

Rental Housing Committee  
**Tentative Appeal Decision**

Petition C23240025

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

**I. Summary of Proceedings**

**Initial Petition**

On October 23, 2023, Tenant Shichao Wang ("**Petitioner**") filed a petition for downward adjustment of rent ("**Petition**") (Petitioner Exhibit #1) related to the property located at 507 Central Avenue, Unit [REDACTED], Mountain View ("**Property**"). Petitioner was represented in the petition proceedings by Petitioner's Authorized Representative, Wenjing Wang ("**Ms. Wang**"). The Property is owned by Agate Bay, LLC, which was represented in the petition proceedings by Stephen A. Welter ("**Mr. Welter**"), managing partner of Agate Bay, LLC, Reeta Rao, Regional Property Manager, CBW Properties, Inc. ("**Ms. Rao**"), and Jordan Rao, on-site Property Manager for Shoreline Village Apartments ("**Mr. Rao**") (collectively, "**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On December 20, 2023, a Notice of Prehearing Meeting and Hearing Date was issued with a hearing date scheduled for February 26, 2024, at 1:00 P.M. (Hearing Officer Exhibit #3).

The Petition requested a downward adjustment of rent on the basis that Respondent had failed to maintain the property in a habitable condition based on the following: a dirty kitchen sink, a dirty dishwasher, broken living room blinds, mold in the kitchen and bathroom, a leak in the bathroom cabinet, bedbugs, a leak in the bathroom ceiling, and a dirty bathroom as a result of maintenance regarding the bathroom ceiling leak. Petitioner also alleged 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.

On February 7, 2024, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Ms. Wang, Mr. Welter, and Ivy Xu ("**Ms. Xu**") and Ariana Menhenett ("**Ms. Menhenett**"), City of Mountain View Interpreters, 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 (See Hearing Officer Exhibit #4: Hearing Officer Order Pursuant to RHC Regulations Chap. 5, Section (C)(4).)

On February 15, 2024, the Hearing Officer inspected the Unit, accompanied by James Olson, City of Mountain View Building Inspector, and Alitcel Camacho, Outreach Specialist. Ms. Wang and Ms. Menhenett were present during the inspection; Ms. Rao was present during the initial portion of the inspection.

The Hearing was held on May 30, 2024, via Zoom. Ms. Wang, Mr. Welter, Ms. Rao, Mr. Rao, Ms. Xu and Ms. Menhenett were present. The Hearing Record was held open until the close of business on July 1, 2024, for submission of additional evidence requested by the Hearing Officer. The Hearing Officer issued

a decision on September 23, 2024 ("**HO Decision**"). The HO Decision was served on the Parties on September 23, 2024.

## **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 Petitioner on October 5, 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 had not met his burden of proof that Respondent failed to correct the leak in the bathroom ceiling in a reasonable time after receiving notice.
2. Petitioner had met his burden of proof that the Respondent had failed to provide a clean and sanitary Unit due to the maintenance technician allowing debris to fall into the bathroom when repairing the leak in the bathroom ceiling.
3. Petitioner had not met his burden of proof that there was mold in the kitchen, near the refrigerator, or in the bathroom.
4. Petitioner had not met his burden of proof that there was an active leak beneath the bathroom sink.
5. Petitioner had not met his burden of proof that there was a bed bug infestation in the Unit.
6. Petitioner had failed to meet his burden of proof that the peeling paint in the bathroom presented a habitability issue.
7. Petitioner had failed to meet his burden of proof that Petitioner had provided Respondent notice or opportunity to fix a clogged toilet; Petitioner had also failed to meet his burden of proof that the toilet tank filling slowly presented a habitability issue.
8. Petitioner had failed to meet his burden of proof that the dirty kitchen sink presented a habitability issue.
9. Petitioner had met his burden of proof of a leak under the kitchen sink, and that Respondent had received notice of the condition, but the condition was not remedied for 4 months and 14 days.
10. Petitioner had met his burden of proof that the stove was not secure, and that Respondent had received notice of the condition, but the condition was not remedied for 6 months and 15 days.

11. Petitioner had not met his burden of proof that the dishwasher was in an unusable condition, thus Petitioner had not demonstrated the condition of the dishwasher resulted in a decrease in housing services.
12. Petitioner had met his burden of proof that two slats in the living room blinds were broken and Respondent's failure to timely repair the blinds represented a decrease in housing services for the period of time that the blinds were broken.
13. Petitioner had failed to meet his burden of proof that Respondent's failure to provide a laundry card to Petitioner represented a decrease in housing services.
14. Petitioner had failed to meet his burden of proof that Respondent's failure to clean the Unit upon Petitioner's request constituted a decrease in housing services.
15. The Hearing Officer does not have the jurisdiction to determine whether the Respondent has retaliated against the Petitioner.
16. The issue of whether Ms. Wang is an "Eligible Family Member" pursuant to CSFRA Regulations, Chapter 9 § (D)(1) is not before the Hearing Officer.
17. Petitioner had met his burden of proof that Respondent has failed to maintain the Unit in a habitable condition due to: failure to adequately clean the bathroom after maintenance, failure to promptly repair a kitchen sink leak, and failure to promptly repair the stove. Respondent shall refund Petitioner \$787.44 for failure to maintain Unit in a habitable condition.
18. Petitioner had met his burden of proof that he experienced a decrease in housing services due to: Respondent's failure to promptly repair the living room blinds. Respondent shall refund Petitioner \$10.83 for a decrease in housing services.
19. Respondent may not issue a rent increase until Petitioner has received all amounts ordered by the HO Decision.

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

Regulation Chapter 5 § 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 Petitioner. The Tentative Appeal Decision regarding each appealed element is provided in Section IV of this Tentative Appeal Decision.

The Appellant-Petitioner raised the following 6 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.** Petitioner argues that the Hearing Officer should have taken into consideration that a California tenant can ask up to \$2,000 as a penalty for a landlord illegally entering a tenant's unit.

- B. The Hearing Officer erred in failing to compensate Petitioner or Ms. Wang for time spent requesting services or engaging in the Hearing process.** Petitioner argues the time spent requesting services for the Unit and time spent on the hearing process should be financially compensated.
- C. The Hearing Officer erred in failing to compensate Petitioner for damaged personal property as a result of Respondent's failure to maintain the Unit in a habitable condition.** Petitioner argues that approximately \$500 worth of personal possessions had to be discarded as a result of Respondent's failure to maintain the bathroom in a habitable condition and that the Hearing Officer should have ordered Respondent to reimburse Petitioner.
- D. The Hearing Officer erred in failing to adequately consider Petitioner's evidence of bed bugs.** Petitioner argues the Hearing Officer did not accord the evidence presented regarding bed bugs sufficient weight.
- E. The Hearing Officer's decision regarding the award for the damaged stove should be increased.** Petitioner argues the Hearing Officer erred in finding the stove was repaired on March 21, 2024, and that the stove has yet to be repaired. Thus, Petitioner argues, Hearing Officer should recalculate the award for the damaged stove.
- F. The Hearing Officer erred in failing to compensate Petitioner for Respondent's failure to clean the carpet after Petitioner's request.** Petitioner argues the value of the carpet cleaning is \$400 and that the Hearing Officer should revise Petitioner's award to include this amount.

#### **IV. Decision Regarding Appealed Elements**

- A. Hearing Officer did not err by failing to consider Respondent's allegedly illegal entry into Petitioner's Unit or failing to consider Respondent's threats to evict the Petitioner.**

The Hearing Officer did not err by failing to consider either Respondent's allegedly illegal entry into Petitioner's Unit or Respondent's threats to evict the Petitioner.

Pursuant to the Community Stabilization and Fair Rent Act ("CSFRA"), in adjudicating a Petition for Downward Adjustment of Rent, the Hearing Officer only has jurisdiction to decide (1) whether the Landlord has failed to maintain a rental unit in a habitable condition, (2) whether there is a decrease in housing services or maintenance of the unit beyond ordinary wear and tear, and (3) whether a Landlord is demanding rent in excess of the lawful rent established by the CSFRA. See CSFRA §§ 1710(b)-(d). The Hearing Officer does not have the authority to make decisions on whether a landlord has violated state law regarding landlord entry into units. Put differently, the Hearing Officer is not authorized to make a decision whether Respondent violated California Civil Code § 1954 regulating the manner in which landlords may access tenants' units. Petitioner would have to bring a civil suit in the appropriate jurisdiction to remedy these allegations of illegal entry.

Further, the Petitioner did not include allegations about illegal entry or Respondent's threats in the Petition. Although Ms. Wang discussed these issues during the Hearing, these issues were never formally a part of Petitioner's complaint. The purpose of the Hearing is to "resolve issues raised by a Petition" (CSFRA Regulations, Chapter 5 § A(1)), and the Hearing Officer shall issue a decision "on the issues raised

in the Petition" (*Id.*). The Hearing Officer is not required by the CSFRA or its implementing regulations to include every issue discussed in the Hearing that was not included in the Petition.

The Hearing Officer correctly exercised her judgment in declining to consider Petitioner's claims about Respondent's allegedly illegal entry into Petitioner's Unit.

**B. Hearing Officer did not err in failing to order Respondent to financially compensate Petitioner or Ms. Wang for time spent in the Hearing process.**

The Hearing Officer did not err in failing to order Respondent to financially compensate Petitioner or Ms. Wang for time spent in the Hearing process.

Remedies available for a Downward Petition of Rent pursuant to the CSFRA and its implementing regulations are limited to "[t]he amount of rent adjustment attributable to each failure to maintain habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in the Petition." CSFRA Regulations, Chapter 5 § F(2)(a). There is no provision in the CSFRA that allows a Hearing Officer to order either party to compensate the other for the time spent engaging in the voluntary Hearing process.

The Hearing Officer is not allowed to award remedies based on the time engaged in the Hearing process, therefore the Hearing Officer did not err in failing to order Respondent (or any other party) to compensate Petitioner or Ms. Wang for time spent on the Hearing process.

**C. Hearing Officer did not err in failing to order Respondent financially compensate Petitioner for damaged personal property.**

The Hearing Officer did not err in failing to order Respondent compensate Petitioner for damaged personal property as a result of Respondent's failure to maintain Unit in a habitable condition.

Similar to the reasoning presented in Section IV.B, the Hearing Officer may only order remedies that constitute "[t]he amount of rent adjustment attributable to each failure to maintain habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in the Petition." CSFRA Regulations, Chapter 5 § F(2)(a) (emphasis added).

The Hearing Officer does not have the authority to order Respondent to compensate Petitioner for Petitioner's damaged personal property—the value of Petitioner's personal property is not a part of Petitioner's rent for the Unit. The Petitioner would have to bring a civil suit in an appropriate jurisdiction to argue Respondent reimburse Petitioner for damaged personal property.

Neither the CSFRA nor the implementing regulations authorize a Hearing Officer to fashion an equitable remedy, except in the limited case 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 its implementing regulations by one of the parties. CSFRA Regulations, Chapter 6 § J(4)(a): "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." These circumstances are not applicable here: this decision is

not final until the conclusion of the appeal, and neither party has requested a compliance hearing or submitted evidence of continued violations of the CSFRA.

**D. Hearing Officer did not err in failing to adequately consider Petitioner's evidence of bed bugs.**

The Hearing Officer did not err in concluding that Petitioner had failed to provide sufficient evidence to prove that Petitioner was experiencing an ongoing bed bug infestation that arose from Respondent's failure to maintain a habitable Unit.

The burden of proof is on the Petitioner 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." CSFRA Regulations, Chapter 5 § G(2)-(3). As the Hearing Officer explained during the Hearing, the Petitioner must convince the Hearing Officer that Petitioner's argument is more likely true than not true.

The Hearing Officer was justified in her conclusion that the evidence presented by the Petitioner was not sufficiently convincing when weighed against Respondent's evidence. Petitioner provided testimony about bed bugs and provided two pictures of ankle bites on Ms. Wang's ankles. (Petitioner Exhibit #10). Respondent and Petitioner provided evidence that a pest control technician—Kilroy Pest Control—did not find evidence of bed bugs. (Petitioner Exhibit #36-46). Petitioner argues that a pest control technician not finding evidence of bed bugs is not the same as proof that there is no infestation.

The Hearing Officer weighed Petitioner's evidence and Petitioner's lack of evidence (for example, doctor's reports that the bites were from bed bugs or additional evidence of an ongoing bed bug issue or photographs of the bed where bed bugs reside) against Respondent's evidence, and the Hearing Officer was not persuaded that Petitioner's version was more likely true than not.

Hearing Officers are often presented with contradictory evidence and must weigh the evidence carefully and draw reasonable conclusions. Here the Hearing Officer did not err in her conclusion that Petitioner did not meet his burden of proof demonstrating a bed bug infestation.

**E. The Hearing Officer's decision regarding the award for the damaged stove should be modified.**

The Hearing Officer awarded Petitioner a downward rent adjustment for the damaged stove based on the following calculations: Hearing Officer reasoned the stove top is worth 3.1% of the total monthly rent, and the appropriate time period to award the rent adjustment is September 6, 2023 (when Petitioner first provided notice) to March 21, 2024, representing 6 months and 15 days. Petitioner's base rent is \$2,195.00. Thus, Hearing Officer concluded Petitioner is entitled to \$441.20 downward adjustment.  $((\$2,195.00 * .031) \times 6) + ((\$2,195.00 \times .031) / 31) \times 15 = \$441.20$ .

However, Petitioner claims in Appeal that the stove has not been fixed as of the Appeal date of October 5, 2024.

Hearing Officer stated March 21, 2024, as the date when the stove was fixed, however evidence in the Hearing Record is not conclusive as to when and whether the stove has been repaired. Neither Respondent nor Petitioner knew what repairs, if any, took place during the March 21, 2024, visit. The Petitioner was provided a 24-hour notice of entry on March 20, 2024 (Respondent Exhibit #29-30), but Ms. Wang

requested that the "repairs must wait when I come back." (Respondent Exhibit #31, p. 3). Ms. Wang testified that she doesn't "know what they did in my apartment" that day.

The Hearing Officer may be relying on information from James Olson, Building Inspector, who attempted to conduct a follow-up inspection to confirm whether repairs ordered during the February 15, 2024, inspection had been made. Mr. Olson was unable to coordinate a time with Petitioner or Ms. Wang to conduct a follow-up inspection. Mr. Olson suggested that Mr. Welter notify Petitioner that the violations will be presumed to be corrected if access is not granted to verify the repairs. On April 16, 2024, Ms. Rao sent an email to Petitioner only (not Ms. Wang) stating: "Since you did not reply with written confirmation to arrange for the re inspection as requested, all violations are considered corrected as no access was arranged by you for the re inspection to verify." (Respondent Exhibit #35.)

The Petitioner is not challenging the Hearing Officer's valuation of the broken stove, merely the length of time the stove has remained unrepaired. Without additional evidence about if and whether the stove was actually repaired by Respondent on March 21, 2024, and given the notice was provided to Petitioner on April 16, 2024, the RHC hereby orders the rent refund related to the stove to be adjusted 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  $\$498.27 ((\$2,195.00 \times .031) \times 7) + (((\$2,195.00 \times .031)/31) \times 10)$ .

**F. Hearing Officer did not err in failing to compensate Petitioner for Respondent's failure to clean the carpet after Petitioner's request.**

The Hearing Officer did not err by failing to order Respondent to pay Petitioner \$400 for failure to clean the carpet after Petitioner's request.

The Hearing Officer can only order remedies based on "[t]he amount of rent adjustment attributable to each failure to maintain habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in the Petition." CSFRA Regulations, Chapter 5 § F(2)(a).

As Hearing Officer explains in her analysis, the Petitioner failed to meet his burden of proof that the state of the carpet rose to the level of an uninhabitable condition. Petitioner also failed to meet his burden of proof to demonstrate that regular carpet cleaning is offered at the Unit and thus can be claimed to be a "housing service". Respondent provided evidence that the carpet had been cleaned prior to Petitioner's move in, but, as Hearing Officer concedes, perhaps not cleaned to Ms. Wang's standard of cleanliness.

Although the Respondent failed to clean the carpet again at Petitioner's request, Petitioner has not shown this lack of responsiveness rises to the level of an uninhabitable condition or that Respondent's failure to act constitutes a decrease in housing services or maintenance. Accordingly, the Hearing Officer did not err in her conclusion that Petitioner is not owed the value of the carpet cleaning that did not take place.

**V. Conclusion**

As detailed above, the RHC denies in part and grants in part the appeal:

1. The Petitioner is entitled to a rent refund of: (1) \$498.27 for the malfunctioning stove, (2) \$293.14 for the leaking sink, (3) \$53.10 for the bathroom ceiling leak, and (4) \$10.83 for the broken blinds.

2. The Petitioner is entitled to a total rent refund of Eight Hundred and Fifty-Five Dollars and 34/100 dollars (\$855.34) (the "Refund Sum") for the Rent that has been paid by Petitioner. 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 before the date on which Petitioner vacates the Property, Petitioner may seek recovery of the outstanding amount via civil action.
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 has failed to comply with this decision, any party may request a Compliance Hearing in accordance with CSFRA Regulations Chapter 5 § (J)(1).