely cleaning the gutters and resealing the windows in the Affected Unit – were insufficient to correct the issue and therefore Petitioners were entitled to a rent reduction for the unresolved mold/moisture issues

2. The Hearing Officer's decision regarding the plumbing and sewer issues is also supported by substantial evidence. While a sewer backup was addressed with hydrojetting on November 5, 2023, this was five or six months after Petitioners first reported lingering sewer odors in their

bathroom and in the hallway and weak toilet water pressure and three months after Landlord's own work orders show that on August 3, 2023, Petitioner reported that the bathtub had been clogged for some time. Given the history of issues with the main sewer line predating the Petitioners' tenancy (as established by Landlord's own evidentiary submissions), the Landlord should have investigated the various plumbing issues before the active backup in November 2023. Given the history of issues with the sewer pipe, it was reasonable for the Hearing Officer to assume that the Petitioners' concerns regarding the odor, low water pressure, and clogging were related, and to consider these issues cumulatively.

3. The Hearing Officer correctly concluded that Petitioners had satisfied the CSFRA's requirement to provide the Landlord with notice and a reasonable opportunity to correct regarding the electrical circuitry issues in the unit. The CSFRA does not require a tenant to continue notifying and providing opportunities to correct, particularly where the landlord has indicated that they do not intend to take further action. On at least two occasions, Landlord either failed to correct and/or failed to respond to Petitioners' notification of the electrical issues.

- C. Finally, the Appellant-Landlord contends that the rent reductions awarded by the Hearing Officer were arbitrary and excessive. The Hearing Officer did not award separate rent reductions for related issues; rather, she awarded one rent reduction for related issues such as the moisture, mold and faulty weatherproofing in the bedrooms (34 percent), the mold and defective caulking in the bathroom (2.5 percent) and the sewer backup and toilet and bathtub clogging (7 percent). She also satisfied the requirement in the CSFRA Regulations to explain the methodology for the rent reductions awarded. Finally, she appropriately limited the time periods for which reductions were awarded based on the presence of the issues.

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 allowed to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals. (Cal. Gov. Code § 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 Decisions(s)

- Public Comment Period applicable for all Appeals on the agenda
- Appeal Hearing (CSFRA Petition No. C24250033)

Staff Report & Presentation	
Appellant-Landlord Presentation of Argument	10 minute maximum
Respondent-Tenant Presentation of Argument	10 minute maximum
Appellant-Landlord Presentation of Rebuttal	5 minute maximum
Respondent-Tenant Presentation of Rebuttal	5 minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Landlord	
RHC Question and Answer with Respondent-Tenant	
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, posting on the City's website, and email to distribution list.

ATTACHMENTS

1. Tentative Appeal Decision for Petition No. C24250033
2. Decision of Hearing Officer (April 17, 2025)
3. Appellant-Landlord Appeal of Decision (May 2, 2025)
4. Appellant-Landlord Response to the Tentative Appeal Decision (June 9, 2025)
5. Supplemental Rental Housing Committee Memo Regarding Appeal Hearing (June 12, 2025)