

Tentative Appeal Decision
Petition C22230037

Rental Housing Committee
Appeal Decision

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

I. Summary of Proceedings

On March 2, 2023, Tenant Eric Allen Walker ("**Petitioner**") filed a petition for a downward adjustment of rent based on unlawful rent (the "**Petition**") (Petitioner's Exhibit #1) related to the property located at 1725 Wright Avenue, Unit [REDACTED], Mountain View ("**Property**"). The Property is owned by Timpson Enterprises, Inc, which has been represented in the petition proceedings by Shirley Ankenbauer, the property manager ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**."

The Petition requested a downward adjustment of rent and rent refund on the basis that the Respondent had failed to maintain a habitable premises due to a lack of hot water at the Property, in violation of the Community Stabilization and Fair Rent Act ("**CSFRA**"). Specifically, the Petition alleged that beginning in November 2022, the temperature of the hot water at the Property was regularly below that required by California health and safety codes.

A hearing was held on May 9, 2023, and the Hearing Officer issued a decision on June 9, 2023 ("**HO Decision**"). The Hearing Officer's Decision concluded that the (a) the maximum water temperature at the Property has failed to reach the 120-degree minimum requirement in California Health & Safety Code Section 114192 on a consistent basis since November 23, 2022 through the date of the hearing and (b) Petitioner provided Respondent with notice of the issue on November 23, 2022, but Respondent failed to meet its obligations to provide a habitable premises since December 1, 2022. As a result, Petitioner was entitled to a ten percent (10%) downward adjustment of rent due and a rent refund of \$1,100.

A timely appeal of the Decision was received from the Respondent on June 22, 2023 ("**Appeal**"). A Tentative Appeal Decision was issued on September 15, 2023. The Rental Housing Committee heard the Appeal on September 25, 2023, where it adopted the Tentative Appeal Decision as issued ("**Appeal Decision**"). The Appeal Decision provided that the hot water temperature standard used by the Hearing Officer was inapplicable to residential properties and remanded the HO Decision to the Hearing Officer for further gathering of evidence and a determination of the appropriate standard for hot water in a residential dwelling unit.

The Remand Hearing was held on November 2, 2023, and the Hearing Officer issued a new decision on January 26, 2024 (“**HO Remand Decision**”). Respondent filed a timely appeal of the HO Remand Decision on February 8, 2024 (“**Remand Appeal**”).

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.

II. Summary of Hearing Officer Remand Decision.

The Hearing Officer issued a detailed decision on the Petition summarizing the evidence and making findings of fact and conclusions of law. The Hearing Officer found the following:

1. The appropriate standard for minimum hot water temperature is “not less than 110 degrees Fahrenheit” as indicated in the International Property Maintenance Code [P] 505.4. This standard was provided to the Hearing Officer by the City of Mountain View’s Multifamily Housing Inspection Department.

3. Under the newly-determined standard, Respondent’s failure to provide the minimum water temperature required still constitutes a failure to maintain a habitable premises. Petitioner provided Respondent with notice of the issue on November 23, 2022 and giving Respondent seven (7) days to fix the issue, Respondent failed to meet its obligations to provide a habitable premises since December 1, 2022.

4. Based on the foregoing, Petitioner was entitled to an eight percent (8%), rather than a ten percent (10%), downward adjustment of rent due and a rent refund. If the issue is not successfully addressed by April 30, 2024, beginning May 1, 2024, the amount of the rent reduction shall be increased by one percent (1%) per month, not to exceed an aggregate of twelve percent (12%) per month.

5. Petitioner’s Rent is \$2,245.00 per month, and assessing the eight percent (8%) reduction, Petitioner is entitled to a rent credit of \$5.99 per day or \$179.60 per month since December 1, 2022, for each day the minimum water temperature requirement is not met.

6. Respondent shall have thirty (30) days from the date of the HO Remand Decision to undertake repairs (“Opportunity to Cure”). Within seven (7) days of the conclusion of the Cure Period (or earlier date if Landlord informs Tenant repairs have been adequately completed),

Petitioner shall give Respondent tentative list of ten dates and ten times the water temperature should be taken by Respondent ("Initial Notice"). These inspections must occur over a period of not more than ninety (90) days with at least five (5) days between each inspection ("Inspections"). Respondent shall take a picture and create a written record of each reading ("Readings"). If Respondent fails to take a reading, then Tenant shall take the reading. The rent credit shall cease on the first date the Readings show the minimum standard of 110-degrees has been met, provided the next three consecutive readings show the minimum standard has been met ("Successful Termination"). If this does not occur, then the above-outlined procedures shall continue and the rent credit shall continue to be owed until such time that there is a Successful Termination.

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 Appeal Decision identifies the elements of the Decision that are subject to appeal by the Respondent. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Respondent raises the following three issues on appeal of the HO Remand Decision:

A. Hearing Officer erred or abused his discretion in relying on the International Property Maintenance Code standard of 110 degrees. Additional recourse and time are required to compare Occupational Safety and Health Administration (OSHA), California Code, and Environmental Protection Agency (EPA) requirements for the state of California or local cities. The international standard appears to be a widespread standard.

B. Hearing Officer erred or abused his discretion in determining that Respondent has failed to adequately address the hot water temperature issue. Respondent has shown accountability and has taken incentive and expense to fix the problem to the best of their ability given the characteristics of the housing. Respondent has brought in vendors to evaluate and make repairs, and upgrades within reason have been completed.

C. Hearing Officer erred in calculating the rent credit for the Property. This finding in Section VI of the HO Remand Decision is incorrect because the Hearing Officer relied on the incorrect Rent for the Property.

IV. Decision Regarding Appealed Elements

A. Hearing Officer Did Not Err in Applying the Minimum Water Temperature Standard from the International Property Maintenance Code.

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Hearing Officer did not err in applying the minimum water temperature standard of 110 degrees Fahrenheit from the International Property Maintenance Code (IMPC) because there was sufficient evidence in the record to demonstrate that this was a reasonable and fair standard.

Respondent argues that the Hearing Officer erred or abused his discretion in applying the requirements of IMPC because other standards – such as OSHA or EPA standards – should have been considered. Respondent contends that the international standard “seems to be such a wide spread standard.” (See Remand Appeal.) Respondent’s argument seemingly contradicts its prior Appeal, wherein Respondent argued that standards applicable to food service facilities should not be applicable to residential dwelling units. It is unclear why (and indeed also, which) OSHA or EPA standards would apply to residential dwelling units when those standards are largely used for occupational or other settings. Moreover, Respondent had sufficient opportunity to submit these standards for consideration at the Remand Hearing. The Hearing Officer specifically requested documentation from both parties as to the standards they believed should be used, and Respondent submitted two separate standards for consideration – neither of which are the EPA or OSHA standards. (See HO Remand Decision, Exhibit #3.) Further, it is unclear what Respondent means when it says that the international standard is “such a wide spread standard.” If a standard is widely accepted and used, then it would be more reliable than a standard used only in narrow circumstances.

The Hearing Officer’s use of the 110-degree Fahrenheit minimum standard for hot water was reasonable given the evidence submitted at the Remand Hearing. The Remand Order directed the Hearing Officer to gather additional evidence regarding the appropriate standard, including seeking “additional briefing from the Parties and expert testimony from the City of Mountain View code enforcement or other professionals.” (See Remand Order.) As noted above, the Hearing Officer asked the Parties if they had any additional standards they would like to be considered. (Hearing at 00:08:28-00:00:08:35.) Petitioner testified that he did not have any additional standard to provide outside of Health & Safety Code Section 114192 (which included a requirement of 120-degrees Fahrenheit as measured from the faucet) but stated that a standard of 105 degrees Fahrenheit would allow him to take “comfortable” but not “hot” showers. (Hearing at 00:11:45-00:13:28). On the other hand, Respondent only provided the 105- to 120-degree Fahrenheit standard submitted in the memorandum to the San Francisco Board of Supervisors (HO Remand Decision, Exhibit #3), but testified that there should not be one standard because of the various variables (distance, distribution system, outdoor weather, etc.). (Hearing at 00:08:36-00:10:35.) The Hearing Officer also sought out his own information from the City’s Multifamily Housing Inspection Department, which provided him with the IMPC standard. (See HO Remand Decision at p. 3). Ultimately, the Hearing Officer determined that the 110-degree Fahrenheit minimum temperature standard “at the tap” was an appropriate standard.

Based on the information provided by the Parties and the City’s Multifamily Housing Inspection Department, the Hearing Officer’s use of the IMPC standard was reasonable; the Hearing Officer did not err or abuse his discretion in relying on the IMPC to make his decision.

B. Respondent is Barred from Challenging the Hearing Officer's Determination that They Had Not Adequately Addressed the Water Temperature Issue.

Respondent cannot raise issues in this Remand Appeal that it failed to raise in its original Appeal because the time to appeal those issues has elapsed.

Respondent argues that the Hearing Officer erred or abused his discretion in determining that Respondent has failed to adequately address the hot water temperature issue. (See Remand Appeal.) Specifically, Respondent argues that it has shown accountability and has taken incentive and expense to fix the problem to the best of their ability given the characteristics of the housing. (*Id.*) The Hearing Officer originally determined that "there has been a reduction in the habitability of the Premises since the Impact Date [November 23, 2022]. We have given Landlord seven days to fix the issue and thus hold starting December 1, 2022 ("Start Date"), Landlord has failed to meet its obligation to the Tenant to provide a habitable premises and have assessed [sic] a 10% penalty effective December 1, 2022." (HO Decision at p. 4.) Respondent's Appeal did not challenge this finding by the Hearing Officer. (See Resp.'s Appeal.)

Respondent is barred from raising this issue in the instant Remand Appeal because the Respondent did not raise this issue in the Appeal. (See Appeal Decision at pp. 2-3.) Moreover, the RHC only remanded the HO Decision for the purpose of gathering "further evidence and testimony regarding the standard applicable to residential dwelling units with regard to the provision of hot water," not for the purpose of redetermining whether Respondent had adequately addressed the hot water temperature issue. (See Appeal Decision at p. 6.) Any actions that Respondent has taken since the Hearing are irrelevant to the determination of the proper hot water temperature standard that should be applied to residential dwelling units.

Respondent may seek a Compliance Hearing and determination if they believe that they have adequately addressed the untenable condition of the Property caused by the lack of hot water and they cannot reach agreement with Petitioner on the issue.

C. Hearing Officer Erred in Calculating the Rent Credit.

Finally, Respondent correctly argues that the rent credit is improperly calculated because the Hearing Officer relied on the incorrect Rent. The HO Decision determined that the lawful Rent for the Property was \$2,200.00. There is no evidence that the lawful Rent for the Property has changed since the Hearing. Nonetheless, the HO Remand Decision uses a Rent of \$2,245.00 to calculate the rent credit. This is incorrect. The Petitioner's Rent is \$2,200 per month, and assessing the eight percent (8%) reduction, Petitioner is entitled to a rent credit of \$5.87 per day or \$176.00 per month.

V. Conclusion

As detailed above, the RHC denies the Remand Appeal as to issues A and B and grants the Remand Appeal as to issue C. In summary, the RHC determines as follows:

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1. The appropriate standard for minimum hot water temperature is “not less than 110 degrees Fahrenheit” as indicated in the IMPC. Under this standard, Respondent’s failure to provide the minimum water temperature required still constitutes a failure to maintain a habitable premises. Petitioner provided Respondent with notice of the issue on November 23, 2022, and giving Respondent seven (7) days to fix the issue, Respondent failed to meet its obligations to provide a habitable premises since December 1, 2022.

2. Based on the foregoing, Petitioner was entitled to an eight percent (8%), rather than a ten percent (10%), downward adjustment of rent due and a rent refund. If the issue is not successfully addressed by April 30, 2024, beginning May 1, 2024, the amount of the rent reduction shall be increased by one percent (1%) per month, not to exceed an aggregate of twelve percent (12%) per month.

3. Petitioner’s Rent is \$2,200 per month, and assessing the eight percent (8%) reduction, Petitioner is entitled to a rent credit of \$5.87 per day or \$176.00 per month since December 1, 2022, for each day the minimum water temperature requirement is not met. Petitioner is entitled to a rent refund of \$2,640.00 for the 16-month period from December 2022 through March 2024. If Petitioner fails to receive a full refund from Respondent within thirty days after this decision becomes final, Petitioner may withhold rent payments until such time that they have withheld a total of \$2,640.00. If Petitioner vacates the Property prior to recovering from Respondent the sum of \$2,640.00, then the remaining balance shall become immediately due and owing no later than the date on which the Petitioner vacates the Property. In such case, if Respondent fails to provide Petitioner with the remaining balance on or before the date on which Petitioner vacates the Property, Petitioner may seek recovery of the outstanding amount via civil action.

4. Petitioner is entitled an ongoing rent credit of \$5.87 per day until such time that there is a “Successful Termination” as that term is defined in the HO Remand Decision. Further, the Parties are ordered to follow the procedures in Section VI.7 of the HO Remand Decision.