Rental Housing Committee
Tentative Appeal Decision

Petitions C23240057 and C23240058

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

I. Summary of Proceedings

Initial Petition

On March 12, 2024, Tenant Keila Garcia ("**Petitioner**") filed a petition for downward adjustment of rent ("**Initial Petition**") (Petitioner Exhibit #1) related to the property located at 251 Higdon Avenue, Unit [redacted], Mountain View ("**Property**"). The Property is owned by Leonard Siegal and Pamalee Siegal ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**". On April 16, 2024, a Notice of Prehearing Meeting and Hearing Date was issued with a hearing date scheduled for June 5, 2024 (Hearing Officer Exhibit #2). On May 23, 2024, Petitioner submitted an amended Petition ("**Amended Petition**"). (Petitioner Exhibits #9, #10). On May 29, 2024, Petitioner submitted a document with additional explanations related to her Petition (together with Amended Petition and Initial Petition, "**Petition**"). (Petitioner Exhibit #12). Respondent submitted a response to the amended Petition (Respondent Exhibit #14). Pursuant to a Notice of Postponement of Hearing, dated June 4, 2024, the hearing date was rescheduled to July 25, 2024, at 1:00 P.M. (HO Exhibit #6).

The Petition requested a downward adjustment of rent on the basis that Respondent had (1) failed to maintain a habitable Unit by failing to maintain a safe environment in allowing Petitioner's neighbor to harass Petitioner and destroy her quiet enjoyment of the Unit; (2) had decreased housing services by taking Petitioner's hose; and (3) Respondent had unlawfully increase Petitioner's Rent by failing to roll back her Rent as required by the Community Stabilization and Fair Rent Act ("**CSFRA**") and by being substantially out of compliance with the CSFRA at the time Respondent raised Petitioner's Rent.

On May 13, 2024, the Hearing Officer held a pre-hearing conference via Zoom. Parties were present on the call. The Hearing Officer and Parties discussed the administrative procedure that would be followed at the Hearing. The Hearing Officer explained her need for the submission of additional documentary evidence. In the Prehearing Summary and Order issued on May 15, 2024, the Hearing Officer notified the Parties that the Hearing Date would be continued. (HO Exhibit #3).

The Hearing was held on July 25, 2024, via Zoom. Parties, Alitcel Camacho and Flavia Toledo, both City of Mountain View Spanish language interpreters, were present. The hearing record was held open until the close of business on August 8, 2024. The Hearing Officer issued a decision on September 24, 2024 ("**HO Decision**"). The HO Decision was served on the Parties on October 7, 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 submitted by the Respondent on October 7, 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 standing pursuant to CSFRA Regulations Chapter 4 Section (D)(7) to file her Petition for relief despite having vacated the Unit on September 30, 2023.

2. Petitioner had failed to meet her burden of proof that Petitioner experienced a decrease in housing services due to Respondent taking Petitioner's hose.

3. The Hearing Officer is not authorized to decide whether the CSFRA's rent rollback provision is constitutional.

4. California Civil Code Section 340 providing for a one-year statute of limitations does not apply to the administrative petition process.

5. The Hearing Officer is not authorized under the CSFRA to allow Respondent to "offset" any money owed to Respondent related to inspection or damage to the Unit by Petitioner via the CSRFA hearing process.

6. The Hearing Officer is not authorized under the CSFRA to determine whether Petitioner's 30-day notice of intent to vacate her Unit prior to the expiration of her lease is generally legally valid.

7. Petitioner had met her burden of proof to show that Respondent had failed to roll back Petitioner's rent to Base Rent.

8. Petitioner had met her burden of proof that Respondent's June 1, 2017, rent increase, and every rent increase thereafter is an unlawful rent increase in violation of CSFRA Section 1707(a)(3). Respondent shall refund Petitioner $8,530.00 for the retention of the unlawful rent.

9. Respondent was not in substantial compliance with the registration requirements under CSFRA for 2021 and 2022.

10. Petitioner had met her burden of proof that Respondent failed to maintain her Unit in a habitable condition and disturbed Petitioner's quiet enjoyment of her Unit due to Respondent's failure to stop or otherwise mitigate her neighbor's harassment. The Hearing Officer determined that a $250 per month reduction in rent was a reasonable amount to account for the habitability violation and lack of quiet enjoyment. The Hearing Officer further determined that the reduction in rent was appropriate for a 32-month period beginning when the Petitioner notified the Respondent of the harassment and continuing until the Petitioner vacated the Unit. Respondent shall refund Petitioner a total of $8,000.00 for failure to maintain a habitable Unit and disturbing Petitioner's quiet enjoyment.

11. In sum, Respondent shall refund Petitioner a total of $16,530.00 for the retention of unlawful rent and for failure to maintain a habitable and secure Unit and disturbing Petitioner's quiet enjoyment.

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 Appeal Decision identifies the elements of the Decision that are subject to appeal by the Petitioner. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Appellant-Petitioner raised the following 14 issues on appeal:

A. **The Hearing Officer erred in stating Petitioner failed to pay rent in September and October of 2023.** Respondent asserts Petitioner failed to pay rent in October and November 2023.

B. **The Hearing Officer erred in stating Petitioner filed her Petition 133 days after Petitioner vacated Unit.** Respondent contends Petitioner filed her Petition 164 days after Petitioner vacated Unit.

C. **The Hearing Officer's decision regarding the failure to roll back rents should be reversed because the rent rollback provision of the CSFRA is unconstitutional**. Further, Respondent asserts the Hearing Officer erred in concluding that the Hearing Officer does not have authority to determine whether the rent rollback provision is unconstitutional.

D. **The Hearing Officer erred in stating that some of the Respondent's increases of Petitioner's Rent occurred more frequently than every 12 months**. Respondent argues the Hearing Officer's statement is not supported by the evidence.

E. **The Hearing Officer erred in failing to properly address Respondent's evidence on the issue of whether Unit was properly registered in 2021 or 2022**. Respondent argues their evidence demonstrating clerical errors on the part of the City of Mountain View staff should be given more weight.

F. **Respondent argues Petitioner failed to take the necessary actions to stop her harassment**. Respondent argues they were "powerless" under the CSFRA to take any action.

G. **The Hearing Officer's decision regarding the rent refund should be reversed because lack of safety does not fall within the scope of the CSFRA**. Respondent contends disputes between neighbors should not be resolved through the hearing process.

H. **The Hearing Officer's decision regarding the rent refund due to the lack of safety should be reversed because "harassment" is not a reduction in housing services, a failure to maintain or repair a Unit, or a failure to maintain a habitable Unit**. Respondent argues harassment is not included in California Civil Code Section 1941.1 defining untenable dwellings.

I. **The Hearing Officer's decision to award "damages" is not supported by the evidence**. Respondent argues the Hearing Officer did not adequately justify the amounts Respondent is ordered to refund to Petitioner.

J. **The Hearing Officer erred in failing to give Petitioner's inconsistent testimony regarding the hose sufficient weight**. Respondent argues the Hearing Officer disregarded Petitioner's contradictory testimony.

K. **The Hearing Officer decision should be reversed as to any claims going back more than one year**. Respondent argues the statute of limitations set forth in California Civil Procedure Section 340 applies to this hearing.

L. **The Hearing Officer decision should be revised to allow Respondent to offset debts Petitioner allegedly owes Respondent against the rent refund Respondent is ordered to pay to Petitioner.** Respondent argues California Civil Procedure Section 431.70 regarding set-off rights applies to this hearing.

M. **The Hearing Officer erred in stating that Petitioner's 30-day notice to vacate her unit is valid**. Respondent argues Petitioners' 30-day notice was not in compliance with California Civil Code Section 1946.7.

N. **The Hearing Officer decision should be reversed because Petitioner's claims are not supported by a preponderance of the evidence**. Respondent contends the evidence in the hearing record does not support the Hearing Officer's decision to refund rent for a lack of safety.

IV. Decision Regarding Appealed Elements

A. The Hearing Officer erred in stating Petitioner failed to pay rent in September and October of 2023, but this error is inconsequential.

The Hearing Officer mistakenly stated the months in which Petitioner failed to pay Rent after Petitioner vacated her Unit in September 2023.

Petitioner and Respondent had signed a lease renewal agreement, executed November 1, 2022, stating the lease would extend through November 2023 (Respondent Exhibit #16). Per Petitioner's 30-day notice to vacate Unit (Petitioner Exhibit #13) and Petitioner's testimony during the hearing, Petitioner vacated her Unit in late September 2023. According to Petitioner's bank statements (Petitioner Exhibit #4), Petitioner paid her September 2023 rent.

This mistake (listing "September and October" of 2023, instead of "October and November" of 2023) is clerical in nature and does not impact any part of the Hearing Officer's decision. No part of the Hearing Officer's decision regarding a rent refund for improper rent increases or failure to provide a safe and secure Unit is dependent on this small error. No change to the Hearing Officer decision on the basis of this appealed element is warranted.

B. **The Hearing Officer erred in stating that Petitioner filed the Petition 133 days after Petitioner vacated the Unit, but this error is inconsequential.**

The Hearing Officer erred in stating that Petitioner filed her Petition 133 days after Petitioner vacated the Unit. Petitioner filed the Petition 164 days after vacating the Unit.

Per Regulations Chapter 4 Section (D)(7), a Petitioner who is a former tenant must file a Petition for a downward rent adjustment no more than 180 days after the tenant vacated the Unit. Petitioner vacated her Unit on September 30, 2023, and Petitioner filed her Petition on March 12, 2024. Petitioner filed her Petition 164 days after vacating her Unit, within the 180-day limit set forth in the Regulations.

While the Hearing Officer made a simple calculation error in determining the number of days between September 30, 2023, and March 12, 2024, this error is inconsequential. So long as Petitioner filed her Petition before the 180-day deadline, which is the case here, Petitioner has standing to file her Petition. No change to the Hearing Officer decision is warranted on the basis of this appealed element.

C. The Hearing Officer's decision regarding the failure to roll back rents should not be reversed because Respondent believes the rent rollback provision of the CSFRA is unconstitutional, and the Hearing Officer did not err in concluding that she does not have authority to rule on the constitutionality of the CSFRA.

The Hearing Officer is not authorized under the CSFRA to determine whether any provision, including the rent rollback provision, of the CSFRA is unconstitutional. Accordingly, the Hearing Officer correctly decided that the Hearing Officer decision will not address the issue of the validity or constitutionality of the CSFRA.

As the Hearing Officer correctly notes in her decision, the CSFRA confers only limited power to Hearing Officers. CSFRA Section 1709(d)(4) authorizes the RHC to "[a]ppoint Hearing Officers to conduct hearings on Petitions for Individual Rent Adjustment." Per Chapter 5 Section (B)(4) of the Regulations, a Hearing Officer has the authority to: administer oaths and affirmations; cause the RHC to issue subpoenas and to produce books, records, papers and other material related to the issues raised in the Petition; cause inspections to be made of the property; rule on offers of proof and receive relevant evidence; control the course of the hearing; rule on procedural requests; render decisions ***on Petitions***; and take other action authorized by RHC rules and regulations.

For rent decrease petitions specifically, Hearing Officers are required to make a decision on "the 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." Chapter 5 Section (F)(2)(a). Hearing Officers are not granted broad discretionary powers to determine the constitutionality of the CSFRA that confers Hearing Officers their authority.

Respondent argues that the Hearing Officer asserted that she does not have the authority to consider the validity of the CSFRA without citing to any authority. However, the Hearing Officer in her decision cites to CSFRA Sections 1709(d)(f) and 1701(g) when she asserts that Hearing Officers have limited authority to hear petitions for individual rent adjustments.

The Hearing Officer did not err when she stated that she does not have the authority to determine the constitutionality of the CSFRA's rent rollback provision. The Hearing Officer acted accordingly, pursuant to the authority granted to her under the CSFRA and applied the CSFRA to the Petition.

Similar to the Hearing Officer's limited authority, the RHC is also not authorized to determine the constitutionality of the CSFRA. Pursuant to the Regulations, the RHC has the authority only to "affirm,

reverse, or modify the decision of the Hearing Officer." The RHC does not have broad powers to determine the constitutionality of the CSFRA.

No change to the Hearing Officer's decision is warranted on the basis that the rent rollback provision is unconstitutional. Neither the Hearing Officer nor the RHC is authorized to make this determination under the CSFRA.

D. **The Hearing Officer did not err in stating that some of Respondent's increases of Petitioner's Rent occurred more frequently than every 12 months**.

The Hearing Officer did not err in stating that some of Respondent's increases of Petitioner's Rent occurred more frequently than every 12 months.

Respondent argues that the Hearing Officer's statement regarding the frequency of the Rent increases "is not supported by the evidence, i.e., the lease renewal agreements produced by Respondents." (Appeal, pages 2-3). However, the Hearing Officer's statement regarding the frequency of rent increases is based off the entire hearing record, not just the subset of "lease renewal agreements" produced by Respondent.

First, note that while Respondent references 7 lease renewal agreements in the text of the Appeal[1], the hearing record only contains copies of 4 lease renewal agreements. Respondent has only submitted into the hearing record the lease agreements implementing rent increases in December 2018, December 2019, December 2021, and December 2022. (Respondent Exhibit #16,21). Respondent claims these lease renewal agreements demonstrate "there were no rent increases more frequently than 12 months."

However, the inquiry does not stop here, and the Hearing Officer correctly referenced additional evidence in the hearing record to determine whether Respondent was in actuality retaining rent and implementing rent increases more frequently than every 12 months.

According to the copies of Petitioner's bank statements, Petitioner paid $988.00 in rent in November 2018. In December 2018, Petitioner began paying $1023.00 in rent. (Petitioner Exhibit #4). This increase is pursuant to the 2018-2019 lease renewal agreement. (Respondent Exhibit #16,21). However, starting in October 2019, only 10 months into the 12-month term, Petitioner begins paying $1058.00. Respondent's lease renewal agreement for 2019 states that Petitioner will begin paying $1058.00 starting in December 2019. (Respondent Exhibit #16,21). Respondent provided no additional evidence or explanations for why Respondent accepted Petitioner's increased Rent amounts two months early in 2019. Respondent may have believed they implemented rent increases every 12 months, but the evidence presented in the hearing record suggests otherwise.

[1] The Respondent's refer in text to 7 lease renewal agreements covering the following terms:

- December 1, 2016-November 30, 2017
- December 1, 2017-November 30, 2018
- December 1, 2018-November 30, 2019
- December 1, 2019-November 30, 2020
- December 1, 2020-November 31, 2021
- December 1, 2021-November 30, 2022
- December 1, 2022-November 30, 2023

Respondent did not object to any of Petitioner's evidence, and affirmed at the hearing that the Petitioner's workbook showing rent paid was accurate. Respondent also failed to submit any rent records they may have kept, and Respondent failed to provide any additional explanations regarding Petitioner's rent payments. Given the evidence presented, the Hearing Officer's finding that Respondent effectively increased Petitioner's rent more often than once every 12 months—in violation of the very lease renewal agreements Respondent attempts to rely on—is supported by substantial evidence in the hearing record.

The issue of whether Respondent implemented rent increases more frequently than 12 months (a violation of CSFRA Section 1707(b) is **not determinative** of the Hearing Officer's outcome. The Hearing Officer states clearly that the analysis of whether Respondent's rent increases were lawful "starts and ends with the violation of the rollback provision" (HO Decision, page 13). Put differently, even if Respondent had only implemented rent increases every 12 months, the Hearing Officer's decision regarding refunding Petitioner unlawful rent due to Respondent's failure to roll back Petitioner's Rent would not change.

E. The Hearing Officer did not err in failing to properly address Respondent's evidence on the issue of whether Unit was properly registered in 2021 or 2022.

The Hearing Officer did not err in failing to properly consider Respondent's evidence regarding whether the Unit was properly registered with the City of Mountain View ("**City**") in 2021 or 2022.

First, Respondent argues that the Hearing Officer erred in including evidence from the City's "Community Portal" showing that the Unit was not properly registered with the City in 2021 or 2022. Respondent asserts that the Hearing Officer may only make her decision based on the "evidence and testimony submitted for and at the hearing." (Appeal, page 3). Respondent also cites to Regulations Chapter 5 Section (G)(3), which states that "no individual claims shall be approved by a Hearing Officer unless supported by the preponderance of the evidence in the hearing record."

Respondent is misconstruing the CSFRA Regulations. Pursuant to the enumerated list of the Hearing Officer's powers, a Hearing Officer is authorized to "produce books, records, papers, and other material related to the issues raised in a Petition." Regulations Chapter 5 Section B(4)(b). The data from the City's Community Portal is a "record" related to the issues raised in the Petition—the issue of whether the Unit was properly registered with the City and whether Respondent was in substantial compliance with the CSFRA at the time of any rent increases. There is no provision in the CSFRA that the Hearing Officer may only base her decision on the evidence submitted at the hearing—for example, a Hearing Officer in a post-Hearing Order is authorized to ask for additional evidence to consider in her decision, evidence which is allowed to be submitted outside of the hearing itself. Additionally, Hearing Officers are authorized to order inspections of the unit if the Hearing Officers determines that an inspection will assist in resolving the issues (See Section 1711(d)). The hearing record is comprised of relevant pieces of evidence "submitted" – the CSFRA does not restrict the parties that may submit the evidence. The Community Portal data record was submitted into the hearing record as Hearing Officer Exhibit #5, and the Hearing Officer properly reviewed the record to inform her conclusions.

Further, Respondent argues that the Hearing Officer should extrapolate from the evidence demonstrating clerical errors related to the Unit's 2023 registration and, without any further evidence, should conclude that likely similar errors took place in 2021 and 2022. This is not the case. Every decision and finding made by the Hearing Officer must be supported by substantial evidence.

Respondent submitted letters, correspondence, and images of checks, all dated in 2023, as evidence to show that the City lost Respondent's 2023 registration. Notably, Respondent did not submit any evidence to corroborate Respondent's assertion that the Unit was properly registered in 2021 and 2022 as well. During the hearing, Respondent stated, "We'll do our best to get you [information related to registration in] '21 and '22." (Hearing, 2:03:40). Yet the only evidence produced were cancelled checks for the rental housing fee for those years. No copies of registrations forms were produced.

The Hearing Officer apparently did take into account Respondent's evidence of clerical errors in 2023 and concluded the Unit was in compliance with the registration and fee provisions of the CSFRA in 2023. The Hearing Officer did not err in concluding, based on the evidence in the hearing record, that the Unit was not properly registered in 2021 or 2022.

However, the issue of whether the Unit was properly registered pursuant to the CSFRA was not a determinative factor in the Hearing Officer's decision to award a rent reduction based on failure to roll back rent. Regardless of whether the Unit was properly registered, the Hearing Officer's order regarding failure to roll back rent would remain the same.

F. Petitioner's actions regarding the harassment does not negate a landlord's duty to provide and maintain a habitable Unit, to maintain the requisite housing services, and to provide Petitioner with quiet enjoyment of their property.

Respondent argues that Petitioner (and implies Petitioner alone) had the power to stop her neighbor's harassment, and Respondent argues that Petitioner should have (1) chosen not to renew her lease and vacate the property or (2) file for a restraining order to stop the harassment.

Respondent fails to note that evidence in the hearing record shows that Petitioner **did** take both of the actions outlined by Respondent. In 2022, with assistance and encouragement from her social worker, Petitioner began the year-long process of obtaining a restraining order against the neighbor, and in 2023, Petitioner chose not to renew her lease. Respondent takes issue with Petitioner failing to "stop" the harassment earlier—however the timing and sufficiency of Petitioner's actions does not eliminate Respondent's duty to provide a habitable Unit, to provide safe and secure housing, and to secure tenants' quiet enjoyment of their Unit.

Petitioner's self-help actions, including notifying the landlord in 2010, 2021, and 2023, asking for permission and installing security cameras, re-installing security cameras at Respondent's request, contacting the police, filing for a Restraining Order, and ultimately choosing to vacate the Unit, do not change Respondent's duty to attempt to address habitability, housing service, and quiet enjoyment issues within a reasonable period of time after receiving notice.

G. Lack of safety and security does fall within the scope of the CSFRA.

See Section IV(H) of this Appeal Decision for a discussion why the harassment Petitioner experienced from the neighbor does pose a quiet enjoyment, housing services, and safety and habitability issue that can properly be addressed by the hearing process pursuant to the CSFRA.

Respondent argues, unconvincingly, that the behavior from Petitioner's neighbor should be classified as a "dispute". The evidence in the hearing record does not support the conclusion that the harassment directed towards Petitioner should be categorized merely as a "dispute among neighbors." If the evidence

in the hearing record suggested Petitioner experienced, for example, a single off hand negative comment from Petitioner's neighbor, then Respondent would have a stronger argument that the CSFRA does not apply. That is not the case here. Petitioner has provided ample evidence, See Section IV(I)(2) of this Appeal Decision, that she was experiencing sustained harassment that compromised Petitioner's health and personal property (e.g., repeated puncturing of her tires). Petitioner was not in a "dispute" with her neighbor.

Respondent had a duty to provide Petitioner with a safe and secure habitable Unit, with adequate housing services, and to uphold the covenant of quiet enjoyment. The severity of the neighbor's actions towards Petitioner threatened her use and enjoyment of the Unit – an issue that falls within the scope of the CSFRA.

H. **The ongoing harassment and threats directed towards Petitioner constitutes a breach of Petitioner's right to quiet enjoyment of her Unit, represents a decrease in housing services, and is a lack of safety arising from a failure to maintain a habitable Unit.**

The ongoing harassment directed towards Petitioner constitutes a breach of Petitioner's right to quiet enjoyment of her Unit, represents a decrease in housing services, and is a lack of safety arising from a failure to maintain a habitable Unit.

The Hearing Officer discussed three bases why Respondent had a duty to reasonably protect Petitioner's use and enjoyment of her Unit and how Respondent's failure to respond timely and sufficiently once notified of the harassment Petitioner was experiencing is a violation of the CSFRA for which Petitioner is owed a rent refund.

Respondent's failure to act in response to notice from Petitioner regarding the harassment: (1) violated Petitioner's right to quiet enjoyment of her Unit, (2) represented a decrease in housing services, and (3) posed a serious safety concern demonstrating a failure to maintain a habitable Unit.

1. Quiet Enjoyment

In her decision, the Hearing Officer describes the problem of the neighbor's harassing behavior as a "quiet enjoyment" issue. (HO Decision, page 17.)

Inherent in every lease in California is the right of a tenant to "quiet enjoyment" of their leased property. See California Civil Code Section 1927. A tenant has the right to use and enjoy their rental unit in peace and quiet, free from disturbances, nuisances, and interference. California courts have held that plaintiffs could have a claim against a landlord for failing to take action against troublesome neighbors. See *Andrews v. Mobile Aire Estates*, 125 Cal. App. 4th 578, (2005). In *Andrews*, the court stated that "[t]he covenant of quiet enjoyment 'insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy.'" *Id.* at 588 (citations omitted). The court added that "**[t]he perpetrator of the interference with the tenants' quiet enjoyment need not be the landlord personally**. There may be an actionable breach where the interference is caused by a neighbor or tenant claiming under the landlord." *Id.* at 590 (emphasis added). The court held that there was a covenant of quiet enjoyment inherent in the lease agreement, and the landlord owed the tenants a contractual duty to preserve their quiet enjoyment. *Id.* At 591.

The ongoing harassing behavior directed towards Petitioner by the neighbor is well documented. See Section IV(I)(2) for a review of evidence presented by Petitioner. Petitioner often feared for her safety, and Petitioner's fear surrounding her safety and the safety of her family rose to the level of severely and negatively impacting her health. (See letter from medical professional, dated July 25, 2023, describing Petitioner as experiencing PTSD and being prescribed medication in Petitioner Exhibit #20, page 24.) Petitioner testified that the harassment she experienced was ongoing and not isolated to a handful of incidents.

A landlord has a duty to ensure that a tenant can peacefully enjoy her Unit. By failing to take sufficient actions to mitigate or stop the harassment from the neighbor, Landlord violated Petitioner's right of quiet enjoyment.

Respondent argues that they were "powerless" to intervene based on Petitioner's statements alone. Evidence in the hearing record shows that Respondent's lease—specifically the Petitioner's lease (Petitioner Exhibit #3) and the neighbor's lease (Respondent Exhibit #14, page 29)—states that "Tenant(s) shall not disturb, annoy, endanger or inconvenience other tenants. Respondent has failed to provide an explanation why, upon receiving clear notice in 2021 of the neighbor's harassing behavior, Respondent did not, for example, send out a notice to all tenants reminding them of their contractual obligations per the lease agreement to "not disturb, annoy, endanger or inconvenience other tenants." (In response to notice that poison ivy had been left in the dumpster, Respondent quickly sent out a notice to all tenants reminding all tenants not to haul in trash from outside the premises. In this instance, Respondent demonstrated their capability of responding timely to complaints—even without proof of who the offending tenant may have been.) However, when it came to responding to Petitioner's 2021 claims of harassment and expressing a concern for her safety, Respondent did not take sufficient actions to protect Petitioner's quiet enjoyment of her Unit.

Respondent argues that they did ask the neighbor whether he was engaging in harassing behavior, the neighbor answered in the negative, and Respondent appeared to have not intervened again. Even upon receiving notice from Petitioner about the harassment and responding to Petitioner's request to put up security cameras to assist with Petitioner's sense of safety, Respondent asks no follow up questions or offer to assist Petitioner beyond allowing Petitioner to engage in self-help actions of purchasing and installing security cameras.

Respondent argues that once receiving a copy of the Restraining Order which proved (to Respondent) the full extent of Petitioner's experience regarding harassment, Respondent acted by sending the neighbor a notice of lease violations and an offer to move out of the Unit without penalty. (It should not escape notice that Respondent did not ever offer Petitioner the option to vacate her lease early without penalty in order to stop the harassment, and instead now insists Petitioner owes money for unpaid rent.) In Respondent's closing argument at the Hearing, Respondent insists that prior to receiving a copy of the Restraining Order, Respondent had no written evidence, and that Respondent only had a "he-said/she-said" situation and were unable to act. (Hearing recording, 2:58:30).

Respondent felt they could not take more definitive actions such as evicting the neighbor based on Petitioner's testimony alone. Doing so, Respondent argues, would open them up to an unlawful eviction suit. However, Respondent appears to have overlooked CSFRA Sections 1705(a)(2), (a)(3), and (a)(4) that allow for just cause evictions of tenants who breach their lease agreements, pose a nuisance, or are engaging in criminal behavior, respectively, after receiving notice. While Respondent may argue fairly that there is no evidence of continued wrongdoing on the part of the neighbor after the September 2023 notice

to neighbor regarding lease violations was sent, this is because Petitioner vacated her Unit that very same month.

Respondent has provided no convincing argument as to why they did not follow up further or with more intention after receiving written notice from Petitioner in 2021 about the harassment. Had Respondent promptly acted in 2021 (for example, by inquiring further with Petitioner for proof of her harassment claims, by asking to look at any security footage captured by the cameras, and by sending a notice of lease violations to the neighbor promptly and then moving forward with an eviction if the harassing behavior went further), Respondent would have a much stronger argument that Respondent responded appropriately to the harassing behavior, and perhaps the harassment would have been successfully stopped.

The evidence in the hearing record shows that Respondent was clearly on notice starting in February 2021, and that Respondent's efforts between 2021 and 2023 were insufficient and ineffective in mitigating the harassment. Petitioner provided ample evidence that the ongoing harassment (and fear and anxiety related to anticipating the next harassing event) severely impacted her mental and physical health. These effects of the ongoing harassment impacted Petitioner's ability to use and enjoy her rental Unit free from disturbances—she was not able to benefit from the covenant of quiet enjoyment.

Landlords have a duty to ensure quiet enjoyment to their tenants, and while Respondent was not directly responsible for the harassing behavior, Respondent still has a duty to ensure Petitioner can enjoy and use her Unit free from constant harassment and free from fear of being harassed or mistreated by her neighbor. True, Respondent were not obligated to immediately evict the neighbor upon receiving Petitioner's notice, but they were obligated to do much more than allow the harassing behavior to continue unabated until they felt satisfied that Petitioner was telling the truth years later.

2. Housing Services

The Hearing Officer also makes note that the continuing harassment and threats by the neighbor constitute a decrease in housing services, a basis for reduction of rent pursuant to the CSFRA. (The Hearing Officer finds that Petitioner received "housing services valued at $705.00 per month." HO Decision, page 16).

Respondent argues that the Hearing Officer decision is "devoid of any evidence of a reduction in housing services."

Pursuant to the CSFRA Section 1702(h), "housing services" includes "any benefit, privilege or facility connected with the use or occupancy of any Rental Unit". One of the privileges and benefits associated with using a Rental Unit *is* the covenant of quiet enjoyment. By breaching the covenant of quiet enjoyment, as outlined above in Section IV(H)(1) of this Appeal decision, Respondent was—from the time they were on notice to the time Petitioner vacated the Unit—decreasing privileges and benefits associated with the Rental Unit by failing to address the ongoing harassment of Petitioner.

A Hearing Officer is authorized to determine a reasonable, appropriate amount of rent reduction tied to a corresponding decrease in housing services. See Section VI(I)(2) of this Appeal Decision for a discussion regarding the reasonableness of the Hearing Officer's rent reduction amount of $250.00 per month.

3. Lack of Habitability

Respondent contends that the term "harassment" does not "fall within the definition of habitable…in Civil Code Section 1941.1". (Appeal, page 5). Respondent is technically correct that the word "harassment" does not make an appearance in California Civil Code Section 1941.1, but Respondent has cherry picked California Civil Code Section 1941.1 to imply that the CSFRA's directive to landlords to maintain a habitable Unit begins and ends at Civil Code Section 1941.1 alone.

What the CSFRA actually states is: "Failure to maintain a Rental Unit in compliance with governing health and safety and building codes, **including but not limited to** Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, constitutes an increase in Rent." (CSFRA Section 1710(b)(1)). Respondent is not correct in asserting that landlords **only** need comply with Civil Code Section 1941.1.

Landlords are responsible for maintaining a habitable Unit generally, and various state codes and regulations are set forth to ensure tenants have access to a safe, secure Unit where their health and wellbeing are not at risk.

Respondent has no answer to an assertion that a rental Unit where you experience ongoing harassment to such a degree that your health and safety are compromised is "habitable." Petitioner provided ample evidence, both in her testimony and in the evidence submitted to the hearing record, that the neighbor's actions posed a serious safety concern—to the degree that she felt she needed to install security cameras both as a deterrent and as an evidence-gathering mechanism.

Respondent has a duty to address known security concerns, even if those concerns are due to a third-party's actions. Respondent was on notice of potentially criminal behavior compromising the safety and security of one of their tenants, and Respondent did not respond in a timely or sufficient manner. Even if Respondent felt they were unable to successfully intervene with the neighbor, Respondent, at the bare minimum, did not offer to allow Petitioner to break her lease early and without penalty – a solution that also would have ended the harassment taking place at the Property.

The failure of the Respondent to respond sufficiently after receiving notice left Petitioner in a less secure, less safe, less habitable Unit.

I. **The Hearing Officer's decision regarding a rent refund is supported by a preponderance of the evidence.**

The Hearing Officer's decision regarding a rent refund due to the ongoing harassment and lack of safety and a rent refund due to Respondent's failure to roll back rents after an illegal rent increase are both supported by a preponderance of the evidence.

1. <u>Failure to Roll Back Rent</u>

As described in detail by the Hearing Officer, the decision to award a rent refund for Respondent's failure to roll back rents after an illegal rent increase is supported by Petitioner's testimony, Workbook, lease renewal notices, and evidence of checks made to and accepted by Respondent between 2017-2023.

Respondent did not refute or provide any rebuttal evidence regarding rent collected. When the Hearing Officer displayed Petitioner's Workbook at the Hearing (via Zoom screen share) and asked Respondent whether Petitioner's documentation of rent increases was accurate, Respondent responded, "They seem

about accurate." (Hearing recording, 57:01). Respondent did not submit a rent ledger or offer any additional evidence suggesting the rent increase evidence provided by Petitioner was inaccurate.

Pursuant to CSFRA Section 1702(b), Base Rent for tenancies that commence prior to October 19, 2015, is the rent that was in effect on that date. Evidence presented by Petitioner shows that the amount of Rent Petitioner paid in October 2015, was $955.00. **Petitioner's Base Rent is $955.00**. (Petitioner Exhibit #10, page 3). Respondent did not dispute this number.

The CSFRA went into effect on December 23, 2016. Pursuant to CSFRA Section 1707(a)(3), the first Rent increase that a Landlord may impose "shall not take effect prior to September 1, 2017." Evidence presented by Petitioner shows that Petitioner's rent was increased from $955.00 to $988.00 starting June 1, 2017. (Petitioner's Exhibit #4, page 6.)[2] Respondent's June 2017 increase violates CSFRA Section 1707(a)(3). Petitioner's rent should have been rolled back to $955.00 per month until a lawful rent increase was imposed. By giving an illegal rent increase in June 2017 and by failing to roll back Petitioner's rent, each subsequent rent increase is unlawful, and legal rent for Petitioner's Rental Unit until Petitioner vacated the Rental Unit was $955.00 per month.

Respondent disputes the constitutionality of the rent rollback provision, but Respondent does not dispute the fact that Respondent imposed an illegal rent increase in June 2017 or failed to roll back rents. Respondent agreed that they did not roll back rents, Respondent contends that they should not have to.

Given the detailed evidence presented and a lack of any alternate explanations of the rent increases provided by Respondent, the Hearing Officer's decision regarding a rent refund for unlawful rent from January 2017 to September 2023, is well supported by a preponderance of the evidence.

2. Harassment

The Hearing Officer's decision regarding a rent refund due to Respondent's failure to protect Petitioner's right of quiet enjoyment, decrease in housing services, and failure to maintain a habitable Unit is also supported by a preponderance of the evidence.

The fact that Petitioner was experiencing ongoing harassment for years is well documented throughout Petitioner's testimony, the Petition, and the hundreds of pages of evidence submitted to successfully secure a restraining order against Petitioner's neighbor. (Petitioner Exhibits #1, #9, #12, #14, #20, and #21, and Hearing recording). The fact that Petitioner was experiencing harassment is supported by a preponderance of the evidence. The fact that Petitioner notified Respondent in 2021 is documented and not disputed. (Petitioner Exhibit #18, page 4). Petitioner informs Respondent that she has "had a lot of problems", that "someone puts a lot of nails in my tires every two weeks," that she has "already made a [police] report of the harassment" and that the "man of the apartment three is harassing [Petitioner] in the garage" and that Petitioner has tried speaking with the neighbor "many times" and "[neighbor] never accepts that he is doing wrong." Respondent was on notice about the neighbor's actions, and the neighbor's specifically harassing and threatening actions, since February 2021.

As discussed in Section IV(H) of this Appeal Decision, the Respondent failed to take appropriate actions to protect against the harassment Petitioner was experiencing. Therefore, the Hearing Officer correctly and

[2] The Evidence also shows that Petitioner paid $1,000 per month between January 1, 2017, and May 1, 2017, although there is no clear evidence from either party regarding a rent increase or the basis for that rent amount.

reasonably calculated damages related to the harassment using February 2021, the date Respondent was clearly on notice of the harassment, as a starting point and September 2023 (the month Petitioner vacated her Unit and also the month Respondent sent a notice to Petitioner's neighbor regarding inappropriate behavior) as the end point.

Regarding the $250.00 per month rent reduction, the Hearing Officer has discretion to determine what is the fair value of housing services Petitioner received given failure of Respondent to provide the Petitioner with a safe and secure Rental Unit and abide by the covenant of quiet enjoyment. The Petitioner valued her lack of safety and quiet enjoyment at $500.00 per month. The Hearing Officer stated that it would be "unfair to award over one-half of the rent as a refund to Petitioner for the lack of security issue." (HO Decision, page 16). The Hearing Officer also chose to decline to award the rent reduction starting from October 2009—the date Petitioner testified the harassment began. The Hearing Officer instead chose to value the housing services Petitioner received at $705.00 per month for the period of time in which Respondent was definitively on notice about the neighbor's problematic and disturbing behavior.

The Hearing Officer's decision regarding a rent refund for the lack of security issue due to harassment is reasonable and supported by a preponderance of the evidence in the hearing record.

J. The Hearing Officer did not err in failing to give Petitioner's inconsistent testimony regarding the hose sufficient weight.

The Hearing Officer did not err in failing to give Petitioner's inconsistent testimony regarding the hose sufficient weight. Petitioner's inconsistent testimony centered on the value of the hose to the Petitioner. However, before deciding the proper amount that could be due under this claim, the Hearing Officer had to first decide whether there had been a decrease in housing services when Respondent took the hose in the first place.

Respondent took Petitioner's hose after providing warning that no tenant may use the outside water spout for any purpose and Petitioner continued to use her hose connected to the outside water spout. The evidence in the hearing record shows that Petitioner had written that the hose had been given to her, but Petitioner had also valued the hose at $50 in her Workbook. Setting aside the fact that people can reasonably place a monetary value on gifts they receive, this inconsistent testimony from the Petitioner is only relevant if the Hearing Officer had determined that the taking of the hose represented a decrease in housing services.

As detailed in her decision, the Hearing Officer found that Petitioner had not met her burden of proof to show that use of the water spout via the hose had ever been a housing service that had been provided in the past. Accordingly, the Hearing Officer awarded no refund in rent on this claim. By not awarding a refund, the Hearing Officer did not need to then parse the true value of the hose to the Petitioner.

Respondent argues that because Petitioner had inconsistent testimony about this aspect of her Petition, the Hearing Officer should have disregarded all of the Petitioner's testimony. Respondent cites to California Jury Instruction No. 107 which states that juries may choose not to believe anything a witness said if they find that a witness did not tell the truth about something important. Although the applicability of a jury instruction to an administrative hearing where the trier of fact is a hearing officer and not a jury is doubtful, it is clear from the hearing record and the HO Decision, that the Hearing Officer did not find the evidence regarding the hose to be important. Additionally, the Respondent does not provide any evidence or argument that any other testimony of the Petitioner was untruthful. The Hearing Officer weighed all of

the evidence and testimony and based on her determination of the credibility of the witnesses made a decision supported by the preponderance of the evidence.

Note Respondent is not asking for any specific portion of the Hearing Officer's decision regarding lack of an award for the hose issue to be amended or reversed. No modification to the Hearing Officer's decision on the issue of the hose is warranted.

K. **California Civil Procedure Section 340 does not apply to this hearing**.

California Civil Procedure (CCP) Section 340 applies in civil actions. This hearing process to determine individual adjustments of rent is not a civil action (i.e., a lawsuit brought in court).

Respondent argues that Petitioner's claims are subject to the one-year statute of limitations set forth in CCP Section 340 because claims where treble damages can be awarded fall within the one-year statute of limitations. Respondent argues that CSFRA Section 1714(b)'s reference to treble damages ("Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages") means CCP Section 340 is triggered here, and that Respondent's liability for damages should be restricted by the one-year statute of limitations.

However, Respondent is incorrect in his assertion that Section 1714(b)'s mandate of treble damages when a Tenant is successful in a civil lawsuit and where a Landlord is found to have acted willfully or with oppression, fraud or malice applies to the rent refund ordered by the Hearing Officer in this hearing process. The Hearing Officer is correct in her statement when she says Section 1714(b) allows treble damages in "certain situations" – the situations where a Landlord is found to have acted willfully or with oppression, fraud or malice and then only in a civil action, which the Hearing is not. Even if Petitioner were to bring a civil lawsuit against Respondent in court and even if Petitioner prevailed in her claims, treble damages would only be awarded if Respondent was found to have acted willfully or with oppression, fraud or malice. That narrow situation is not before the RHC now.

Importantly treble damages are **not** allowed when a Hearing Officer is determining the appropriate amount of rent refund awarded to a Petitioner in a downward adjustment of rent Petition. A Hearing Officer may only award "the 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" (Regulations Chapter 5 Section (F)(2)) and the Hearing Officer may not triple this amount. (For example, the Hearing Officer awarded a total of $16,530, she did not, and is not allowed to, take this amount and triple to $49,590.)

This hearing is not a civil lawsuit, and treble damages are not mandated or even allowed for a Hearing Officer's determination of a downward adjustment of rent, thus CCP Section 340 and the one-year statute of limitations do not apply to the Hearing Officer's decision.

L. California Civil Procedure Section 431.70 does not apply to this hearing process.

CCP Section 431.70 applies in civil actions. This hearing process to determine individual adjustments of rent is not a civil action.

Respondent argues that because Respondent has monetary claims against Petitioner, the Hearing Officer erred in not allowing Respondent to offset the amount owed to Petitioner by the amount Petitioner owes to Respondent.

Respondent is mistaken about the scope of the Hearing Officer's authority to order remedies through this hearing process. Per the CSFRA and its Regulations, for rent decrease petitions, a Hearing Officer may only decide "the 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." Regulations Chapter 5 Section (F)(2). The Hearing Officer does not have broad powers to determine whether the Respondent-landlord is owed money for separate claims against Petitioner. In rent decrease petitions, a Hearing Officer cannot order Petitioner to pay Respondent—either Petitioner will receive a downward rent adjustment, or they will not. The hearing process for downward adjustment of rent is the improper venue for Respondent to demand Petitioner pay Respondent for "unpaid rent and damage to the rental unit". (Appeal, page 9).

Because the Hearing Officer may only award downward adjustments to rent if warranted, the Hearing Officer did not err by failing to allow Respondent to offset money Respondent claims Petitioner owes to Respondent.

M. The Hearing Officer did not state that the Petitioner's 30-day notice to vacate is valid.

Respondent argues that the letter written by Petitioner's legal representative is invalid, and that the Hearing Officer incorrectly concluded that the notice was generally valid.

The Hearing Officer did not state that Petitioner's letter is generally valid, and Respondent is misreading and misinterpreting the Hearing Officer's words. The Hearing Officer stated that the decision "will not address the validity of the letter" because the Hearing Officer's authority to decide this issue is limited. As noted above the Hearing Officer may only render a decision regarding whether a landlord owes a rent refund to a tenant on the basis of failure to maintain a habitable unit, decrease in housing services, or demand for or retention of unlawful rent. The Hearing Officer actually stated that, "A legal notice by an authorized legal representative is generally valid", (HO Decision, page 19-20), not that **Petitioner's specific letter** was "generally valid."

Further, the legal validity of the 30-day notice to vacate was not relevant to the Hearing Officer's determination that Respondent failed to roll back Petitioner's rent and failed to maintain a habitable Unit, decreased Petitioner's housing services, and did not ensure Petitioner had quiet enjoyment of her Unit. The 30-day notice is only relevant as supporting evidence that Petitioner vacated her Unit in September 2023 and this fact factored into the number of months for which the rent reduction was ordered. Petitioner's and Respondent's testimony alone provided sufficient evidence that Respondent had vacated in September 2023. The legal validity of the letter had no impact in the Hearing Officer's decision.

N. Petitioner's claims are supported by a preponderance of the evidence.

Pursuant to Regulation Chapter 5(G)(3), the burden is on the Petitioner to prove her claims by a preponderance of the evidence. This means Petitioner must demonstrate that her claims are more likely true than not true.

1. <u>Decision regarding Rent Roll back</u>

See Section IV(I)(1) of this Appeal Decision for a discussion on why Petitioner's claim regarding a failure by Respondent to roll back rents is supported by a preponderance of the evidence.

2. Decision regarding Harassment

See Section IV(I)(2) of this Appeal Decision for a discussion on why Petitioner's claim regarding harassment and the detrimental health effects of the harassment is supported by a preponderance of the evidence.

V. Conclusion

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

1. The Petitioner is entitled to a downward adjustment of rent to the correctly calculated Base Rent of $955.00 on the basis that Respondent gave an improper rent increase in June 2017 which was not rolled back and thereafter improperly imposed rent increases in 2018, 2019, 2020, 2021, 2022, and 2023.

2. Respondent shall refund to Petitioner $8,530.00 in unlawfully collected rent from January 1, 2017, through September 30, 2024.

3. Respondent shall refund Petitioner the amount of $8,000.00 for failure to protect Petitioner's quiet enjoyment of her Unit, decrease Petitioner's housing services, and failure to maintain a habitable Unit.

4. The total amount owed to Petitioner is $16,530.00 and is due and payable to Petitioner immediately and if said amount is not paid, Petitioner shall be entitled to a money judgment in the amount of the unpaid payments in an action in court or any other administrative or judicial or quasi-judicial proceeding.

5. If a dispute arises as to whether any party to this Appeal has failed to comply with this Appeal Decision, any party may request a Compliance Hearing pursuant to CSFRA Regulations, Chapter 5 Section (J)(1).