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October 24, 2024

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 Nos. C23240030 and C23240031

memorandum
confidentiality

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 two tenant petitions for downward adjustment of rent ("Petitions") based on unlawful rent and failure to maintain habitable premises. These Petitions were formally consolidated with two other tenant petitions from a neighbor located in a different unit at the same property.¹ The consolidated hearing on the Petitions was held on March 11, 2024. The Hearing Officer's Decision was issued on September 19, 2024 ("HO Decision") and served on the parties on September 20, 2024.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
January 12, 2024	RHC accepted Petition Nos. C23240030 and C23240031.
February 5, 2024	Notice of Consolidation of Petitions served to parties.
February 23, 2024	Pre-hearing telephone conference held.

¹ This staff report and appeal only concerns the Petitions filed related to Unit #35.

February 29, 2024	Summary of Pre-hearing Conference Call and Order served on parties.
March 11, 2024	Hearing held and closed.
March 15, 2024	Post Hearing Order re: Additional Evidence Submissions served on parties.
April 1, 2024	Hearing Record closed.
September 19, 2024	HO Decision issued.
September 20, 2024	HO Decision served on the Landlord and Tenant.
October 7, 2024	Appeal submitted by Appellant-Tenant.
October 14, 2024	Tentative Appeal Decision issued and served.
October 24, 2024	Appeal hearing before the Rental Housing Committee.

The first Petition requested a rent reduction on the basis that Landlord had failed to maintain the property in a habitable condition based on a biting bug infestation, chemical smells, noise, and excessive dust and dirt due to construction, a spider infestation, a gap in Petitioner's front door, and an extremely stuck doorknob that made it difficult for the Petitioner to enter her apartment. The second Petition requested a rent reduction and ongoing rent reduction on the basis that, due to the habitability issues, the Landlord's 2023 rent increase was unlawful because the Landlord had issued the rent increase while being substantially noncompliant with the CSFRA.

The Hearing Officer determined that Petitioner had met her burden of proof only on the issue of the extremely stuck doorknob because Landlord had received notice of the issue and had failed, following reasonable notice, to repair the condition. The Hearing Officer ordered a 5% reduction in rent (from \$1,931.36 to \$1,834.79) until the door condition is fully corrected by the Landlord.

On each of the other habitability issues, the Hearing Officer concluded that Petitioner had failed to meet her burden of proof. Regarding the biting bug infestation, the Hearing Officer found that the Petitioner did not provide sufficient evidence of an *ongoing* bug biting problem after October 2023 when the Petitioner shared photos of her bug bites with the Landlord. On the chemical smells, noise, and excessive dust and dirt due to construction, the Hearing Officer found Petitioner had failed to meet her burden of proof that these habitability issues resulted from the Landlord's failure to maintain her Unit and the apartment's common areas. The Hearing Officer found Petitioner had met her burden of proof to demonstrate spiders and mosquitos were present in her Unit, but not to such a

degree that their presence breached the warranty of habitability. The Hearing Officer found the Petitioner had not met her burden of proof that the gap in the door was severely impacting Petitioner's use of the Unit as her residence.

As it relates to the second Petition, the Hearing Officer, for all the reasons detailed above, found that the Unit was in substantial compliance with the CSFRA's habitability requirements at the time the Landlord raised the rent. Petitioner had also raised a claim that the Landlord had raised the Unit's rent as a form of discrimination against the Petitioner, however the Hearing Officer stated that the Hearing Officer does not have jurisdiction to decide whether discrimination or retaliation motivated the Landlord to issue the rent increase. (Landlord claimed the rent increase was the 2023 annual general adjustment authorized by the CSFRA.)

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

- A. The Hearing Officer erred in excluding portions of pages 3-4 of Exhibit LL-12.
- B. The decision regarding no award for chemical smells should be reversed.
- C. The decision regarding no award for noise and excessive dust and dirt should be reversed.
- D. The decision regarding no award for the insect infestation should be reversed.
- E. The decision regarding no award for spiders and mosquitos should be reversed.

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 October 21, 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.

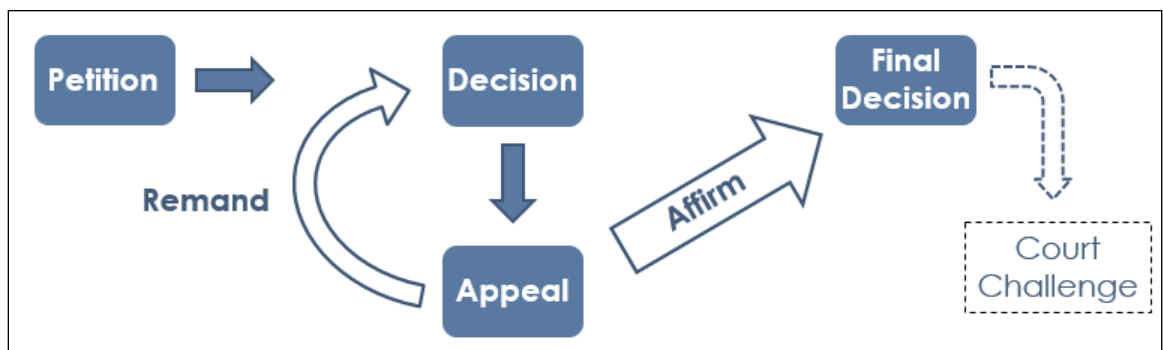
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and an appeal court: the trial court drafts a decision after weighing all the evidence, and the appeal court reviews 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 its totality. In summary:

- A. Appellant-Tenant alleges in her Appeal that the Hearing Officer erred in excluding portions of pages 3-4 of Exhibit LL-12. Tenant takes greatest issue with the Hearing Officer's *characterization* of the excluded evidence – the Hearing Officer describes the excluded evidence as dealing "with a history of conflicts by and between [Tenant], her visitors/co-residents, other residents at the complex and/or [Landlord's] personnel." Tenant emphatically asserts that the evidence contained in LL-12 is false and of a defamatory nature. Pursuant to the CSFRA regulations Chapter 5 § B.4.d, the Hearing Officer may "[r]ule on offers of proof and receive relevant evidence." Because the evidence presented on pages 3-4 of Exhibit LL-12 deals with relationships between Petitioner and other tenants and does not touch upon any of the habitability issues raised, the Hearing Officer had discretion to omit the evidence, determining that it was not relevant to the issues that formed the basis of the Petition. Although Tenant alleges the Hearing Officer erred in the exclusion of certain evidence, the Tenant does not request the excluded evidence be submitted.
- B. Appellant-Tenant argues the decision regarding no award due to the chemical smells should be reversed. The Tenant did not provide Landlord notice of the unpleasant smells while the problem was occurring—the Landlord only received notice upon the filing of the initial Petition. Further, the Tenant did not provide any evidence beyond her testimony about the severity of the problem. For both reasons, the Tenant failed to meet her burden of proof by a preponderance of the evidence that the smells from construction were due to the Landlord's failure to correct an issue after reasonable notice.
- C. Appellant-Tenant argues the decision regarding no award for noise and excessive dust and dirt should be reversed. The Tenant did not provide Landlord notice of the noise and excessive dust and dirt from Landlord's construction. Tenant also did not provide sufficient evidence beyond testimony about the degree of the noise and excessive dust and dirt and how it impacted her ability to use and enjoy her Unit. For both reasons, the Tenant failed to meet her burden of proof by a preponderance of the evidence that the noise and excessive dust and dirt from construction were due to the Landlord's failure to correct an issue after reasonable notice.
- D. Appellant-Tenant contends that the decision regarding no award for the insect infestation should be reversed. The Hearing Officer found that while the Tenant had met her burden of proof to demonstrate she was suffering from a biting bug infestation from approximately September 10, 2023, to October 7, 2023, and that Landlord had received notice. However, the Hearing Officer was unable to discern whether the Tenant was still experiencing a biting bug infestation after Landlord had received notice. Tenant did not provide any evidence regarding a biting bug infestation after October 2023. The Hearing Officer compared the lack of evidence of an ongoing infestation regarding biting bugs with the evidence of an ongoing concern with spiders and mosquitos (see item E below), and Hearing

Officer concluded that Tenant had not met her burden of proof by a preponderance of evidence that Tenant was suffering a biting bug infestation that resulted from the Landlord's failure to maintain the Unit in a habitable condition.

- E. Appellant-Tenant argues that the decision regarding no award for spiders and mosquitos should be reversed. While the Hearing Officer acknowledged that the Tenant had provided testimonial and photographic evidence of the presence of at least one spider and mosquitos in her Unit, the Tenant had not met her burden of proof to demonstrate the number of spiders and mosquitos were so great that they were significantly interfering with Tenant's health or Tenant's ability to use and enjoy her Unit. The Hearing Officer acknowledged that Landlord had responded reasonably upon notice from the Tenant; Landlord had installed extra wide weather strips around the Petitioner's door and Landlord's pest control contractor sprays outside of Unit #35 which, Tenant acknowledges, has helped to significantly lessen the presence of insects.

D. Appeal Hearing Procedure

Each party to the Appeal will have an opportunity to present their arguments to the RHC and respond to the other party's presentation. As noted above, the parties are not allowed to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals. (Cal. Gov. Code § 54954.3(a).) Finally, RHC members may have questions for staff and/or the parties. The following schedule for the appeal hearing is proposed to facilitate the orderly participation of all parties.

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

- Conclude Agenda Item

FISCAL IMPACT

Adoption of the Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a Hearing Decision to the RHC (As opposed to directly appealing to the courts) is to ensure that Hearing Decisions are legally defensible, and so the appeal process to the RHC reduces the overall risk of legal liability and litigation expenses. As discussed above, the Tentative Appeal Decision recommends upholding the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

PUBLIC NOTICING

See agenda posting for October 24, 2024, RHC meeting.

ATTACHMENTS

1. Tentative Appeal Decision for Petition Nos. C23240030 and C23240031
2. Decision of Hearing Officer (September 19, 2024)
3. Appellant-Tenant Appeal of Decision (October 7, 2024)
4. Tenant Response to Tentative Appeal Decision (October 21, 2024)