

Tentative Appeal Decision
 Petitions C23240030 and C23240031

Rental Housing Committee
Tentative 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

Initial Petitions

On December 11, 2023, Tenant Heidi Fadaee ("**Petitioner**") filed a petition for downward adjustment of rent ("**Petition**") (Tenant's Exhibit #1) related to the property located at 959 Rich Avenue, ██████████ Mountain View ("**Property**"). Pursuant to written notice, Petitioner's petition was consolidated for hearing purposes with two petitions filed by Petitioner's neighbor, Cassandra Brown, the tenant at 959 Rich Avenue ██████████. The Property Owner was represented at the prehearing conference and at the hearing by Pam Chen (Ms. Chen) and Ramiro Hernandez (Mr. Hernandez) (collectively, "**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On February 5, 2024, a notice of hearing was issued with a hearing date scheduled for March 11, 2024, at 1:00 P.M. (HO Exhibit #3).

The Petition requested a downward adjustment of rent on the bases that Respondent had failed to maintain the property in a habitable condition based on the following: an infestation of biting bugs; chemical smells, noise, excessive dust, and dirt due to construction and property maintenance; defective front entry door. Petitioner further contended that the habitability conditions at her Unit rendered the Unit out of compliance with the CSFRA, and thus an October 1, 2023, rent increase was unlawful.

On February 23, 2024, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Petitioner, Ms. Brown, and Respondent (through its authorized representatives Ms. Chen and Mr. Hernandez) were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing, and the Hearing Officer explained her need for the submission of additional documentary evidence to ensure she could render a full and fair decision on the Petition. A Notice of Hearing Officer's Post-Hearing Order and Post-Hearing Order re: Additional Evidence Submissions were served on the Parties on March 15, 2024. (HO Exhibit #7).

The hearing was held on March 11, 2024. The hearing record was held open until the close of business on April 1, 2024, for submission of additional evidence requested by the Hearing Officer. The Hearing Officer issued a decision on September 19, 2021 ("**HO Decision**"). The Hearing Officer's Decision was served on the parties on September 20, 2024. The deadline for issuance of the Hearing Officer's Decision was extended due to additional time required to analyze and adequately address all the issues presented by the Petition and an unanticipated family medical emergency of the Hearing Officer.

Appeal

¹ This Appeal only concerns the Petitions filed related to Unit ██████████.

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 Petitioner on October 7, 2024 ("**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. Petitioner had not met her burden of proof that the construction noise, chemical smells, and excessive dirt resulted from Respondent's failure to maintain the Unit and its common areas.
2. Petitioner had met her burden of proof that that spiders were present in the Unit; however, Petitioner had not met her burden of proof that the presence of spiders continued after Respondent's good faith efforts to ameliorate the condition.
3. Petitioner had not met her burden of proof to show that conditions at the Unit were not otherwise in substantial compliance with the requirements of Civil Code Section 1941.1 or Health and Safety Code Section 17920.3.
4. The Respondent's October 1, 2023, rent increase for the Unit did not violate the CSFRA.
5. The Hearing Officer lacks jurisdiction to adjudicate Petitioner's claims of discrimination and retaliation by Respondent through its imposition of a rent increase.
6. Petitioner had met her burden of proof that the condition of her front entry door impacts Petitioner's ongoing use and enjoyment of the Unit and that Respondent had notice of the condition and failed, following reasonable notice, to correct the condition.
7. Due to the defective condition of the front entry door, Petitioner's rent should be reduced by \$96.57, or 5%, from her base rent of \$1,931.36 beginning August 27, 2023.
8. Respondent should refund to Petitioner a total of \$1,120.23, representing \$96.57 per month and \$3.22 per diem for 11 months and 18 days.
9. If Petitioner remains at her Unit, the lawful base rent for the unit is adjusted downward to \$1,834.79 until such time as the door condition is fully and permanently corrected.

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 Tentative 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 raised the following 5 issues on appeal:

- A. **The Hearing Officer erred in excluding portions of pages 3-4 of Exhibit LL-12.** Petitioner argues that the Hearing Officer misinterpreted the relevance of the evidence contained in pages 3-4 of Exhibit LL-12. Respondent disagrees with the characterization that pages 3-4 deal with "a history of conflicts by and between Ms. Fadaee, her visitors/co-residents, other residents at the complex and /or SCI personnel."
- B. **The Hearing Officer's decision regarding no award for chemical smells should be reversed.** Petitioner argues the smells from the construction made her Unit uninhabitable.
- C. **The Hearing Officer's decision regarding noise and excessive dust and dirt should be reversed.** Petitioner argues the noise and excessive dust and dirt from the construction created an uninhabitable condition in her Unit.
- D. **The Hearing Officer's decision regarding insect infestation should be reversed.** Petitioner argues the presence of biting bugs created an uninhabitable condition in her Unit.
- E. **The Hearing Officer's decision regarding spiders and mosquitos should be reversed.** Petitioner argues the presence of spiders and mosquitos created an uninhabitable condition in her Unit.

IV. Decision Regarding Appealed Elements

- A. **Hearing Officer Did Not Err or Abuse Her Discretion by Excluding Respondent's Evidence on Pages 3-4 of LL-12.**

The Hearing Officer did not err or abuse her discretion by excluding the Respondent's evidence on pages 3-4 of LL-12.

The implementing regulations of the Community Stabilization and Fair Rent Act ("CSFRA") state that the Hearing Officer has the authority to, among other things, "[r]ule on offers of proof and receive *relevant* evidence" (Chapter 5, Section B(4)(d)). During the hearing, the Hearing Officer will determine if evidence offered by the Parties is "credible and relevant to the requested rent adjustment" (Chapter 5, Section E(4)). Relevant evidence is "the sort of evidence which a reasonable person might consider in the conduct of serious affairs". (Chapter 5, Section E(4)).

The evidence presented in pages 3-4 of LL-12 does not relate to habitability issues (i.e., the noise, smell, dust, insects, or door) which forms the basis of the Petition. As described by the Hearing Officer, this evidence related instead to the relationships between Petitioner and other tenants which is not a topic of or related to the Hearing Officer Decision or this Appeal. Petitioner characterizes this evidence as "lies" and "made up stories" and asserts the evidence is of a defamatory nature. The Hearing Officer's decision to exclude and redact this evidence in the Hearing Record is apparently consistent with the outcome the Petitioner wants. Petitioner takes issue with the Hearing Officer's *description* of the rightfully excluded

evidence, but the description of this now-excluded evidence did not impact the outcome of the decision and is not relevant to this appeal.

The Hearing Officer correctly exercised her judgment in excluding pages 3-4 of the LL-12.

B. Respondent Has Not Demonstrated the Chemical Smells Arose from Respondent's Failure to Maintain Unit After Reasonable Notice.

The Hearing Officer did not err in concluding that Petitioner had failed to provide sufficient evidence to prove that chemical smells existed in the Unit to a significant degree as a result of the Respondent's failure to maintain a habitable Unit.

Petitioner's appeal fails for two reasons: (1) Respondent was never given notice of the unpleasant smells (until the Petition was filed and after the issue had abated) and was therefore unable to respond to Petitioner's complaint at the time of the issue, and (2) Petitioner failed to provide sufficient evidence of the severity of the problem to meet her burden of proof by a preponderance of the evidence.

Petitioner offered no evidence that she provided Respondent with notice of the smells thus depriving Respondent of an opportunity to cure. Petitioner admitted, through her workbook and testimony, that she never gave Respondent notice of the problems. A tenant Petition filed pursuant to the CSFRA "must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition." CSFRA Section 1710(b)(2). Petitioner has failed to meet this requirement.

Further, Petitioner has failed to provide sufficient evidence that the severity of the smells in her Unit were due to Respondent's failure to maintain the overall apartment complex. Petitioner's testimony holds some weight to be sure. However, for the smell issue to rise to the level of a statutory violation of Civil Code or Health and Safety Code, the condition must significantly impact the resident's ability to reside at the Unit and/or endanger the life, health, safety of the resident. The smells from the restoration work may have been unpleasant or inconvenient, but Petitioner offered no proof that her ability to reside at the Unit or her health were compromised. (For example, Petitioner offered no medical records of doctor's visits that indicate her respiratory health was at risk.) Petitioner was able to walk outside during the construction, but mostly chose to stay inside her unit with windows closed during the duration of the project.

For the two foregoing reasons, Petitioner has failed to meet her burden of proof as it relates to chemical smells in her apartment.

C. Respondent Has Not Demonstrated the Excessive Dust and Dirt Arose from Respondent's Failure to Maintain Unit After Reasonable Notice.

The Hearing Officer did not err in concluding that Petitioner had failed to provide sufficient evidence to prove that excessive dust and dirt arose from Respondent's failure to maintain a habitable Unit.

Petitioner has failed to provide sufficient evidence to meet her burden of proof that the excessive dust and dirt that resulted from Respondent's construction work on the complex resulted in an uninhabitable Unit. Petitioner testified during the hearing that she would clean up the debris and dust left behind on the exterior of her doors and windows each day during construction. But Petitioner did not provide any

evidence of the dust and debris in the interior of her living space. Petitioner offered no other evidence (for example, photographs or videos) establishing the degree to which the debris interfered with her ability to reside in her Unit. There is also no evidence that Petitioner provided Respondent with notice of the issue of excessive dirt and debris, therefore Respondent did not have an opportunity to cure.

Petitioner has failed to meet her burden of proof as it relates to excessive dirt and debris outside her apartment.

D. Respondent Has Not Demonstrated the Biting Insect Infestation Arose from Respondent's Failure to Maintain Unit After Reasonable Notice.

The Hearing Officer did not err in concluding that Petitioner had failed to provide sufficient evidence to prove that she was experiencing an ongoing biting bug infestation that arose from Respondent's failure to maintain a habitable Unit.

Petitioner submitted photographs and offered testimony at the hearing about being bitten by bugs in her apartment during the period of construction work. Petitioner had met her burden of proof by establishing that she was experiencing bites from approximately September 10, 2023, to October 7, 2023. Respondent was provided notice about the biting bugs in Petitioner's unit through a notice sent by Petitioner's neighbor, Ms. Brown, on October 7, 2023. Respondent did not provide any evidence of following up with Petitioner or specifically investigating Petitioner's unit in an attempt to ameliorate the issue. If Petitioner had offered any additional evidence of *continuing* to experience biting despite the Respondent having notice and failing to act, then Petitioner may have been entitled to a rent reduction on this basis. However, after reviewing the Hearing Record, it is not clear that Petitioner offered any additional evidence to show an ongoing issue *after Respondent failed to act*.

The burden of proof is on the tenant to prove the claims raised in a rent decrease petition, and no individual claims "shall be approved by a Hearing Officer unless supported by the preponderance of the evidence in the hearing record" (Chapter 5(G)(2)-(3)). The Hearing Officer was justified in her conclusion that the absence of additional evidence of a biting bug infestation occurring after October 7th means that she cannot fairly conclude that there was an infestation due to failure to maintain Petition's Unit after receiving notice of said infestation. The Hearing Officer was properly exercising her discretion to compare the lack of evidence about an ongoing biting bug infestation to the more ample evidence Petitioner provided about ongoing issues (e.g., the defective condition of her door and the presence of mosquitos and spiders) in concluding that Petitioner was capable of documenting issues in her Unit but failed to gather or submit additional evidence of the ongoing biting bug infestation after October 7, 2023.

E. Respondent Has Not Demonstrated the Presence of Spiders and Mosquitos Arose from Respondent's Failure to Maintain Unit After Reasonable Notice.

The Hearing Officer did not err in concluding that Petitioner had failed to provide sufficient evidence to prove that the presence of spiders and mosquitos arose from Respondent's failure to maintain a habitable Unit and were present at such a level to rise to a breach in habitability.

While Petitioner offered testimonial and photographic evidence of the presence of at least one spider in her Unit, Petitioner has not met her burden of proof that (1) the presence of spiders or mosquitos rose to a level that breaches Civil or Health and Safety codes and (2) that their presence is a result of Respondent's failure to maintain the Unit after notice. Petitioner did not submit any additional evidence other than a

photograph of a single spider (and no additional evidence about mosquitos). In Petitioner's maintenance requests to Respondent, Petitioner specifically did not allow pest control to enter her Unit. Respondent provided witness evidence that none of their pest control contractors had found a spider near [REDACTED] (Though without having inspected the interior of [REDACTED] which they were seemingly not allowed to do at Petitioner's behest—this fact is not dispositive.) Petitioner met her burden of proving the presence of spiders but has failed to meet her burden of proof establishing an infestation of spiders.

Further, Respondent has responded reasonably to this issue after receiving notice. Respondent has installed extra wide weather strips around Petitioner's door, and Respondent ordered extra exterior insect treatment. Petitioner acknowledged that when pest control sprayed outside, the problem "got much better."

V. Conclusion

As detailed above, the RHC denies the appeal in its entirety and affirms the Decision in its entirety:

1. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of One Thousand Eight Hundred Thirty-Four and 79/100 dollars (\$1,834.79) on the basis that Respondent failed to correct the defective condition of the entry door to the Unit.
2. The Petitioner is entitled to a total rent refund of One Thousand One Hundred and Twenty and 23/100 dollars (\$1,120.23) (the "Refund Sum") for the Rent that has been paid by Petitioner for 11 months and 18 days. 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 Petitioner has withheld a total of the Refund Sum. If Petitioner vacates Property prior to recovering from Respondent the Refund Sum, then the remaining balance shall be come 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.