Rental Housing Committee
Tentative Appeal Decision

Petition Nos. C22230019 and C22230025

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

I. Summary of Proceedings

On February 3, 2023, Tenant Celestina Sierra (collectively **"Petitioner**") filed two petitions for downward adjustment of rent (the "**Petitions**") (Tenant's Exhibit #1 and #2) related to the property located 2489 Whitney Avenue [redacted], Mountain View ("**Property**"). The Property is owned by West Washington Properties, LLC, which was represented in the petition proceedings by maintenance manager, [redacted], and Teri Henson and Mark Katz of CM Property Management ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**."

The first Petition requested a downward adjustment of rent on the basis of unlawful rent because (1) Respondent had incorrectly calculated Petitioner's Base Rent at the time that the Community Stabilization and Fair Rent Act ("**CSFRA**") went into effect and (2) Respondent imposed unlawful rent increases above the lawful Annual General Adjustment ("AGA") permitted under the CSFRA in 2017, 2018, 2020, 2021, and 2023. The second Petition requested a downward adjustment of rent on the basis that Respondent had (1) failed to maintain the property in a habitable condition based on ten (10) separate conditions[1] and (2) had improperly decreased Housing Services without a corresponding decrease in Rent based on the closure of the pool, the lack of an on-site property manager, because Petitioner had to change her parking space due to security issues, because Respondent failed to evict other tenants for nuisance behaviors, threatening safety, or committing crimes, and based on the closure of the laundry rooms.

On April 3, 2023, a notice of hearing was issued with a hearing date scheduled for May 4, 2023, at 10:00 a.m. On April 11, 2023, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Petitioner and Respondent were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing. A Notice of Hearing Officer's Written Order and Summary of Pre-Hearing Conference and Notice of the Hearing were served on the Parties on April 12, 2023. (HO Exh. #4).

The hearing was held on May 4, 2023 (the "First Hearing"), and the hearing record was closed on May 4, 2023, after the hearing.

On November 9, 2023, the Rent Stabilization Division served a Notice of Reopening Record, New Assignment, and Setting New Prehearing Meeting and Hearing Dates (the "November 9th Notice"). The

[1] The habitability conditions alleged by Petitioner were (a) allowing smoking on the Property; (b) failing to eliminate a rat infestation; (c) having inadequate lights in the parking lot; (d) failing to repair Petitioner's door lock within a reasonable time; (e) failing to update wall outlets to 3-prongs; (f) allowing water leakage from an area near the laundry room; (g) failing to repair holes in the ceiling of the Affected Unit; (h) not addressing a leak from the bathroom to parking lot; (i) not repairing a broken toilet in the Affected Unit; and (j) allowing trash to accumulate on the Property.

November 9th Notice stated that "[t]he Rent Stabilization Division's internal review process has led us to conclude that a new hearing would be in the best interest of both parties. As a result of delays and issues with the evidence, the record will be reopened and a new hearing will be held."

A new Hearing Officer was assigned, and a second pre-hearing conference was held by Zoom on November 20, 2023. At the second pre-hearing conference, the Hearing Officer explained hearing procedure and the burden of proof, answered the parties' questions, and discussed whether additional evidence would be requested. A Notice of Hearing Officer Prehearing Order and Notice of Hearing were served on the parties on November 30, 2023; the Order set a deadline of December 11, 2023 for filing additional documents and witness lists.

On December 6, 2023, the Hearing Officer inspected the common areas of the Property, accompanied by James Olson, Building Inspector with the City of Mountain View Multi-Family Housing Inspection Program. On December 7, 2023, the Hearing Officer issued an additional pre-hearing order, which was served on the parties on that date.

The second hearing was held on December 20, 2023 (the "Second Hearing"). On December 21, 2023, the Hearing Officer issued a Post-Hearing Order requesting further evidence from the Parties on or before January 22, 2024, and giving the Parties an opportunity to respond to the evidence on or before January 29, 2024. A Notice of Post-Hearing Order was served on the Parties on December 21, 2024. On January 9, 2024, the Hearing Officer issued an Additional Post-Hearing Order requesting additional evidence from Respondent on or before January 22, 2024; this was served on the Parties on January 9, 2024.

The hearing record was closed on January 31, 2024. The Hearing Officer issued a Post-Hearing Order re Closing the Record on January 31, 2024, which was served on the Parties on February 14, 2024. The Hearing Officer issued a decision on March 20, 2024 ("**HO Decision**"). The HO Decision was served on the Parties on March 21, 2024.

A timely appeal of the Decision was received from the Respondent on April 3, 2024. (**Appeal**").

Procedural Posture

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.

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 met their burden of proof that Respondent had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because Respondent did not properly roll back the rent for the Affected Unit to its level on October 19, 2015, as required by CSFRA Sections

1702(b)(1) and 1706(a), and did not properly refund Petitioner the amount of the unlawful rent collected due to the improper rent rollback. The weight of the evidence demonstrated that the premises rent for the Property on October 19, 2015 was $1,465.00 per month and Petitioner paid $65.00 for utilities for the period from September 20, 2015 through October 20, 2015, therefore the correct Base Rent for the Property was $1,530.00 per month.

2. Petitioner met their burden of proof that Respondent was responsible for unlawful retention of rent in excess of the amount permitted by the CSFRA on the basis that rent increase imposed by Respondent effective September 1, 2018 was unlawful pursuant to CSFRA Sections 1706(a) and (b) and 1707(a) because it did not use the correct Base Rent. Consequently, that rent increase and all subsequent rent increases were unlawful. Respondent was required to refund Petitioner $8,357.18 in unlawfully collected rent for December 23, 2016 through December 31, 2023.

3. Petitioner met their burden of proof that Respondent acted in contravention of CSFRA Section 1710(b)(1), California Health and Safety Code Section 17920.3(c), and Mountain View Municipal Code, Ch. 21, Art. II, Section 21.56 by allowing tenants of the Property to smoke in their rental units with resultant secondhand smoke drifting into the Petitioner's unit and affecting Petitioner's health, welfare and safety. As a result, Petitioner was entitled to a total rent refund of $8,039.90 for the period between March 15, 2019 and the date of the HO Decision.

4. Petitioner met their burden of proof that Respondent had failed to maintain the Property in a habitable condition by allowing a rodent infestation to continue for over two years. As a result, Petitioner was entitled to an overall rent reduction of 0.4 percent of monthly rent for the period from November 10, 2020 through December 22, 2022, or a total refund of $155.37.

5. Petitioner met their burden of proof that Respondent violated CSFRA Section 1710(b)(1), California Health and Safety Code Section 17920.3(a)(10), and International Property Maintenance Code Section 402.3 by failing to remediate inadequate lighting in the parking lot for over 17 months. As a result, Petitioner was entitled to a four percent (4%) monthly rent reduction for the period from July 14, 2022 through December 20, 2023, or a total refund of $1,052.25.

6. Petitioner met their burden of proof that Respondent failed to maintain the Property in a habitable condition by not promptly installing a new door lock and dead bolt after an attempted break-in at Petitioner's unit. As a result, Petitioner was entitled to damages in the amount of $295.00, calculated by looking at the average price of replacing a door lock and installing a deadbolt.

7. Petitioner met their burden of proof that Respondent failed to maintain the Property in habitable condition by permitting an inordinate amount of bulky trash to remain on the Property over a period of almost four years, and that this failure also constitutes a decrease in Housing Services. As a result, Petitioner was entitled to a four percent (4%) monthly rent reduction for the period from January 1, 2021 through December 20, 2023, or a total refund of $2,179.51.

8. Petitioner did not meet their burden of proof that Respondent failed to maintain a habitable premises as it relates to (1) installation of a three-prong wall outlet in the Property, (2) water leaking for an area near one of the laundry rooms, (3) knots in the wooden ceiling of the unit falling out and causing cosmetic holes, (4) water leaking from the bathroom in the unit into the parking lot, and (5) a leaking toilet in the unit.

9. Petitioner met their burden of proof that there was a reduction in housing services due to Respondent's failure to keep the swimming pool clean and sanitary for several months each year over the course of four years. As a result, Petitioner was entitled to a refund of rent based on what Petitioner would have to pay for an alternate place to swim, or a total refund of $1,872.00 for the closures in 2019, 2020, 2021, 2022 and 2023.

10. Petitioner met their burden of proof that Respondent improperly reduced housing services by closing the laundry rooms on the premises for four months due to vandalism and vagrancy. Therefore, Petitioner was entitled to a total refund of $441.92 for the period from June 3, 2022 through September 28, 2022, calculated by looking at the cost of travel to the laundromat and the value of the Petitioner's lost time.

11. Petitioner met their burden of proof that Respondent's failure to remedy the nuisance behaviors and threatening behaviors of other tenants on the Property constitute a breach of the covenant of quiet enjoyment in Petitioner's Lease, which, being a benefit connected with the use or occupancy of the Affected Unit, constitutes a decrease in Housing Services pursuant to CSFRA Sections 1702(h) and 1710(c). As a result, Petitioner was entitled to a 20 percent reduction of the monthly rent for the 36-month period from December 20, 2020 through December 20, 2023, or a total refund of $11,016.00.

12. Petitioner met their burden of proof that Respondent improperly decreased Housing Services by failing to have an on-site property manager from February 1, 2020 through February 28, 2022. Therefore, Petitioner was entitled to 4 percent reduction in the monthly rent, or a total refund of $1,522.10.

13. Petitioner did not meet their burden of proof that Respondent improperly decreased Housing Services because Petitioner parks in a parking spot other than her assigned parking spot because of security and vandalism issues on the premises.

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 Respondent. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Respondent raises the following fifteen (15) issues on appeal:

A. **The Hearing Officer erred in determining that maintenance and repairs undertaken by Respondent improperly interfered with Petitioner's use and occupancy of the Property**. Respondent cites to *Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board* (1999) 73 Cal.App.4th 1204 for the proposition that unavoidable inconveniences, such as necessary maintenance and repairs, which may interfere with Housing Services but do not substantially interfere with the right to occupy the premises as a residence do not entitle a tenant to a reduction in rent.

B. **The Hearing Officer erred in applying a strict liability standard to the Respondent.** Respondent alleges that that the CSFRA and California law require only "substantial compliance" with the provisions therein, but that the Hearing Officer applied a strict liability standard in determining whether Respondent was liable to the Petitioner for several of the issues at the Property.

C. **The Hearing Officer erred in determining the reasonable value of the various habitability and Housing Services issues at the Property**. Respondent cites an unpublished case for the premise that a refund for habitability issues is justified only to the extent that the rent paid exceeded the reasonable value of the tenant's unit in its uninhabitable condition. Therefore, where the rent is below market because of rent control, no rent reduction or refund should be awarded without evidence of lost value.

D. **The Hearing Officer erred or abused her discretion in concluding that the Respondent demanded and accepted unlawful Rent for the Property**. Respondent contends that the Hearing Officer erroneously determined that Respondent was required to include Utility Charges in the calculation of Petitioner's Base Rent and that the Hearing Officer erroneously concluded that all of the rent increases imposed by Respondent were invalid because Respondent was, in fact, in substantial compliance with the CSFRA.

E. **The Hearing Officer abused her discretion in determining the valuation of the common areas as twenty percent (20%) of the rental value of the Property**. Respondent argues that the Hearing Officer did not provide any legal authority for the methodology used to allocate value to the common areas, and that it would have been more appropriate for the Hearing Officer to have calculated the common area valuation by dividing the common area by the total number of units (40), equaling 2.5 percent.

F. **The Hearing Officer abused her discretion by ignoring extensive evidence of Respondent's efforts to address the second-hand smoke issue**. The Hearing Officer should have considered whether Respondent was doing all it could do to address the problem and should not have awarded 52 months and 17 days of rent reduction because Petitioner did not claim there was smoke in her unit every day.

G. **The Hearing Officer abused her discretion in finding that Respondent failed to maintain the Property in a habitable condition due to the lack of lighting in the common areas**. Petitioner failed to meet her burden of showing that the lights were not repaired within a reasonable time and did not assert that she had suffered any harm from the lack of lights.

H. **The Hearing Officer abused her discretion by applying a strict liability standard to Respondent's trash collection efforts**. Civil Code Section 1941.1 provides that the standards for habitability are not violated unless a residence "substantially lacks" one of the required characteristics. Furthermore, the rent reduction awarded was arbitrary and excessive.

I. **The Hearing Officer abused her discretion in awarding a rent reduction on the basis of the pool closure.** The pool closures were largely due to the presence of migrating ducks, which Respondent was told it could not remove.

J. **The Hearing Officer abused her discretion in awarding damages for the closure of the laundry room because the Respondent was repairing vandalism damage.** The holding in *Golden Gate Center* provides that necessary repairs that interrupt a tenant's use of Housing Services do not warrant a reduction in rent.

K. **The Hearing Officer abused her discretion by holding Petitioner was entitled to a rent reduction for Respondent's failure to correct nuisance and threatening behaviors of other tenants.** The

Hearing Officer improperly imported the implied covenant of quiet enjoyment, which is a contractual right, into the CSFRA without express authority, and arbitrarily and capriciously calculated damages.

L. **The Hearing Officer abused her discretion by awarding a rent reduction based on Respondent's failure to provide an on-site property manager.** There is no legal requirement to have an on-site property manager for a building with fewer than sixteen (16) units. Further, to the extent that the reduction is based on the Petitioner's right to quiet enjoyment, the Hearing Officer already awarded a rent reduction for those alleged impacts.

M. **The Hearing Officer improperly awarded multiple rent reductions related to the common areas of the Property without justification.** Together, the reductions amount to 102 percent of the Hearing Officer's 20 percent common area valuation.

N. **The Hearing Officer's Decision denies Respondent a fair rate of return on its investment, in violation of *Birkenfeld v. City of Berkeley* (197) 17 Cal.3d 129, 165.**

O. **The Rental Housing Committee's appeal procedures are unjust as applied to this action.** The Committee's appeal process lacks any accommodations for an extension of time, thereby denying the Respondent a fair and reasonable opportunity to make arguments on appeal to the Committee.

IV. Decision Regarding Appealed Elements

A. Hearing Officer Did Not Err in Holding that Repairs Undertaken by Respondent Improperly Interfered with Petitioner's Use and Occupancy of the Property.

Respondent first argues that the Hearing Officer erred in holding that that there was an improper decrease in Housing Services where Respondent's provision of maintenance or repairs interrupted Petitioner's use of certain amenities associated with her use and occupancy the Property.

To reach this conclusion, Respondent relies on the public policy reasoning outlined in *Doric Realty Company v. Union City Rent Board* (1981) 182 N.J.Super. 486 [442 A.2d 652], which Respondent claims was adopted by the court in *Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board* (1999) 73 Cal.App.4th 1204. While the *Golden Gateway Center* court did state that the *Doric* decision was "of slightly more value," it also acknowledged that much of the useful aspects of the *Doric* decision were dictum. (73 Cal.App.4th at 1211.) As Respondent notes, the *Golden Gateway Center* court cited the *Doric* dictum for the proposition that "'[s]ervices and amenities furnished by landlords, like everything else in life, are subject to breakdown. As long as the breakdown does not result from the landlord's failure or neglect and there are timely and reasonable measures taken for repair, temporary interruptions are not the kinds of decreases in service which justify a rent decrease under the ordinance.'" (*Id.* at 1210 (citing *Doric*, *supra*, 182 N.J.Super at 493).)

Of relevance here is the *Doric* court's inherent acknowledgment that where, as here, the breakdown and/or delay are alleged to arise from the landlord's failure or neglect, then a rent decrease may be justified. In fact, this factor is what ultimately distinguishes the holding in *Golden Gate Center* from the instant case. In *Golden Gate Center*, the landlord undertook preventative and preemptive repairs and maintenance, such as replacing deck railings and installing new flooring on deck surfaces, which interfered with the tenant's ability to use their decks. (*Id.* at 1206-07.) As such, the court determined that "a housing service did not *cease* to be provided; rather, by undertaking to *provide* housing services – repair, maintenance and paint – another service was temporarily interrupted." (*Id.* at 1212.) Such is not the case

here. For instance, the cause of the laundry room closure was not Respondent undertaking to provide another housing service, but rather Respondent's failure to properly secure the laundry facilities to prevent break-ins and vandalism. Similarly, the closure of the pool during the summer months over the course of the last five years did not arise out of Respondent's provisions of other housing services. In fact, if Respondent had been more proactive like the landlord in *Golden Gate Center*, installing a pool cover or treating the pool with liquid duck repellent after the first year that the ducks arrived, then its possible it could have avoided this issue entirely in subsequent years. Neither can Respondent's failure to provide an on-site property manager for two years nor its failure to provide sufficient refuse removal services for three years be blamed on Respondent providing other housing services to Petitioner. Rather, these issues, as well as several of the untenantable conditions, resulted from Respondent's lack of diligence in providing maintenance and repairs, or generally being responsive and thorough in addressing the issues at the premises.

For the foregoing reasons, neither the policy reasoning in *Doric* nor the holding in *Golden Gate Center* are applicable here. Therefore, the Hearing Officer did not err in holding that Respondent's neglect and unreasonable delay in making repairs resulted in an improper reduction of Petitioner's Housing Services.

B. Hearing Officer Did Not Apply a "Strict Liability" Standard.

Respondent next asserts that the Hearing Officer erroneously applied a "strict liability" standard by requiring perfection from the Landlord where both the CSFRA and state law require only "substantial compliance." Respondent seems to imply, without explanation, that the Hearing Officer should have applied the "substantial performance" requirement in contract law to the requirements of the CSFRA. (Appeal § II.B. (citing *Posner v. Grunwald-Marx, Inc.* (1961) 56 Cal.2d 169, 186-187 ("What constitutes substantial performance is a question of fact, but it is essential that there be no willful departure from the terms of the contract, and that the defects be such as may be easily remedied or compensated, so that the promisee may get practically what the contract calls for.").)

Respondent is correct that the CSFRA provides that a Landlord cannot impose a Rent increase where the Landlord "[h]as failed to substantially comply with all provisions of [the CSFRA] and all rules and regulations promulgated by the Committee." (CSFRA § 1707(f)(1).) However, Respondent completely ignores that the CSFRA also grants the Committee broad discretion to "[e]stablish rules and regulations for the administration and enforcement of" the CSFRA. (CSFRA § 1709(d)(2).) Under this grant of authority, the Committee has promulgated regulations defining "substantial compliance." (*See, generally,* CSFRA Regulations, Ch. 12, Section B.) The CSFRA and the regulations promulgated by the Committee thereunder, not the contract law standard to which Respondent cites, control here. Therefore, the Hearing Officer did not err in relying on those regulations in reaching her conclusions. (HO Decision at p. 42.)

As it relates to habitability issues, the CSFRA requires "compliance," not "substantial 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." (CSFRA § 1710(b)(1).) It is true that *"*[i]n most cases substantial compliance with those applicable building and housing code standards which materially affect health and safety will suffice to meet the landlord's obligations *under the common law implied warranty of habitability*." (*Green v. Superior Court (1974)* 10 Cal.3d 616, 637 (emphasis added).) However, the remedy in CSFRA § 1710(b), although borrowing from, is not entirely synonymous with, the common law implied warranty of habitability.

On the one hand, the common implied warranty of habitability requires the tenant to demonstrate that the landlord has not substantially complied with the applicable health, safety and housing codes. On the other hand, pursuant to the CSFRA, a tenant's burden of proof in a petition for downward adjustment based on habitability is to establish, by a preponderance of the evidence[2], that (1) the condition(s) alleged constitute a failure to maintain the Rental Unit in a habitable condition exist and (2) the Landlord had reasonable notice and an opportunity to correct the conditions that form the basis of the petition. (CSFRA § 1710(b)(2); *see also* CSFRA Regulations, Ch. 6, Section G.) Again, because the CSFRA controls here, the Hearing Officer appropriately relied on the requirements of CSFRA § 1710(b)(2) to determine whether a rent reduction was justified.

The Hearing Officer did not apply a "strict liability" standard or require perfection from Respondent; rather, the Hearing Officer correctly applied the standards in the CSFRA and the Regulations.

C. Hearing Officer's Calculations of "Damages" Were Not Arbitrary.

Next, Respondent argues that Hearing Officer's measure of "damages" for the breach of habitability standards was "untethered from the facts or the law." (Appeal § II.C.) Relying on *Quevedo v. Braga* (1977) 72 Cal.App.3d Supp. 1, 8, Respondent asserts that damages awarded for habitability violations are "for a refund in rent, to the extent the rent paid exceeded the reasonable value of the tenant's unit in its uninhabitable condition." (*Id*.) Respondent then conclusively states that "reasonable value" is determined by the market value, and therefore, because the Rent for the Property is below market here due to rent control, no rent reduction should have been awarded without evidence of lost value. (*Id.*)

For one, it is worth noting that the *Quevedo* case is a superior court case from the County of Los Angeles and would only serve as persuasive, not precedential, authority in the Superior Court of Santa Clara County. Nonetheless, for the sake of thoroughness, we address the *Quevado* case. In *Quevedo*, the court stated as follows:

> "Damages for a breach of implied warranty of habitability should be limited to a refund of an amount which reflects the difference between the rent paid during the duration of the unfit condition and the rent which would have been reasonable, taking into account the extent to which the rental value of the property was reduced by virtue of the existence of the defect." (*Quevedo, supra,* 72 Cal.App.3d Supp. at 8.)

While the court referred to "the rent which would have been reasonable," it did not provide any further details about how the reasonable rent should be calculated. Looking at one of the cases cited by the *Quevedo* court sheds some additional light. In that case, the court held that where a landlord breached the implied warranty of habitability, the tenant "remains liable for the reasonable rental value of the premises, *as determined by the trial court*, for such time as the premises were in violation of housing codes." (*Hinson v Delis* (1972) 26 Cal.App.3d 62, 70 (emphasis added).) While the *Hinson* court not also did not provide a singular definition of "reasonable rental value," it did make clear that the trial court (or, in this case, the Hearing Officer) had the discretion to determine that value. As a matter of fact, Respondent cites no authority for the assertion that the Rent is below market, or that because the Rent for the Property is below market here because of rent control, no rent reduction could be awarded without evidence of lost value.

[2] Proving a proposition by "the preponderance of the evidence" requires demonstrating that the proposition is more likely true than not true.

Moreover, Respondent's reading of the case would lead to absurd results. Namely, that because tenants in rent-controlled units are paying below-market rents, their landlord may neglect the duty to maintain those units in a habitable condition without consequences. If one were to accept Respondent's interpretation, *Hinson* would represent a complete undermining of the system of rent stabilization, particularly the petition system which is intended to ensure landlords do not engage in "backdoor" rent increases. Perhaps most compellingly, the CSFRA itself, which is the prevailing law here, does not even use the word "reasonable." Rather, as it relates to habitability issues, the CSFRA states that a "Tenant may file a Petition with the Committee to adjust the Rent downward ***based on a loss in rental value attributable to*** the Landlord's failure to maintain the Rental Unit in habitable condition." (CSFRA § 1710(b)(1).) Similarly, where a decrease in Housing Services is the basis of the petition, "the Tenant may file a Petition to adjust the Rent downward ***based on a loss in rental value attributable to*** a decrease in Housing Services or maintenance or deterioration of the Rental Unit. (CSFRA § 1710(c).) In this context, "rental value" may reasonably be interpreted to mean the lawful Rent for the affected Rental Unit at the time that the untenantable condition existed or Housing Services were improperly reduced or eliminated.

Under *Hinson*, the Hearing Officer had discretion to determine the reasonable rental value of the Property. The Hearing Officer's determination that the lawful Rent for the Property constituted its reasonable rental value not only fell within the Hearing Officer's discretion but also aligned with the language of the CSFRA.

D. Hearing Officer Did Not Err in Concluding Respondent Had Demanded and Accepted Unlawful Rent.

Respondent argues that the Hearing Officer's conclusions of law and fact regarding unlawful rent "should be reversed, because the HO erroneously determined that Landlord did not substantially comply with the CSFRA when it calculated Petitioner's Base Rent, issued her a refund, and subsequently increased Petitioner's rent in 2017, 2018, 2019, 2021, and 2023." (Appeal, § III.A.)

Respondent first raises the issue of the Hearing Officer's inclusion of Utility Charges in the calculation of the Base Rent. Specifically, Respondent alleges that the Rental Housing Committee's recent adoption of Chapter 13 of the CSFRA Regulations – which clarify that the use of Ratio Utility Billing Systems (RUBS) by Landlords to allocate and bill Utility Charges to Tenants is prohibited under the CSFRA – "establishes that including Utilities was not clearly required by the CSFRA." (Appeal, § III.A.) Respondent states that CSFRA Regulations Chapter 13 "takes ten pages to explain how utilities were to be calculated as rents." (*Id.*)

Respondent's argument both wrongly assumes the intent of the Committee in adopting the Chapter 13 regulations and incorrectly interprets the impact of these regulations. The CSFRA's definition of Rent regulates all periodic payments for the use and occupancy of a Covered Rental Unit, including Housing Services, and including, but not limited to, Utility Charges:

> "All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises

> and ***attendant Housing Services, including all payment and consideration demanded or paid for*** parking, ***Utility Charges***[3], pets, furniture, and/or subletting." (CSFRA § 1702(p).) (emphasis added)

CSFRA § 1702(h) further reiterates that:

> "***Housing Services include***, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, ***Utility Charges that are paid to the Landlord***, refuse removal, furnishings, telephones, parking, the right to have a specified number of occupants, and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained." (emphasis added)

These definitions are found in the text of the CSFRA as it existed on the date it went into effect. Therefore, Utility Charges paid (either directly or indirectly through a third-party billing service) to a Landlord were required, from the inception of the CSFRA, to be included in the calculation of the Base Rent and subsequent lawful Rent for a Covered Rental Unit.

In 2022, the Committee was informed that most CSFRA-covered properties in the City were using RUBS to allocate Utility Charges to Tenants. As a result, the amount that Tenants were being charged for utilities fluctuated from one month to the next. The Committee determined that this fluctuation, and the use of RUBS generally, violated the rent stabilization provisions of the CSFRA because (1) the CSFRA limits annual rent increases to the AGA (which the RUBS fluctuations often exceeded), (2) the CSFRA permits only one rent increase per year, and (3) the CSFRA requires compliance with state noticing requirements prior to the imposition of any Rent increase. In recognition of the fact that most CSFRA-covered properties were utilizing RUBS, the Committee adopted the Chapter 13 regulations creating a One-Time Utility Adjustment Petition process "to bring all CSFRA-covered rental properties that are currently using RUBS (or any similar system or method that is not based on a Tenant's actual Utility usage) to allocate Utility Charges *into compliance with the CSFRA*." (CSFRA Regulations, Ch. 13, Section B.1.a.) This language in the regulations acknowledges that properties using RUBS, such as the one here, were out of compliance with the requirements of the CSFRA.

Despite this, Respondent argues that the Hearing Officer arbitrarily concluded that Respondent's subsequent Rent increases were, in part, invalid because Respondent failed to substantially comply with the rollback requirement of the CSFRA and the Regulations. Respondent claims that the Hearing Officer not only ignored "Landlord's documented and undisputed efforts to comply with the then-new rent rollback requirements" but also that there was no "shred of evidence presented by the Petitioner of any 'willful departure from the terms' of the CSFRA." (Appeal, § III.A.) The CSFRA prohibits the imposition of a rent increase where "the Landlord has failed to substantially comply with all provisions of" the CSFRA "and all rules and regulations promulgated by the Committee." (CSFRA § 1707(f)(1).) The CSFRA Regulations provide that a Landlord's failure to roll back the rent and refund any overpayment of rent constitutes substantial noncompliance with the CSFRA. (CSFRA Regulations, Ch. 12, Section B.) For the reasons already outlined in Section IV.B of this Appeal Decision, the definition of "substantial compliance" in CSFRA

[3] CSFRA § 1702(v) defines Utility Charges as follows: "Any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of a Rental Unit."

Regulations Chapter 12, Section B, not the contract law definition of "substantial performance," applies here. Respondent's Appeal fails to put forth any other legal authority or legal theory for straying from the requirements of the CSFRA. As such, the Hearing Officer did not err or abuse her discretion in concluding that Respondent was not in substantial compliance with the CSFRA at the time that it imposed the Rent increases and was therefore prohibited from imposing these Rent increases.

Even assuming that Respondent correctly argues it was in substantial compliance based on its attempts to comply with the rollback requirement, the Rent increases imposed were still unlawful because it relied on the incorrect Base Rent to calculate the increase. As the Hearing Officer explained, the CSFRA provides that upon its effective date, "no Landlord shall charge Rent in an amount that exceeds the sum of the Base Rent plus any lawful Rent increases actually implemented pursuant to" the Act. (*See* HO Decision at pp. 42-43 (citing CSFRA § 1706(a).) The "Base Rent" for a tenancy commencing on or before October 19, 2015, is the rent in effect on that date. (CSFRA § 1702(b)(1).) As explained, the correct Base Rent for the Property, which includes premises rent and utilities, is $1,530.00. (HO Decision at p. 43.) None of the Rent increases imposed, beginning in 2018 through 2023, used the $1,530.00 as the Base Rent. (Pet. Exhs. #16, 17, 18, and 50.)

The Hearing Officer's decision is based on the correct interpretation and application of the requirements of the CSFRA. Therefore, the Hearing Officer did not err in concluding that the 2017, 2018, 2019, 2021, and 2023 rent increases were improperly imposed or in concluding that Respondent was liable to Tenant for any overpayment of Rent that either it demanded and retained.

E. Habitability Issues.

1. Hearing Officer's Valuation of the Common Areas Was Not Arbitrary.

Respondent challenges the Hearing Officer's methodology for calculating the rent reductions associated with the habitability issues and reduction of services in the common areas of the Property. (Appeal § II.B.1.) Respondent's main contention is that the Hearing Officer decided to treat the common areas of the Property "as equivalent to an additional room in the Affected Unit, increasing it to five rooms with each room worth 20 percent of the monthly rent." (*Id.*) Respondent argues that the Hearing Officer cited no legal authority or evidentiary facts for the twenty percent (20%) valuation of the common areas and suggests that the common area valuation should have been calculated by dividing the common area by the total number of units on the property (i.e., one-fortieth or two-and-one-half percent (2.5%).)

First, it is important to note that Respondent had the opportunity to raise the valuation issue at either the First Hearing or the Second Hearing but failed to do so. Therefore, there was no evidence in the record, outside of the estimated valuations provided by the Petitioner, upon which the Hearing Officer could base her valuation of the common area. Moreover, the CSFRA Regulations Ch. 6, Section B.4 provides Hearing Officers with broad authority to render decisions on petitions. Hearing Officers have the authority to determine the "amount of rent adjustment attributable to each failure to maintain a habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in" a petition so long as their decisions include findings of fact and conclusions of law which support the decision. (CSFRA Regulations Ch. 6, Section F.2.a.) In the instant case, nothing in the CSFRA or the Regulations required the Hearing Officer to follow a certain methodology for the valuation of the common areas. Therefore, it was reasonable and within the Hearing Officer's authority for the Hearing Officer to develop a methodology. In doing so, the Hearing Officer explained her reasoning, thereby satisfying the requirements of the CSFRA Regulations. (HO Decision at p. 51.)

Even if the Respondent had raised the methodology issue during the proceedings and had recommended the 2.5 percent valuation, it is not clear that the use of this valuation would have been fair or reasonable. In deciding the appropriate rent reduction, a Hearing Officer determines the loss in rental value of the affected Rental Unit attributable to the failure to maintain a habitable premises or the decrease in Housing Services. This means that the Hearing Officer must look at what proportion of the rental value of the Rental Unit lies in the common areas and amenities, not what the Rental Unit's "share" is of the common areas. Regardless, we need not reach the validity of Respondent's suggested methodology because this suggestion was not in the record before the Hearing Officer.

Based on the evidence in the record, the Hearing Officer acted within her authority and discretion in treating the common areas as an additional room in the Property, and thereby attributing a total of 20 percent rental value to the common areas collectively.

2. Hearing Officer Did Not Abuse Her Discretion in Concluding Respondent Was Liable to Petitioner for the Second-Hand Smoke Despite Respondent's Unsuccessful Efforts.

Respondent argues that the Hearing Officer's conclusion that the Petitioner was entitled to a rent reduction because she met her burden of proof regarding the impacts of second-hand smoke is arbitrary and capricious. Respondent's argument is two-fold: (1) the Hearing Officer improperly "ignored and dismissed extensive evidence of Respondent's actions to respond to Petitioner's complaints that other tenants were smoking" and (2) "unreasonably calculated the rent reduction for smoking." (Appeal § III.B.2.)

The Hearing Officer did not err or abuse her discretion in holding that the Respondent failed to correct the second-hand smoke issue at the premises because there is sufficient evidence in the record to support the findings of fact and law underlying the decision. As previously explained, the Petitioner's burden of proof was to demonstrate that it was more likely than not true (1) her neighbors were smoking on or near the Property in violation of Mountain View Municipal Code, Chapter 21, Article II, §§ 21.46 et seq. (the "Anti-Smoking Ordinance") and California Health & Safety Code § 17920.3(c) and (2) the Landlord had notice and a reasonable opportunity to correct the second-hand smoke issue.

Because Respondent's Appeal does not contend that the Hearing Officer erred in concluding tenants were smoking on the Property, it is safe to assume that this fact is established and need not be further addressed in this Appeal Decision. Instead, we turn our attention to Respondent's assertion that it did not violate its duties under California's law of public nuisance because the case cited by the Hearing Officer - *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540 – requires a finding that Respondent did not take "reasonable steps" to abate the nuisance. (Appeal § III.B.2.)

However, the Hearing Officer did not cite to *Birke* for the rule about when a landlord is liable to their tenant for the failure to abate a public nuisance; rather, the Hearing Officer cited to *Birke* to demonstrate that a tenant whose child's conditions were exacerbated by secondhand smoke in the common areas of their housing complex could claim the existence of a nuisance condition. (HO Decision at p. 48.) The purpose of citing to *Birke* was to connect the presence of secondhand smoke back to Health & Safety Code § 17920.3(c), which provides as follows:

> "Any building or portion thereof including any dwelling unit, … or the premises on which the same is located, in which there exists any of the following listed conditions to an

> extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building: … (c) Any nuisance."

In fact, the Hearing Officer need not have relied on *Birke* at all for the premise that secondhand smoke constitutes a nuisance. As the Hearing Officer outlined, the Anti-Smoking Ordinance prohibits smoking in multi-unit residences in the City. (MV Muni. Code § 21.49(h).) "Smoking is prohibited, and no person shall smoke inside any new or existing unit of a multi-unit residence, in any enclosed or unenclosed common area of a multi-unit residence or within a reasonable distance of any operable doorway, window, opening or vent of a multi-unit residence." (MV Muni. Code § 21.56(a).) The Fire Department has interpreted this to mean that smoking is prohibited "[w]ithin 25 feet of any operable doorway, window, opening and vents of this and neighboring multi-unit residences." (Pet. Exh. #70.) "Landlords are required to keep the premises free of smoking waste, post "no smoking" signs, and include a smoking prohibition in leases." (HO Decision at p. 48, citing Mv Muni. Code § 21.56(d), (e), (f).) The Ordinance further provides that "[a]ny violation of this article is hereby declared to be a nuisance." (MV Muni. Code § 21.55(h).)

Perhaps more significantly, 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. While the CSFRA is more generous than the state common law on the implied warranty of habitability by requiring the Tenant to demonstrate that the Landlord had notice and a reasonable opportunity to cure, the CSFRA still does not take into consideration a Landlord's failed attempts to correct a condition. (*See Knight v. Hallsthammar* (1981) 29 Cal.3d 46, 55 ("At least in a situation where, as here, a landlord has notice of alleged uninhabitable conditions not caused by the tenants themselves, a landlord's breach of the implied warranty of habitability exists whether or not he has had a "reasonable" time to repair. Otherwise, the mutual dependence of a landlord's obligation to maintain habitable premises, and of a tenant's duty to pay rent, would make no sense.") So long as the condition persists and the Tenant demonstrates that the Landlord knows and has had a reasonable chance to cure, the Tenant will prevail under CSFRA § 1710(b). On Appeal, Respondent fails to put forth any new authorities that would support its argument that the Hearing Officer erred or abused her discretion by "[s]etting aside the question of whether [Respondent] have really done all they could." (HO Decision at p. 49.)

As noted, Respondent also argues that, even if the second-hand smoke did constitute a violation of the applicable health and safety codes, the Hearing Officer's calculation of the associated rent reduction was unreasonable. Respondent's main qualm appears to be that the HO Decision awards Petitioner a rent reduction for the entire 52-month and 17-day period from March 15, 2019, through August 1, 2023. (HO Decision at p. 51.) In support of this contention, Respondent alleges "Petitioner did not claim that there was smoke in the Unit every single day of those 52 months and 17 days, and no evidence supports that conclusion. (Appeal § III.B.2.) However, Respondent is mistaken. Petitioner did testify that the smoking happens every day. (First Hearing Recording at 00:47:00-00:47:16.) Among other documentary evidence and photos, Petitioner also provided a 34-page smoking log documenting the dates and times of each instance between 2019 and 2022 where a neighbor was smoking. (Pet.'s Exh. #26.)

On the other side, the only evidence provided by Respondent in rebuttal was testimony from Mr. Katz that he inspected rental unit [redacted] in August 2022 and did not smell smoke or see any evidence of smoking, and testimony from Ms. Henson that she has never seen anyone on the premises smoking and has never found any cigarette butts on the premises. (HO Decision at p. 35.) This testimony contradicted the conclusions of the Fire Department's Reports re Smoking, but also Ms. Henson's own testimony that their gardeners come every week and pick up cigarette butts. (HO Decision at p. 14.) Because there was

significant evidence in the record about the persistence of the second-hand smoke issue, it was reasonable for the Hearing Officer to decide that Petitioner was entitled to a rent reduction for the entire period from March 15, 2019 through August 1, 2023.

The Hearing Officer did not err or abuse her discretion in holding that the Petitioner was entitled to a rent reduction, for the entire period from March 15, 2019 through August 1, 2023, based on the Landlord's failure to correct the second-hand smoke issue at the premises.

3. Hearing Officer Did Not Abuse Her Discretion in Finding that Respondent Failed to Maintain the Property in a Habitable Condition Due to Lack of Lighting.

Respondent next argues that the Hearing Officer's decision to award Petitioner a 20 percent reduction of the common area value, or an overall 4 percent reduction of the total monthly rent, for inadequate lighting was arbitrary. Again, Respondent's challenge relies on two main contentions: (1) that the Petitioner did not present evidence that the lights were not repaired within a reasonable time and (2) that the 20 percent valuation of the common area value was unsupported.

As Respondent's second argument is already addressed in Section IV.C. of this Appeal Decision and Respondent puts forth no new authorities or theories as it relates to the Hearing Officer's valuation of the common areas, this argument is not addressed again in this section. We turn instead to Respondent's argument that the Hearing Officer abused her discretion by awarding a rent reduction where Petitioner failed to present evidence that the lights were not repaired within a reasonable time.

At the First Hearing, Petitioner testified that the parking lot is dark at night and the lights, which are on a timer, do not come on until nine or ten p.m. (HO Decision at p. 4.) She first complained about the lighting issue in an email to the property manager on July 14, 2022. (Pet. Exh. #34.) Petitioner submitted photos on at least 5 occasions – July 17, 2022, July 26, 2022, August 10, 2023, October 16, 2023, and November 16, 2023 – which show the parking lot as pitch black. (HO Decision at p. 37; *see also* Pet. Exh. #32.) Petitioner testified that at the time of both the First Hearing and the Second Hearing, the lights remained an issue. (HO Decision at pp. 4; 11.)

Petitioner's testimony and evidence was corroborated by Respondent's representatives. For instance, the on-site resident manager, [redacted], emailed CM Properties on August 12, 2022 about various issues at the premises, including "The lights in the parking lot are not working correctly. Much of the time at night, it is very dark." (HO Decision at p. 37.) Mr. Katz and Ms. Henson both testified that the removal or breaking of light bulbs is an ongoing problem. (HO Decision at pp. 6; 18.) No maintenance logs were submitted to show that the issue had been corrected. (HO Decision at p. 52.) However, Ms. [redacted] testified during the Second Hearing that the parking lot lights are on a timer that needs to be adjusted, and that she called a contractor to install additional, motion-sensor lights that do not need to be on a timer, which the Hearing Officer reasonably interpreted as an admission that the existing lighting was inadequate. (HO Decision at pp. 19; 52.)

Respondent further alleges that Petitioner did not "assert that she suffered any harm from the lack of lights, or that it caused her any damage." (Appeal § III.B.3.) Given the extensive evidence in the record about the happenings at the premises, it was reasonable for the Hearing Officer to conclude that the lack of adequate lighting in the common areas constituted a safety concern for Petitioner. (Pet. Exhs. #55, 57, 58, 59, 60, 66 and 67; *see also* HO Decision at pp. 30-31.) Mr. Katz himself testified that "tenants remove the lights so they can engage in illicit activities in the parking lot." (HO Decision at p. 37.)

Taken together, this evidence is sufficient support for the Hearing Officer's conclusion that inadequate lighting in the parking lots persisted between July 14, 2022 and December 20, 2023, causing a safety concern for Petitioner and supporting the rent reduction awarded by the Hearing Officer.

4. Hearing Officer Did Not Apply a Strict Liability Standard to Respondent's Trash Collection Efforts.

As with the second-hand smoke issue, Respondent argues that the Hearing Officer improperly applied a strict liability standard to Respondent's trash collection efforts, holding that Respondent "should be liable for any 'excess of trash on the Property.'" (Appeal § IV.C.4.) Respondent claims that this holding by the Hearing Officer contravenes Civil Code § 1941.1 which states that standards for habitability are not violated unless a residence "substantially lacks" one of its required elements.

For one, Respondent misstates the language of the Hearing Officer's Decision. The section to which Respondent cites states: "The *question* is whether there continues to be an excess of trash on the Property, which violates state and local laws. The weight of the evidence demonstrates that *there is frequently excessive trash on the Property*." (HO Decision at p. 54 (emphasis added).) The Hearing Officer, then, did not hold Respondent liable for *any excess* of trash on the Property, but rather *frequent excessive* trash on the Property. Frequent excessive trash on the premises may be construed as a material breach.

Civil Code § 1941.1(f) states that a "dwelling shall be deemed untenantable…if it substantially lacks…[b]uilding, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin." "Provisions of the Civil Code 'are to be liberally construed with a view to effects its objects and to promote justice.'" (*See Knight*, *supra*, 29 Cal.3d at 53.) And as Respondent admits in its Appeal, "[w]hether the defect is 'substantial' or 'de minimis' (no actionable breach) is determined on a case-by-case basis. *Hall v. Municipal Court* (1974) 10 Cal.3d 641, 644." (Appeal § III.C.) Here, the Hearing Officer, as the determiner of fact, was responsible for making the determination.

There is substantial evidence in the record to support the Hearing Officer's conclusion that there was frequently an excess of trash on the premises, constituting a substantial defect under Civil Code § 1941.1 and a violation of the CSFRA. The evidence supporting this conclusion includes all of the following:

- Petitioner's testimony at the First Hearing that neighbors dump large items everywhere on the premises and of her inability to dispose of household trash in the dumpsters sometimes (HO Decision at pp. 4-5);
- Petitioner's testimony at the Second Hearing that trash continues to be a constant problem on the premises (HO Decision at p. 11.);
- Emails from Petitioner to property management from July 12, 2021 and July 23, 2021 documenting shopping carts left on the premises;
- Emails from Petitioner to property management on September 8, 2022 documenting trash (HO Decision at p. 38);
- Twenty-one (21) photos from 2022 and twenty-three (23) photos from 2023, covering at least 38 days, of bulky trash dumped outside the dumpster and trash piled up outside several units (HO Decision at p. 38);

- Multi-Family Housing Inspection reports from September 8, 2021, August 3, 2022, November 1, 2022, December 21, 2022, March 14, 2023, and May 27, 2023 pointing out trash on the Property and noting violations of state fire and building codes due to the accumulation of trash (HO Decision at p. 54); and
- Testimony from Ms. Henson and Mr. Katz admitting that trash is an ongoing issue at the premises (HO Decision at p.7).

Moreover, Respondent did not submit evidence that the issue had been resolved. It is worth noting here that at the outset of the Second Hearing, the Hearing Officer established that, in reaching her decision, she would disregard any testimony that she did not find credible. (Second Hearing Recording at 00:28:00-00:28:40.) The testimony from Respondent's representatives was largely inconsistent. For instance, at the First Hearing, Mr. Katz said bulk trash pick-up is weekly while Ms. Henson said once a quarter. (HO Decision at p.7.) At the Second Hearing, Ms. Henson estimated that Respondent has bulky trash hauled away one to three times per month. (HO Decision at p.17.) Similarly, Mr. Katz testified that he felt the trash situation had improved, while Ms. Henson stated that despite her best efforts, she does not think the situation has improved. (HO Decision at p. 17.) Meanwhile Respondent submitted documentary evidence of only eight total bulk trash pick-ups between 2022 and 2023 combined. (HO Decision at p. 54.) Based on these inconsistencies and others in the testimony of Respondent's various representatives, it was reasonable for the Hearing Officer to assign more weight to the evidence of the existence of the excessive trash issue.

In reaching the conclusion that Respondent had failed to maintain the premises in a tenantable condition, the Hearing Officer also explained that the Landlord's efforts were irrelevant. (*See* HO Decision at p. 54.) For the same reasons that the Hearing Officer was not required to consider the Respondent's failed attempts to correct the second-hand smoking situation, the Hearing Officer was not required to consider the Respondent's limited, failed attempts to address the excessive trash problem on the premises in determining whether a rent reduction was justified. Furthermore, there is simply no legal authority for the contention that a Landlord is excused from exercising due diligence and seeking to resolve a serious habitability condition merely because it would be costly or time-consuming. To add to the lack of authority for this contention is the fact that Respondent's failure was based on a mere conjecture. Respondent refused to implement potential options for addressing the condition, such as installing a gate to limit access to the parking lot where the dumpsters are stored, adding more dumpsters to accommodate the additional trash, or locking the dumpsters to keep people out, solely because its representatives believed these approaches would not work.

Lastly, Respondent again argues that a 20 percent valuation attributed to the common areas, or an overall 4 percent reduction of the total monthly rent, for 35 months and 19 days was arbitrary and excessive. Based on the evidence outlined above, particularly Ms. Henson's testimony that she deals with the trash issue on a daily basis, the Hearing Officer acted reasonably in concluding that the violation was continuous, or near continuous, for the entire 35-month and 19-day period.

Based on all of the foregoing, the Hearing Officer did not abuse her discretion in holding that the Petitioner was entitled to a rent reduction due to a substantial lack of common areas free of trash and debris.

F. Decrease in Housing Services.

1. Hearing Officer Did Not Abuse Her Discretion by Awarding a Rent Reduction for Swimming Pool Closure.

Respondent claims that the Hearing Officer's Decision to award a rent reduction on the basis of "the unusable swimming pool" is unfair because (1) only Petitioner's son, who is not on the lease, not Petitioner used the pool, (2) the evidence established a substantial portion of the time that the pool was closed was due to the presence of migrating ducks that could not be removed, and (3) the Hearing Officer's valuation of the swimming pool closure lacked merit.

Contrary to Respondent's statement, at the First Hearing Petitioner testified "that she had always used the pool during the summer." (HO Decision at p. 4.) At the Second Hearing, the Petitioner "testified that her son used to swim in the pool frequently from May through September, but that the pool has been unusable since 2018 because it was dirty and there were ducks in it. (HO Decision at p. 56.) Regardless of whether Petitioner or her son used the pool, the Hearing Officer's decision was sufficiently supported by findings of fact and conclusions of law. Whether or not the Petitioner's son is on the lease, he is entitled to use and occupancy of the Property. The CSFRA defines "Tenant" as a "Tenant, subtenant, lessee, sublessee or ***any other person entitled under the terms of*** a Rental Housing Agreement or ***this Article to the use or occupancy of any Rental Unit***." (CSFRA § 1702(u).) And, as the Hearing Officer noted, under CSFRA Section 1705(a)(2)(B), "a Landlord shall not take any action to terminate a tenancy as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild…so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503b of the Uniform Housing Code…." (*See* HO Decision at p. 64.) Taken together, these provisions entitle a qualifying family member of a lawful Tenant to the use and occupancy of the Covered Rental Unit and the attendant common areas and Housing Services.

There is also sufficient evidence in the record to support the Hearing Officer's finding that Respondent was liable for the closure for the swimming pool, despite the presence of ducks. It is undisputed that there are ducks in the swimming pool at the premises, and that they largely cause the unsanitary and unsafe conditions of the swimming pool. While Respondent alleges that it was in an impossible position because it had to decide between violating the law by removing the ducks or becoming liable for the rent reductions for keeping the pool closed, it is not clear that these were, in fact, Respondent's only options. As the Hearing Officer outlined, Respondent only authorized the addition of chemicals to the pool one time to deter ducks. (HO Decisions at p. 57.) Respondent also put inflatable toys in the pool to scare away the ducks. (*Id.*) However, there is no evidence that, since the time the ducks started to appear in 2018, Respondent "consulted with experts about deterrents to keep the ducks from coming back, i.e., interrupting their migratory pattern, such as a solar cover, an automatic pool cleaner, bird netting, or deterrents which use sound." (*Id.* at 58.) Five, nearly six years, was more than a reasonable amount of time for the Respondent to at least try other methods to deter the ducks, if not to correct the problem and restore the pool facilities.

Lastly, as it relates to the swimming pool issue, Respondent challenges the Hearing Officer's calculation of the rent reduction based on the average cost of paying for an alternate place to swim. (Appeal § III.B.5.) Respondent specifically takes issue with the fact that the Hearing Officer "abandoned her otherwise consistent use of the 'common area rent value'" without explaining why a different measure of damages should apply to the pool. (*Id.*) Respondent's argument overlooks the fact that the Hearing Officer's use of the" common area valuation" method applied only to issues arising out of Respondent's failure to maintain the Property in a habitable or tenantable condition. On the other hand, the Hearing Officer used different measures for two of the Housing Services issues – the closure of the swimming pool and the closure of the laundry rooms. The methodologies used by the Hearing Officer to attribute value to these two issues better reflects the value of the Housing Services in question and the cost to the Tenant of the loss of these Housing Services.

For the reasons outlined above, the Hearing Officer did not abuse her discretion in awarding a rent reduction for the closure of the swimming pool during the summer months.

2. Hearing Officer Did Not Abuse Her Discretion by Awarding a Rent Reduction for Laundry Room Closure.

Respondent also contests the Hearing Officer's award of damages for the time period from June 3, 2022, and September 28, 2022 when Respondent was allegedly repairing vandalism damage to laundry rooms and upgrading the laundry machines to phone-based systems.

Specifically, Respondent argues that the Hearing Officer's decision regarding the laundry rooms contravenes the *Golden Gateway Center* decision because the Hearing Officer awarded damages for an inconvenience due to maintenance and repair. (*Golden Gateway Center*, *supra*, 73 Cal.App.4th at 1204.) However, as explained in detail in Section IV.A of this Appeal Decision, the facts here are distinguishable from the facts in *Golden Gateway Center* because the laundry room closure was not caused by Respondent undertaking to provide another housing service, but rather Respondent's failure to properly secure the laundry facilities to prevent break-ins and vandalism and the Respondent's unexplained four-month delay in getting the laundry facilities back up and running. In fact, the Hearing Officer reviewed all the evidence about when the laundry rooms were closed and the duration for which they were closed, and decided that, based on conflicting evidence and testimony (including from Respondent's own representatives), the evidence from all the parties most reliably indicated the laundry rooms were closed from June 3, 2022, through September 28, 2022. (HO Decision at pp. 59-60.) The notice that was posted by Respondent on June 3, 2022 informed the tenants that all of the laundry rooms were being shut down and the machines were being disconnected until such time that Respondent was able to identify the people responsible for the break-ins and damage; the notice made no mention of repairs or maintenance. (Pet. Exh. # 37.) Therefore, there is no evidence that this closure was undertaken because of repairs.

The rule declared by *Golden Gateway Center* court is inapplicable to the instant case; thus, the Hearing Officer did not err in her application of the law or her award of damages to Petitioner for the closure of the laundry facilities.

3. Hearing Officer Did Not Abuse Her Discretion by Awarding a Rent Reduction for Respondent's Failure to Correct "Nuisance and Threatening Behaviors" of Other Tenants.

Respondent protests the Hearing Officer's award of a rent reduction on the basis that, over a three-year period, Respondent breached the covenant of quiet enjoyment by failing to adequately address the behaviors of other tenants on the property that "constitute a nuisance, such as disorderly, peace-disturbing conduct, or behaviors that are threatening to the safety of other." (Appeal § IV.B.7.)

Respondent's protest is trifold: (1) "[i]mporting a contractual right into a public statute without express authority is improper and unjust," (2) the Hearing Officer's calculation of damages associated with this reduction in Housing Services is arbitrary and capricious, and (3) upholding the rent reduction award in this scenario would constitute bad public policy. (*Id*.)

Respondent challenges the Hearing Officer's decision that a breach of the covenant of quiet enjoyment constitutes a decrease in Housing Services on the basis that a contractual covenant should be enforced in superior court where Respondent would be entitled to affirmative defenses and evidentiary and

procedural protections of civil law. Respondent cites no authority for its position why this particular contractual obligation cannot be enforced via the petition process, while several of a landlord's other duties in a residential lease can be. As the Hearing Officer explained, the covenant of quiet enjoyment, like the implied warranty of habitability, is inherent in all residential leases in California. (HO Decision at p. 62, citing Civil Code § 1927.) Case law has established that where the covenant of quiet enjoyment is inherent in a lease, the landlord owes the tenants a contractual duty to preserve their quiet enjoyment, including taking action against troublesome neighbors. (*Id.*, citing *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 583, 590.) Since the covenant of quiet enjoyment is inherent in Petitioner's lease for the Property, Respondent agreed to provide the Housing Service (connected to the Petitioner's use and occupancy of the Property) of ensuring Petitioner's quiet enjoyment of the Property.

Nor does Respondent explain why the quasi-judicial proceeding is incapable of affording it due process. Both the federal and state Constitutions require the government to afford persons due process before depriving them of "life, liberty or property." (US Const., 14th Amend.; Cal. Const., art. I, § 7.) The most fundamental requirements of due process are adequate notice and an opportunity to be heard before a fair and impartial hearing body. (*Horn v. County of Ventura* (1979) 34 Cal.3d 605, 612.) The requirements of due process extend to administrative adjudications. (*Id.*) Respondent does not explain how the petition process failed to provide adequate notice or an opportunity to be a heard before a fair and impartial body.

As with the common area valuation, Respondent argues that the Hearing Officer cited no legal authority or evidentiary facts for the twenty percent (20%) valuation of the covenant of quiet enjoyment. However, as explained in Section IV.E.1 of this Appeal Decision, the Hearing Officer has broad discretion to establish a methodology for the valuation of habitability violations and Housing Services. The Hearing Officer explained that her treatment of the right to quiet enjoyment as the equivalent of an additional room in the Property (worth 20 percent of the value of the monthly rent) was based on the fact that the right of a tenant to feel safe and comfortable in their home is a significant Housing Service, the loss of which can be traumatizing. (HO Decision at p. 63.) Without any additional authority to support its position, Respondent's argument about the Hearing Officer's calculation of the rent reduction must necessarily fail.

Finally, Respondent argues that upholding the $11,016.00 rent reduction would be terrible public policy because the nuisance and threatening behaviors underlying the breach of the covenant of quiet enjoyment "were a result of Landlord's agreement to rent vacant units at the Property to the unhoused population during the COVID pandemic." (Appeal § III.B.8.) Respondent seemingly takes the position that their attempt to assist a vulnerable population is being punished. However, this, also, is a mischaracterization. The Hearing Officer's Decision does not "punish Respondent's good deed," it merely holds Respondent responsible for its failure to continue to provide the Housing Services which it contracted and promised to provide to Petitioner. The Respondent's act of assisting vulnerable individual with special needs did not excuse their obligations to provide safe, tenantable housing to Petitioner.

For all the foregoing reasons, the Hearing Officer did not abuse her discretion in holding that the covenant of quiet enjoyment was a Housing Service to which the Petitioner was entitled, and that Respondent was liable to Petitioner for their failure to uphold this obligation.

4. Hearing Officer Did Not Abuse Her Discretion by Awarding a Rent Reduction for Lack of an On-Site Property Manager.

Respondent calls into question the Hearing Officer's award of a rent reduction on the basis that Respondent failed to provide an on-site property manager for a period of two years.

Respondent argues that there is no legal requirement for an on-site property manager for a building with fewer than 16 units.[4] However, as the Hearing Officer explained, the determination of whether Respondent is required by law to provide an on-site property manager is irrelevant here because the provision of an onsite property manager at the time that the CSFRA went into effect constitutes a "Housing Service" under Petitioner's rental housing agreement, and therefore, the failure to have an on-site property manager for any period of time constitutes a reduction in Housing Services for which there must be a corresponding decrease in rent. (HO Decision at p. 63.)

Respondent further states that, "to extent that the reduction is due to the stated reasons that it 'affected Petitioner's right to quiet enjoyment', the HO already awarded rent reduction for those alleged affects, and so awarding further damages to Petitioner for the same injury is unjust and unsupported by the law or evidence." (Appeal § III.B.8.) However, the Hearing Officer identified helping regulate tenant behavior as only one aspect of the Housing Service that is having an on-site property manager; other aspects include dealing with emergencies and helping to keep the Property well-maintained.

Thus, the Hearing Officer did not abuse her discretion by awarding a rent reduction based on the lack of an on-site property manage for two years.

G. Again, the Hearing Officer's Valuation of Common Area Reductions is Not Arbitrary.

Respondent again challenges the Hearing Officer's methodology for awarding rent reductions related to the common areas of the Property. Respondent alleges that the rent reductions awarded based on the rodent infestation (2 percent of 20 percent), the parking lot lighting (20 percent of 20 percent), excessive trash (20 percent of 20 percent) and the lack of an onsite property manager (20 percent of 20 percent) alone comprise 62% of the value of the entire common area of the Property, which "seems very hard to square with the reality of how tenants use common areas and highlights the sheer arbitrariness of the" Hearing Officer's valuation. (Appeal § III.C.) As outlined thoroughly in Section IV.E.1 of this Appeal Decision, the Hearing Officer was broadly authorized to determine the "amount of rent adjustment attributable to each failure to maintain a habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in" a petition so long as her decision included findings of fact and conclusions of law which support the decision. (CSFRA Regulations Ch. 6, Section F.2.a.) In each instance, the Hearing Officer explained the findings of fact and conclusions of law underlying the rent reduction awarded. Therefore, the valuations of the common area reductions were not arbitrary.

H. An Appeal is Not the Appropriate Forum to Raise the Fair Rate of Return Issue.

Relying on the conclusion of the court in *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 165 that local rent control schemes must be reasonably calculated to provide landlords with just and reasonable return on their property, Respondent argues that the Hearing Officer's Decision denies Respondent any return whatsoever. For one, the determination about whether a landlord can achieve a fair rate of return under a local rent control scheme is made on a property-wide, not unit-by-unit, basis. Secondly, if Respondent does, in fact, believe that the HO Decision prevents them from achieving a fair rate of return on their

[4] It is worth noting that Respondent argues elsewhere in their Appeal that the common areas/amenities serve a total of forty (40) units in the complex, thereby recognizing that there are more than sixteen (16) units on premises. Based on this admittance by Respondent, an onsite property manager would also be required by law.

investment, it is entitled to seek an upward adjustment of rent via the petition process once it has complied with the HO Decision and all other requirements of the CSFRA and the Regulations. (*See* CSFRA § 1710(a).)

I. The Rental Housing Committee's Appeal Procedures Satisfy Due Process Requirements.

Finally, Respondent objects to the Board's appeal process because it lacks any accommodations for the extension of time to appeal, thereby denying Respondent with a fair and reasonable opportunity to make arguments to the Rental Housing Committee. (Appeal § III.E.) However, as Rent Stabilization Division staff explained to Respondent, CSFRA Regulations Chapter 6, Section H.2 provides that the "Committee may accept the late appeal, in Rental Housing Committee's sole discretion…upon finding that the untimely appeal request is supported by good cause and postponement serves the interest of justice." This process also requires the Committee to "provide the affected parties with an opportunity to make an oral argument in a length not to exceed five (5) minutes per party and present any documentary evidence supporting their position."

V. Conclusion

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

1. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of One Thousand Five Hundred Thirty Dollars and Zero Cents ($1,530.00) on the basis that Respondent incorrectly rolled back the Rent for the Property upon the effective date of the CSFRA and thereafter improperly imposed AGA increases in 2017, 2018, 2019, 2020, 2021 and 2023.

2. Respondent shall refund to Petitioner $8,357.18 in unlawfully collected rent for December 23, 2016 through December 31, 2023, plus any additional sums exceeding the current lawful rent of $1,530.00 for the Property that have been paid by Petitioner after January 1, 2024.

3. Upon receipt of the refund for unlawfully collected rent, Petitioner must repay the amount of unlawfully collected rent paid by any entities on behalf of Petitioner, as follows: (a) the State of California's Covid-19 Rent Relief Fund, $360.00; (b) CSA Rent Relief, $520.00; and (c) CLESPA, $640.00. Petitioner shall be responsible for reimbursing any additional entities not listed herein.

4. Respondent shall refund Petitioner in the amount of $11,722.03 for the failure to maintain the Property and common areas in a habitable condition.

5. Respondent shall refund to Petitioner the amount of $14,852.02 for a decrease in Housing Services.

6. Respondent shall refund to Petitioner the total amount of (a) $34,931.23, (b) plus any additional amounts exceeding the current lawful rent of $1,530.00 for the Property that may have been paid by Petitioner after December 20, 2023, (c) plus any past, unpaid utilities invoices that Petitioner has paid or may pay which increase the total payment to Respondent above $1,530.00 for each month of utilities payments.

7. In the event that Petitioner does not receive full payment of $34,931.23 plus any additional sums exceeding the current lawful rent of $1,530.00 for the Property that have been paid by Petitioner after January 31, 2024 on or before July 29, 2024, Petitioner shall be entitled to withhold rent

payments until such time as she has withheld a total of $34,931.23 plus any additional sums exceeding the current lawful rent of $1,530.00 for the Property that have been paid by Petitioner after January 31, 2024.

8. In the event that either Petitioner or Respondent terminates Petitioner's tenancy for any reason prior to delivery of the payments ordered by this Decision, the total amount then owed shall become 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.

9. Respondent may not issue a Rent increase for the Property until (1) all refunds due to Petitioner are fully paid, and (2) Respondent has provided written notice to Petitioner of the rent increase at least 30 days in advance of such increase in the manner prescribed by the CSFRA and California law. CSFRA Regulations Ch. 7, Section (B)(1) requires that a notice in substantially the same form as that promulgated by the Rental Housing Committee must be served on Tenants for all rent increases.

10. In addition to complying with the requirements of Paragraph 9 above, Respondent may not issue a rent increase for the Property if Respondent is in violation of any of the provisions set forth in CSFRA Section 1707(f)(1)-(3) and CSFRA Regs. Ch. 12, Section (B), which require substantial compliance with the CSFRA and include, among other things, charging only lawful amounts of rent, registering the Property annually with the Rent Stabilization Division (see CSFRA Regs. Ch. 11), refunding all unlawfully charged rents for all Tenants, and maintaining the Property in habitable condition according to state law and the CSFRA, including making all repairs ordered hereunder or required by the City Building Department or other department of the City of Mountain View as a result of Multi-Family Housing Program Inspections. Only when Respondent has complied with all of the provisions of this paragraph and paragraph 9, above, may Respondent issue a rent increase, provided that it does so in a manner consistent with the CSFRA and California law.

11. 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, Ch. 5, Section J.1.