

Tentative Appeal Decision  
Petitions C23240029 and C23240044

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**

**Initial Petitions**

On December 21, 2023, Tenant Cassandra Brown ("**Petitioner**") filed a petition for downward adjustment of rent ("**Petition**") (Tenant's Exhibit #1) related to the property located at 959 Rich Avenue, ██████████ Mountain View ("**Property**"). Pursuant to written notice, Petitioner's petition was consolidated for hearing purposes with two petitions filed by Petitioner's neighbor, Heidi Fadaee, the tenant at 959 Rich Avenue ██████████. The Property Owner was represented at the pre-hearing conference and the hearing by Pam Chen (Ms. Chen) and Ramiro Hernandez (Mr. Hernandez) (collectively, "**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On February 5, 2024, a notice of hearing was issued with a hearing date scheduled for March 11, 2024, at 1:00 P.M. (HO Exhibit #3).

The Petition requested a downward adjustment of rent on the bases that Respondent (1) had failed to maintain the property in a habitable condition based on an infestation of biting bugs, chemical smells, noise, excessive dust and dirt due to construction, malfunctioning electrical outlets, blocked roads and walkways to apartment amenities; (2) had improperly reduced housing services by failing to accommodate Petitioner's access to Petitioner's assigned parking space without a corresponding decrease in the rent; and (3) had demanded past-due water bill payments that amounted to an unlawful rent increase.

On February 23, 2024, a prehearing conference was conducted by the Hearing Officer via Zoom. Petitioner, Ms. Fadaee, and Respondent (through its authorized representatives Ms. Chen and Mr. Hernandez) were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing, and the Hearing Officer explained her need for the submission of additional documentary evidence to ensure she could render a full and fair decision on the Petition. A Notice of Hearing Officer's Post-Hearing Order and Post-Hearing Order re: Additional Evidence Submissions were served on the Parties on March 15, 2024. (HO Exhibit #7).

The consolidated hearing was held on March 11, 2024. The hearing record was held open until the close of business on April 1, 2024, for submission of additional evidence requested by the Hearing Officer. The Hearing Officer issued a decision on September 4, 2024. The Hearing Officer's Decision was served on the parties on September 6, 2024. The deadline for issuance of the Hearing Officer's Decision was extended due to additional time required to analyze and adequately address all the issues presented by the Petition and an unanticipated family medical emergency of the Hearing Officer.

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<sup>1</sup> This Appeal only concerns the Petitions filed related to ██████████.

## **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." Regulation 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 a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

A timely appeal of the Decision was received from the Respondent on September 23, 2024 ("**Appeal**").

## **II. Summary of Hearing Officer 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. Petitioner did not meet her burden of proof that the construction noise, chemical smells, and excessive dirt resulted from Respondent's failure to maintain the Unit and its common areas.
2. Petitioner had not met her burden of proof that there was an infestation of spiders in the Unit. Petitioner had also not met her burden of proof that the temporary blocking of a route to the laundry room arose from Respondent's failure to maintain the Unit and common areas of the apartment complex.
3. Petitioner had met her burden of proof evidencing a reduction of Unit services related to lack of access to adequate parking from September 10, 2023, to October 24, 2023, but Petitioner had not met her burden of proof that Respondent failed to timely correct the reduction in services upon receiving notice.
4. Hearing Officer lacks jurisdiction over the contractual question that the withholding of a "lease completion bonus" amounted to an unlawful rent increase; further, Respondent's tender to Petitioner of the lease completion bonus amount prior to Hearing rendered this issue moot.
5. Petitioner had met her burden of proof that beginning September 1, 2023, a biting bug infestation existed in her Unit to such a degree that it violated Civil Code Section 1941.1.
6. Petitioner had met her burden of proof that beginning in December 2022, the Unit lacked effective heat throughout the premises and this condition violated Health and Safety Code Section 17920.3 and Civil Code Section 1941.1.
7. The (1) biting bug infestation and (2) the lack of effective heat violated Health and Safety Code Section 17920.3 and Civil Code Section 1941.1 such that there was a breach of the warranty of habitability. Respondent had reasonable notice of each condition but failed to correct them despite a reasonable opportunity to do so.
8. Due to the ongoing biting bug infestation, Petitioner's rent should be reduced by \$537.50, or 25%, from her base rent of \$2,150.00 beginning September 1, 2023. Due to the failure to provide sufficient heating facilities throughout the Unit, Petitioner's rent should be reduced by \$215, or 10%, from her base rent beginning May 1, 2023. In sum, Petitioner should receive the following

downward rent adjustments: \$215 per month beginning May 2023, and a total of \$752.50 for each month beginning September 2023 until the defective conditions are fully and permanently corrected or the termination of the tenancy.

9. Respondent should refund to Petitioner a total of \$5,650.92, representing \$2,228.83 for heating issue present from May 1, 2023, to March 11, 2024 (date of Hearing) and \$3,422.08 for biting bug infestation issue present from September 1, 2023, to March 11, 2024. For the period after the Hearing where Petitioner has paid her original base rent of \$2,150, Respondent shall refund an additional \$752.50 per month.
10. If Petitioner remains at her Unit, the lawful base rent for the Unit is adjusted downward to \$1397.50 until such time as the biting bug infestation and lack of heating issue are fully and permanently corrected.

### **III. Appealed Elements of Hearing Officer Decision**

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 Tentative 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 raised the following 2 issues on appeal:

#### **A. The Decision regarding the biting bug infestation should be reversed due to (1) lack of evidentiary support; (2) error in application of Health and Safety Code Section 17920.3; (3) misapplication of *Peviani* holding; and (4) abuse of discretion.**

1. Lack of evidentiary support. Respondent argues that Hearing Officer should have weighted the evidence from the pest control companies more heavily and relied less on the Petitioner's testimony. Respondent argues the Hearing Officer's finding of an ongoing biting bug infestation is not supported by the evidentiary record.
2. Error in application of Health and Safety Code (HSC) Section 17920.3. Respondent argues that Hearing Officer misinterpreted HSC Section 17920.3 by suggesting any hazardous condition automatically violates habitability standards. Respondents argue that Petitioner's bug bites are a "discomfort" but do not rise to the level of severity that endangers health or safety.
3. Misapplication of *Peviani*. Respondent argues Hearing Officer misconstrued the case *Peviani v. Arbors at California Oaks Prop. Owner, LLC* (2021) 62 Cal. App. 5<sup>th</sup> 874, 891. Respondent argues Hearing Officer wrongly implies, through her *Peviani* quote, that "insect presence alone" could signify a violation.
4. Abuse of Discretion. Respondent argues Hearing Officer abused her discretion by ordering a 25% rent reduction. Respondent argues the rent reduction appears arbitrary and lacks sufficient justification based on the evidence.

**B. The Decision regarding the heating issues should be reversed because (1) there was no breach of habitability; (2) Respondent timely and adequately responded to heating complaints; (3) Petitioner misused the electrical outlets; and (4) the rent reduction is excessive.**

1. Breach of habitability. Respondent contends Hearing Officer misinterpreted Cal. Civil Code Section 1941.1 and HSC 17930.3 [sic] because these statutes do not require "perfect heat distribution" and that Respondent had provided evidence that the wall heater and thermostat are in working condition.
2. Respondent timely and adequately responded. Respondent argues Hearing Officer failed to adequately consider the Respondent's prompt and diligent efforts in responding to this issue.
3. Petitioner's misuse of electrical outlets. Respondent argues Hearing Officer improperly overlooked Petitioner's improper use of space heaters which contributed to electrical issues, and that such actions on the part of the Petitioner should significantly mitigate Respondent's liability.
4. Excessive rent reduction. Respondent argues the 10% rent reduction is excessive given the operational nature of the heating system.

**IV. Decision Regarding Appealed Elements**

**A. Petitioner has provided sufficient evidence to prove the existence of a biting bug infestation; the Hearing Officer did not err in applying Health and Safety Code Section 17920.3; the Hearing Officer did not misapply the *Peviani* holding; and the Hearing Officer did not abuse her discretion when determining a 25% reduction in rent.**

1. Sufficient evidence exists to support Petitioner's claim of a biting bug infestation. There is sufficient evidence in the Hearing Record to support Hearing Officer's decision that the Petitioner has been impacted by an ongoing biting bug infestation.

Respondent argues that Hearing Officer dismissed the findings of multiple insect experts who evaluated Petitioner's Unit and instead relied too heavily on Petitioner's testimony. However, Petitioner's evidence comprises more than just her testimony at the consolidated hearing. Petitioner provided witness testimony corroborating her own testimony (one witness stated he would get bit every time he would stay at her unit between August 2023 and February 2024), provided evidence of more than one visit to the doctor on account of the ongoing biting bug infestation, and multiple photos of the bug bites.

Respondent's evidence—the testimony and written inspection reports from pest control contractors—is not dispositive. While Respondent was able to provide credible testimony that the pest control contractors were not able to prove the existence of a "No See Ums" infestation, neither were the pest control professionals able to prove the *absence* of an infestation.

Absence of evidence does not mean evidence of absence. That is to say that even Respondent's own witnesses testified to the fact that "most people can't detect [the bugs] very easily" and No See Ums "are not easily detected." (Testimony of Mr. Serrato of Earls Pest Control.) In the September 21, 2023, Bed Bug Treatment and/or Inspection Report from Earls Pest Control, the findings indicate "Not Clearable" – as opposed to "Positive", a clear indication of the presence of bugs, or "No Visible Signs", an indication of the absence of bugs. Another representative of Earls Pest Control confirmed that he had not found evidence of a biting bug, but that he also agreed that it is difficult to find No See Ums when they are *present*. (Testimony of Mr. Quinones of Earls Pest Control.) Mr. Quinones expressed his belief that Petitioner was experiencing bug biting, and that he wished he could help her identify which bug may be biting her. Respondent's other pest control professional, Mr. Venter, inspected the interior of Petitioner's Unit once in October 2023 and did not find evidence of a biting bug. None of the testimony or evidence from the pest control professionals suggested that Petitioner was lying about her experience or that it was Petitioner's own failure to maintain her Unit that was the cause of her bug bites.

The burden of proof is on the tenant to prove the claims raised in a rent decrease petition, and no individual claims "shall be approved by a Hearing Officer unless supported by the preponderance of the evidence in the hearing record." (Chapter 5(G)(2)-(3).) In this case, the Hearing Officer had to weigh Petitioner's evidence that Petitioner was experiencing an ongoing biting bug infestation of some kind, with Respondent's evidence that professionals were unable to prove either the presence of or absence of No See Ums. The Hearing Officer was justified in her conclusion that Petitioner was experiencing an ongoing biting bug infestation to such a degree that Petitioner sought medical attention on a number of occasions and turned to various self-help measures to ameliorate her situation. Petitioner provided sufficient evidence to meet her burden of proof that Petitioner was experiencing a biting bug infestation, that Respondent had notice of the condition, and that Respondent—despite Respondent's responsiveness to some degree—had failed to maintain the Unit in a habitable condition.

2. Hearing Officer did not misapply Health and Safety Code Section 17920.3. In making her decision, the Hearing Officer concluded that the ongoing presence of a biting bug infestation in Petitioner's Unit violated several standards: the implied warranty of habitability, Civil Code Section 1941.1, and Health and Safety Code Section 17920.3.

Respondents argue that Hearing Officer implies that "any hazardous condition automatically constitutes a violation of habitability standards", and Respondents argue that the Hearing Officer misapplied HSC Section 17920.3(a)(12) specifically.

In reviewing the Hearing Officer's decision, Respondents imply that the Hearing Officer relied primarily or solely on HSC Section 17920.3(a)(12) when determining that Respondent's had failed to maintain Petitioner's Unit in a habitable condition. The Hearing Officer's analysis primarily relied upon compliance with Civil Code Section 1941.1 and the warranty of habitability. The Hearing Office cited to HSC 17920.3(a)(12) and the requirement that an infestation under HSC 17920.3(a)(12) must be determined by a health or code officer but then proceeds to address the violations pursuant to Civil Code

Section 1941.1 and HSC 17920.3 generally which prohibits any condition in housing that exists to an extent to endanger life, limb, health and welfare.

The Hearing Officer concludes that based on the weight of the evidence, habitability standards were not met based on Petitioner's uncontradicted evidence that she was bitten by insects on an ongoing basis and that the infestation has adversely impacted her health. Civil Code Section 1941.1 mandates that landlords keep their premises free from, among other things, vermin.

Respondents may have had a more colorable argument had the Hearing Officer relied only on HSC Section 17920.3(a)(12) as the basis for her conclusion. In this scenario, the statute clearly states that determination of an infestation of insects is "as determined by a health officer...or a code enforcement officer." But that is not the case here. The evidence of the ongoing bug biting infestation demonstrated a lack of compliance with other statutes and legal requirements. For clarity's sake, had the Hearing Officer struck her single reference to 17920.3(a)(12), she would have reached the same justifiable conclusion.

3. Hearing Officer did not rely on *Peviani*, nor did Hearing Officer misconstrue *Peviani*. The Hearing Officer references the *Peviani* case only once throughout her 35-page decision, and the Hearing Officer's decision regarding the biting bug infestation rests primarily on statutory violations and a breach of the implied warranty of habitability, not the *Peviani* case. The Hearing Officer cites the *Peviani* decision to support the premise that violations of Civil Code Section 1941.1's prohibition on vermin must be such that they provide a strong indication of a materially defective condition. In other words, the Hearing Officer acknowledges that the mere presence of vermin does not constitute a violation of the warranty of habitability or Civil Code Section 1941.1 unless it reaches a degree where it is significant. Hearing Officer and Respondents apparently both agree that, according to *Peviani*, a strong indication of a materially defective condition exists. Indeed, the Hearing Officer agrees with the Respondent's interpretation regarding the need for a shoring of a strong indication of materially defective condition in order to find violation of Civil Code 1941.1 when considering Petitioner's claims of a spider infestation.
4. Hearing Officer did not abuse her discretion in ordering a 25% reduction in rent. The Hearing Officer did not abuse her discretion in ordering a 25% reduction in Petitioner's rent due to the ongoing biting bug infestation because the Hearing Officer's decision comports with the requirements of the CSFRA.

Respondent argues that the 25% rent reduction "appears arbitrary and lacks sufficient justification based on the evidence." As outlined above, the Hearing Officer came to a justifiable conclusion about the existence of an ongoing biting bug infestation that persisted despite Respondent receiving notice and failing to correct the problem.

Petitioner requested an 85% reduction in her rent due to the bugs indicating that to the Petitioner, the presence of the biting bug infestation was a substantial impediment to her use and enjoyment of the premises. In fact, as noted in the Decisions, the Petitioner ultimately vacated the unit because of the bug problems. The Hearing Officer did not grant Petitioner's request (calling this percentage "excessive"); instead, the Hearing Officer gave considerable weight to the Respondent's response to the biting bug

infestation and reduced Petitioner's rent by 25% – the lowest reduction percentage the Hearing Officer, in her discretion, believed to be fair. Respondents argue that their "diligent efforts to address the alleged infestation, including multiple pest control inspections and ongoing communication with the Petitioner" was merely acknowledged by the Hearing Officer but was not actually factored into the rent reduction decision. To the contrary, the Hearing Officer states: "[s]election of this lower figure *is because* there was significant evidence that Respondent diligently attempted to address this problem and acted timely once it received report of the problem." (Hearing Officer Decision p. 26, lines. 10-12.)

Respondents also argue that Petitioner's actions frustrated the ability of the pest control contractors by throwing away insect traps and refusing access to the apartment to representatives from Earls in November 2023. Petitioner testified to throwing away one round of traps due to childproofing her home for a family member, and Respondents did not provide any additional evidence that points to Petitioner intentionally trying to frustrate the efforts to identify a bug. After a number of weekly visits from Earls Pest Control, Respondent refused entry to the service technicians during a November 2<sup>nd</sup> visit. There was no evidence provided that this refusal in November meant that Petitioner would never allow future technicians, nor was there evidence provided that Respondents attempted to conduct any additional follow up regarding the bug issue after the November visit until the date of the hearing, when Petitioner allowed access to the Unit. Respondent representatives did not raise this as a significant issue during the hearing.

The CSRFA provides that failure to maintain a Unit in compliance with governing health and safety building codes "constitutes an increase in Rent." CSFRA Section 1710(b)(1). Petitioner filed a Petition pursuant to the CSRFA and was able to demonstrate that the Respondent was provided notice and an opportunity to cure the conditions and thus met her burden of proof, as found by the Hearing Officer.

**B. Petitioner has provided sufficient evidence to prove a breach of habitability regarding insufficient heat; Respondent did not adequately respond to heating complaints; Petitioner did not misuse electrical outlets; and the rent reduction was not excessive.**

1. Sufficient evidence exists to support Petitioner's claim of insufficient heating. There is sufficient evidence in the Hearing Record to support Hearing Officer's decision that the Petitioner has been impacted by a lack of heat throughout Petitioner's Unit.

Respondent argues that the Hearing Officer misapplied the habitability standard in Civil Code Section 1941.1 and Health and Safety Code Section 17920.3. Respondent argues that neither of the aforementioned code systems require landlords to require "perfect heat distribution throughout ever room." True the two code sections do not include this exact language; what the codes do require is "adequate" heating (HSC Section 17920.3(a)(6)) that is "maintained in good working order." (Civil Code Section 1941.1(a)(4).) Respondents do not present a legal or factual argument that a heating system that fails to provide heat Petitioner's bathroom or bedroom in her Unit should still be considered "adequate". Also note that pursuant to Housing and Community Development Regulations—which apply to dwelling units offered for rent—require that the heating facilities must be functioning "*in all habitable rooms*" (Cal. Code Regs. Tit. 25 Section 34(a)), including the bedroom.

Respondent provided evidence—in the form of an invoice from Monteros Heating and Air (LL-18)—that the wall heater is "designed to heat the room its installed in as the living room." The Respondent's evidence shows the heating system, as designed, heats up the living room, but does not adequately heat up the bedroom or bathroom. Respondents did not deny that they gave Petitioner a space heater, arguably admitting that Respondent believed Petitioner's heating facilities were inadequate to provide sufficient heat.

Respondent's testimony confirmed that one potential solution to the lack of adequate heating was to move the thermostat to the bedroom. However, Respondent stated that they would not be pursuing this solution because hiring an electrician to relocate the thermostat "would not be an efficient way of doing this." (Testimony of Mr. Hernandez). The Petitioner is faced with having insufficient heat in two of her rooms or having excessive heat in one of her rooms—and Respondents have provided no evidence as to why either scenario meets the legal standard of adequate heating facilities.

2. Respondent did not adequately respond to heating complaints. Respondent responded in a timely manner to Petitioner's complaints, but Respondent did not respond adequately to Petitioner's heating issues.

Respondent argues that Hearing Officer failed to consider Respondent's "prompt and diligent efforts" to address the heating response. To Respondent's credit, Respondent did dispatch a technician in a timely manner to investigate the thermostat and heater upon receiving notice from Petitioner. However, investigating the problem alone is not sufficient to meet a landlord's duty to maintain a habitable unit for tenants. Respondent did provide Petitioner with a space heater—but this solution too is not adequate given that Petitioner should not use "2 or more space heaters" (LL-18) in her Unit without risking tripping her circuit breaker. Again, Petitioner is apparently faced with a decision to heat some of her rooms some of the time but is without an effective solution to heat her entire Unit sustainably and safely.

3. Petitioner's Misuse of Electrical Outlets is not relevant to lack of sufficient heating issue. Petitioner's use of electrical outlets did not contribute to the lack of insufficient heating throughout her Unit.

Respondents argue that the Hearing Officer should have taken into consideration Petitioner's misuse of the outlets when determining whether Respondent has maintained Petitioner's Unit in a habitable condition. Not only do Respondents claim there to be no heating issue, but Respondents also claim if there were a heating issue, they have responded adequately, and it is only the Petitioner's implementation of Respondent's own solution that has caused Petitioner's "discomfort."

Petitioner resorted to using space heaters due to Respondent's refusal to move the wall thermostat to Petitioner's bedroom. Respondent then blames Petitioner for implementing Respondent's proposed solution. (Note also that Respondents do not provide any evidence of offering to provide Petitioner with some sort of surge protector in order for her to use the space heaters in a way that adequately heats her apartment.)



Regardless of how Petitioner uses the space heaters, Respondents have not provided a legal or factual response to their failure to maintain an adequate heating facility in the first place.

4. Hearing Officer did not abuse her discretion in ordering a 10% reduction in rent. The Hearing Officer did not abuse her discretion in ordering a 10% reduction in Petitioner's rent because the decision comports with the requirements of the CSFRA.

In determining that there had been a failure on the part of the Respondent to maintain Petitioner's Unit regarding adequate heating, the Hearing Officer used her discretion to determine an appropriate reduction in rent given the degree of the issue.

The CSFRA provides that failure to maintain a Unit in compliance with governing health and safety building codes "constitutes an increase in Rent." CSFRA Section 1710(b)(1). Petitioner filed a Petition pursuant to the CSFRA and was able to demonstrate that the Respondent was provided notice and an opportunity to cure the insufficient heating condition. The Hearing Officer has the discretion to establish the percentage of rent reduction in a tenant petition for downward rent adjustment. Here a 10% reduction in rent is fair in light of the circumstances – i.e., Respondent did respond in a timely manner but chose not to implement a reasonable solution, leaving Petitioner with an inferior work around. The Hearing Officer's order is not excessive or unfounded.

## **V. Conclusion**

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

1. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of \$1935.00 from May 1, 2023, to September 2023 on the basis that Respondent failed to correct the defective condition of the lack of adequate heating.
2. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of \$1,397.50 beginning September 1, 2023, on the basis that Respondent failed to correct the defective condition of the biting bug infestation and lack of adequate heating.
3. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of \$1,397.50 from the Hearing date of March 11, 2024, until either Petitioner vacated the Unit, or the conditions were corrected, and a rent refund of any amount paid in excess of that Base Rent after March 11, 2024.
4. That Petitioner is entitled to a total rent refund of \$5,650.92 (the "**Refund Sum**") representing \$2,228.83 for the period of May 1, 2023, through March 11, 2024, for the heating issue, and \$3,422.08 for the 6 months and 11 days between September 1, 2023, and March 11, 2024, for the heating and bug infestation issues combined. If Petitioner fails to receive a full refund from Respondent within thirty days after this decision becomes final, Petitioner may withhold rent payments until such time Petitioner has withheld a total of the Refund Sum. If Petitioner vacates Property prior to recovering from Respondent the Refund Sum, then the remaining balance shall be come immediately due and owing no later than the date on which the Petitioner vacates the Property. In such case, if Respondent fails to provide Petitioner with the remaining balance on or

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before the date on which Petitioner vacates the Property, Petitioner may seek recovery of the outstanding amount via civil action.