

## CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

## REMAND DECISION

## PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT ("CSFRA")

<b>Rental Housing Committee Petition No.:</b>	C222300537
<b>Type of Petition:</b>	Failure to Maintain Habitable Premises
<b>Address of Rental Property:</b>	1725 Wright Ave.
<b>Subject Unit(s):</b>	■
<b>Petitioner Name(s) and Authorized Representative(s):</b>	Eric Allen Walker ("Tenant")
<b>Respondent Name(s) and Authorized Representative(s):</b>	Timpson Enterprises, Inc., ("Landlord"); Shirley Ankenbauer, Property Manager ("Ms. Ankenbauer")
<b>Date of Hearing:</b>	May 9, 2023
<b>Place of Hearing:</b>	Zoom
<b>Decision Issued:</b>	June 9, 2023
<b>Appeal Filed:</b>	June 22, 2023
<b>Notice of Appeal Decision:</b>	October 12, 2023
<b>Notice of Remand Hearing:</b>	October 17, 2023
<b>Date of Remand Hearing:</b>	November 2, 2023
<b>Date Hearing Record Closed:</b>	November 6, 2023
<b>Date of Remand Decision:</b>	January 26, 2024
<b>Date of Mailing:</b>	See attached
<b>Hearing Officer:</b>	Duf Sundheim

**I. STATEMENT OF THE CASE**

1. On March 3, 2023, Eric Allen Walker ("Tenant") filed a petition (the "Petition") with the City of Mountain View (the "City") Rental Housing Committee ("RHC") with respect to the property located at 1725 Wright Ave. (the "Property"), Unit ■ (the "Premises"), claiming a failure to maintain a habitable premises by the Landlord due to the lack of hot water (the "Claim").

2. The Petition was accepted by RHC on April 4, 2023.

property located at 1725 Wright Ave. (the "Property"), Unit [REDACTED] (the "Premises"), claiming a failure to maintain a habitable premises by the Landlord due to the lack of hot water (the "Claim").

2. The Petition was accepted by RHC on April 4, 2023.

3. Landlord, through the Premises' property manager Ms. Ankenbauer ("Landlord's Representative") submitted a response to the Petition on April 22, 2023.

4. The Notice of Prehearing Conference was served on April 11, 2023. A Revised Notice of Prehearing Conference and Hearing Date was served on April 12, 2023, which changed only the Hearing date from May 15, 2023, to May 9, 2023, at 1:00 p.m.

5. The Pre-Hearing Telephone Conference was held May 2, 2023. Tenant, Ms. Ankenbauer, Joann Pham ("Ms. Pham") of the City of Mountain View's Rent Stabilization Division ("RSD"), and Duf Sundheim, the hearing officer ("Hearing Officer") participated in the call. In addition to discussing hearing procedures, the parties were told to submit any additional documentation by close of business Friday, May 5, 2023, including an up-to-date reading of the maximum water temperature at the Premises.

6. The hearing was held on May 9, 2023 (the "Original Hearing"). The Original Hearing record was closed on May 9, 2023. The Hearing Officer issued a decision on June 9, 2023. The original decision was served on the parties on June 12, 2023 (the "Original Decision").

7. A timely appeal of the Original Decision was received from the Respondent on June 22, 2023 (the "Appeal").

8. The Appeal Hearing was held on September 25, 2023, and a Notice of Appeal Decision and Remand Order was issued October 12, 2023 (the "Appeal Decision"). The Appeal Decision remanded the case because the standard used at the Hearing to determine the minimum water temperature only applies to restaurants, not apartments. The Hearing Officer was tasked to come up with a minimum water temperature that applies to apartments within the City.

9. The Notice of Remand Hearing was issued October 17, 2023.

10. The Remand Hearing was held November 2, 2023 (the "Remand Hearing") and a Notice Order giving the parties until November 6, 2023, to provide any additional relevant evidence was issued November 3, 2023.

**II. PARTIES WHO ATTENDED THE REMAND HEARING.** Tenant, Ms. Ankenbauer, Ms. Pham, and the Hearing Officer were the only parties present at the Remand Hearing. There were no witnesses, interpreters, or legal representatives present.

**III. SUMMARY OF FINDINGS** As of the date this Remand Decision is issued, Tenant is entitled to a rent credit of \$2,334.80 for the period ending December 31, 2023 (13 months \*

\$179.60), plus \$5.99 per day thereafter (\$179.60/30 = \$5.99)) for the reduction in the habitability of the Premises. Tenant is entitled to additional rent credits as set forth below.

#### **IV. ISSUES PRESENTED**

The only issues at the Remand Hearing were (1) what should the minimum water temperature requirement be and (2) did the Landlord meet this requirement during the relevant periods.

#### **V. TESTIMONY AND FINDINGS**

1. Minimum Temperature: At the Remand Hearing Tenant provided no documentation as to what the Minimum Temperature should be. Landlord provided a couple of pages from a document or documents attached as Exhibit 3. The first page is from a six-year-old memorandum between staff members of the San Francisco Board of Supervisors with the title "Legislation Introduced". The second page has completely different pagination, font and appears to be a proposed statute, ordinance, or rule for some jurisdiction that the water temperature should be a minimum of 105 degrees. Landlord's efforts are appreciated. However, it is not at all clear the exhibit is a law, much less that it applies to premises within the City.

The City's Multifamily Housing Inspection Department indicated the International Property Maintenance Code [P] 505.4 provides the water temperature should be "not less than 110 degrees Fahrenheit". Given 110 degrees is a reasonable figure, and in the absence of a specific City minimum, this will be the standard applied in this case. Hence, references to the "Minimum Temperature" shall be 110 degrees Fahrenheit.

2. Temperatures during the relevant period. At the Original Hearing Tenant had provided text and readings showing at numerous times the water temperature was not warm, much less hot and failed to reach a maximum temperature greater than 95 degrees, and was under 100 degrees on numerous occasions.

Throughout this process the parties have produced the following specific readings:

#### **TENANT**

<u>Date</u>	<u>Time</u>	<u>Location</u>	<u>Temp in Fahrenheit</u>
12/9/22			below 95
7/26/23	9 am	Kitchen Sink	72.1
11/2/23	1130 am	Bathtub	101.5
11/3/23	9 am	Bathtub	102.7
11/4/23	7 am	Bathtub	95.2
11/5/23	740 am	Bathtub	106.9
11/6/23	6 am	Bathtub	98.2

**LANDLORD**

<u>Date</u>	<u>Time</u>	<u>Location</u>	<u>Temp in Fahrenheit</u>
3/29/23		Bathtub	107.4
		Kitchen	106.3
6/22/23	158 pm	Kitchen Sink	108.3
	231 pm	Bathroom Sink	108.2
	239 pm	Bathtub	111.0
9/24/23	6 pm	Bathtub	109.9
	6 pm	Kitchen Sink	110.8
	6 pm	Bathroom Sink	109.6

Tenant agreed Landlord’s readings probably were accurate. However, he indicated the issue was and is the same: depending on the outdoor temperature and the time of day, especially during the winter months and early morning when Tenant takes his morning shower, the temperatures are considerably lower than Landlord’s readings. (The above readings in the aggregate are referred to as the “Experienced Temperatures”).

**II. Analysis**

1. Compensate Tenant. When assessing the relief a party is entitled to, the primary objective is to achieve a fair and just outcome. In landlord/tenant actions, one of the main purposes is to compensate the tenant for the actual loss or harm tenant has suffered as the result of the landlord’s action or inaction. This may include (a) economic loss (not present here), (b) non-economic loss (the failure to have water that is hot enough to meet Tenant’s reasonable needs and the anxiety caused by wondering whether in any particular situation the water will be warm enough to meet Tenant’s reasonable needs), and sometimes (c) punitive damages (when the landlord’s conduct is particularly egregious) – which is not the case here.

Hence, in this situation, one of the primary focuses is the non-economic damages suffered by Tenant. The Original Decision held Tenant had a right to expect a minimum temperature of 120 degrees and compensated him based on the difference between 120 degrees and the Experienced Temperatures. Reducing Tenant’s reasonable expectations by ten degrees does not make the Experienced Temperatures any warmer but does impact the gap between what Tenant was experiencing and what he had a right to expect, and the measure of damages needs to be reduced accordingly.

2. Accountability/Deterrence. In assessing damages there also is the goal of holding the landlord accountable for failing to meet the necessary standard, and to deter such conduct in the future with respect to (1) the specific premises and (2) other premises throughout the City.

With respect to accountability and deterrence in this case, the path to a just determination is at best murky. Despite the significant amount of time, money and resources spent on this issue in this case, outside what is determined by this decision on this date there is no definite number this Landlord could have looked to determine if Landlord was meeting the City and the City's requirements and the Tenant's reasonable needs. And based on the record before us, Landlord has been sympathetic to the Tenant's issue, has run numerous tests to attempt to determine what the temperature is, and worked to identify what the problem or problems may be.

On the other hand, it appears what the real issue is, is that the existing system is inadequate to meet the reasonable needs of this particular Tenant in this particular Premises. And Landlord appears to be reluctant to spend the potentially significant resources necessary to fix the problem, especially since exactly how much that cost is either is (a) unknown by Landlord at the present time, or (b) known to Landlord and Landlord has determined it does not want to incur such expense.

Consequently, the rent credit provided Tenant needs to be high enough to ensure Landlord has the incentive to fix the problem, as expensive and difficult as that may be. And by "fixing the problem" it means a minimum water temperature of 110 degrees Fahrenheit, regardless of the time of year or time of day.

## **VI. Decision**

1. Failure to meet the Minimum Temperature. The water temperature failed to reach the Minimum Temperature on a consistent basis from November 23, 2022 (the "Impact Date") and was still an issue both as of the Original Hearing Date and as of November 2, 2023 (the "Remand Hearing Date"). This is a failure of the Landlord to maintain a habitable premises.

2. Why the Minimum Temperature Matters. The Minimum Temperature is necessary (a) to provide sufficient heat to shower, wash hands, and clean dishes, (b) to prevent bacteria from forming in the areas where the water is being stored, and (c) other health and practical reasons.

3. Significant Impact. The evidence in this case showed the failure to meet the Minimum Temperature had a significant impact on Tenant's use of the shower and the ability to properly use the sinks. There was no evidence of any bacteria in the water or related health issues.

### 4. Adjustments in Rent Credit Percentages.

4.1 Rent Credit Adjusted from 10% to 8% per Day. In the Original Decision Tenant was entitled to a rent credit of 10% of the rent due. Based on a reduction in the minimum temperature requirement from 120 degrees to 110 degrees and weighing the various factors discussed above, the credit is reduced from 10% to 8%. Given that rent is \$2,245 per month, an 8% credit is \$179.60 per month; \$5.99 per day (the "Rent Credit").

4.2 Possible Subsequent Increase in Rent Credit. If there is not a “Successful Termination” as defined below by April 30, 2024, commencing May 1, 2024 the Rent Credit shall be increased by 1% per month, not to exceed an aggregate Rent Credit of 12% per month (“Adjusted Rent Credit”).

5. Rent Credit Period. The start date for the Rent Credit originally was set at December 1, 2022. Landlord did not appeal that determination. Hence the start date for the Rent Credit shall remain December 1, 2022 (the “Start Date”).

For tenant petitions under the CSFRA, the tenant has the burden to prove the issue existed. It has been determined Tenant met his burden of proof. It is now up to Landlord to prove Landlord has corrected the issue. As of the date of this Decision, they have not done so. Consequently, until that occurs, the Rent Credit shall continue until terminated below.

6. Challenges to Determine When Rent Credit Shall Cease. Exactly how to determine when the Rent Credit shall cease has practical challenges. Since the burden is on the Landlord to show the water meets the Minimum Requirements, Landlord has the burden of taking the readings to show they have done so. However, since the issue is most acute during the early hours of the morning and late at night, this means they may have to interfere with Tenant’s quiet enjoyment at his most private times. And since the temperature may meet the Minimum Standard for significant periods of time due to the external weather temperature, it is possible Landlord’s readings may indicate the problem has been solved when in fact, it has not. This Decision attempts to take these factors, and others, into account.

#### 7. Procedures to Determine Whether Minimum Standard has been Met.

7.1 Landlord’s Opportunity to Cure. Landlord shall have 30 days from the date of this Decision (“Cure Period”) to undertake the repairs necessary to ensure the Minimum Temperature is available at all sources at the Premises, 24 hours per day, seven days per week (“Opportunity to Cure”).

7.2 Initial Notice. Within seven days of the conclusion of the Cure Period, or such earlier date Landlord informs Tenant the repairs have been done and Landlord believes the Minimum Standard has been achieved (the “Notification End Date”), Tenant shall give Landlord a tentative list indicating ten dates and ten times the water temperature should be taken by Landlord (the “Initial Notice”). It is understood such readings will need to be taken at times such as 6 AM because that is when the water is most likely to fail to meet the Minimum Requirement. The inspections shall occur over a period of not more than 90 days and there shall be at least five days between each inspection (the “Inspections”).

7.2 Landlord Concerns. Within three business days from receipt of the Initial Notice, Landlord will discuss with Tenant any concerns with the dates/times in the Initial Notice. Tenant will have absolute discretion as to whether to modify the Initial Notice based on such input.

7.3 Final Notice. Within seven days of Notification End Date, Tenant will send Landlord a notice (the "Final Notice") indicating when and at what times the Inspections will occur. The first Inspection shall not occur until at least seven days after delivery of the Final Notice to Landlord.

7.4 Readings. Landlord shall take a picture and have a written record of each reading taken during an Inspection (the "Procedure"). If Landlord fails to take the temperature within 15 minutes before or after the date and time set forth in the Final Notice, Tenant shall take the readings on such date within 30 minutes of the time set for such reading following the Procedure. (The readings shall be referred to as the "Readings", and the first ten Readings as the "Initial Readings".)

7.5 Landlord's failure to take a Reading within the period required shall not allow Landlord to take a Reading at another time, except as allowed by the lease between Tenant and Landlord or the law.

7.6 Successful Termination. The Rent Credit shall cease on the first date the Readings show the Minimum Standard has been met ("Threshold"), provided the next three consecutive Readings after the Threshold Reading also show the Minimum Standard has been met ("Successful Termination").

7.7 Procedure if No Successful Termination. If there is not a Successful Termination during the Initial Readings, the procedure of Final Notices, Inspections, and Readings shall continue and the Rent Credit shall continue to be owed until there is a Successful Termination.

7.8 Examples.

a. Example a

February 29, 2024	111 degrees
March 10, 2024	113 degrees
April 1, 2024	110 degrees
April 15, 2024	112 degrees

The Threshold was met effective February 29, 2024, and the Rent Credit terminated as of such date.

Tenant shall be entitled to a Rent Credit of \$2,694.00 (15 months x \$179.60).

b. Example b

February 29, 2024	111 degrees
March 10, 2024	113 degrees
April 1, 2024	110 degrees

April 15, 2024	92 degrees
April 30, 2024	114 degrees
May 1, 2024	111 degrees
May 10, 2024	94 degrees
May 31, 2024	110 degrees
June 10, 2024	111 degrees
June 15, 2024	112 degrees
June 30, 2024	111 degrees

The Threshold was met effective May 31, 2024, and the Rent Credit terminated as of such date.

Tenant shall be entitled to a rent credit of \$3,255.25 (17 months at \$179.60 = \$3,053.20 (see Section 4.1) plus one month at \$202.05 (see Section 4.2).

8. Rent Credit Calculation. Tenant shall be compensated for the damages through a rent credit, according to the attached table.

9. Tenant Vacates. If Tenant vacates the Premises, that portion of the amount due that has not been credited shall be paid by Landlord to Tenant within thirty (30) days of the date Tenant vacates the Premises.

10. Excess Credit. After a Successful Termination, Tenant shall pay back (a) the \$100.00 he withheld from the March 2023 rent and (b) any excess credit given pursuant the procedures set forth in Section 7, in two equal installments with the next two rent payments, or (b) before Tenant vacates the Premises, whichever occurs first.

11. Successors. The terms of this Decision shall be enforceable as to any successor in interest or assignees of Landlord.

12. Compliance Hearing. If a dispute arises as to whether any party has failed to comply with this Decision, any party may request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, section J(1).

It is so ordered.

 1.26.24  
 Duf Sundheim  
 Hearing Officer

**Attachment 1**  
**Exhibits**

**Appellant-Landlord Exhibits**

**Exhibit 1** Request for Appeal of Petition Hearing Decision dated June 22, 2023

**Exhibit 2** Landlord Water Readings from June 22, 2023 through September 24, 2023

**Exhibit 3** Two Pages from apparently different documents discussing minimum water temperatures submitted by Landlord November 2, 2023

**Respondent-Tenant Exhibits**

**Exhibit 4** Memo from Tenant dated November 6, 2023

**Exhibit 5** Tenant Water Temperature Readings from July 26, 2023 through November 6, 2023

**Hearing Officer Exhibits**

**Exhibit 6** Notice of Appeal Decision and Remand Order with Proof of Service, dated October 12, 2023

**Exhibit 7** Appeal Decision and Direction to Hearing Officer on Remand

**Exhibit 8** Notice of Remand Hearing, dated October 17, 2023

**Exhibit 9** Hearing Officer Remand Hearing Order, dated November 3, 2023

**Exhibit 10** Notice of Extension of Hearing Officer Written Decision Deadline, dated December 19, 2023

**Attachment 2  
Award Schedule**

1725 Wright Ave [REDACTED] - RHC Petition# C22230037

**Hearing Officer Decision**

Habitability Issue	Month/Year Issue Began	Month/Year Issue Cut-off	Number of Months Issue Persisted	Rent Amount	Percent of Rent Rebate	Rent Rebate Awarded
Hot water	12/1/2022	12/31/2023	13.0	\$ 2,245.00	8%	\$ 2,334.80
Continuing hot water issues*	1/1/2024	4/30/2024	TBD	\$ 2,245.00	8%	\$5.99/ day
Continuing hot water issues*	5/1/2024	TBD	TBD	\$ 2,245.00	additional 1%/ month	TBD
<b>TOTAL</b>						\$ 2,334.80

**Credit Schedule**

Month/Year of Rent Payment**	Monthly Rent Owed by Petitioner	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
TBD	\$ 2,245.00	\$ 2,145.00	\$ 100.00
TBD	\$ 2,245.00	\$ 89.80	\$ 2,155.20
TBD	\$ 2,245.00	TBD	TBD
TBD	\$ 2,245.00	TBD	TBD
<b>TOTAL</b>		\$ 2,234.80	\$ 2,255.20

\* Hot water issues beginning 1/1/2024 will continue to accrue a rent rebate of \$5.99/ day; see paragraph 4.2 of the Decision for continuing hot water issues after 4/30/2024.

\*\* Continuing hot water issues beginning 1/1/2024 should be credited to Petitioner beginning the first month after calculation of the additional rent credit owed following Successful Termination (when the Minimum Standard has been met for three consecutive readings after the Threshold Reading), or within 30 days of vacating the premises. Pursuant to paragraph 10 of the Decision, Tenant must pay back the \$100.00 he withheld from March 2023 rent and pay any excess credit taken in the next two rent payments or before vacating the Premises, whichever comes first.