

Tentative Appeal Decision
Petition No. C22330052

Rental Housing Committee
Appeal Decision

Petition No. C22230052

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

I. Summary of Proceedings

On May 16, 2023, Tenants Judith Hernandez (“Ms. Hernandez”) and Israel Gonzales (“Mr. Gonzales”) (collectively “**Petitioners**”) filed a petition for a downward adjustment of rent based on failure to maintain a habitable premises (the “**Petition**”) (Petitioners’ Exhibit #1) related to the property located at 222 Escuela Avenue [REDACTED], Mountain View (“**Property**”). The Property is owned by Highland Garden Apartments, which has been represented in the proceedings by various employees of its property management company, Decron Properties Corp., including Regional Manager Eva Sharp, Community Manager Arnetta Griffin, Director of Maintenance Terry Betts and Lead Maintenance Technician Francisco Ramirez (collectively “**Respondent**”). Petitioners and Respondent are collectively herein referred to as the “**Parties.**” On August 9, 2023, a notice of hearing was issued with a hearing date scheduled for August 30, 2023 at 6:30 p.m.

The Petition requested a downward adjustment of rent and rent refund on the basis that the Respondent failed to maintain a habitable premises due to a serious mold problem that was allowed to grow over an extended period of time, in violation of the Community Stabilization and Fair Rent Act (“**CSFRA**”). Specifically, the Petition alleged in October 2021, there was a water leak in the area surrounding the living room window which caused the inside of the wall to become wet with moisture; for nearly two years thereafter, the Petition alleged that Tenants experienced intermittent issues with humidity and moisture in and on that same living room wall, causing mold to develop in that area on multiple occasions.

On August 17, 2023, a pre-hearing conference was conducted by the Hearing Officer via the Zoom teleconferencing platform. Petitioners and Respondent (through its authorized representatives Ms. Sharp and Ms. Griffin) were present on and participated in the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing. In addition, the Parties were instructed to submit any documentary evidence by close of business on August 25, 2023. A Notice of Hearing Officer’s Written Order and Summary of Pre-Hearing Conference and Notice of Hearing were served on the Parties on August 24, 2023 (Hearing Officer’s Exhibit #8).

The hearing was held on August 30, 2023. The hearing record was closed on the same date. The Hearing Officer issued a decision on October 10, 2023 (“**HO Decision**”). The HO’s Decision was served on the Parties on October 16, 2023.

A timely appeal of the Decision was filed by the Respondent on October 25, 2023 (“**Appeal**”).

Procedural Posture

CSFRA Section 1711(j) states, in relevant part, that “[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review.” CSFRA Regulations 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 the Hearing Officer for further findings of fact and revised Decision” as applicable to each appealed element of the decision.

II. Summary of Hearing Officer’s 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. Appellant-Landlord was not liable to the Tenant for the wall moisture and mold issue between October 21, 2021 and January 4, 2023.
 - a. It was undisputed that the wall had substantial moisture on October 21, 2021, but there was no discoloration present between October 21, 2021 and February 2022. While discoloration was present on February 19, 2022, neither Landlord nor Tenants perceived it as a serious issue.
 - b. Mr. Ramirez treated the wall to the Tenant’s satisfaction sometime in April/May 2022. There was no further evidence presented by Tenants that the wall presented any issues until November 2022.
 - c. Testimony established that in November 2022, the moisture in/on the wall returned. Tenants informed Landlord of the condition. On November 19, 2022, Mr. Ramirez returned to the Property, informed Tenants to move furniture away from the wall, and told them that he had to wait for the wall to dry out before taking any further action.
 - d. By December 17, 2022, no corrective action had been taken by Landlord and mold began to form on the wall. Tenants informed Landlord of the condition but turned Mr. Ramirez away from the Property on four different occasions. Therefore, because Tenants did not provide Landlord with a reasonable opportunity to correct the issue, Landlord is not liable to Tenants for failure to address the condition of the wall up and through January 4, 2023.
2. Appellant-Landlord was liable for a reduction in the habitability of the Property from January 4, 2023 through July 1, 2023.

- a. Documentary and testimonial evidence presented by Tenant at the Hearing demonstrated that the issue persisted. Tenants gave detailed testimony regarding their discussion with Mr. Ramirez about the wall, and about when Mr. Ramirez took action and when he did not. On the other hand, there were numerous gaps and inconsistencies in Landlord's records, and Landlord did not present any evidence showing that the work was completed before July 1, 2023.
 - b. Landlord's argument that Tenants substantially contributed to the mold condition (under Civil Code Section 1941.2) is undermined by evidence presented at the Hearing demonstrating that Tenants (1) had the dehumidifier on as directed and only turned it off when they were sleeping, (2) moved all furniture away from the wall as directed by Landlord, and (3) ventilated the room whenever weather conditions permitted.
3. Based on the testimony presented by Tenants regarding the impact of the condition on Tenants' use of the Property and on the health of Tenants' family, Tenants suffered a 40 percent reduction in the value of the Property from January 4, 2023 through July 1, 2023. Therefore, Tenants are entitled to a \$7,050.60 rent refund from Landlord.

III. Appealed Elements of Hearing Officer's Decision

CSFRA 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 HO Decision that are subject to appeal by the Appellant. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Appellant-Landlord raises the following issues on Appeal:

1. **The Hearing Officer erroneously held that Landlord did not challenge Tenants' testimony regarding the moisture issue.** At the Hearing, Landlord challenged Tenants' testimony regarding the date of completion of the cleaning and painting of the wall, providing that the repairs had been completed on January 4, 2023.
2. **The Hearing Officer erred in holding that the repairs to the wall were completed on July 1, 2023.** There was no evidence presented at the Hearing that Mr. Ramirez returned to the Property between June and July 2023 to perform wall repairs. Tenants presented no photos or documents evidencing the issue since January 2023. While additional photos and moisture readings were taken on August 12, 2023 in anticipation of the Hearing, no repairs were undertaken after January 1, 2023.

3. **The Hearing Officer abused his discretion by concluding that one of the photos demonstrating the condition of the wall was taken in May 2023, as presented by Tenants.** The Tenants' presentation of the photo lacked full data properties to verify its authenticity that it was taken in May 2023.
4. **During the Hearing, the Hearing Officer improperly demonstrated bias toward the Tenants.** The Hearing Officer complimented the Tenants' presentation of their case and their attentiveness during the Hearing. Hearing Officers should remain impartial and refrain from making comments that suggest bias and a predetermined position on the decision.

In addition to these appealed elements, the Appeal emphasizes that the Landlord's testimony during the hearing was entirely truthful and takes issue with the Hearing Officer's accusation that the Landlord lied in their testimony. This Appeal Decision does not address that part of the Appeal as it is not clear how the Hearing Officer's potentially offensive characterization of the Landlord's testimony in the HO Decision altered the outcome of the Petition.

IV. Decision Regarding Appealed Elements

A. The Hearing Officer's Findings Regarding Testimony that Was Not Challenged by Landlord Does Not Alter Outcome of the Petition.

Appellant-Landlord first argues that that summary of Hearing Officer's findings incorrectly states that Landlord did not challenge Tenant's testimony regarding the moisture issue at the Property. Specifically, the Appeal provides that Landlord "consistently referenced January 4th as the date of completion of the cleaning and painting" at the Hearing, and that their evidence in support of this claim included a work order detail recap and Mr. Ramirez's testimony.

Section V of the HO Decision summarizes the testimony presented by both Landlord and Tenant. The Hearing Officer concluded that the following testimony by the Tenant was not challenged by the Landlord during the Hearing:

- Rainwater entered the Property through the living room window on or around October 21, 2021. Tenants informed Mr. Ramirez of this problem, and he informed them that he was going to take no action at that time because the wall needed to dry out.
- On or around December 1, 2021, Mr. Ramirez came to the Property to address an issue with the sink and Tenants again informed Mr. Ramirez that the wall was still wet. While the wall was still wet, the moisture had not adversely affected the paint and there were no visible signs of mold, so Mr. Ramirez did not take any remedial action.
- Between February 2022 and April 2022, no repairs were done. Mr. Ramirez returned to the Property in April and May of 2022, treated the wall with a chemical designed to

eliminate moisture and painted the wall. This resolved the problem to Tenants' satisfaction.

- In November 2022, the moisture returned. Tenants submitted a work order on November 16, 2022, and on November 19, 2022, Mr. Ramirez came to the Property to address the issue. He again applied the chemical designed to eliminate moisture and advised Tenants to move personal property away from the wall. He did not paint the wall because it was still wet at that time.
- Black mold appeared on the wall in December 2022. Tenants filed a work order on or around December 17, 2022. The wall was not painted during the holiday season.

These are the only aspects of Tenants' testimony that the Hearing Officer concluded were not challenged by Landlord. Upon review of the recording of the Hearing, it does appear that Landlord did challenge one aspect of the Tenants' testimony that the Hearing Officer concluded was not challenged. Specifically, during the Hearing, Mr. Ramirez testified that he did not recall being informed by the Tenants about rainwater entering the Property through the living room window on or around October 21, 2021, nor did he remember taking action to seal the window at that time to prevent additional water from entering the Property. (Hearing Recording at 01:58:40-02:00:23.) However, even if the Hearing Officer had properly concluded that Landlord challenged this part of the Tenant's testimony, it would not have affected the Decision outcome because the HO Decision holds that Landlord is not liable to Tenants for the moisture and mold issue prior to January 4, 2023.

As it relates to the January 4, 2023 repair date, the HO Decision specifically states "[t]he main point of contention is Landlord testified that all Wall repair was completed on January 4, 2023. Tenants vehemently disagree and testified the work was not done until the June/July 2023 time frame." Therefore, the HO Decision aligns with Appellant's own characterization of their testimony regarding the January 4, 2023 repair date and the Parties' disagreements about this date as the date on which the moisture and mold issue was resolved. As outlined in subsection (B) below, the Hearing Officer considered both Parties' evidence as it relates to the condition of the Property after the January 4, 2023 date, and concluded that Tenants' testimony and evidence prevailed over Landlord's testimony and evidence.

B. There is Sufficient Evidence in the Record to Support Hearing Officer's Conclusion that the Wall Was Not Repaired Until July 1, 2023.

Next, Appellant argues that the Hearing Officer erred or abused his discretion in concluding that Landlord did not repair the wall until July 1, 2023. Appellant's argument hinges on the fact that there was "no record of Mr. Ramirez returning to the premises between June and July 1st to perform any wall repairs." The Appeal further states that while Mr. Ramirez "documented the

condition of the unit along with moisture readings and photos on 8/12/23 to prove that repairs were done, no additional wall repairs or painting was completed after 1/4/23.”

There is sufficient evidence in the record to support the Hearing Officer’s conclusion that Landlord repaired the wall around July 1, 2023. First, Mr. Ramirez’s notes from January 4, 2023 in the maintenance log entry state that he “returned and painted wall” and thereafter advised the Tenants to keep air mattress away from the wall and open the windows for ventilation and to prevent condensation on the windows. (Respondent’s Exhibit #2.) Of note, his notes do not state that the issue was completely resolved at that time or that no further action was required or would be taken. Neither, as Landlord has admitted, are there photos or videos from that date (or from any date prior to August 12, 2023) or moisture readings demonstrating that the repairs were completed despite Landlord’s testimony that they have procedures in place to document such actions. (Hearing Recording at 02:26:50-02:28:21.)

Furthermore, Tenants’ testimony and evidence and Landlord’s maintenance log for the unit all indicate that Tenants raised this issue with Landlord after January 4, 2023. Tenants requested assistance with the wall issue on April 1, 2023, and requested repairs to the wall on April 29, 2023. (Petitioner’s Exhibit #3A; Resp. Exh. #2.) The Tenants’ copy of the maintenance request from April 1, 2023 includes a photo of the condition of the wall, which the Tenants testified accurately represented the condition of the wall on that date. (Pet. Exh. #3A.) Mr. Ramirez’s notes on the April 1, 2023 maintenance log entry from April 5, 2023 state that he provided Tenants with a humidifier to use for three days, and thereafter the “[s]mell in unit dissolved.” (Resp. Exh. #2.) His notes from that date also state there was “[n]o evidence on the wall,” but not that there was no issue related to the moisture and mold. (*Id.*) These notes on the April 1, 2023 maintenance log entry are inconsistent with Landlord’s own assertions that “no additional wall repairs...[were] completed after 1/4/23.”

The Tenants’ request for maintenance on April 29, 2023 stated they were “waiting for repair the wall [*sic*] that still has humidity.” (Pet. Exh. #3A; Resp. Exh. #2.) As the Hearing Officer noted in his decision, it is unclear why the Tenants would request additional repairs to the wall if the humidity issue had already been adequately addressed. (HO Decision, pg. 8.) Mr. Ramirez’s notes to the April 29, 2023 maintenance log entry from May 1, 2023 state that there was “[n]o evidence of humidity on the wall.” (Resp. Exh. #2.) However, the entry does not state that repairs were completed or that no further action would be taken.

Tenants testified that on the same date – May 1, 2023 – a service technician from AT&T came to the Property to set up their wireless internet connection. (Hearing Recording at 00:48:50-00:50:40.) Upon seeing the condition of the wall, the technician left the unit and returned with a specialized mask. (*Id.*) When Tenants asked the technician why he retrieved the mask, the technician informed Tenants of the potential health risks associated with being exposed to the type of mold he believed was on the wall. (*Id.*)

Thereafter, Tenants filed the Petition on May 16, 2023 stating the wall had not been fixed. (Pet. Exh. #4.) The filing of the Petition is further indication that the issue still had not been sufficiently addressed by the Landlord. Tenants testified that during the June/July timeframe, Mr. Ramirez returned to the Property to fix the wall issue. (Hearing Recording at 00:52:20-00:52:48.) Given that Tenants had already filed the Petition and the Parties were engaged in the Hearing process, it is probable that Landlord completed the repairs during this time despite the lack of maintenance requests from Tenants or notes documenting the repairs from Mr. Ramirez.

On August 12, 2023, Landlord testified and their records indicate that Mr. Ramirez returned to the Property to take moisture readings and pictures of the completed repair work to the wall. (Res. Exh. #3.) As noted above, these are the only photos that Landlord provided of the repaired condition of the wall.

On the other hand, Tenants submitted several photos showing varying amounts of mold on the wall. (Pet. Exh. #3A.) While Tenants did not testify as to when these photos were taken, in at least one photo, there appears to be either a WiFi modem and/or router; this indicates that the photo was potentially taken after the May 1, 2023 date when the AT&T service technician visited the Property. (*Id.*) Notably, the same WiFi equipment is not visible in the photo attached to the April 1, 2023 maintenance request. (Pet. Exh. #3A.)

Taken together, the Tenants' testimony, the April 2023 maintenance requests, the filing of the Petition in May 2023 and the Landlord's photos and maintenance notes from August 12, 2023 constitute a sufficient basis for the Hearing Officer to conclude that the humidity and mold problem persisted after January 4, 2023 and through July 1, 2023. On the other hand, Appellant presented little evidence to contradict the timeline established by Tenants. For instance, at no time did Mr. Ramirez's testimony confirm Ms. Sharp's assertion that the no repairs took place after January 4, 2023; in fact, Mr. Ramirez's notes on the April 2023 maintenance requests undercut Ms. Sharp's claim that no repairs of the wall took place after January 4, 2023.

Therefore, the Hearing Officer did not abuse his discretion in finding Tenants' version of the events to be more credible and holding that the humidity/mold issue persisted after January 4, 2023 and was repaired by July 1, 2023 as Tenants testified.

C. The Hearing Officer Did Not Abuse His Discretion by Concluding Photo Showed Condition of Unit in April 2023.

Appellant asserts that the Hearing Officer abused his discretion by concluding that the photo shown by Tenants at the Hearing reflected the condition of the wall in April 2023. Landlord requests that the evidence be more closely examined "to ensure its accuracy and reliability."

First, formal rules of evidence do not apply in the administrative hearings related to Individual Rent Adjustment petitions. (CSFRA Regulations, Chapter 6, Section E.4.) Rather, "the Petitioner and other affected parties may offer any documents, testimony, written declarations, or other evidence that, *in the opinion of the Hearing Officer*, is credible and relevant to the requested rent

adjustment.” (*Id.* (emphasis added).) Therefore, there was no requirement that the Hearing Officer verify the authenticity of the evidence offered by either Party, including the photo in question.

Furthermore, there was ample basis in the record for the Hearing Officer to conclude that the photo reflected the condition of the wall in April 2023. For one, the photo was included as an attachment to the April 1, 2023 maintenance request submitted by the Tenants. It is not clear why the Tenants would submit a photo at that time that did not accurately reflect the condition of the wall. Second, at the Hearing, Landlord questioned Tenants about whether the photo accurately reflected the condition of the wall on April 1, 2023 and Tenants testified that the photo was taken on or around April 2023 and not in December 2022 as asserted by the Landlord. (Hearing Recording at 01:02:51-01:08:26.) Finally, as noted by the Hearing Officer, “[a]ll Landlord had to do to completely undermine Tenants’ claims as of those dates would be to submit *one picture* showing the work was completed as of any one of those dates. Something Landlord never did.” (HO Decision, page 9 (emphasis added).)

Tenants established by their testimony and circumstantial evidence that the photo accurately reflected the condition of the wall on or around April 1, 2023. Landlord presented no evidence of their own, other than an unsubstantiated claim that the photo was taken in December 2022, to undermine Tenants’ evidence. Based on the foregoing, the Hearing Officer did not abuse his discretion in concluding, in his opinion, that the photo was a reliable representation of the condition of the unit around the April 2023 timeframe.

D. The Hearing Officer Did Not Demonstrate Bias Toward Tenants During the Hearing.

Finally, Appellant-Landlord alleges that the Hearing Officer demonstrated bias toward the Tenants during the Hearing, indicating that the decision was not impartial. In particular, Landlord takes issue with the Hearing Officer’s comments about how well the Tenants presented their case and his praise of their attentiveness during the Hearing. Landlord concludes from these comments by the Hearing Officer that the Hearing Officer had a pre-existing bias toward the Tenants and a predetermined stance on the outcome of the Petition.

First, it is worth noting that the Hearing Officer complimented both Parties during the Hearing. For instance, the Hearing Officer thanked the Landlord for listening patiently during the Tenants’ presentation of their case and without interrupting the Tenants or acting in an unprofessional manner. (Hearing Recording at 00:58:50-00:59:03.) Later, he thanked both parties for remaining professional throughout the Hearing and for their clear presentations of their cases. (Hearing Recording at 02:36:48-02:37:02.) He also separately complimented Ms. Sharp’s presentation of the Landlords’ case, stating that she “has been great all the way through the Hearing.” (Hearing Recording at 02:31:40-02:31:50.)

More importantly, the HO Decision itself demonstrates that the Hearing Officer was fair and impartial in his decision. The Hearing Officer carefully weighed all the testimony and evidence

from both Parties, and ultimately concluded that Landlord was liable to Tenant only for part of the time during which the mold and humidity issue existed at the Property.

The Hearing Officer's apparent practice of complimenting and encouraging both Parties throughout the Hearing does not rise to a level of improper bias. His impartiality is evidenced by the careful consideration of all of the evidence from both Parties and reasoned conclusion in the HO Decision.

V. Conclusion

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

1. Petitioner-Tenants satisfied their burden of proof to demonstrate Landlord's failure to maintain a habitable premises for the period from January 4, 2023 through July 1, 2023 due the existence of humidity and mold on the Property.
2. During the period from January 4, 2023 through July 1, 2023, Tenants experienced a significant reduction in the value of the Property arising out of limitations on their use of the Property and the physical affects of the humidity/mold condition on their health. As a result, they are entitled to a forty percent (40%) reduction in the value of the Property for the period in question.
3. Rent during the period was \$2,398 per month, or \$97.93 per day. Forty percent (40%) of \$97.93 is \$39.17 per day. There are 180 days between January 3, 2023 and July 1, 2023. Therefore, Tenants are entitled to a total Rent refund of \$7,050.60 to be provided to Tenants as a rent credit at such time that this Appeal Decision becomes final. If Tenants vacate the Property, the portion of the award that has not been credited by the Landlord shall be paid to the Tenants within thirty (30) days of the date Tenants vacate the Premises.