

Rental Housing Committee  
**Tentative Appeal Decision**

Petition No. C23240005

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

**I. Summary of Proceedings**

**Initial Petition**

On December 4, 2023, Tenants Daria Quintero and Jesse Moreno ("**Petitioners**") filed a petition for downward adjustment of rent (the "**Petition**") (Tenant's Exhibit #1) related to the property located at 258 Pamela Drive, Unit #■, Mountain View, CA 94043 ("**Property**"). The Property is owned by Lam Family LLC, which was represented in the proceedings by Jor Lam and the resident manager, Xu Qing (Christy) Liu (hereinafter "**Respondent**"). Respondent was also represented by counsel of record, Andrew Van Slyke, during the proceedings. Petitioner and Respondent are collectively referred to herein as the "**Parties**."

The Petition requested a downward adjustment of rent on the basis that Respondent had failed to maintain a habitable premises, had reduced Housing Services and/or maintenance without a corresponding reduction in Rent in violation of the Community Stabilization and Fair Rent Act ("**CSFRA**"). Specifically, the Petition alleged that (1) there was a severe infestation of cockroaches throughout Petitioners' unit, (2) the cabinets in the bathroom and kitchen had water damage resulting in a noxious odor, (3) there was rust on the mirror in the bathroom, (4) there was rust on the bathtub, (5) the carpet in the bedroom closet had black mold due to a prior water leak, and (6) the caulking in the bathroom and kitchen were unfinished. (Petitioners' Exhibit #1.)

On January 9, 2024, a Notice of Prehearing Meeting and Hearing Date, setting a Prehearing Meeting on January 30, 2024, and a Hearing on February 13, 2024 was issued. On January 30, 2024, a pre-hearing conference was conducted by the Hearing Officer via videoconference. Petitioners and Mr. Lam (on behalf of Respondent) were present on the call. The Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing and whether additional evidence would be requested. After the Prehearing Meeting, the Hearing Officer issued a Prehearing Order on January 31, 2024, tentatively rescheduling the Hearing to February 15, 2024. (Hearing Officer's Exhibit # 4.) On February 5, 2024, a Notice of Hearing Date and Time was served on the Parties. (Hearing Officer Exhibit #5). On February 14, 2024, a Notice of Hearing Officer's Second Prehearing Order was served on the Parties, rescheduling the Hearing to February 27, 2024. (Hearing Officer's Exhibit #6.)

The hearing was held on February 27, 2024, where witnesses – including Petitioners, Mr. Lam, Ms. Liu, and independent contractor, Oscar Perez, hired by Respondent – were sworn in and provided testimony. After the Hearing, the Hearing Officer issued a Post-Hearing Order, dated March 1, 2024, leaving the Hearing record open for an additional two weeks to allow Respondent to produce several documents specifically requested by the Hearing Officer, to allow the Parties to submit rebuttal evidence, and to allow the Parties to submit additional briefing, if desired. (Hearing Officer's Exhibit #6.) The Notice of Post-Hearing Order was served on the Parties on March 4, 2024. (*Id.*)

The Hearing Record was ultimately closed on April 25, 2024. After an Extension of Hearing Officer Written Decision Deadline was issued on June 24, 2024, due to an unexpected family medical emergency, the Hearing Officer issued a decision on February 7, 2025 ("**HO Decision**"). The Hearing Officer's Decision was served on the parties on the same date.

## **Appeal**

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.

A timely appeal of the Decision was received from the Respondent on February 21, 2025. (**Appeal**).

## **II. Summary of Hearing Officer 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. Petitioners demonstrated by a preponderance of the evidence that the moisture and mold conditions in their bedroom closet 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. As a result, they were entitled to a seven-and-one-half percent (7.5%) percent rent reduction, or total rent refund of \$2,147.83, for the period from April 1, 2023 through May 16, 2024 (which was the date on which Petitioners vacated their unit).
2. Petitioners demonstrated by a preponderance of the evidence that there existed a severe cockroach infestation in their unit that violated the warranty of habitability, and that Respondent failed to take adequate measures to eliminate the infestation within a reasonable time after receiving notice of the condition. As a result, they were entitled to a thirty-three percent (33%) reduction in Rent, or a total rent refund of \$16,498.90, for the period from June 1, 2022, through May 16, 2024.
3. Petitioners demonstrated by a preponderance of the evidence that the existence of water damage to and potential mold in the kitchen cabinets in their unit resulted in noxious odors, and that Respondent failed to eliminate these conditions within a reasonable time after receiving notice. While noxious odors alone did not amount to a violation of the warranty of habitability, the fact that they arose from the landlord's failure to maintain the rental unit justified a five percent (5%) rent reduction, or total rent refund of \$2,499.78, for the period from June 1, 2022, through May 16, 2024, pursuant to CSFRA § 1710(c).
4. Petitioners demonstrated by a preponderance of the evidence that the various conditions in their bathroom, including dampness, rust on bathroom mirror and bathtub, a deteriorated cabinet, and unfinished walls (i.e., holes), that Respondent failed to address after receiving notice, amounted to a failure to maintain the rental unit in good repair, and justified a five percent (5%) rent reduction, or total rent refund of \$2,499.78, for the period from June 1, 2022, through May 16, 2024, pursuant to CSFRA § 1710(c).

5. Petitioners demonstrated by a preponderance of the evidence that the caulking in their kitchen and bathroom was defective, and that Respondent made no meaningful effort to repair the defects within a reasonable time after receiving notice of the defects. As a result, Petitioners were entitled to a two percent (2%) rent reduction, or total rent refund of \$537.88, for the period from May 1, 2023, through May 16, 2024.

### **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-Landlord raises four issues on Appeal:

- a. **The Hearing Officer erred or abused her discretion in concluding that Petitioners had met their burden of proof regarding the cockroach infestation and were entitled to a rent reduction and refund based on the cockroach infestation.** The decision regarding the cockroach infestation lacks solid evidentiary support and misapplied relevant legal standards, namely that contained in Health and Safety Code Section 17920.3.
- b. **The Hearing Officer erred or abused her discretion in awarding a rent reduction for both the water damage to the cabinetry in the kitchen and bathroom, and the odor caused by the mold and moisture conditions.** The Hearing Officer's decision linking the odor to the allegations of mold and moisture and awarding a five percent (5%) rent reduction was already encompassed by the Hearing Officer's decision to award a seven-and-one-half percent (7.5%) rent reduction for "issues or moisture and mold in the Unit." The Hearing Officer cannot use an alleged condition of the Unit, which was already addressed and resolved with a rent reduction to provide a second rent reduction hinging on the same facts.
- c. **The Hearing Officer exhibited prejudice against Respondent after the Hearing by admitting and considering documents outside the scope of her Post-Hearing Order that were submitted by Petitioner.** Respondents were not given a chance to respond to the new evidence submitted by Petitioner, which contained inaccurate information about Petitioner's ability to move out of the unit, even though the documents were added to the exhibit list in the HO Decision and presumably were considered in issuing the HO Decision.
- d. **The delay in the issuance of the Hearing Officer's Decision prejudiced Respondent.** The substantial delay between the hearing and the issuance of the decision creates the potential for significantly increased costs to Respondent as the conditions, and their resulting liability, remained unaddressed for almost a year.

### **IV. Decision Regarding Appealed Elements**

- A. **The Hearing Officer Did Not Err or Abuse Her Discretion Determining Petitioners Met Their Burden of Proof Regarding the Cockroach Infestation and Were Entitled to Relief on the Cockroach Infestation Issue.**

The Hearing Officer's Decision regarding Respondent's liability for the cockroach infestation in Petitioners' unit is supported by substantial evidence in the Hearing record and comports with applicable legal standards.

The CSFRA provides that a Landlord's "[f]ailure to maintain a Rental Unit in compliance with governing health and safety building code, **including but not limited to** Civil Code Sections 1941.1 et seq and Health and Safety Code Sections 179320.3 and 17920.10, constitutes an increase in Rent" and authorizes a tenant to file a petition for downward adjustment of rent "based on a loss in rental value attributable to the Landlord's failure to maintain the Rental Unit in habitable condition." (CSFRA § 1710(b).) A tenant must (1) "specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition," (2) demonstrate that the Landlord was provided with reasonable notice, and (3) demonstrate that the Landlord was provided with "opportunity to correct the conditions...." (*Id.*)

CSFRA § 1711(h) provides "No Petition for Individual Rent Adjustment...shall be granted unless supported by the preponderance of the evidence submitted prior to and at the hearing." Stated plainly then, to prevail on a petition for downward adjustment of rent based on a failure to maintain a habitable premises, a tenant must demonstrate that it is "more likely true than not true" (i.e., there is a 51 percent likelihood) that (1) a condition exists that constitutes a failure to maintain the unit in a habitable condition, (2) the tenant provided the Landlord with reasonable notice of said condition, and (3) the tenant provided the Landlord with an opportunity to **correct** (not just address) the condition.

Where the Hearing Officer concludes that the tenant has met their burden of proof as to all three elements and the Landlord appeals the Hearing Officer's conclusions, the Rental Housing Committee is tasked with determining whether substantial evidence in the record supports the Hearing Officer's conclusion(s) that something was "more likely than not true." Substantial evidence is sufficient evidence to support a conclusion that a reasonable mind would deem adequate.

Respondent's argument that the Hearing Officer erred or abused her discretion with regard to the cockroach infestation is three-fold: (1) the Hearing Officer's conclusion that the cockroach infestation in the unit arose to a level of a habitability violation is "fundamentally unsupported by evidence"; (2) the Hearing Officer failed to give due weight to evidence in the record regarding Respondent's efforts to treat the infestation; and (3) the Hearing Officer misapplied the legal standard in Health and Safety Code § 17920.3.

1. The Hearing Officer's Decision Regarding the Severity of the Infestation is Supported by Substantial Evidence.

Respondent first argues that the Hearing Officer's conclusion that a cockroach infestation constitutes a habitability violation is "fundamentally unsupported by evidence" because "multiple pest control inspections consistently failed to identify a significant infestation in the unit" and Petitioners testified "that the amount of cockroaches, and the severity, changed over time." (Appeal, pg. 2.)

California law provides that a "dwelling shall be deemed untenable...if it **substantially lacks**...[b]uilding, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and *vermin*." (Civil Code § 1941.1(f).) "Provisions of the Civil Code 'are to be liberally construed with a view to effect its objects and to promote justice.'" (*Knight v.*

*Hallsthammar* (1981) 29 Cal.3d 46, 53.) Ultimately, “[w]hether the defect is ‘substantial’ or ‘de minimis’ (no actionable breach) is determined on a case-by-case basis.” (*Hall v. Municipal Court* (1974) 10 Cal.3d 641, 644.) Here, the Hearing Officer, as the determiner of fact, was responsible for making the determination.

Respondent’s argument largely mischaracterizes and minimizes the evidence in the record. For one, Petitioners submitted photos and videos demonstrating the existence of a cockroach infestation in their unit, including photos from when they initially moved into the unit in June 2022 and there were dead cockroaches and droppings throughout the apartment. (Petitioners Exhibit #3, 5, 8, and 9.) Both Ms. Quintero and Mr. Moreno testified to the severity of the cockroach infestation as well. Ms. Quintero testified that in one instance a cockroach fell out of her hair during a workout class. (HO Decision, p. 6:9-10.) Mr. Moreno explained that he awoke one night to something crawling on him, killed it, and turned on the lights to discover that it was a cockroach. (HO Decision, p. 9:12-14.)

And while Ms. Quintero did discuss how the severity of the cockroach infestation had changed more recently, neither Petitioner testified that the cockroach infestation had been reduced to a level of insignificance as the Respondent seeks to allege. As the Hearing Officer’s Decision summarizes, “Ms. Quintero testified that Petitioners saw cockroaches every day. The amount had slowed down a bit in the two months before the hearing, but Petitioners still saw them every day during the daylight hours, indicating that far more cockroaches actually are in the Unit because, generally, more roaches come out at night. The problem areas in the Unit for cockroaches are primarily in the kitchen and bathroom; they are sporadically in the bedroom as well.” (HO Decision, p. 9.) This testimony does not indicate, as Respondent argues, that the cockroach infestation had been eliminated as required by applicable habitability laws.

Neither do the pest control inspections from Orkin, submitted by Respondent itself, support Respondent’s argument. As the Hearing Officer explained, Mr. Lam testified during the Hearing that he was unaware of the “severity” of the cockroach infestation at the Property until recently. (HO Decision, p. 23:15-16.) However, the Orkin reports, as the Hearing Officer put it, “painted a very different picture about the presence of infestations at the Pamela Gardens complex than Mr. Lam (and Ms. Liu) did in their testimony.” (HO Decision, p. 15:24-28.) In explaining her reasoning for the lack of credibility given to Ms. Liu’s testimony, the Hearing Officer summarized the Orkin reports as follows:

“Her testimony is wholly inconsistent with the undisputable conclusions based upon the documentary evidenced that almost 50% of the units in the Pamela Gardens complex (13 of 28 units at the Pamela Garden Apartments) required interior treatment for roaches because infestations over the course of 2 years...Indeed, certain units whose numbers suggest they are nearby the Unit had been subject to what Orkin referred to as a ‘roach cleanout’ shortly before Petitioners moved in.

fn. 23. In addition to the Unit (Unit [REDACTED] between January 2022 and February 7, 2024, all of the following units at the complex had been treated by Orkin for cockroach infestations ranging from what Orkin described as light to large: Units [REDACTED] [REDACTED].” (HO Decision, pp. 24:20-25:4; see also Respondents Exhibits # 3, 9, and 10.)

This evidence, coupled with the inspection reports from the City’s Multifamily Housing Program, the fact that pest control treatment was required on at least a monthly basis, and that Respondent never disputed

the existence of the cockroach infestation in Petitioners' unit<sup>1</sup>, was more than sufficient to support the Hearing Officer's conclusion that the infestation rose to the level of habitability violation.

2. The Hearing Officer Considered Landlord's Efforts Appropriately.

Respondent also challenges the Hearing Officer's determination about the cockroach infestation on the basis that the Respondent failed to give due weight to the evidence in the record of Respondent's efforts to address the cockroach infestation.

It is worth repeating that CSFRA § 1710(b) requires a Tenant to give a Landlord "the opportunity to **correct**" a condition that constitutes a habitability violation. While the CSFRA is more generous than the state common law on the implied warranty of habitability by requiring the Tenant to demonstrate that the Landlord had notice and a reasonable opportunity to cure, the CSFRA still does not take into consideration a Landlord's failed attempts to correct a condition. (*See Knight v. Hallsthammar* (1981) 29 Cal.3d 46, 55 ("At least in a situation where, as here, a landlord has notice of alleged uninhabitable conditions not caused by the tenants themselves, a landlord's breach of the implied warranty of habitability exists whether or not he has had a "reasonable" time to repair. Otherwise, the mutual dependence of a landlord's obligation to maintain habitable premises, and of a tenant's duty to pay rent, would make no sense.") Therefore, pursuant to the CSFRA, it is not enough for the Landlord to merely address the conditions; their efforts must eliminate the condition or at least reduce it to a *de minimis* level. If they do not and the condition persists and the Tenant demonstrates that the Landlord knows and has had a reasonable chance to cure, the Tenant will prevail under CSFRA § 1710(b).

In light of this requirement, the Hearing Officer appropriately weighed the evidence of Respondent's efforts to address the cockroach infestation. Interestingly, the Appeal alleges that "the Hearing Officer issues an order on the assumption that Respondents *failed to address the issue whatsoever* and stating that it remained '*unresolved* for almost two years' before the Hearing." (Appeal, p. 3:1-3 (italics added); see also HO Decision, p. 25:20.) However, addressing an issue and resolving an issue are two different standards and Respondents puts forth no authorities indicating otherwise.

Because 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, the Hearing Officer did not err or abuse her discretion by holding Respondent liable for the ongoing cockroach infestation in Petitioners' unit.

3. The Hearing Officer Did Not Misapply Health and Safety Code § 17920.3.

Next, Respondent appeals the Hearing Officer's decision on the basis that the Hearing Officer misapplied the standard in Health and Safety Code § 17920.3(a)(12). Specifically, Respondent argues that the Health and Safety Code requires that any infestation must be determined by a health officer or qualified code enforcement officer, and that the testimony and evidence presented did not establish that a qualified assessment had been made. (Appeal, p. 3:19-22.)

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<sup>1</sup> It may be worth noting that consistently throughout his testimony, Mr. Lam stated that "other than Unit [REDACTED]" Respondent was not aware of or had not received complaints from any other units except maybe one or two about a cockroach infestation. However, Mr. Lam never disputed the existence of the infestation in Petitioners' unit or its severity during the Hearing.

Respondent's argument seems to imply that the Hearing Officer relied primarily or solely on Health and Safety Code § 17920.3(a)(12) when determining that Respondent's had failed to maintain Petitioner's Unit in a habitable condition. However, Petitioner's Unit violated several standards, including the implied warranty of habitability, Civil Code Section 1941.1, and Health and Safety Code Section 17920.3. For example, Civil Code Section 1941.1(a)(6) mandates that landlords keep their premises "in every part clean, sanitary, and free from all accumulations of, among other things, vermin. The evidence of the cockroach infestation demonstrated a lack of compliance with other statutes and legal requirements. For clarity's sake, the Hearing Officer could reach the same justifiable conclusion she reached without relying on Health and Safety Code Section 17920.3(a)(12).

More importantly perhaps, Respondent does not explain why it would be unreasonable for the Hearing Officer to conclude that the requirements of Health and Safety Code § 17920.3(a)(12) had been met. Respondent alleges, without any substantiation from evidence in the record, that the cockroach infestation "was not found as a violation by a code enforcement officer who has successfully completed a course of study in the appropriate subject matter." (Appeal, p. 3:24-25.) However, the inspection report from the City's Multi-Family Housing Program, dated June 23, 2023, cites directly to the subject statute. The report states, in relevant part:

"The owner of any structure shall be responsible for pest elimination within the structure during and prior to renting or leasing the structure. (Health and Safety Code §17920.3(a12); IPMC §309.) Location: Unit [REDACTED] Have a licensed pest service company inspect and treat this unit as well as any adjacent units due the cockroaches were found during my inspection." (Hearing Officer's Exhibit #8; *see also* Hearing Officer's Exhibit #12, also citing to Health and Safety Code § 17920.3(a)(12) for cockroach inspection at Property.)

The report lists City of Mountain View code enforcement officer, Jim Olson, as the drafter. When viewing the foregoing in light of the preponderance of the evidence standard, it would be reasonable for the Hearing Officer to conclude that the code enforcement officer responsible for the report was (1) knowledgeable of the requirements of the statute on which he was relying and (2) able to meet the qualifications required by Health and Safety Code § 17920.3(a)(12) to reach the conclusion he reached. There is no evidence in the record contradicting this conclusion.

Based on all the foregoing, the Hearing Officer did not err or abuse her discretion in concluding that there existed an ongoing cockroach infestation in Petitioner's unit and holding Respondent liable for this failure to maintain Petitioners' unit in a habitable condition.

4. Hearing Officer Did Err in Awarding Rent Reduction for Cockroach Infestation Beginning June 1, 2022.

Finally, Respondent argues that the Hearing Officer abused her discretion by awarding a rent reduction for the cockroach infestation beginning June 1, 2022, because that is the date on which Petitioners began their tenancy. Specifically, Respondent relies on the Hearing Officer's finding that Respondent had notice of the cockroach condition no later than August 1, 2022.

Respondent is correct. The Hearing Officer concluded that Respondent "has had years of notice [of the cockroach infestation], beginning almost immediately after Petitioner began occupying the unit." (HO Decision, p. 25:18-19.) However, to satisfy the requirements of CSFRA § 1710(b), Petitioners must

demonstrate not only that Respondent had notice of the condition, but that Respondent had a reasonable opportunity to address the cockroach infestation. Based on Respondent's testimony that treatment typically resolves a cockroach infestation within two weeks to a month of the treatment, the earliest date on which Respondent should have corrected the issue would be on or around August 1, 2022. Based on the foregoing, the Hearing Officer erred or abused her discretion by awarding a rent reduction beginning June 1, 2022.

To correct this error, the HO Decision shall be modified to provide Petitioners with a rent reduction beginning August 1, 2022, through the date on which Petitioners vacated the Property (May 16, 2024).

**B. The Hearing Officer Did Not Err or Abuse Her Discretion by Awarding Various Rent Reductions for Issues Related to Mold, Moisture, and Odors in Petitioners' Unit.**

Respondent argues that the Hearing Officer erred or abused her discretion in awarding a rent reduction for both the water damage to the cabinetry in the kitchen and bathroom, and the odor caused by the mold and moisture conditions. Specifically, Respondent contends:

"...the decision to order a 7.5% reduction issued for "issues of moisture and mold in the Unit" (Decision Following Hearing, p. 22, In 18) and then a separate 5% reduction for similar moisture and odor issues in cabinetry which was "exacerbated by Respondent's failure to respond to moisture and mold in the bedroom carpet as well" (Decision Following Hearing, p. 26, O Ins. 24-25) creates a functional rent reduction of 12.5%. The decision to grant a 12.5% rent reduction, where in the same issues already adjudicated are brought up again as evidence for further reductions, appears arbitrary and lacks sufficient justification based on the evidence." (Appeal, p. 6:6-12.)

The Hearing Officer did not abuse her discretion in determining the amount of rent reduction attributable to each issue in the Petition. Hearing Officers are authorized "to render a final decision on the merits of the Petition" (CSFRA §1711(a).) More specifically, Hearing Officers have the authority to determine the "amount of rent adjustment attributable to each failure to maintain a habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in" a petition so long as their decisions include findings of fact and conclusions of law which support the decision. (CSFRA Regulations Ch. 6, Section F.2.a.) Nothing in the CSFRA or the Regulations require a Hearing Officer to follow a certain methodology for the valuation of habitability issues. The Hearing Officer's decisions to award a seven-and-one-half percent (7.5%) rent reduction for the bedroom mold and mildew issues and five percent (5%) rent reduction for the deteriorated kitchen and bathroom cabinetry were fully explained by the Hearing Officer in the HO Decision. (HO Decision, pp. 23:3-11; 27:3-11.)

More importantly, Respondent's argument conflates the Hearing Officer's conclusions. In Section A of the Decision, the Hearing Officer concludes that Respondent's failure to address the mold and moisture *in the Petitioner's bedroom closet and carpet* warranted a seven-and-one-half percent (7.5%) reduction in monthly rent. This is reflected in the final paragraph of that section, which states, in relevant part:

"While this Hearing Officer believes that, in light of Respondent's failure to undertake anything other than *de minimis carpet drying efforts* for well over a year after mold and mildew was reported, the fact that the mold and mildew were **limited in scope to a single closet and a part of the Unit's bedroom** must be considered as well. On balance, a rent reduction of 7.5% per



month accurately reflects the severity of the condition reported while also acknowledging that (a) it did not affect Petitioners' use of most of the rooms in the Unit; yet (b) **it did affect the bedroom, a room in daily use and in which Petitioners needed to sleep every single night, creating an increased health risk for them.**" (HO Decision, p. 23:4-11 (emphasis added).)

On the other hand, the Hearing Officer's analysis in Section C addresses the issue of noxious odors and deterioration *in the kitchen and bathroom cabinetry*. Specifically, the Hearing Officer decided that while the odor problems in Petitioner's unit alone did not constitute a habitability violation, they did constitute (1) a nuisance under Civil Code § 3479 and (2) were indicative of a reduction in Housing Services because they demonstrated Respondent's failure to maintain the unit. (*Id.* at p. 26:9-22.) To reinforce the basis for the award in Section C, the Hearing Officer concluded by stating that "a smaller 5% reduction more accurately reflects the actual impact and use and enjoyment of the Unit, which would reasonably be expected from the *deteriorated kitchen and bathroom cabinetry*." (*Id.* at p. 27:9-11.)

The only reference to the bedroom carpet issues in Section C is as follows: "The odors at issue in the Petition arise from Respondent's failure to correct water damage to cabinetry in the bathroom and kitchen of the Unit (exacerbated by Respondent's failure to respond to moisture and mold in the bedroom carpet as well)." (HO Decision, p. 26: 23-25.) The Hearing Officer's acknowledgement that the mold and moisture issues in the bedroom exacerbated the odors throughout other parts of the unit does not mean that her decision to award a five percent (5%) reduction for the nuisance odors and failure to maintain bathroom and kitchen cabinetry was unsubstantiated or excessive.

Thus, the Hearing Officer did not err or abuse her discretion in awarding a seven-and-one-half percent (7.5%) for the bedroom mold and mildew issues and five percent (5%) for the deteriorated kitchen and bathroom cabinetry.

**C. There Is No Basis For Reversing the Hearing Officer's Decision Due to Prejudice Against Respondents After the Hearing.**

1. The Hearing Officer's Decision to Include Certain Evidence in the Record Was Proper.

Next, Respondent alleges that the Hearing Officer should not have admitted evidence submitted by Petitioners after the Hearing, because the evidence contained inaccurate information regarding Petitioner's ability to move out. Respondent's main contention is that the evidence submitted – Petitioners Exhibit #13 – contained "inaccurate information regarding Petitioner's ability to move out" and Respondents "were not given a chance to respond to these new allegations." (Appeal, p. 6:19-23.)

While Respondent is correct that the evidence submitted was considered by the Hearing Officer, it was not considered for the reason that the Respondent alleges. The Hearing Officer only considered Petitioners Exhibit #13 for the purposes of determining that Petitioners had vacated their unit on May 16, 2024. Nowhere in the Hearing Decision does the Hearing Officer indicate that she relied on the statements in Petitioners Exhibit #13 about Petitioners' ability to move out in reaching her conclusion that Respondent was liable to Petitioners for the various issues raised by the Petition. In fact, Respondent puts forth no explanation of how the outcome of the decision would have been different had the Hearing Officer not seen or reviewed such statements. Most importantly, the Hearing Officer's consideration of Petitioners Exhibit #13 actually favored Respondent, cutting off its liability for the various unresolved habitability issues on the date that Petitioners vacated the Property.

Based on the foregoing, Respondent has failed to demonstrate that they were prejudiced by the Hearing Officer's consideration of Petitioner's Exhibit #13.

2. Respondent Was Not Actually Prejudiced by the Delay in the Issuance of the Hearing Officer's Decision.

Finally, Respondent argues that they were prejudiced by the delay in the issuance of the Hearing Officer's decision because the delay "creates the potential for significantly increased costs to the Respondents as these conditions, and their resulting liability, would remain unaddressed for almost a year after the hearing was completed." (Appeal, p. 7:1-3.)

It is entirely unclear from the language in the Appeal what Respondent means when it alleges that the conditions would remain unaddressed for a year. Respondent's ability to address the uninhabitable or substandard conditions in Petitioners' unit or on the Property remained fully within its own control during the pendency of the Petition. The Respondent could have addressed, and more importantly, resolved the issues addressed by the Petition at any time before, during, or after the Hearing. Furthermore, while the Appeal speculates that the delay could have potentially significantly increased costs to Respondent, Respondent puts forth no evidence that the delay did result in any increased costs. In fact, even if given the opportunity to put forth such evidence, Respondent could not do so because Petitioners vacated the Property on May 16, 2024, thereby ending any liability Respondent had to Petitioners for the several habitability issues on said date.

Based on the foregoing, Respondent has failed to demonstrate that they were prejudiced by the delay in the issuance of the Hearing Officer's decision.

**V. Conclusion**

As detailed above, the RHC denies the appeal in its entirety, affirms the HO Decision in part, and modifies the HO Decision in part as follows:

- A. The Hearing Officer's holdings as to the following issues are **AFFIRMED**:
1. Petitioners met their burden of proof with regard to the moisture and mold conditions in the bedroom closet/carpet and are entitled to a seven-and-one-half percent (7.5%) rent reduction, or rent refund of \$2,147.83, for the period from April 1, 2023, through May 16, 2024 (which was the date on which Petitioners vacated their unit).
  2. Petitioners met their burden of proof that there existed a severe cockroach infestation in their unit that violated the warranty of habitability and Respondents failed to timely and adequately correct the issue.
  3. Petitioners met their burden of proof that there existed water damage to and potential mold in the kitchen cabinets in their unit resulting in noxious odor and that Respondent failed to eliminate these conditions within a reasonable time after receiving notice and are entitled to a five percent (5%) rent reduction, or rent refund of \$2,499.78, for the period from June 1, 2022, through May 16, 2024.

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4. Petitioners met their burden of proof that there existed various deteriorated conditions in their bathroom, including dampness, rust on bathroom mirror and bathtub, a deteriorated cabinet, and unfinished walls (i.e., holes) and that Respondent's failure to correct these issues after receiving notice amounted to a failure to maintain the rental unit in good repair pursuant to CSFRA § 1710(c). As such, Petitioners are entitled to a five percent (5%) rent reduction, or rent refund of \$2,499.78, for the period from June 1, 2022, through May 16, 2024.
  5. Petitioners met their burden of proof that the caulking in their kitchen and bathroom was defective, and that Respondent made no meaningful effort to repair the defects within a reasonable time after receiving notice of the defect. Therefore, Petitioners are entitled to a two percent (2%) rent reduction, or rent refund of \$537.88, for the period from May 1, 2023, through May 16, 2024.
  6. A total rent refund due of \$7,712.27 is due to petitioner for claims related to Section A.
- B. The Hearing Officer's decision that Petitioners were entitled, as a result of the persistent cockroach infestation, to a thirty-three (33%) rent reduction, or a total rent refund of \$16,498.90, for the period from June 1, 2022, through May 16, 2024 is **MODIFIED** to provide that Petitioners are entitled to thirty-three (33%) rent reduction, or a rent refund of \$15,112.90, for the period from August 1, 2022 through May 16, 2024.
  - C. Absent an action for writ of administrative mandamus, the total amount owed to Petitioner from Section A and Section B of \$22,825.17 is due and payable to Petitioner immediately and if said amount is not paid, Petitioner shall be entitled to a money judgment in the amount of the unpaid payments in an action in court or any other administrative or judicial or quasi-judicial proceeding.
  - D. The payments and credits to Petitioner as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.
  - E. If a dispute arises as to whether any party has failed to comply with this decision, any party may request a Compliance Hearing in accordance with CSFRA Regulations, Ch. 5, section J.1.

Hearing Officer Decision re Failure to Maintain Habitable Premises and Reduction in Housing Services or Maintenance

Habitability/Housing Service Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue Persisted	Number of Days Issue Persisted	Monthly Rent	Percentage Reduction	Monthly Reduction (\$)	Daily Reduction (\$)	Total Rent Reduction Awarded
Water damage/odors in kitchen	6/1/2022	5/31/2023	12	0	\$ 2,100.00	5.0%	\$ 105.00	\$ 3.50	\$ 1,260.00
Water damage/odors in kitchen	6/1/2023	5/16/2024	11	16	\$ 2,150.00	5.0%	\$ 107.50	\$ 3.58	\$ 1,239.78
Cockroaches	8/1/2022	5/31/2023	10	0	\$ 2,100.00	33.0%	\$ 693.00	\$ 23.10	\$ 6,930.00
Cockroaches	6/1/2023	5/16/2024	11	16	\$ 2,150.00	33.0%	\$ 709.50	\$ 23.65	\$ 8,182.90
Mold/carpet in bedroom	4/1/2023	5/31/2023	2	0	\$ 2,100.00	7.5%	\$ 157.50	\$ 5.25	\$ 315.00
Mold/carpet in bedroom	6/1/2023	5/16/2024	11	16	\$ 2,150.00	7.5%	\$ 161.25	\$ 5.38	\$ 1,859.83
Water damage/odors in bathroom	6/1/2022	5/31/2023	12	0	\$ 2,100.00	5.0%	\$ 105.00	\$ 3.50	\$ 1,260.00
Water damage/odors in bathroom	6/1/2023	5/16/2024	11	16	\$ 2,150.00	5.0%	\$ 107.50	\$ 3.58	\$ 1,239.78
Caulking	5/1/2023	5/31/2023	1	0	\$ 2,100.00	2.0%	\$ 42.00	\$ 1.40	\$ 42.00
Caulking	6/1/2023	5/16/2024	11	16	\$ 2,150.00	2.0%	\$ 43.00	\$ 1.43	\$ 495.88
<b>TOTAL</b>									<b>\$ 22,825.17</b>

**TOTAL REFUND OWED TO PETITIONER\*\*\* \$ 22,825.17**

Refund Schedule

Month/Year Refund Due	Overpayment Type	Refund Due
3/27/2025	Habitability	\$ 22,825.17
<b>TOTAL</b>		<b>\$ 22,825.17</b>