

**DATE:** October 16, 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. C22230030

**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 instant appeal arises out of a tenant petition for downward adjustment of rent (“Petition”) based on the Landlord’s failure to maintain a habitable premises. The hearing on the petition was held on May 3, 2023, and the Hearing Officer’s Decision (“Hearing Decision”) was issued and served on the parties on June 30, 2023. The Landlord timely appealed the Hearing Decision on July 7, 2023. A relevant timeline is provided below in Table 1 for reference:

**Table 1: Relevant Timeline**

<u>Date</u>	<u>Action</u>
February 13, 2023	RHC accepted petition regarding 1260 Montecito Avenue, No. 1, Petition No. C22230030
April 18, 2023	Prehearing telephone conference held.
April 21, 2023	Written Summary of Prehearing Conference and the Hearing Officer’s Request for Documents served on parties.
May 3, 2023	Hearing held and closed.
May 15, 2023	Hearing Record closed.
June 30, 2023	Hearing Decision delivered.
June 30, 2023	Hearing Decision served on Landlord and Tenant.
July 7, 2023	Appeal submitted by Appellant-Landlord.

<u>Date</u>	<u>Action</u>
September 15, 2023	Tenant's Request for Postponement of appeal hearing granted.
October 6, 2023	Tentative Appeal Decision issued.
October 16, 2023	Appeal hearing before the RHC.

The Petition requested a rent reduction and rent refund on the basis that the Landlord had failed to maintain a habitable premises due to a water leak and mold at the property.

The Hearing Decision determined that between December 12, 2022 and February 28, 2023, Respondent had failed to maintain the property in compliance with laws requiring effective weatherproofing, even after Petitioner notified Respondent of the existence of water leaks and mold at the property. While Petitioner met his burden of proof about the existence of mold in the garage and living room and a water leak in the living room, he did not meet his burden of proof with regard to the damaged condition of the living room floor because he did not inform Respondent of this condition and provide Respondent with a reasonable opportunity to correct the condition prior to filing his petition.

The Hearing Officer held that, for the period between December 12, 2022 and February 28, 2023, Petitioner was entitled to a twenty percent (20%) rent reduction for the mold conditions and a five percent (5%) rent reduction for the water intrusion caused by the leak in the living room. The reduction award reflected that at least one tenant—Petitioner's elderly mother—was unable to use two different locations in the property due to a risk to her health. As such, Petitioner was entitled to rent refund of \$1,293 for the excess Rent he paid to Respondent between December 12, 2022 through January 31, 2023, but was not entitled to a rent refund for the period from February 1, 2023 through February 28, 2023 because he withheld Rent for that month. Petitioner moved out of the property on or around February 28, 2023, so there was no ongoing rent reduction awarded.

Appellant-Landlord raised the following six issues on appeal:

- A. The Hearing Officer erred in holding that the roof leak was not dealt with in a timely manner because a tarp was placed on the roof while Appellant waited for a contractor.
- B. The Hearing Officer abused her discretion in awarding a rent reduction for the presence of mold because Petitioner did not establish the presence of mold by testing.
- C. The Hearing Officer erred in holding that living room floor was affected by the leak because any discoloration in the flooring was from variations from the manufacturer.
- D. The Hearing Officer erred or abused her discretion in holding that the Property was rendered uninhabitable by the leak and/or that the leak interfered with the Petitioners' ability to live in the property to any meaningful extent.

- E. The Hearing Officer erred or abused her discretion in holding that Petitioner was entitled to a rent reduction due to the condition in the garage because he parked his boat in the garage during the entire period covered by the petition.
- F. The Hearing Officer erred or abused her discretion in holding that Petitioner was entitled to a rent reduction based on the leak in the living room wall because the small spot in earlier photos submitted by Petitioner disappeared in subsequent photos.

The 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 October 11, 2023. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

## **ANALYSIS**

### **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 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 record on which the RHC may base its decision.

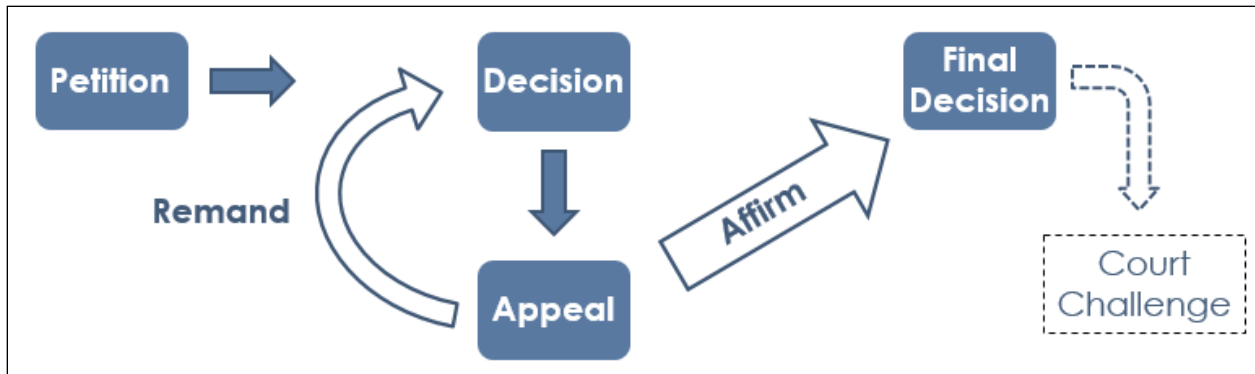
For questions of law (including statutory interpretation), the RHC must exercise its independent judgment without assuming that the Hearing Officer's ruling is correct or affording deference to the Hearing Officer's interpretation. Even though the RHC exercises its independent judgment, its review is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

**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 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**

**Tentative Appeal Decision—Appeal Elements**

The Tentative Appeal Decision recommends affirming the Prehearing Order and Hearing Decision in its totality. In summary:

- A. Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion in holding that the roof leak was not addressed in a reasonable amount of time because a tarp was placed on the roof while Landlord waited for a roofing contractor. There is sufficient evidence in the record that Tenant informed Landlord of the existence of the leak on at least four occasions (between December 12, 2022 and December 30, 2022) and that Landlord was aware of the leaks before Landlord placed the tarp on the roof in February 2023. While Landlord's agents testified that they contacted contractors to request quotes for the work on the roof, the only written evidence of a quote is a text from a contractor dated March 14, 2023, after Tenant had already vacated the property. Even the placing of the tarp on which Landlord relies to argue that the leak was addressed did not take place until two months after Tenant first informed Landlord of the leak. Therefore, the Hearing Officer did not err or abuse her discretion in concluding that two months was a reasonable amount of time for Landlord to address the leak.

- B. Appellant next argues that Hearing Officer abused her discretion in awarding a rent reduction for the presence of mold at the property because Tenant did not establish the presence of mold with any testing, only discoloration in photos. There is sufficient evidence in the record for Hearing Officer to conclude that there was mold at the property. In addition to the photos and videos submitted by Tenant showing visual discoloration, Landlord's agent testified that he also witnessed discoloration when he inspected the property. Once Tenant established, by a preponderance of the evidence, that there was mold at the property, the burden shifted to Landlord to rebut this evidence; Landlord did not do so. The burden of testing for mold was on Landlord, but Landlord provided no such testing or expert testimony. Therefore, the Hearing Officer reasonably concluded there was mold at the Property, Landlord knew about the mold, and Landlord failed to take timely action to remedy this condition.
- C. In addition, Appellant argues that Tenant did not provide any documentation, such as a report from a treating physician, to establish alleged symptoms of mold exposure. However, Tenant did not allege mold exposure, only that his mother's physician had advised the conditions in the unit were unsafe for her. He also testified that his mother was unable to use the living room and garage based on this advice. Landlord did not refute or even call into question this evidence at the hearing. Therefore, there is also sufficient evidence in the record to support the award related to mold at the property.
- D. Third, Appellant asserts that the Hearing Officer erred in holding that the floor in the living room was affected by the leak. However, while the Hearing Officer did conclude that Petitioner established by a preponderance of the evidence that the living room lacked flooring in good repair, the Hearing Officer did not award any rent refund for this condition. Specifically, the Hearing Officer determined that Tenant had failed to provide Landlord with reasonable notice and an opportunity to cure this condition before filing his petition. Since the Hearing Officer's Decision did not authorize any award for the condition of the living room floor, the Appeal Decision does not reach the merits of Landlord's argument about whether there was sufficient evidence in the record to support the Hearing Officer's decision regarding the condition of the living room floor.
- E. Appellant also argues that the Hearing Officer erred or abused her discretion in holding the property was rendered uninhabitable by the roof leak, namely because Tenant continued to live at the property even after the leak occurred. However, Appellant's argument misunderstands the meaning of "habitability." Neither the CSFRA nor the state health and safety statutes on which it relies require that the occupants vacate the unit for the unit to be considered uninhabitable or substandard. Furthermore, Tenant testified at the hearing about the impact of the leak on his and his mother's ability to use the property; Landlord did not rebut this evidence in any manner at the hearing. Landlord also fails to address the undisputed fact that Tenant and his mother did eventually vacate the property due to the Landlord's failure to address the untenable conditions. Thus, the Hearing Officer's

determination that the roof leak affected Tenant's use and enjoyment of the property is sufficient supported by the record.

- F. Thereafter, Appellant alleges that the Hearing Officer erred or abused her discretion in holding that Tenant was entitled to a rent reduction due to the condition in the garage because he parked his boat in the garage during the entire period covered by the petition. While the Hearing Officer's decision did award a 20% reduction for the mold in both the garage and the living room, the Hearing Officer did not award any rent reduction based on the leak in the garage, concluding it was not severe enough to prevent the use of the garage for parking of an automobile or storage of personal belongings. Therefore, it appears that the 20% reduction was based on the Tenant's testimony that his mother could not enter the garage or use the living room, not on the Tenant's use of the garage (which was already taken into consideration). Thus, the Hearing Officer exercised appropriate discretion in awarding a rent reduction for the mold in the garage based on Tenant's mother's inability to enter the garage.
  
- G. Finally, Appellant asserts that the Hearing Officer erred or abused her discretion in holding that Tenant was entitled to a rent reduction based on the leak in the living room wall because the small spot in earlier photos submitted by Petitioner disappeared in subsequent photos. Appellant's argument is unclear as to which photos they are referring in making this argument because all the photos of the living room submitted by Tenant show warping, bubbling, or cracking. Hearing Officer relied on these photos, as well as testimony and evidence from Landlord that the living room had been repainted and her own observations at the inspection, in reaching the conclusion that any photos submitted by Landlord did not reflect the condition of the living room wall during Tenant's tenancy. Based on all of this evidence, the Hearing Officer appropriately concluded there was warping and bubbling in the living room wall during Tenant's tenancy that entitled Tenant to a 5% rent reduction.

### **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.

**Schedule of Appeal(s) of Hearing Decision(s)**

- Public Comment Period applicable for all Appeals on the agenda

<b>Appeal Hearing (CSFRA Petition No. C22230030)</b>	
Staff Report and Presentation	
Appellant-Landlord Presentation of Argument	10-minute maximum
Respondent-Tenant Presentation of Argument	10-minute maximum
Appellant-Landlord Presentation of Rebuttal	5-minute maximum
Respondent-Tenant Presentation of Rebuttal	5-minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Landlord	
RHC Question and Answer with Respondent-Tenants	
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**—Agenda posting.

KMT-NS-AvD/KG/8/HSN/RHC  
847-10-16-23M

- Attachments:
1. Tentative Appeal Decision for Petition No. C22230030
  2. Decision of Hearing Officer (June 30, 2023)
  3. Appellant-Landlord Appeal of Decision (July 7, 2023)