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January 23, 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. C23240065

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 decrease in Housing Services and/or maintenance. The Hearing on the Petition was held on August 20, 2024. The Hearing Officer's Decision was issued on October 2, 2024 ("HO Decision") and served on the parties on October 3, 2024.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
May 13, 2024	RHC accepted Petition No. C23240065
July 3, 2024	Notice of Hearing and Pre-Hearing Conference served on the Parties.
July 30, 2024	Pre-hearing telephone conference held.
July 31, 2024	Summary of Pre-hearing Conference Call and Order served on parties.
August 20, 2024	Hearing held.

<u>Date</u>	<u>Action</u>
September 4, 2024	Hearing record closed.
October 2, 2024	HO Decision issued and served on the Parties.
October 14, 2024	Appeal submitted by Appellant-Landlord.
January 13, 2025	Tentative Appeal Decision issued and served.
January 23, 2025	Appeal hearing before the Rental Housing Committee.

The Petition requested a downward adjustment of rent on the basis that the Landlord had reduced Housing Services and/or maintenance without a corresponding reduction in Rent. Specifically, the Petition alleged that the bathroom sink drains slowly on an intermittent but frequently recurring basis, and that the Landlord had indicated they would take no further action to address the issue after the Petitioner's most recent maintenance request in March 2024.

The Hearing Officer determined that Petitioner had met their burden of proof that Landlord had improperly reduced Housing Service(s) and/or maintenance in violation of CSFRA Sections 1702(h) and 1710(c) by failing to find a permanent solution to the recurrent problem of the slow-draining bathroom sink in the Property. As a result, the Petitioner was entitled to a total rent refund of \$496.44 for the decrease in Housing Services and maintenance for the period from March 11, 2024, through August 20, 2024, and an ongoing monthly rent reduction of \$93.84, or 4.125 percent of monthly rent payments until such time that the drain issue is resolved by Landlord.

Furthermore, Landlord's improper reduction in Housing Services and/or maintenance meant that the Landlord was not in substantial compliance with the CSFRA at the time that they imposed the most recent rent increase for the Property (effective August 19, 2024). Pursuant to CSFRA Section 1707(f)(1), the rent increase was nullified because (1) Landlord was not in substantial compliance with the CSFRA and (2) it was imposed prior to the expiration of the initial rental agreement between Petitioner and Landlord, thus resulting in the collection of unlawful rent. Petitioner was entitled to a refund of all amounts unlawfully demanded and retained by Landlord based on the nullified rent increase; the lawful rent for the Property remained \$2,275.00.

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

- A. The Hearing Officer erred or abused her discretion by concluding that there was a reduction in Housing Services and maintenance based on the slow-draining bathroom sink because the speed at which the bathroom sink drains does not impact the Petitioner's ability to use the sink.

- B. The Hearing Officer erred or abused her discretion by awarding a 4.125 percent rent reduction based on the decrease in Housing Services and maintenance because this amount is excessive, punitive, and "likely larger than percentages allocated to other reductions in service where in fact there was an obvious or significant reduction in service."
- C. The Hearing Officer failed to provide guidance or metrics as to when the issue is considered resolved, including how the issue should be addressed and by whose standards resolution is measured.
- D. The Hearing Officer erred or abused her discretion by nullifying the rent increase that Landlord imposed on Petitioner effective August 19, 2024, because the rent increase was not contested in the petition and the lease allows for such increases.
- E. The Hearing Officer exhibited bias toward the Petitioner during the hearing, thereby indicating that she would decide in favor of Petitioner regardless of Landlord's testimony or evidence.

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 January 21, 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

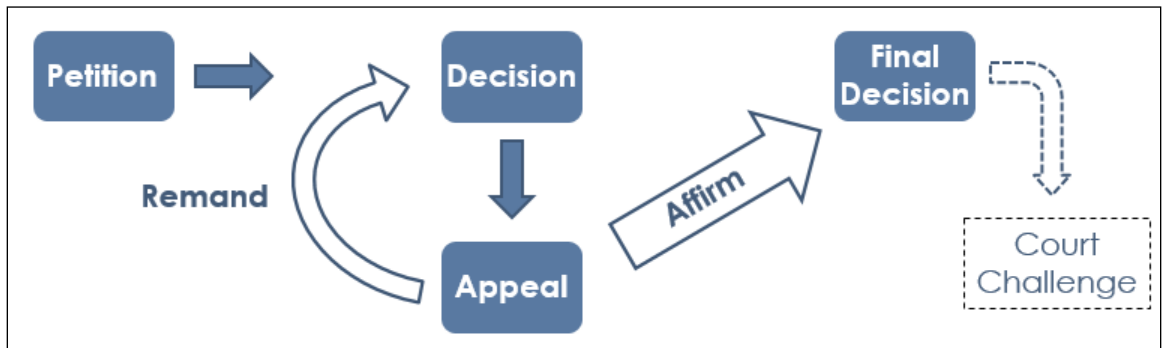
element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does **not** mean that the RHC members (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 Hearing Decision in its totality. In summary:

- A. Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion by concluding that there was a reduction in Housing Services and maintenance because the speed at which the bathroom sink drains does not impact the Petitioner's ability to use the sink. Appellant's argument misstates the basis on which the Hearing Officer concluded there had been a reduction in Housing Services or maintenance. The Hearing Officer did not conclude that the Petitioner was entitled to a rent refund and ongoing rent reduction because the Landlord had failed to maintain the bathroom sink in a habitable condition. Rather, the Hearing Officer concluded that the Petitioner was entitled to a rent refund and reduction based on the Landlord's refusal to take further action to permanently repair the

bathroom sink. The Hearing Officer's conclusion that Landlord's refusal to take additional action to permanently resolve the bathroom sink issue constituted an improper decrease in the level of maintenance it was providing to Petitioner was supported by substantial evidence in the record, including testimony from and correspondence and records submitted by both parties.

- B. Appellant-Landlord next argues that the Hearing Officer erred or abused her discretion in awarding a 4.125 percent, or \$93.84, monthly reduction in rent for the reduction in Housing Services and maintenance. Pursuant to chapter 6, section F.2.a of the CSFRA Regulations, Hearing Officers are authorized to determine the "amount of rent adjustment attributable to each...decrease in housing services or maintenance...claimed in" a petition so long as their decisions include findings of fact and conclusions of law which support the decision. The Hearing Officer provided a reasonable explanation for the methodology she used for the valuation of the reduction in Housing Services and maintenance, thereby satisfying the requirements of the CSFRA Regulations. Moreover, rent reduction findings in other petitions are not binding or precedential; in fact, the determination of an appropriate rent reduction is a factual determination that must be made on a case-by-case basis. Lastly, while the Appellant did contest the amount of the rent reduction (25 percent of the monthly rent) requested by the Petitioner during the hearing, it never recommended a more appropriate amount or methodology.
- C. Appellant-Landlord further asserts that it is both unclear *how* the issue should be resolved, and *whose* metrics by which the issue will be considered resolved. In fact, the HO Decision outlines several actions that the Landlord could have taken and could still take to find a permanent solution to the issue. (HO Decision, p. 15.) The HO Decision also clearly states that the issue will be resolved when " the sink is functioning properly, which means that the water drains while the faucet is running 100 percent of the time." (HO Decision, p. 16.) If there is disagreement between the parties about whether the issue has been resolved, the HO Decision explains they may request a Compliance Hearing pursuant to the CSFRA Regulations. Therefore, the Hearing Officer provided sufficient guidance about how and when the slow-draining sink issue will be considered resolved.
- D. Thereafter, Appellant-Landlord contends that the Hearing Officer erred or abused her discretion by nullifying the August 19, 2024, rent increase that the Landlord imposed on the Petitioner. The rent increase was both noticed and imposed after the Petitioner filed his petition; it was both relevant and proper for the Petitioner to update the information – namely the amount of his current rent - provided in the original Petition. Importantly, the CSFRA and the Regulations require the Hearing Officer to establish the current lawful rent for the property in order to issue a decision that accurately states the amount of rent reduction attributable to the decrease in Housing Services or the amount to which the Landlord could restore the Rent for the Property upon correcting the issue. Moreover, there is nothing preventing the Hearing Officer from raising the related issue of the lawful

rent for the Property *sua sponte*. In conclusion, the provision in the rental agreement that allows for rent increases during the term of Petitioner's lease applies only to lease renewals; therefore, it does not apply shield the rent increase that went into effect during the original term of Petitioner's lease.

E. Finally, Appellant-Landlord alleges that the Hearing Officer exhibited improper bias toward the Petitioner during the hearing, indicating that she would decide in favor of Petitioner regardless of the evidence or testimony presented by the Appellant. Appellant provides no factual support for this assertion, and a review of the hearing tape demonstrated that the Hearing Officer conducted the hearing in accordance with the CSFRA and the Regulations. The HO Decision itself also demonstrates that the Hearing Officer was fair and impartial in her decision and that she did consider the evidence and testimony put forth by Appellant and its witnesses. The Hearing Officer carefully weighed all the testimony and evidence from both Parties, and ultimately concluded that Respondent was liable to Petitioner only for part of the time during which the issue with the slow-draining bathroom sink has existed at the Property. Appellant has failed to demonstrate inappropriate bias on the part of the Hearing Officer.

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)	
<ul style="list-style-type: none"> Public Comment Period applicable for all Appeals on the agenda Appeal Hearing (CSFRA Petition No. <u>C23240065</u>) 	
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-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

See agenda posting for January 23, 2025, RHC meeting.

ATTACHMENTS

1. Tentative Appeal Decision for Petition No. C23240065
2. Decision of Hearing Officer (October 2, 2024)
3. Appellant-Tenant Appeal of Decision (October 14, 2024)