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December 12, 2024

memorandum
confidentiality

To
Mountain View Rental Housing Committee
From
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Estrella Lucero, Special Counsel to the Rental Housing Committee
RE
Appeal of Hearing Officer's Decision Re: Petition Nos. C23240057 and C23240058.

RECOMMENDATION

To consider the Tentative Appeal Decision and either accept the Tentative Appeal Decision or modify the Tentative Appeal Decision with instructions to staff citing appropriate evidence in the Hearing Record to support the changes.

BACKGROUND

The instant appeal arises out of a petition for downward adjustment of rent ("Petition") based on failure to maintain habitable premises and a decrease in housing services and a demand for and retention of unlawful rent. The hearing on the Petition was held on July 25, 2024. The Hearing Officer's decision was issued on September 24, 2024, and served on the parties on October 7, 2024 ("HO Decision"). Landlord-Respondent filed a timely appeal of the HO Decision on October 7, 2024.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
April 11, 2024	RHC accepted Petition Nos. C23240057 and C23240058.
May 13, 2024	Pre-hearing telephone conference held.
May 15, 2024	Hearing Officer Order summarizing Pre-hearing conference and request for additional evidence served on parties.

July 25, 2024	Hearing held and closed.
August 1, 2024	Post Hearing Order served on parties.
August 8, 2024	Hearing Record closed.
September 24, 2024	HO Decision issued.
October 7, 2024	HO Decision served on parties.
October 7, 2024	Appeal submitted by Appellant-Respondent.
December 2, 2024	Tentative Appeal Decision issued and served.
November 12, 2024	Appeal hearing before the Rental Housing Committee.

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 increased 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.

The Hearing Officer determined that Petitioner had met her burden of proof on the issues of Respondent's failure to maintain a safe and secure environment by failing to sufficiently address the neighbor's harassment of Petitioner. The Hearing Officer ordered a rent refund of \$8,000.00 to account for the diminished value of the housing services received as a result of Petitioner's lack of quiet enjoyment of her Unit and lack of a safe and secure habitable Unit.

The Hearing Officer also determined that Petitioner had met her burden of proof that Respondent had unlawfully increased Petitioner's Rent and failed to roll back Petitioner's Rent pursuant to the CSFRA. The Hearing Officer ordered a rent refund of \$8,530.00 for retention of unlawful rent.

The Hearing Officer concluded that Petitioner had failed to meet her burden of proof regarding Respondent's taking of Petitioner's hose. The Hearing Officer found that there was no decrease in housing services related to the removal of the hose.

The Appellant-Respondent raised the following fourteen issues on appeal:

- A. The Hearing Officer erred in stating Petitioner failed to pay rent in September and October of 2023.

- B. The Hearing Officer erred in stating Petitioner filed her Petition 133 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.
- 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.
- 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.
- F. Respondent argues Petitioner failed to take the necessary actions to stop her harassment.
- 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.
- 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.
- I. The Hearing Officer's decision to award "damages" is not supported by the evidence.
- J. The Hearing Officer erred in failing to give Petitioner's inconsistent testimony regarding the hose sufficient weight.
- K. The Hearing Officer decision should be reversed as to any claims going back more than one year.
- 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.
- M. The Hearing Officer erred in stating that Petitioner's 30-day notice to vacate her unit is valid.
- N. The Hearing Officer decision should be reversed because Petitioner's claims are not supported by a preponderance of the evidence.

All elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section C of this report below. All parties to the Appeal are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Appeal Decision were due on December 9, 2024. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

ANALYSIS

A. Role of the RHC

The role of the RHC is not to re-weigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal "*de novo*" pursuant to Regulation Chapter 5, Section H(5)(a). *De novo* review would require the RHC to open the Hearing Record and hold a new, formal hearing. Staff does not recommend *de novo* review for this Appeal because there is sufficient evidence in the Hearing Record on which the Committee may base its decision.

For questions of law (including statutory interpretation), the RHC must exercise its independent judgment without assuming that the Hearing Officer's ruling is correct or affording deference to the Hearing Officer's interpretation. Even though the RHC exercises its independent judgment, its review is still based on the evidence in the Hearing Record for the Petition hearing.

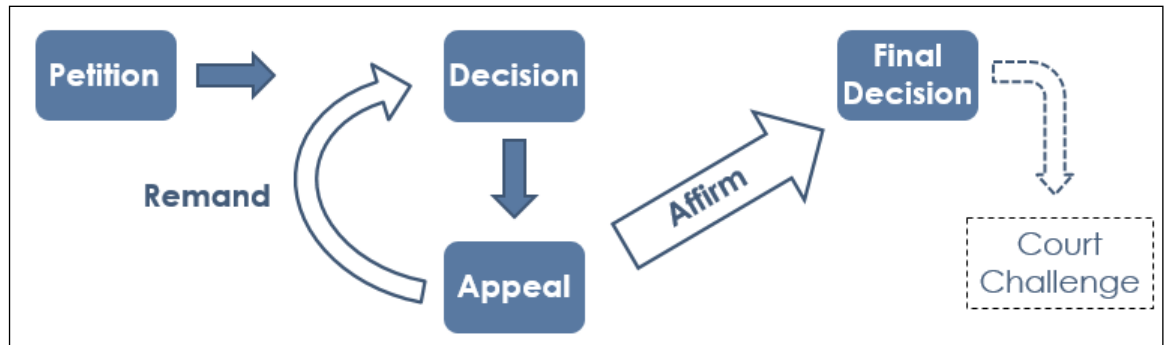
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and an appeal court: the trial court drafts a decision after weighing all the evidence, and the appeal court reviews the decision to verify whether the decision was adequate. Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does **not** mean that the RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the Hearing.

B. Review: Affirming, Reversing, and/or Remanding the Appealed Elements of the Decision After Remand

Petitions define the scope of the Hearing Officer's review. Appeals define the scope of RHC's review of the Hearing Decision. The portions of the Hearing Decision that were not appealed by any party are considered final. The Tentative Appeal Decision reviews only those portions of the Hearing Decision that were appealed by the parties.

The process for an appeal can result in multiple appeal hearings before the RHC if a Hearing Decision is remanded to the Hearing Officer. A summary graphic visualizing the appeal procedure is provided below.

Graphic 1: Visualization of Appeal Procedure



C. Tentative Appeal Decision – Appeal Elements

The Tentative Appeal Decision recommends affirming the Hearing Decision in its entirety. In summary:

- A. Appellant-Respondent argues that the Hearing Officer erred in stating the months that Petitioner failed to pay rent in 2023. The Hearing Officer stated Petitioner failed to pay rent in September and October 2023; Appellant-Respondent asserts Petitioner failed to pay rent in October and November 2023. The Hearing Officer made a small error in the HO Decision—evidence in the record shows Petitioner failed to pay rent in October and November 2023. The error has no effect on the Decision.
- B. Appellant-Respondent argues the Hearing Officer did not state the correct number of days that Petitioner filed her Petition after vacating her Unit. The Hearing Officer stated 133 days, when 164 days had elapsed between the date Petitioner vacated her Unit and the date Petitioner filed her Petition. Petitioner is entitled to file her Petition up to 180 days after vacating her Unit. Regulations Chapter 4 Section (D)(7). The error has not effect on the Decision.
- C. Appellant-Respondent argues that the rent roll back provision of the CSFRA is unconstitutional and argues that the Hearing Officer has the authority to determine the constitutionality of the CSFRA. The Hearing Officer is an RHC-appointed officer with a limited set of enumerated powers, including having 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. Regulations Chapter 5 Section (B)(4). Hearing Officers do not have the authority to determine the constitutionality of

the CSFRA – that decision making power lies with a court of competent jurisdiction.

- D. Appellant-Respondent argues the Hearing Officer erred in stating that Respondent increased Petitioner's Rent more frequently than every 12 months. Appellant-Respondent argues that they send a lease renewal agreement, which extends the term of the lease and increases the Rent for the Unit, once every 12 months. However, evidence provided by the Petitioner in the form of bank statements shows that Petitioner paid, and Respondent accepted, increased Rent more frequently than every 12 months. For example, the Petitioner paid \$988.00 in November 2018, \$10.23.00 in December 2018, and—10 months later—paid \$1058.00 in October 2019. Respondent did not dispute Petitioner's evidence, and Respondent did not provide evidence of rent roll or other rent records to dispute Petitioner's evidence.
- E. Appellant-Respondent argues that the Hearing Officer erred by not properly addressing Respondent's 2023 evidence about the Unit's registration on the City's rental registry and that Hearing Officer erred by not applying the 2023 evidence to years 2021 and 2022. The Hearing Officer found that the Unit was not registered with the City of Mountain View for 2021 and 2022. Respondent provided evidence of clerical errors on the part of the City that delayed registration **in 2023**, but Respondent did not provide any evidence of registration in 2021 and 2022 to counter City records that show the Unit was not properly registered in those years. Respondent implied that evidence of errors in 2023 meant there were likely errors in 2021 and 2022. But a Hearing Officer cannot make a finding without substantial evidence, thus Hearing Officer did not err in concluding the Unit was not registered in 2021 and 2022. The failure to register was **not** a determinative factor in Hearing Officer's ultimate conclusion that Respondent failed to roll back Petitioner's Rent.
- F. Appellant-Respondent argues that Petitioner should have done more to stop the harassment by the Petitioner's neighbor. Respondent's assertion that Petitioner should have stopped her neighbor from harassing her is irrelevant to the fact that Respondent, as landlord, has a duty to protect tenants' quiet enjoyment of their Unit and a duty to provide a habitable, secure Unit. Regardless of Petitioner's actions, Respondent still has a duty to provide certain housing services and a habitable Unit. Respondent fails to acknowledge that Petitioner **did** take various self-help actions including: notifying the Respondent in 2010, 2021, and 2023 about the harassment, 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 vacating the Unit.
- G. Appellant-Respondent alleges that lack of safety and security does not fall within the scope of the CSFRA. Respondent argues that the harassment Petitioner experienced should be characterized as a "dispute between neighbors" and that

such disputes are outside the purview of the CSFRA. However, the harassment rose to the level that Petitioner's health and safety were compromised. Respondent has a duty to provide Petitioner with a safe and secure, habitable Unit. Failing to provide this is grounds for a reduction in rent under the CSFRA.

- H. Appellant-Respondent argues that ongoing harassment does not fall into one of the three categories the CSFRA authorizes for downward adjustments of rent: (1) maintenance of a habitable Unit, (2) maintenance of housing services, (3) demand for or retention of unlawful rent. However, Hearing Officer correctly couched the harassment Petitioner experienced as (1) a breach of quiet enjoyment, (2) a decrease in housing services, and (3) a lack of habitability in the Unit. The covenant of quiet enjoyment is inherent in all California leases. In *Andrews v. Mobile Aire Estates* (2005) 125 Cal. App. 4th 578, a court found that a landlord has a duty to protect against interference of a tenants' quiet enjoyment—even if that interference is not perpetrated by the landlord personally. The *Andrews* court stated that a tenant may have an actionable breach where the interference with quiet enjoyment is caused by another tenant of the landlord. Here, Respondent was on notice of the harassment and how the harassment was interfering with Petitioner's ability to enjoy her Unit. However, Respondent did not take sufficient actions to protect Petitioner's quiet enjoyment of her Unit. (For example, Respondent never followed up with Petitioner about her claims of the harassment; Respondent allowed security cameras to be installed but then forced Petitioner to uninstall the cameras due to damage to the building; and Respondent sent a letter to the harassing neighbor more than two years after receiving notice and only after Petitioner provided Respondent with a copy of her restraining order against the neighbor.)

Respondents' failure to act disturbed Petitioner's quiet enjoyment of her Unit. The Hearing Officer valued the housing services Petitioner received at \$705.00 per month, resulting in a \$250 per month reduction in the rent. As defined by the CSFRA, housing services include "any benefit, privilege or facility connected with the use or occupancy of any Rental Unit." One of the benefits and privileges of using or occupying a Unit is the benefit of quiet enjoyment. By breaching the covenant of quiet enjoyment, Respondent reduced Petitioner's housing services.

Respondent argues that California Civil Code Section 1941.1 does not list "harassment" as a condition of a habitable unit. But the CSFRA mandates compliance with a number of state codes and regulations, including but not limited to Cal. Civ. Code Section 1941.1. Landlords have a duty to provide a safe, secure Unit to their tenants – the ongoing harassment by Petitioner's neighbor posed a security threat to Petitioner (in a particularly egregious example of the harassing behavior, the neighbor would put nails in Petitioner's tires). Respondent was on notice about the lack of personal safety and security and failed to respond sufficiently.

- I. Appellant-Respondent argues that the Hearing Officer's decision regarding a reduction in rent is not supported by a preponderance of the evidence. However, the Hearing Officer's decision regarding a reduction in rent for the rent roll back issue and the harassment issue are both supported by a preponderance of the evidence in the hearing record.

Rent Roll Back: The evidence provided by Petitioner—evidence which was not disputed by Respondent—shows that Respondent (1) accepted more rent than what Petitioner owed for 5 months in 2017, (2) issued an illegal rent increase in June 2017, and (3) failed to roll back Petitioner's rent at any point after the illegal June 2017 increase.

Harassment: The harassment that Petitioner experienced as well as the health and safety effects of the harassment were well documented in Petitioner's evidence. Petitioner submitted hundreds of pages of evidence provided to the court to successfully obtain a restraining order against the harassing neighbor. Evidence in the hearing record shows that Respondent had written notice of the harassment but failed to take sufficient action to ensure Petitioner had access to a safe, secure, habitable Unit free to use and enjoy without interference.

- J. Appellant-Respondent argues that the Hearing Officer should have placed more weight on Petitioner's inconsistent testimony about the hose. Petitioner submitted evidence that the hose Petitioner used to water outside plants was gifted to her; Petitioner also submitted testimony that the hose was worth \$50. The inconsistent testimony would only be relevant if the Hearing Officer determined the taking of the hose represented a decrease in housing services. However, the Hearing Officer found that because outside watering was never allowed at the Unit, the taking of Petitioner's hose could not, and did not, represent a decrease in housing services. Thus testimony, inconsistent or otherwise, about the value of the hose became irrelevant. Respondent argues that the inconsistent testimony about the hose means that all of the Petitioner's testimony should not be believed. However, Respondent did not provide any evidence that Petitioner's other testimony and evidence (about the rent roll back or the harassment) was untruthful.
- K. Appellant-Respondent argues that the one-year statute of limitations set forth in California Civil Procedure (CCP) Section 340 applies to this hearing. Respondent argues that the treble damage clause in CSFRA Section 1714(b) (which allows for a Petitioner who successfully brought a case in court under the CSFRA, won, and showed that a landlord was acting maliciously to be awarded treble damages) triggers CCP Section 340 here. However, this hearing is not a civil lawsuit, so CCP would not apply here. Further, Respondent argues that CSFRA Section 1714(b) is a mandatory treble damage provision, however the treble damage provision only kicks in if a Petitioner is successful in court and shows a landlord has acted maliciously. The rent refund allowed through the hearing process does not allow for treble "damages." For these reasons, CCP Section 340 does not

apply, and the one-year statute of limitations does not apply to the rent reduction ordered by the Hearing Officer.

- L. Appellant-Respondent argues that CCP Section 431.70 applies to this hearing. However, CCP Section 431.70—which allows parties to offset damages awarded to each other—applies in civil actions, not in this hearing. The CSFRA only allows a Hearing Officer to order a reduction in rent; the CSFRA does not allow a Hearing Officer in a downward adjustment of rent petition to order a Petitioner to pay money back to their landlord for debts they may owe the landlord. The petition process for a downward adjustment of rent is not the correct venue for Respondent to pursue sums owed by Petitioner to Respondent.
- M. Appellant-Respondent argues that Hearing Officer erred in concluding that Petitioner's 30-day notice to vacate her Unit was "generally legally valid." Petitioner's 30-day notice to vacate was not relevant to Hearing Officer's decision, and the Hearing Officer did not state that the specific notice provided to Petitioner was valid. Rather, the Hearing Officer stated that she will "not address" the validity of the letter and that "a legal notice by an authorized legal representative is generally valid."
- N. Overall, Appellant-Respondent argues that Petitioner's claims are not supported by a preponderance of the evidence. However, as we have stated in Section IV(I)(1) (rent roll back) and Section IV(I)(2) (harassment), the Petitioner's claims were supported by a preponderance of the evidence in the hearing record. And the Hearing Officer's decision regarding rent refunds for failure to roll back rent and failure to sufficiently respond to protect Petitioner's right to enjoy her Unit free from constant harassment is supported by substantial evidence.

D. Appeal Hearing Procedure

Each party to the Appeal will have an opportunity to present their arguments to the RHC and respond to the other party's presentation. As noted above, the parties are not allowed to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals. Cal. Gov. Code Section 54954.3(a). Finally, RHC members may have questions for staff and/or the parties. The following schedule for the appeal hearing is proposed to facilitate the orderly participation of all parties.

Schedule of Appeal(s) of Hearing Decisions(s)	
<ul style="list-style-type: none">• Public Comment Period applicable for all Appeals on the agenda• Appeal Hearing (CSFRA Petition Nos. C23240057 and C23240058)	
Staff Report & Presentation	
Appellant-Respondent Presentation of Argument	10 minute maximum

Respondent-Petitioner Presentation of Argument	10 minute maximum
Appellant-Respondent Presentation of Rebuttal	5 minute maximum
Respondent-Petitioner Presentation of Rebuttal	5 minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Respondent	
RHC Question and Answer with Respondent-Petitioner	
RHC Deliberations and Decision	

- Conclude Agenda Item

FISCAL IMPACT

Adoption of the Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a Hearing Decision to the RHC (as opposed to directly appealing to the courts) is to ensure that Hearing Decisions are legally defensible, and so the appeal process to the RHC reduces the overall risk of legal liability and litigation expenses. As discussed above, the Tentative Appeal Decision recommends upholding the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

PUBLIC NOTICING

See agenda posting for the December 12, 2024, RHC meeting.

ATTACHMENTS

1. Tentative Appeal Decision for Petition Nos. C23240057 and C23240058 (December 2, 2024)
2. Decision of Hearing Officer (October 7, 2024)
3. Appellant-Respondent Appeal of Decision (October 7, 2024)
4. Appellant-Respondent Answer to Tentative Appeal Decision (December 9, 2024)