

M David Kroot
Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
Dianne Jackson McLean
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
William F. DiCamillo
Amy DeVaudreuil
Barbara E. Kautz
Rafael Yaquián
Celia W. Lee
Dolores Bastian Dalton
Joshua J. Mason
Jeffrey A. Streiffer
Elizabeth R. Klueck
Jhaila R. Brown
Gabrielle B. Janssens
Benjamin Funk
Rye P. Murphy
Aileen T. Nguyen
Katie Dahlinghaus
Matthew S. Heaton
Brandon V. Stracener
Dori Kojima
Nazanin Salehi
Erin C. Lapeyrolerie
Minda Bautista Hickey
Jocelyn A. Portales
Colleen A. Wisel
Thomas J. Levendosky
Estrella M. Lucero

March 27, 2025

memorandum

To
Mountain View Rental Housing Committee

From
**Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Nazanin Salehi, Special Counsel to the Rental Housing Committee**

RE
Appeal of Hearing Officer's Decision Re: Petition No. C32340005

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 a habitable premises. The Hearing on the Petition was held on February 27, 2024. The Hearing Officer's Decision was issued and served on the parties on February 7, 2025¹ ("HO Decision").

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
January 3, 2024	RHC accepted Petition No. C23240005

¹ The delay in the issuance of the Hearing Officer's decision was due to two factors: (1) the Hearing Officer left the Hearing record open for nearly two months to allow the parties – namely, Respondent-Landlord – to submit additional evidence ordered by the Hearing Officer; and (2) the Hearing Officer experienced an unexpected family medical emergency thereby requiring an extension of the time to issue the decision in June 2024. Since Petitioner-Tenants vacated the unit in May 2024, there were no concerns about the issues in the unit lingering during the extension granted to the Hearing Officer.

January 9, 2024	Notice of Hearing and Pre-Hearing Conference served on the Parties.
January 30, 2024	Pre-hearing telephone conference held.
January 31, 2024	Summary of Pre-hearing Conference Call and Order served on parties; Hearing rescheduled.
February 5, 2024	Notice of Hearing Date and Time served on the parties.
February 14, 2024	Notice of Hearing Officer's Second Pre-hearing Order served on the parties; Hearing rescheduled.
February 27, 2024	Hearing held.
March 1, 2024	Hearing Officer's Post-Hearing Order issued.
March 4, 2024	Notice of Post-Hearing Order served on the parties.
April 25, 2024	Hearing Record closed.
June 24, 2024	Extension of Hearing Officer Written Decision Deadline issued and served on the parties.
February 7, 2025	Hearing Officer's Decision issued and served on the parties.
February 21, 2025	Appeal filed by Respondent-Landlord.
March 17, 2025	Tentative Appeal Decision issued and served.

March 27, 2025	Appeal hearing before the Rental Housing Committee.
----------------	---

The Petition requested a downward adjustment of rent on the basis that the Landlord had failed to maintain Petitioners' unit in a habitable condition in violation of the Community Stabilization and Fair Rent Act ("CSFRA"). Specifically, the Petition alleged that (1) there was a severe infestation of cockroaches throughout Petitioners' unit, (2) the cabinets in the bathroom and kitchen had water damage resulting in a noxious odor, (3) there was rust on the mirror in the bathroom, (4) there was rust on the bathtub, (5) the carpet in the bedroom closet had black mold due to a prior water leak, and (6) the caulking in the bathroom and kitchen were unfinished.

The Hearing Officer determined that Petitioners had met their burden of proof – to demonstrate by a preponderance of the evidence – that:

1. The moisture and mold conditions in their bedroom closet 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;
2. There existed a severe cockroach infestation in their unit that violated the warranty of habitability, and that Respondent failed to take adequate measures to eliminate the infestation within a reasonable time after receiving notice of the condition;
3. The existence of water damage to and potential mold in the kitchen cabinets resulted in noxious odors and demonstrated that Respondent had failed to maintain the unit in good repair in violation of CSFRA § 1710(c);
4. The various conditions in their bathroom, including dampness, rust on the bathroom mirror and bathtub, a deteriorating cabinet, and unfinished walls (i.e., holes), which Respondent failed to address after receiving notice, amounted to a failure to maintain the unit in good repair in violation of CSFRA § 1710(c); and
5. The caulking in their kitchen and bathroom was defective in violation of the warranty of habitability, and Respondent made no meaningful efforts to correct the defects within a reasonable time after receiving notice of them.

Based on the foregoing, the Hearing Officer granted the following:

1. For the moisture and mold issues in the bedroom closet and carpet, a seven-and-one-half percent (7.5%) rent reduction, or total rent refund of \$2,147.83, for the period from April 1, 2023, through May 16, 2024 (which was the date on which Petitioners vacated their unit).

2. For the cockroach infestation, a thirty-three percent (33%) rent reduction, or total rent refund of \$16,489.90, for the period from June 1, 2022, through May 16, 2024.
3. For the water damage and potential mold in the kitchen cabinets resulting in noxious odors, a five percent (5%) rent reduction, or total rent refund of \$2,499.78, for the period from June 1, 2022, through May 16, 2024.
4. For the various substandard conditions in the bathroom indicating a failure to maintain the unit in good repair, a five percent (5%) rent reduction, or total rent refund of \$2,499.78, for the period from June 1, 2022, through May 16, 2024.
5. For the defective caulking in the kitchen and bathroom, a two percent (2%) rent reduction, or total rent refund of \$537.88, for the period from May 1, 2023, through May 16, 2024.

The Appellant-Landlord raised the following four issues on appeal:

- A. The Hearing Officer erred or abused her discretion in concluding that Petitioners had met their burden of proof regarding the cockroach infestation and were entitled to a rent reduction and refund. The decision lacked solid evidentiary support and misapplied relevant legal standards.
- B. The Hearing Officer erred or abused her discretion in awarding a rent reduction for both the water damage to the cabinetry in the kitchen and bathroom, and the odor caused by the mold and moisture conditions in the unit. The Hearing Officer cannot use an alleged condition of the unit, which was already addressed and resolved with a rent reduction to provide a second rent reduction hinging on the same facts.
- C. The Hearing Officer exhibited prejudice against Respondent after the Hearing by admitting and considering documents outside the scope of her Post-Hearing Order that were submitted by Petitioner. Respondent was not given a chance to respond to the new evidence submitted by Petitioners, which contained inaccurate information about Petitioners' ability to move out of the unit.
- D. The delay in the issuance of the Hearing Officer's Decision prejudiced Respondent by creating the potential for significantly increased costs to Respondent as the conditions, and their resulting liability, remained unaddressed for almost a year.

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 March 24, 2025. 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.

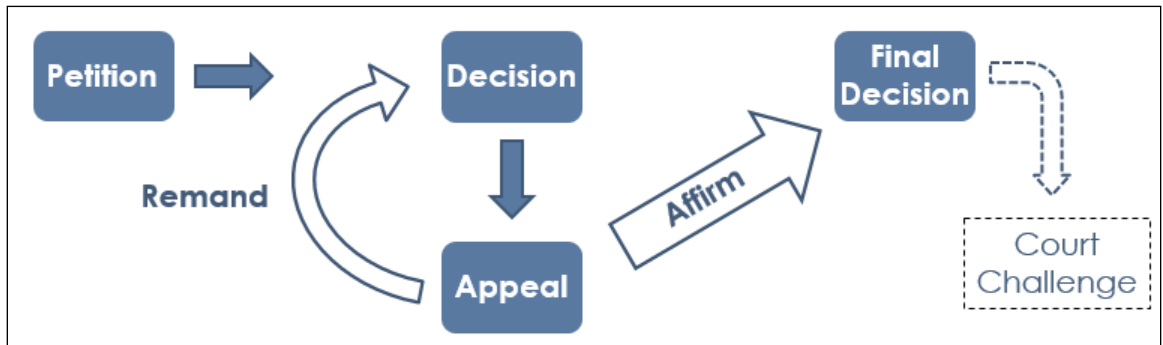
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and an appeal court: the trial court drafts a decision after weighing all the evidence, and the appeal court reviews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

- A. Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion by concluding that Petitioners had met their burden of proof regarding the cockroach infestation in their unit and were entitled to a rent reduction and refund.
 1. The Hearing Officer’s decision regarding the severity of the infestation is supported by substantial evidence in the record, including photographs and videos submitted by Petitioners, Petitioners’ testimony, inspection reports from the City’s Multi-Family Housing Program, and the unredacted reports from Landlord’s own pest control contractor, Orkin.
 2. The Hearing Officer did consider the Landlord’s efforts to treat the cockroach infestation, but correctly concluded that the CSFRA requires that the Landlord not just address but actually *correct* the issue. Because 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 Hearing Officer did not err or abuse her discretion by holding Landlord liable for the ongoing cockroach infestation in Petitioners’ unit.
 3. The Hearing Officer did not misapply the standard in Health & Safety Code § 17920.3. For one, the Hearing Officer’s decision relied on several standards, including the implied warranty of habitability, Civil Code § 1941.1(a)(6), and Health and Safety Code § 17920.3(a)(12). Even if the Hearing Officer had relied solely on and Health and Safety Code § 17920.3(a)(12), it was reasonable for her to conclude that the City’s code enforcement officer who inspected the property and concluded the condition of the unit violated § 17920.3(a)(12) was knowledgeable of the

requirements of the statute on which he was relying and able to meet the qualifications required by that section.

4. The Hearing Officer erred in awarding a rent reduction for cockroach infestation beginning June 1, 2022, because the CSFRA requires providing the Landlord with reasonable notice of the condition *and* an opportunity to correct the issue. Therefore, the HO Decision should be modified to award the Petitioners a rent reduction for the cockroach infestation for the period from *August 1, 2022* through May 16, 2024.
- B. Appellant-Landlord also argues that the Hearing Officer erred or abused her discretion by awarding a rent reduction and refund for both the water damage to the cabinetry in the bathroom and kitchen and the odors caused by the mold and moisture conditions in the unit. Landlord's argument conflates the Hearing Officer's various conclusions. In Section A of the Decision, the Hearing Officer concludes that Landlord's failure to address the mold and moisture *in the Petitioner's bedroom closet and carpet* warranted a seven-and-one-half percent (7.5%) rent reduction; in Section C, the Hearing Officer determined that the noxious odors and deterioration *in the kitchen and bathroom cabinetry* demonstrated a failure to maintain the unit in good repair in violation of CSFRA § 1710(c) warranted a five percent (5%) rent reduction. As such, the Hearing Officer did not err or abuse her discretion in awarding the two above-referenced rent reductions based on different issues.
- C. Appellant-Landlord next asserts that the Hearing Officer exhibited prejudice against Landlord by admitting and considering evidence after the hearing that were outside the scope of her Post-Hearing Order. While the Hearing Officer did consider post-Hearing correspondence between Petitioners and Rent Stabilization Division staff, she did so only for the purpose of determining the date on which Petitioners vacated the unit. The Hearing Officer did not rely on Petitioners' Exhibit #13 in reaching her conclusion that Landlord was liable to Petitioners for the various issues raised by the Petitioner; as such, Landlord was not prejudiced by consideration of this evidence.
- D. Finally, Appellant-Landlord contends that the one-year delay between the date of the hearing and issuance of the Hearing Officer's Decision prejudiced Landlord by creating *the potential* for increased liability by leaving the issues in the unit unaddressed. Landlord's ability to address the conditions raised by the Petition remained fully within its control during the pendency of the Petition. Moreover, since Petitioners vacated the unit in May 2024, the additional delay in issuing the decision did not result in any increased costs to Landlord. Therefore, Landlord failed to demonstrate that it was prejudiced by the excused delay in the issuance of the Hearing Officer's Decision.

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 No. <u>C32340005</u>) 	
Staff Report & Presentation	
Appellant-Landlord Presentation of Argument	10 minute maximum
Respondent-Tenant Presentation of Argument	10 minute maximum
Appellant-Landlord Presentation of Rebuttal	5 minute maximum
Respondent-Tenant 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-Tenants	
RHC Deliberations and Decision	
<ul style="list-style-type: none"> 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

Agenda posting, posting on the City’s website, and email to distribution list..

March 27, 2025

Page 9

ATTACHMENTS

1. Tentative Appeal Decision for Petition No. C32340005
2. Decision of Hearing Officer (February 7, 2025)
3. Appellant-Landlord Appeal of Decision (February 21, 2025)