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November 7, 2024

memorandum  
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To  
Mountain View Rental Housing Committee

From  
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee  
Estrella Lucero, Special Counsel to the Rental Housing Committee

RE  
Appeal of Hearing Officer's Decision Re: Petition No. C23240025

**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 failure to maintain habitable premises and a decrease in housing services. The hearing on the Petition was held on May 30, 2024. The Hearing Officer's decision was issued and served on the parties on September 23, 2024 ("HO Decision"). Tenant-Petitioner filed a timely appeal of the HO Decision on October 5, 2024.

**Table 1: Relevant Timeline**

<b><u>Date</u></b>	<b><u>Action</u></b>
November 22, 2023	RHC accepted Petition No. C23240025.
February 7, 2024	Pre-hearing telephone conference held.
February 8, 2024	Hearing Officer Order summarizing Pre-hearing conference and request for additional evidence served on parties.
February 15, 2024	Hearing Officer inspected Unit.

May 30, 2024	Hearing held and closed.
June 3, 2024	Post Hearing Order served on parties.
July 1, 2024	Hearing Record closed.
September 23, 2024	HO Decision issued and served on parties.
October 5, 2024	Appeal submitted by Appellant-Petitioner.
November 4, 2024	Tentative Appeal Decision issued and served.
November 14, 2024	Appeal hearing before the Rental Housing Committee.

The Petition requested a rent reduction on the basis that Respondent had failed to maintain the property in a habitable condition based on a dirty kitchen sink, a dirty dishwasher, broken living room blinds, mold in the kitchen and bathroom, a leak in the bathroom cabinet, a leak under the kitchen sink, bedbugs, a leak in the bathroom ceiling, and a dirty bathroom as a result of maintenance fixing the bathroom ceiling leak, and a malfunctioning stove. The Petition also requested a rent reduction on the basis that Petitioner had experienced a decrease in housing services due to Respondent's failure to provide Petitioner with a laundry card and failure to clean the Unit upon Petitioner's request at move in.

The Hearing Officer determined that Petitioner had met his burden of proof on the issues of (1) Respondent's failure to adequately clean the bathroom after maintenance, (2) Respondent's failure to promptly repair a kitchen sink leak, and (3) Respondent's failure to promptly repair the stove. The Hearing Officer ordered a rent refund of \$787.44 for failure to maintain the Unit in a habitable condition.

The Hearing Officer also determined that Petitioner had met his burden of proof and demonstrated that Petitioner experienced a decrease in housing services due to Respondent's failure to promptly repair living room blinds. The Hearing Officer ordered a rent refund of \$10.83 for a decrease in housing services. The Hearing Officer ordered a total rent refund of \$798.27.

The Hearing Officer concluded that Petitioner had failed to meet his burden of proof about the following issues: that the dirty kitchen sink or the dirty dishwasher presented a habitability issue; that mold was present in the kitchen and bathroom; that there was an active leak in the bathroom cabinet; that bedbugs were present in the Unit; that the leak in the bathroom ceiling was not promptly repaired after Respondent received notice; that Petitioner experienced a decrease in housing services due to failure to receive a laundry card or due to Respondent failing to conduct an extra carpet cleaning upon Petitioner's request.

The Appellant-Petitioner raised the following six issues on appeal:

- A. The Hearing Officer erred in failing to consider the Respondent's allegedly illegal entry into Petitioner's Unit and Respondent's threats to evict Petitioner.
- B. The Hearing Officer erred in failing to compensate Petitioner for time spent engaging in the Hearing process.
- C. The Hearing Officer erred in failing to compensate Petitioner for damaged personal property.
- D. The Hearing Officer erred in failing to adequately consider Petitioner's evidence of bed bugs.
- E. The decision regarding the award for the damaged stove should be increased.
- F. The Hearing Officer erred in failing to compensate Petitioner for Respondent's failure to clean the carpet after Petitioner's request.

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 November 12, 2024. 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

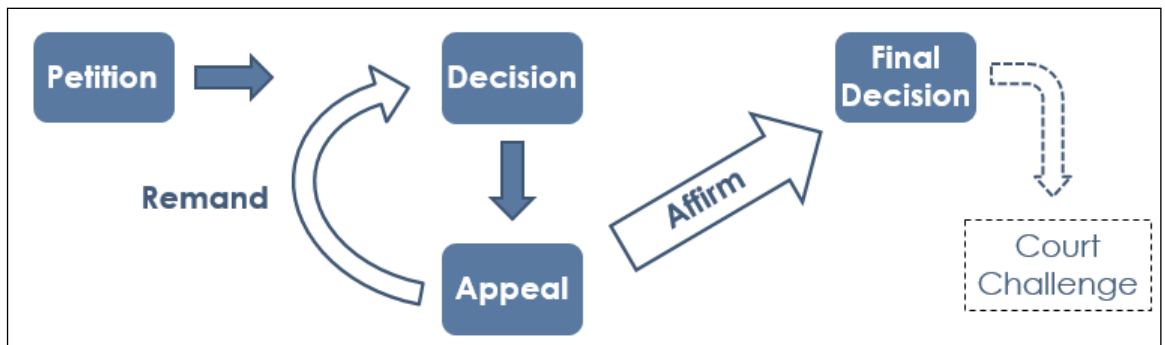
adequate. Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have 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 part and modifying the Hearing Decision in part. In summary:

- A. Appellant-Petitioner alleges in his Appeal that the Hearing Officer failed to consider the Respondent's allegedly illegal entry into Petitioner's Unit and Respondent's threats to evict Petitioner. Pursuant to the CSFRA, the Hearing Officer only has jurisdiction to decide whether a landlord has failed to maintain the unit in a habitable condition, whether there has been a decrease in housing services or maintenance in the unit, and whether a Landlord is demanding rent in excess of the lawful rent amount established by the CSFRA. See CSFRA §§ 1710(b)-(d). The Hearing Officer is not authorized to decide whether a Landlord

has violated state law in entering a Petitioner's Unit. Further, Petitioner did not include allegations about illegal entry in the Petition. The Hearing Officer did not err in failing to consider or address this issue in the HO Decision.

- B. Appellant-Petitioner alleges in his Appeal that the Hearing Officer erred in failing to financially compensate Petitioner or Petitioner's Authorized Representative, Ms. Wang, for time spent requesting services for the Unit and for time spent on the hearing process. Pursuant to the CSFRA, the remedies available for a downward petition of rent are limited to the amount of rent adjustment attributable to failure to maintain habitable premises, a decrease in housing services or maintenance, or a demand or retention of unlawful rent. CSFRA Regulations, Chapter 5 § F(2)(a). The CSFRA does not authorize the Hearing Officer to mandate financial compensation to the parties for participating in the voluntary hearing process. The Hearing Officer did not err by failing to order compensation to Petitioner or Ms. Wang for time spent in the hearing process.
- C. Appellant-Petitioner contends the Hearing Officer erred in failing to order Respondent compensate Petitioner for damaged personal property. Appellant-Petitioner threw away \$500 worth of personal property due to Respondent's failure to maintain a clean bathroom while repairing the leak in the bathroom ceiling. The Hearing Officer does not have the authority to issue broad equitable remedies. Pursuant to the CSFRA, the remedies available for a downward petition of rent are limited to the amount of rent adjustment attributable to failure to maintain habitable premises, a decrease in housing services or maintenance, or a demand or retention of unlawful rent. CSFRA Regulations, Chapter 5 § F(2)(a). The Hearing Officer may only issue equitable remedies in a narrow circumstance: when a decision has been issued, the decision is final, a party has requested a compliance hearing, and credible evidence of repeated or continued violations of the CSFRA is presented. CSFRA Regulations, Chapter 6 § J(4)(a). This narrow circumstance is not present here; therefore, the Hearing Officer did not err by failing to order Respondent compensate Petitioner for damages to personal property.
- D. Appellant-Petitioner argues that the Hearing Officer did not adequately consider Petitioner's evidence of bed bugs. The burden of proof is on Petitioner, and Petitioner must convince the Hearing Officer of their arguments by a preponderance of the evidence. While Ms. Wang provided some evidence of being bitten by bed bugs (Ms. Wang's testimony and pictures of Ms. Wang's ankles), Respondent provided evidence from a pest control company that no bed bugs were found in the Unit. In the HO Decision, the Hearing Officer describes that she was not convinced by Ms. Wang's evidence that the Unit was experiencing an ongoing bed bug issue. For example, Ms. Wang did not provide any expert testimony or evidence that could confirm whether the bites were from bed bugs, and Ms. Wang did not give any notice to Respondent about bed bugs until the Petition was filed on October 23, 2023. The Hearing Officer properly

exercised her discretion and did not err in finding no concrete evidence of bed bugs and therefore did not order any corresponding decrease in rent for this issue.

- E. Appellant-Petitioner argues the award for a malfunctioning stove should be increased. Petitioner notified Respondent on September 6, 2023, about the Unit's malfunctioning stove. Inspector Jim Olson ("Mr. Olson") noted in his February 15, 2024, inspection that the stove should be repaired. Evidence in the hearing record is not conclusive as to when or whether the stove has been repaired. Respondent testified that all of the repairs noted in the February 15, 2024, inspection were made in March. Evidence in the hearing record shows that Mr. Olson attempted to schedule a follow-up inspection to determine whether the repairs had been made, but Petitioner did not allow entry. Mr. Olson informed the Respondent to inform Petitioner that if entry is not allowed, Mr. Olson would consider the repairs completed. Respondent informed Petitioner on April 16, 2024, that all repairs were considered complete unless a follow up inspection could be made. Appellant-Petitioner did not respond to the April 16, 2024 correspondence. Appellant-Petitioner in his Appeal argues the stove has yet to be repaired as of October 5, 2024.

The Hearing Officer determined that Petitioner was without a functioning stove from September 6, 2023, to March 21, 2024. However, given that Respondent testified that repairs were made in March but provided Petitioner notice on April 16, 2024 that repairs would be considered final if a reinspection was not allowed, and given that the hearing record does not provide additional evidence that Petitioner ever responded to the April 16, 2024 notice, the Tentative Appeal Decision determined that the appropriate period of time that Petitioner was without a functioning stove is from September 6, 2023, to April 16, 2024. Instead of awarding Petitioner \$441.20 for the malfunctioning stove, the Petitioner should be awarded \$498.27, calculated as follows:

Petitioner is entitled to a downward rent adjustment covering the period from September 6, 2023, to April 16, 2024, or a period of 7 months and 10 days. Petitioner would be entitled to a downward rent adjustment of \$498.27  $((\$2,195.00 \times .031^1) \times 7) + (((\$2,195.00 \times .031)/31) \times 10)$ .

- F. Appellant-Petitioner argues that Hearing Officer failed to compensate Petitioner for Respondent's failure to clean the carpet upon Petitioner's request. However, Petitioner failed to meet his burden of proof that the state of the carpet rose to the level of an uninhabitable condition. The Hearing Officer found that Respondent provided evidence that the carpet was cleaned prior to Petitioner's move in, but perhaps not to Ms. Wang's cleanliness standard. Because regular carpet cleaning

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<sup>1</sup> Hearing Officer determined the stovetop represented 12.5% of the total 25% value of the kitchen, amounting to 3.1% of the total monthly rent. The value of the stove determined by the Hearing Officer was not contested by the Appellant-Petitioner, only the period of time in which the rent reduction should be applied.

was not offered at the Unit, the failure of Respondent to provide an extra cleaning could not be classified as a "housing service" under the CSFRA. By failing to demonstrate a decrease in housing services, Petitioner is not entitled to a reduction in rent, a rent refund, or any other type of compensation from Respondent for Respondent's failure to conduct an additional carpet cleaning.

**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.

<b>Schedule of Appeal(s) of Hearing Decisions(s)</b>	
<ul style="list-style-type: none"> <li>Public Comment Period applicable for all Appeals on the agenda</li> <li>Appeal Hearing (CSFRA Petition Nos. C23240030 and C23240031)</li> </ul>	
Staff Report & Presentation	
Appellant-Petitioner Presentation of Argument	10 minute maximum
Respondent-Landlord Presentation of Argument	10 minute maximum
Appellant-Petitioner Presentation of Rebuttal	5 minute maximum
Respondent-Landlord Presentation of Rebuttal	5 minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Petitioner	
RHC Question and Answer with Respondent-Landlord	
RHC Deliberations and Decision	
<ul style="list-style-type: none"> <li>Conclude Agenda Item</li> </ul>	

**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

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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 the November 14, 2024, RHC meeting.

**ATTACHMENTS**

1. Tentative Appeal Decision for Petition No. C23240025 (November 4, 2024)
2. Decision of Hearing Officer (September 23, 2024)
3. Appellant-Petitioner Appeal of Decision (October 5, 2024)
4. Respondent-Landlord Answer to Tentative Appeal Decision (November 7, 2024)