

**DATE:** August 21, 2023

**TO:** Rental Housing Committee

**FROM:** Karen M. Tiedemann, Special Counsel to the Rental Housing Committee  
Nazanin Salehi, Special Counsel to the Rental Housing Committee  
Anky van Deursen, Program Manager

**SUBJECT:** Appeal of Hearing Officer’s Decision Regarding Petition No. M2223001

**RECOMMENDATION**

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 record.

**BACKGROUND**

The appeal arises out of a tenant petition for downward adjustment of rent (“Petition”) based on unlawful rent related to rent concessions provided prior to the enactment of the Mobile Home Rent Stabilization Ordinance (“MHRSO”). The hearing on the petition was held on April 21, 2023, and the Hearing Officer’s Decision (“Hearing Decision”) was delivered on May 22, 2023. The tenants timely appealed the Hearing Decision on May 31, 2023. A relevant timeline is provided below in Table 1 for reference.

**Table 1: Relevant Timeline**

Date	Action
December 16, 2022	RHC accepted petition regarding 1075 Space Parkway, Space No. 203 (Petition No. M2223001)
January 10, 2023	Voluntary settlement conference; did not settle
March 27, 2023	Prehearing conference held; written summary of prehearing conference served on parties
April 21, 2023	Hearing held
April 21, 2023	Hearing closed and hearing record closed
May 22, 2023	Hearing Decision delivered
May 31, 2023	Appeal submitted by Petitioner-Tenant
August 21, 2023	Appeal hearing before RHC

The Petition requested a rent reduction on the basis that the Respondent-Landlord (“Respondent”): (i) failed to roll back Petitioner-Tenants’ (“Petitioners”) rent to the lawful base rent after the MHRSO went into effect on October 28, 2021; and (ii) improperly increased the Petitioners’ rent by imposing the Annual General Adjustment (“AGA”) on the incorrect base rent. Specifically, the Petition alleged that the Respondent’s calculation of base rent failed to account for rent concessions that were provided by the Respondent in the original lease agreement for the space.

In relevant part, the Hearing Decision first addressed whether the monthly rent concession provided in the lease agreement for the space should be factored into the determination of the Petitioners’ base rent. The Hearing Officer determined that, based on the definition of base rent in MHRSO Section 46.2(c) and MHRSO Regulations, Chapter 2, Section (c)(1), the rent in effect for Petitioners was the rent stated in their lease agreement (\$3,595 plus utilities), not the rent they paid on March 16, 2021, which included the concessions. Thereafter, the Hearing Officer determined that the Petitioners were not entitled to a rent rollback because the rent they paid on October 28, 2021 (i.e., the effective date of the MHRSO) did not exceed their base rent. Finally, the Hearing Officer held that the Respondents properly increased the Petitioners’ rent to \$3,774.75 effective December 1, 2022, in accordance with the requirements of the MHRSO. As such, the Petitioners were neither entitled to a downward adjustment of rent due to unlawful rent nor a rent refund.

The Petitioners raised four issues on appeal. On appeal, the Petitioners argue:

1. The Hearing Officer erred in determining that the Petitioners’ base rent is \$3,595 because the base rent for tenancies commencing on or before March 16, 2021 is the rent actually paid by the tenants on that date, not the rent as stated in the rental agreement.
2. The Hearing Officer erred in holding that the Petitioners were not entitled to a rent rollback because the rent they were paying on the effective date of the MHRSO (October 28, 2021) exceeded their base rent.
3. The Hearing Officer erred in holding that the rent increase imposed in December 2022 was valid and that the Petitioners’ current rent is \$3,774.75 because the Hearing Officer based her decision on the incorrect base rent.
4. Based on the foregoing, the Hearing Officer erred in determining that the Petitioners were not entitled to a rent refund; the Petitioners are entitled to a rent refund for all amounts overpaid since November 16, 2021.

The elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section D of this report.

All parties to the Appeal are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Appeal Decision were due on August 16, 2023. 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 reweigh evidence submitted in support of, or opposition to, the Petition unless the RHC chooses to hear the appeal “*de novo*” pursuant to Regulations Chapter 5, Section H.5.a. A hearing *de novo* would require the RHC to open the hearing record and hold a new, formal hearing. Staff does not recommend a hearing *de novo* for this appeal because the facts on the record are not contested by either party.

Although staff does not recommend a hearing *de novo* for this matter, the RHC should review any questions of law (including statutory interpretation) *de novo*. *De novo* review of a question of law means that 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 record for the petition hearing; it does not hold a new, formal 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 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 RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the hearing.

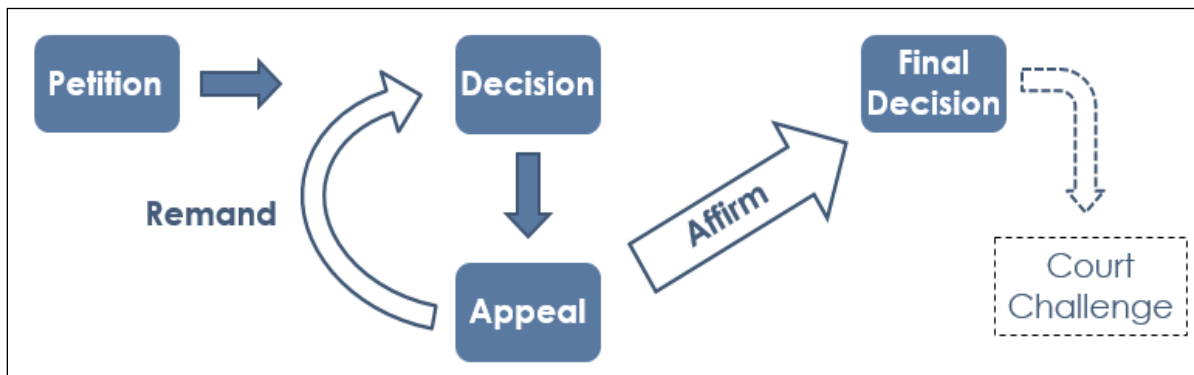
The first appealed element in the Petitioners’ appeal raises a question of law. The second through fourth appealed elements raise questions of fact.

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

Petitions define the scope of the Hearing Officer’s review. Appeals define the scope of RHC 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 Hearing Decision that were appealed by the parties.

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

**Graphic 1: Visualization of Appeal Procedure**



### C. Tentative Appeal Decision—Appeal Elements

The Tentative Appeal Decision recommends affirming the Hearing Decision in its totality.

1. Rules of statutory interpretation indicate that the base rent for tenancies commencing on or before March 16, 2021 were to be determined based on a different standard than the base rent for tenancies commencing after March 16, 2021. The RHC reinforced this intent when it adopted regulations clarifying that calculating the “initial rental rate” provided for in MHRSO Section 46.2(c)(2) included rental concessions but did not adopt language providing that “rent in effect” as provided for in MHRSO Section 46.2(c)(1) would also include rental concessions. Therefore, the Petitioners’ base rent is \$3,595.
2. The Hearing Officer correctly determined that the Petitioners are not entitled to a rent rollback because the rent they were paying on the effective date of the MHRSO (October 28, 2021) did not exceed their base rent.
3. The Hearing Officer did not err in holding that the rent increase imposed in December 2022 was valid because the Respondent relied on the correct base rent, imposed the correct AGA for the applicable period, and complied with all other requirements of the MHRSO and state law related to rent increases. The Petitioners’ current monthly rent is \$3,774.75.
4. The Hearing Officer correctly held that the Petitioners were not entitled to a rent refund because the Respondent has not improperly or incorrectly raised their rent at

any point since March 16, 2021. The Petitioners are not entitled to any rent refund because they have not overpaid any amount in violation of the MHRSO.

**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 to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals (Gov. § 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.

<b>Schedule of Appeal(s) of Hearing Decision(s)</b>	
Public Comment Period applicable for all Appeals on the agenda	
<b>Appeal Hearing (MHRSO Petition No. M2223001)</b>	
<b>Staff Report and Presentation</b>	
<b>Appellant-Tenant Presentation of Argument</b>	10-minute maximum
<b>Respondent-Park Owner Presentation of Argument</b>	10-minute maximum
<b>Appellant-Tenant Presentation of Rebuttal</b>	5-minute maximum
<b>Respondent-Park Owner Presentation of Rebuttal</b>	5-minute maximum
<b>RHC Question and Answer with Staff</b>	
<b>RHC Question and Answer with Appellant-Tenant</b>	
<b>RHC Question and Answer with Respondent-Park Owner</b>	
<b>RHC Deliberations and Decision</b>	
Conclude Agenda Item	

**FISCAL IMPACT**

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

the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

**PUBLIC NOTICING**—Agenda posting

KMT-NS-AVD/KG/4/HSN/RHC

847-08-21-23M-1

- Attachments:
1. Tentative Appeal Decision for Petition No. M2223001
  2. Decision of Hearing Officer (May 22, 2023)
  3. Appellant-Tenant Appeal of Decision (May 31, 2023)
  4. Respondent's Response to Tentative Appeal Decision (August 16, 2023)
  5. Supplemental RHC Memo Appeal Hearing (August 18, 2023)