Tentative Appeal Decision
Petition No. C24250033

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

On November 15, 2024, Tenants Sandy Brooksfox and Brian Keith (collectively "**Petitioners**") filed a petition for downward adjustment of rent (the "**Petition**") (Petitioners' Exhibit #1 and #2) related to the property located at 1984 Colony Street, Mountain View (the "**Property**"), specifically Unit [redacted] (the "**Affected Unit**"). The Property is owned by Richard Todd Spieker and Catherine Reilly Spieker, as trustees of the Spieker Living Trust and doing business as Spieker Companies (the "**Respondent**"). Respondent's authorized representative in the petition proceedings was regional portfolio manager, Rachel Jones, and the witnesses on behalf of Respondent were Ms. Jones, resident manager Gwendolyn Lim, and maintenance technician Troy Martin. Respondent was also represented by legal counsel of record, Rachel G. Chubey, Esq. of Spencer Fane, LLP, during the proceedings. Petitioners and Respondent are collectively referred to herein as the "**Parties**."

On January 17, 2025, a Notice of Prehearing Meeting and Hearing was served on the Parties, setting a Prehearing Meeting for January 24, 2025, and a tentative Hearing date of February 24, 2025. After the Prehearing Meeting, the Hearing Officer issued a Prehearing Order on January 27, 2025, rescheduling the Hearing to February 19, 2025.

The Petition requested a downward adjustment of rent on the basis that Respondent had failed to maintain the property in a habitable condition and/or improperly decreased Housing Services without a corresponding decrease in Rent in violation of the Community Stabilization and Fair Rent Act ("**CSFRA**"). Specifically, the Petition was based on the following conditions: (1) moisture in the bedrooms of the Affected Unit; (2) mold and/or mildew in the bedrooms and bathroom of the Affected Unit; (3) improper replacement and sealing of windows in the Affected Unit; (4) various plumbing issues, including sewer pipes clogging, bathtub failing to drain properly, and toilet clogging; (5) electrical circuit failures; (6) excessive noise from the water heater; and (7) a wall furnace that was not working. (Petitioners' Exhibit #1.)

On January 24, 2025, a Prehearing meeting was conducted by the Hearing Officer via videoconference. The Hearing Officer and the Parties discussed the administrative procedure that would be followed at the Hearing, the burden of proof, and whether additional evidence would be requested. After the Prehearing meeting, the Hearing Officer issued a Prehearing Order on January 27, 2025, granting the Parties until February 7, 2025 to submit documents requested by the Hearing Officer and to submit witness lists.

The hearing was held on February 19, 2025. After the Hearing, the Hearing Officer issued a Post-Hearing Order requesting further evidence from the Parties on or before March 3, 2025. The Hearing Officer issued an Order on March 7, 2025, closing the Record as of March 6, 2025.

The Hearing Officer issued a decision on April 17, 2025 ("**HO Decision**"). The HO 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." CSFRA Regulations Chapter 5, Section H.5.a. provides that the Committee "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.

A timely appeal of the HO Decision was received from the Respondent on May 2, 2025. (**Appeal**").

II. Summary of Hearing Officer Decision

The Hearing Officer issued a detailed decision on the Petition summarizing the evidence (including the testimony presented at the Hearing) 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 water intrusion and mold and mildew conditions in the bedrooms of the Affected Unit 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 eight-and-one-half percent (8.5%) percent rent reduction for their bedroom and their son's bedroom and a seventeen percent (17%) rent reduction for their daughter's room, or total rent refund of $6,255.56, for the periods from December 27, 2023 through May 31, 2024 and November 1, 2024 through January 4, 2025 (the date on which Petitioners vacated the Affected Unit).

2. Petitioners demonstrated by a preponderance of the evidence that there was mold growth and defective caulking in the bathroom of the Affected United and that the Respondent failed to address the mold and caulking in the bathroom in an appropriate manner which would have prevented the mold from growing back after cleaning. As a result, they were entitled to a two-and-one-half percent (2.5%) rent reduction, or total rent refund of $1,366.21, for the period from late August 2023 through January 4, 2025.

3. Petitioners demonstrated by a preponderance of the evidence that the plumbing in the Affected Unit was not maintained by Respondent as required by California law. As a result, they were entitled to a seven percent (7%) rent reduction, or total rent refund of $1,364.57, for the period from May 13, 2023 through November 5, 2023.

4. Petitioners demonstrated by a preponderance of the evidence that the electrical circuitry in the Affected Unit was insufficient, creating a potential safety hazard, and that Respondent failed to remedy the condition in a reasonable time after being notified by Petitioners. As a result, Petitioners were entitled to an eight-and-one-half percent (8.5%) rent reduction, or total rent refund $4,915.08, for the period from August 3, 2023 through January 4, 2025.

5. Petitioners did not meet their burden of proof with respect to the wall heater because they failed to provide notice to the Respondent of the condition as required the CSFRA. Therefore, they were not entitled to any rent reduction for this condition.

6. Petitioners demonstrated by a preponderance of the evidence that Respondent delayed in addressing the excessive noise caused by the water heater and provided inadequate repairs, resulting in a decrease in Housing Services. As a result, they were entitled to a seventeen percent (17%) rent reduction, or total rent refund of $372.35, for the 20-day period from April 26, 2023 through May 16, 2023, when their daughter could not sleep in her bedroom due to the noise.

7. Petitioners' claims that they were evicted by Respondent in retaliation for their complaints about the conditions in the Affected Unit are outside the scope of the Hearing Officer's jurisdiction. Therefore, the Hearing Officer was not able to and did not consider or decide this issue.

III. Appealed Elements of Hearing Officer Decision

CSFRA Regulations 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 the following five issues on Appeal:

A. The Hearing Officer improperly awarded rent reductions for issues that were not pled in the Petition – excessive noise from the water heater and bathtub clogging. Awards based on unpled claims violate both due process and the CSFRA Regulations, which require tenants to specify the conditions forming the basis of their Petition.

B. The Hearing Officer erred or abused her discretion in awarding a rent reduction and refund based on mold and moisture in Petitioners' unit. The Petitioners did not report the mold issue until eight months into their tenancy, and all evidence was anecdotal. The record demonstrates that Respondent took reasonable steps to investigate and remediate the issue after it was reported, including roof repairs, cleaning gutters, and multiple inspections.

C. The Hearing Officer erred or abused her discretion in awarding an ongoing rent reduction based on sewer and drainage conditions. The main sewer backup on November 5, 2023 was resolved via hydrojetting, and the affected backyard was cleaned and sealed. There were no credible complaints of sewer issues thereafter. Petitioners acknowledged that toilet clogging largely subsided after the toilet was replaced in July 2024. Petitioners admitted that they stopped reporting the clogging of that bathtub after August 2023 and simply used Drain-o to address any clogs. A tenant's decision to stop reporting problems precludes a finding of continuing habitability violations.

D. The Hearing Officer erred or abused her discretion by awarding a rent reduction of 15 percent for the electrical circuit failures. The CSFRA does not permit rent reductions based on stale complaints that were not pursued or corroborated.

E. The Hearing Officer's rent reductions were arbitrary and excessive. The Hearing Officer assigned separate rent reductions for multiple conditions, many of which were interconnected or intermittent. There is no clear explanation of how the Hearing Officer calculated the value of each condition's impact on rent or why the cumulative financial award should approach that magnitude. Finally, if not entirely reversed, the rent reductions awarded should be significantly reduced based on the limited duration of the cited issues.

IV. Decision Regarding Appealed Elements

A. The Hearing Officer's Award for Issues That Were Not Listed in the Petition Did Not Violate Due Process or the CSFRA Regulations.

The Hearing Officer's consideration of conditions that were not listed in the Petition does not violate the guarantee of due process or the CSFRA Regulations because the Respondent waived notice and was afforded an opportunity to present arguments and evidence related to those conditions.

For one, the Hearing Officer's consideration of these issues also does not violate the CSFRA Regulations. While the CSFRA Regulations Ch. 4, Sections (C) through (F) do establish certain requirements for the filing of downward adjustment of rent petitions based on failure to maintain a habitable premises or decrease in Housing Services, neither the regulations nor the CSFRA itself forecloses a tenant from either further elaborating on the issues raised in the petition or raising additional issues at the hearing. In fact, the CSFRA provides that "No Petition for Individual Rent Adjustment, whether upward or downward, shall be granted unless supported by the preponderance of the evidence *submitted prior to and at the hearing*." (CSFRA § 1711(h).) The cited language indicates what a tenant submits as part of the petition prior to the hearing does not constitute the exclusive basis for the Hearing Officer's review.

The Hearing Officer's consideration of the excessive noise from the water heater and the clogging of the bathtub also did not violate the Respondent's procedural due process rights.

Both the federal and state Constitutions require the government to afford persons due process before depriving them of "life, liberty or property." (US Const., 14th Amend.; Cal. Const., art. I, § 7.) The most fundamental requirements of procedural due process are adequate notice and an opportunity to be heard before a fair and impartial hearing body. (*Horn v. County of Ventura* (1979) 34 Cal.3d 605, 612.) The requirements of due process extend to administrative adjudications. (*Id*.) Administrative adjudications, or quasi-judicial proceedings, involve the application of a rule or standard to the specific facts of an individual case to determine specific rights or take specific actions under existing law. (*Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 519.) Undoubtedly, hearings on Individual Rent Adjustment Petitions are considered quasi-judicial proceedings that require a guarantee of due process. In administrative proceedings where important decisions turn on questions of fact, such as hearings on Individual Rent Adjustment Petitions, the opportunity to be heard must include an opportunity to confront and cross-examine adverse witnesses. (*Manufactured Home Communities, Inc. v. County of San Luis Obispo* (2008) 167 Cal.App.4th 705, 711.)

The record demonstrates that Petitioners did raise these issues in their pre-hearing petition submissions. While the workbook does not specifically list the water heater, the Petitioners submitted evidence with their petition forms – namely, an undated video of the water heater making noise (Petitioners' Exhibit #38) – that should have put the Respondent on notice that this issue may arise at the hearing. The water

heater is also an issue identified in the City's Multifamily Housing Program Inspection Report that the Hearing Officer directed Respondent to submit. (Respondent's Exhibit #4 ("Due to the use of foil tape used to hold the exterior metal water heater cabinet door closed the proper installation of the water heater could not be verified, remove the foil tape, and find a method that will allow this door the remain attached and easily opened. Note: The resident stated that the tape was applied due to the metal door made [*sic*] excessive noise during the normal operation of the water heater.").) As far as the bathtub clogging, this issue was also raised by the Petition, which identified "plumbing" and "sewer" issues generally. (Petitioners' Exhibits #1; 2.) It is worth noting that in accordance with this characterization of the issues by Petitioners in the Petition, the Hearing Officer considered the bathtub clogging as one aspect of the overall plumbing and sewer line issues. (*See, generally,* HO Decision at pp. 32-35.)

Moreover, Respondent waived any objection to the Hearing Officer's consideration of these issues. At the beginning of the Hearing, the Hearing Officer listed off the issues that were raised in the petition and would be considered at the Hearing – including the bathtub was not properly draining and the excessive noise from the water heater – and asked the Parties to confirm that these were the issued raised by the petition. Respondent could have objected to the consideration of the two issues at such time. Instead, both Parties – including counsel for Respondent, Ms. Chubey – confirmed that these were the issues raised by the petition and to be heard at the hearing. (Hearing Recording at 00:07:41 – 00:08:25.) The Hearing Officer specifically asked, "Does everyone agree that those are the issues raised in the petition?" To which, Ms. Brooksfox and Ms. Chubey both responded "Yes." (*Id.*)

Most importantly, Respondent was afforded (i) an opportunity to present evidence on these conditions and (ii) an opportunity to cross-examine the Petitioners on their testimony regarding these issues at the hearing. Respondent was also afforded an additional opportunity to address the bathtub drainage issue after the hearing. The Hearing Officer's Post-Hearing Order requests that the Respondent provide: "Documents evidencing that a licensed plumber inspected the drain line for the bathroom sometime after 11/25/2024, as required by the Mountain View Fire and Environmental Protection Division Inspection Report, dated 11/25/2024 (the 'MFH Inspection Report')." (Hearing Officer's Exhibit #8.) Respondent availed itself of this opportunity by submitting an invoice from Triple "A" Plumbing dated February 20, 2025 that demonstrated the issue had been addressed. (Respondent's Exhibit #10.)

For the foregoing reasons, the Hearing Officer's consideration of the excessive noise from the water heater and bathtub clogging did not violate the CSFRA regulations or the Respondent's right to procedural due process.

B. The Hearing Officer Did Not Err or Abuse Her Discretion by Granting Petitioners a Rent Reduction for the Moisture/Mold, Plumbing, or Electrical Issues in the Affected Unit.

Respondent also argues that the Hearing Officer erred or abused her discretion in awarding a rent reduction for the following conditions: (1) moisture, mold and mildew in the Affected Unit; (2) sewer and drainage issues in the Affected Unit; and (3) insufficient and unsafe electrical circuitry in the Affected Unit.

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 valuable 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.

1. *There is Substantial Evidence in the Record to Support the Hearing Officer's Decision Regarding the Mold and Moisture Issues in the Affected Unit.*

Respondent argues that the Hearing Officer erred or abused her discretion in awarding a rent reduction and refund based on the mold and moisture issues in the Affected Unit. Respondent puts forth the following in support of its argument:

- Petitioners did not report mold until December 2023, nearly eight (8) months into their tenancy.

- All evidence of moisture, mold and mildew was anecdotal – namely anecdotal descriptions and photographs of window condensation. There were no objective findings of mold. Petitioners' testimony regarding visible mold growth was contradicted by Respondent's walkthrough and City Inspector's acknowledgement that mold growth was minor.

- Respondent took reasonable steps to investigate and remediate, including roof repairs (completed in March 2024), cleaning gutters, and multiple inspections. Petitioners actively refused to allow entry between October and December 2024, hampering further mitigation.

Respondent seemingly asserts that the fact that Petitioners did not report the mold until eight months into their tenancy is evidence that the issue was not serious or persistent. In fact, Petitioners' testimony at the hearing was that the mold and moisture issues in the bedrooms of the Affected Unit coincided with the winter months. (HO Decision at p. 7 ("Ms. Brooksfox said that in the spring and summer, the moisture lessened, and the smell of mold was not as bad.").) To account for the fact that the mold and moisture in the bedrooms came and went with the rainy season, the Hearing Officer limited the rent reduction awarded to Petitioners to the periods from December 27, 2023 through May 31, 2024 and November 1, 2024 through January 4, 2025. (HO Decision, p. 29 ("Precipitation for the relevant months occurred from December 2023 through May 2024 and from November 2024 through January 2025. The calculation of the rent reduction shall be limited to the rainy months.").)

Next, Respondent argues that the Hearing Officer's conclusion that it was "more likely true than not true" that moisture and mold were present in the unit was supported only by the tenant's anecdotes. Respondent states, "The Hearing Officer credited subjective tenant descriptions while disregarding evidence from Mr. Martin and Ms. Jones that the moisture resulted from condensation due to lack of ventilation – not roof leaks or defective windows." (Appeal, p. 4:2-4.) Respondent's contention, then, appears to be that the Hearing Officer should have afforded greater weight to the testimony of Respondent's representative than to the Petitioners' testimony.

Even if Petitioners' testimony of the conditions were merely anecdotal, the fact that they were supported by photographic evidence of moisture and mold is a valid reason to afford these descriptions greater weight. (Petitioner's Exhibits #39-63.) Additionally, Petitioners' photographs and testimony were also corroborated by the City's MFH Inspection Report, which made the following references to mold/moisture issues:

> "The bathroom has signs of some mold growth, have this room sanded, primed, and painted with mold resistant paint and remind the resident that this bathroom does not have a mechanical ventilation fan due to its age of construction that the door and window must remain open after use regardless of the weather to help prevent mold growth.
> …
> Bedrooms shows signs of weather-related water damaged, this damage in at the upper portion of the wall where it meets the ceiling, during this inspection the right-hand bedroom wall has what appeared to be water/moisture dripping down the wall surfaces. Note: The above violation may be related to the roof gutters are full of leaves and debris and may be caused the rain from the roof to overflow leading the water entering the building envelope and the heater not working (listed below). Have a licensed roofing contractor inspect the roof and gutter system to verify that both are in working condition. The left-hand bedroom has loose/damaged ceiling material where it meets the wall near the door.
> ..
> Soffit vent screens were found damaged, inspected, and replace all damaged soffit vent screens.
> …
> Resident stated that the wall furnace in the living room was not working, This may have contributed to the moisture/mold complaint." (Respondent's Exhibit #4.)

Perhaps most significantly, testimony from Respondents' representatives on this issue was inconsistent at best. Ms. Lim testified that Mr. Garcia had told her the roofer, California Rainguard, had inspected in December 2023 and recalked the windows "so the moisture problem was taken care of." (HO Decision at p. 10.) She also stated that when she accompanied the vendor to look at the windows, "she saw some moisture on them" but she "did not see any discoloration or soft spots on the walls and did not see any mold." (*Id.*) Ms. Jones testified that when Petitioners complained in September 2024, she "reiterated that when moisture appears on windows, it is typically due to lack of ventilation" but she also admitted "she did see in the Affected Unit that there was evidence of a leak from above." (HO Decision, p. 12.) She further stated that the exterior soffit vents had been painted over and "were replaced as a preventive measure because Mr. Martin said that they could cause moisture intrusion." (HO Decision, p. 13.)

Lastly, Respondent argues that they took reasonable steps "to investigate and remediate" the issue, and that Petitioners prevented further efforts by Respondent by refusing entry between October and December 2024. The testimony at the hearing from both Petitioners and Respondent's own

representative – Ms. Jones – established that Petitioners only denied entry on one occasion immediately preceding the City's inspection. (Hearing Recording at 03:54:02-03:54:31.) The reason that they denied entry was to preserve the conditions of the unit for the City's inspection. Shortly thereafter, on December 4, 2024, Petitioners allowed Respondent entry to address the issues identified by the City's MFH Program inspection report. (HO Decision, p. 36.) Petitioners' single denial of entry in later 2024 does not constitute sufficient grounds to excuse Respondent's failure to address the moisture/mold issue that was first reported a year prior.

Moreover, 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 CSFRA requires that a landlord not just address conditions of which it is notified but actually correct any habitability issues. (CSFRA § 1710(b)(2) ("A Tenant Petition filed pursuant to this Subsection 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.").) 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.") So long as the condition persists and the Tenant demonstrates that the Landlord knows and has had a reasonable chance to correct, the Tenant will prevail under CSFRA § 1710(b).

On Appeal, Respondent fails to put forth any new authorities that would support its argument that the Hearing Officer erred or abused her discretion by finding that its efforts – namely cleaning the gutters and resealing the windows in the Affected Unit – were insufficient to correct the issue and therefore Petitioners were entitled to a rent reduction for the unresolved. mold/moisture issues.

Thus, the Hearing Officer's order requiring Respondent to refund Petitioners for the moisture and mold issues in the Affected Unit was supported by substantial evidence in the record and complied with the applicable law.

2. *There is Substantial Evidence in the Record to Support the Hearing Officer's Conclusion that the Sewer and Drainage Issues Constituted a Habitability Violation.*

Respondent also argues that the Hearing Officer erred or abused her discretion in awarding a rent reduction for the sewer and drainage issues that impacted the Affected Unit. The main tenet of Respondent's argument is that "A tenant's decision to stop reporting problems precludes a finding of continuing habitability violations." (Appeal, p. 4:17-18.) Respondent contends that the following facts support its argument that the issue had been adequately resolved;

- The main sewer backup on November 5, 2023 was resolved via hydrojetting, and the affected backyard was cleaned and sealed. There were no credible complaints of sewer issues thereafter.

- Petitioners acknowledged that toilet clogging largely subsided after the toilet was replaced in July 2023.

- Petitioners admitted that they stopped reporting the clogging of the bathtub after August 2023 and simply used Drain-O to address any clogs.

While a sewer backup was addressed with hydrojetting on November 5, 2023, this was five or six months after Petitioners first reported lingering sewer odors in their bathroom and in the hallway and weak toilet water pressure. (HO Decision, p. 32.) It was also three months after Respondent's own work orders show that on August 3, 2023, Petitioner reported that the bathtub had been clogged for some time. (Respondent's Exhibit #8.) Respondent itself submitted evidence that that there had been problems with the sewer pipe prior to the November 5, 2023 backup reported by Petitioners. (Petitioner's Exhibit #10.) Invoices from Respondent's vendor, therefore, establish that the sewer issues predated Petitioners' tenancy and had to be repeatedly addressed. (*Id.*) Despite this history, Respondent provided "no explanation as to why the sewer pipe was not investigated until there was an active backup in November 2023 when Petitioners complained of a sewer odor in May 2023, and…also complained about clogs in the toilet and the bathtub." (HO Decision, p. 33.)

The CSFRA requires that a tenant demonstrate that the Landlord was provided with reasonable notice, and that the Landlord was provided with "opportunity to correct the conditions…." (CSFRA § 1710(b)(2).) Contrary to Respondent's assertion, nothing in the language of the CSFRA requires a tenant to continue notifying and continue providing the landlord with opportunities to correct where the landlord has failed to take any action or indicated that they would not take any further action upon receipt of prior notifications. In fact, if the tenant's obligation to notify and provide an opportunity to correct were read to be continuous in this manner, then a tenant would never be able to make a claim for rent reduction under the terms of the CSFRA. Therefore, the Hearing Officer correctly concluded that the Petitioners had satisfied the requirements of the CSFRA to provide notice and an opportunity to correct.

Even if the CSFRA did require the Petitioners to continue reporting these issues, such a requirement would not change the analysis related to the sewer and plumbing problems. Given the history of issues with the sewer pipe, it was reasonable for the Hearing Officer to assume that the Petitioners' concerns regarding the odor, low water pressure, and clogging were related, and to consider these issues cumulatively. As such, the record demonstrates that Petitioners did, in fact, consistently report "sewer pipe related problems" throughout the period from April 19, 2023 through November 5, 2023. Accordingly, the Hearing Officer's decision grants Petitioners a rent reduction for all sewer-related issues for the period from May 13, 2023 through November 5, 2023. (HO Decision, p. 35.)

In conclusion, the Hearing Officer did not err or abuse her discretion in awarding Petitioners a rent reduction based on the various sewer and drainage issues.

3. There is Substantial Evidence in the Record to Support the Hearing Officer's Award of a Rent Reduction for the Electrical Circuit Failures.

Respondent similarly argues that the Hearing Officer erred or abused her discretion in awarding a rent reduction based on the electrical circuitry issues in the Affected Unit because Petitioners stopped reporting the issues after August 29, 2023, and therefore Respondent was not provided with notice or a reasonable opportunity to evaluate or correct the ongoing issues. (Appeal, p. 4:22-5:1.)

However, as the Hearing Officer summarized:

> "Ms. Brooksfox first notified Mr. Garcia generally about the circuit breakers shutting down by email of April 19, 2023. On May 13, 2023, she sent another email specifically discussing appliances triggering the circuit breaker if the microwave was in use. On June 9, 2023, Mr. Garcia sent Ms. Brooksfox an email stating that "[w]e are adding a heater in the back room and a dedicated kitchen outlet to add more electrical capacity so that you can use appliances that require more power without triggering the same circuit. It is also to alleviate some of the power consumption on the original circuit." On August 3, 2023, a work order was submitted saying that the power was shutting down in the kitchen when Petitioners used an appliance like the coffeemaker and the microwave. The work order said that Mr. Sanchez investigated, said that he could not replicate the problem and told Ms. Brooksfox to use a different outlet for the coffeemaker. On August 29, 2023, Ms. Brooksfox sent two emails to Mr. Sanchez about the circuits in the kitchen still shutting down despite the installation of the additional circuit. There are no work orders or invoices indicating that anything else was done to remedy the problem, and Ms. Brooksfox said that Petitioners worked around the circuit problem from then on." (HO Decision, pp. 35-36.)

Based the evidence in the record, Respondent either failed to correct and/or failed to respond the last two times that Petitioners notified them of the electrical issues. As explained in the prior section, the CSFRA does not require a tenant to continue notifying and providing opportunities to correct, particularly where the landlord has indicated that they do not intend to take further action. This comports with the Hearing Officer's conclusion regarding the rent reduction: "Respondent made efforts to address this issue prior to August 3, 2023. On August 3, 2023, the effort to deal with the electrical problem – telling Petitioners to use a different outlet – was ineffectual, and the response to complaints thereafter resulted in nothing being done. Therefore, the rent reduction will commence as of August 3, 2023." (HO Decision, p. 36.)

Nonetheless, Respondent seemingly argues that Petitioners should not have been awarded a rent reduction because they waited too long to assert their claim related to the electrical circuitry issues. The Appeal states: "The CSFRA does not permit rent reductions based on stale complaints that were not pursued or corroborated." (Appeal, pp. 4:28-5:1.) Respondent's argument, in effect, seeks to assert an equitable defense to Petitioners' claim. For one, Respondents did not raise any equitable defenses at the Hearing. Moreover, a Hearing Officer appointed by the Committee to conduct a hearing upon an individual rent adjustment petition authorized by the CSFRA is not a court of equity. While the Hearing Officer may consider legal defenses, neither the CSFRA nor the Regulations authorize a Hearing Officer to fashion an equitable remedy, except in one limited circumstance.[1] Since the circumstances here do not satisfy the

[1] CSFRA Regulations, Ch. 6, sec. J.4.a. provides: "Where there is credible evidence of repeated or continued violations of provisions of the CSFRA or the Regulations by any party, the Hearing Officer may fashion an equitable remedy, including, but not limited to, submittal of rent records and receipts on a quarterly basis." This section applies only where all of the following conditions are met: (1) a decision has been issued on a petition, (2) the decision has become final, (3) one or more of the Parties requests a compliance hearing to resolve an ongoing dispute among the parties as to whether there has been compliance with the decision, and (4) there is credible evidence of repeated or continued violations of the CSFRA or the Regulations by one of the parties.

conditions outlined by CSFRA Regulations, Ch. 6, sec. J.4.a., the Hearing Officer could not have considered Respondent's equitable defense even if it had been raised at the Hearing.

Based on the foregoing, the Hearing Officer did nor err or abuse her discretion in concluding that Petitioners were entitled to a rent refund for electrical circuit issues in the Affected Unit.

C. The Hearing Officer's Rent Reductions Were Not Arbitrary or Excessive Because She Applied a Consistent Methodology Throughout Her Decision.

Lastly, Respondent argues that the amounts of the rent reductions that the Hearing Officer awarded were arbitrary and excessive.

Firstly, Respondent claims that the Hearing Officer assigned separate rent reductions for multiple conditions, many of which were interconnected or intermittent. This is inaccurate. In fact, the Hearing Officer only awarded one rent reduction for related issues. For instance,

- The Hearing Officer awarded a 34 percent rent reduction for the moisture intrusion, mold, and faulty weatherproofing (windows) in the bedrooms of the Affected Unit. (HO Decision, pp. 29-30.)

- The Hearing Officer awarded a 2.5 percent rent reduction for the mold in the bathroom and the faulty caulking around the bathtub. (HO Decision, pp., 31-32.) In doing so, the Hearing Officer specifically noted: "Given that these problems seem to be interrelated in that the mold was emanating from the backsplash caulking, the rent reduction for them will not be cumulative, but will be calculated as totaling one year, four months, and three days." (*Id.*)

- Similarly, the Hearing Officer awarded a 7 percent rent reduction for the sewer pipe backup and toilet and bathtub clogging issues. (HO Decision, pp. 34-35.)

Respondent further argues that there is no clear explanation of how the Hearing Officer calculated the value of each condition's impact on rent or why the cumulative financial award should approach that magnitude. Again, this is untrue. The fundamental presumption underlying the Hearing Officer's calculations is explained as such: "The Affected Unit has six rooms: a living room, two bedrooms, a den which was being used as a bedroom, a bathroom and a kitchen. It is reasonable to value each room as worth one-sixth, or 17 percent, of the value of the whole." (HO Decision, p. 30.) Each of the Hearing Officer's valuations thereafter build off the basic premise that each room in the Affected Unit is worth 17 percent of the total rental value and go on to explain how the untenantable condition reduces the usefulness of the room(s) that it impacts. For example,

- "There was evidence that Petitioners' son's room and their bedroom had some water intrusion also, but they were able to use those rooms and did not present evidence of health problems or of their personal items being affected. However, since under California statutory law, they should not have been expected to live in rooms lacking basic weatherproofing, the value of each of those rooms is diminished by 50 percent of their 17 percent value, or 8.5 percent." (HO Decision, p. 30.)

- "While the mold was potentially unhealthful to Petitioners' daughter and unpleasant to the remaining occupants, they were able to use the bathroom, although bathing could be an unhealthy experience with mold emanating from the caulking. A bathroom has three functional

> elements: a sink, a toilet, and a bathtub/shower. Each of these elements are worth a third of the overall 17 percent value of the bathroom, or 5.7 percent. The shower was not completely unusable, so it is reasonable to reduce the percentage to 2.5 percent." (HO Decision, p. 32.)

As noted above, the CSFRA states that a "Tenant may file a Petition with the Committee to adjust the Rent downward ***based on a loss in rental value attributable to*** the Landlord's failure to maintain the Rental Unit in habitable condition." (CSFRA § 1710(b)(1).) Similarly, where a decrease in Housing Services is the basis of the petition, "the Tenant may file a Petition to adjust the Rent downward ***based on a loss in rental value attributable to*** a decrease in Housing Services or maintenance or deterioration of the Rental Unit. (CSFRA § 1710(c).) In this context, "rental value" may reasonably be interpreted to mean the lawful Rent for the affected Rental Unit at the time that the untenantable condition existed or Housing Services were improperly reduced or eliminated.

CSFRA Regulations Ch. 6, Section B.4 provides Hearing Officers with broad authority to render decisions on petitions. 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.) In the instant case, nothing in the CSFRA or the Regulations required the Hearing Officer to follow a certain methodology for the valuation of the common areas. Moreover, at no time during the hearing did the Respondent argue for the use of a certain alternate methodology or put forth evidence regarding the appropriate valuation of the conditions asserted. Therefore, it was reasonable and within the Hearing Officer's authority for the Hearing Officer to develop a methodology. In doing so, the Hearing Officer explained her reasoning, thereby satisfying the requirements of the CSFRA Regulations.

Finally, Respondent argues that if Hearing Officer's decision is not entirely reversed, the rent reductions awarded should be significantly reduced based on the limited duration of the cited issues. The Hearing Officer's decision already appropriately limits the time periods for which reductions are awarded. (HO Decision, pp. 30; 32; 34-35; 36-37.)

In conclusion, the Hearing Officer's valuations of the habitability conditions and reductions in maintenance were neither arbitrary nor excessive.

V. Conclusion

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

1. Petitioners met their burden of proof to demonstrate by a preponderance of the evidence that Respondent failed to maintain the property in habitable condition/decreased Housing Services and/or maintenance based on the following conditions: (1) water intrusion and mold and mildew conditions in the bedrooms of the Affected Unit; (2) mold growth and defective caulking in the bathroom of the Affected Unit; (3) defective plumbing in the Affected Unit; (4) insufficient and unsafe electrical circuitry in the Affected Unit; and (5) excessive noise caused by and inadequate repairs to the water heater in the Affected Unit.

2. The total amount owed to Petitioners by Respondent pursuant to this Appeal Decision is $14,273.78. The $14,273.78 is due and payable to Petitioners immediately. If Petitioner

does not receive the amounts owed pursuant to this Appeal Decision within thirty (30) days of this decision becoming final, 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.

3. The payments and credits to Petitioner as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.

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