

**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:** Untimely Appeal Request of Decision Regarding Petition No. 22230012

**RECOMMENDATION**

To receive information and evidence from the Petitioner-Tenant and Respondent-Landlord about the untimely appeal request by Respondent-Landlord of the Hearing Officer’s Decision issued February 22, 2023 in Petition No. 22230012 and deny the untimely appeal request of the Hearing Officer’s decision.

**BACKGROUND**

The request for an appeal arises out of a tenant petition for downward adjustment of rent (“Petition”) based on failure to maintain a habitable premise and decrease in housing services or maintenance. The Petitioner-Tenant (“Petitioner”) submitted the petition on October 19, 2022, and a hearing was held on December 1, 2022. The Hearing Officer’s Decision (“Hearing Decision”), including mention of the notice of the 10-day appeal deadline, was delivered to all parties on February 28, 2023. The deadline to appeal the Hearing Decision expired on March 10, 2023. Respondent-Landlord (“Respondent”) submitted a request for an appeal of the Hearing Decision on July 12, 2023. A relevant timeline is provided below in Table 1 for reference.

**Table 1: Relevant Timeline**

Date	Action
October 19, 2022	RHC accepted petition regarding 1826 Higdon Avenue, Unit 1 (Petition No. 21220016)
November 17, 2022	Prehearing telephone conference between parties and Hearing Officer
November 23, 2022	Written summary of prehearing conference and the Hearing Officer’s Request for Documents served on parties
December 1, 2022	Hearing held
December 1, 2022	Hearing closed and hearing record closed

Date	Action
February 28, 2023	Notice of Hearing Officer Decision, Hearing Officer Decision and Appeal Request Form sent to parties
April 6, 2023	Notice of Final Decision sent to parties
May 3, 2023	Respondent emails written correspondence dated May 1, 2023 to Senior Management Analyst with Rent Stabilization Division
May 4, 2023	Senior Management Analyst responds to Respondent with further information on untimely appeals
May 30, 2023	Respondent met with staff in person to discuss appeal process and provide documentation of repairs for code enforcement
June 12, 2023	Respondent emails Senior Management Analyst for clarification on how to file the appeal request
June 12, 2023	Senior Management Analyst responds with submittal information
July 17, 2023	Respondent emails Senior Management Analyst for clarification on how to file the appeal request
July 18, 2023	Senior Management Analyst responds with submittal information, referencing June 12, 2023, correspondence
July 25, 2023	Respondent submits Request for Appeal to RHC

## **ANALYSIS**

### **A. Procedural Due Process**

Both 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.*). Administrative adjudications, or quasi-judicial proceedings, involve the application of a rule or standard to the specific facts of an individual case to determine specific rights or take specific actions under existing law (*Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 519.). Hearings on Individual Adjustment Petitions and subsequent appeals of Hearing Officers’ Decisions on those petitions are considered quasi-judicial proceedings that require a guarantee of due process.

### **B. Role of the Rental Housing Committee**

The Community Stabilization and Fair Rent Act (CSFRA) regulations provide that any party to a petition may appeal a Hearing Officer’s Decision by submitting a Request to Appeal to the Rental Housing Committee (RHC) (CSFRA Regulations, Chapter 5, Section H.1.). If neither party requests an appeal within 10 days after service of the Decision, the Decision will be considered final (*Id.* at Section H.1.b.).

However, the RHC has the authority to accept late appeals under certain circumstances (*Id.* at Section H.1.c.). Specifically, prior to accepting a late appeal, the RHC must make a finding that the “untimely appeal request is supported by good cause and postponement serves the interests of justice” (*Id.*). The RHC is required to make its determination about whether to accept an untimely appeal at a regularly scheduled meeting and after providing the parties with an opportunity to make an oral argument in length not to exceed five minutes per party and to present any documentary evidence supporting their position (*Id.*).

In determining whether there was good cause for Respondent’s late filing of the Appeal and whether the postponement serves the interests of justice, the RHC may, but is not limited to, considering the following factors:

- Whether Respondent received adequate notice of: (1) the Hearing Officer’s Decision; and (2) the consequences of the failure to appeal in a timely manner;
- Whether Respondent took ordinary care and prudence to file the Appeal in a timely manner;
- Whether conditions outside of Respondent’s control prevented Respondent’s timely filing of the Appeal;
- Whether the delay in filing the Appeal has unfairly prejudiced or unduly burdened Petitioner;
- Whether granting or denying the late filing would deprive either party of their due process rights.
- However, the RHC need not and should not consider the substantive issues raised by or the likelihood of success of the Appeal in determining whether to accept the Appeal.

### C. **Staff’s Recommendation**

Staff recommends denying Respondent’s untimely request for an appeal due to lack of good cause. In reaching its recommendation, staff considered the following factors:

1. Respondent has not indicated that she failed to receive adequate notice of the Hearing Decision or of the consequences of the failure to timely appeal.
2. Respondent corresponded and met with program staff on a number of occasions between the date on which the Hearing Decision was issued and the date of her untimely request for an appeal, including in a letter dated May 1, 2023 that was

- emailed to Senior Management Analyst Patricia Black on May 3, 2023 in which Respondent asked if there was any City official or body to which she could appeal after the 10-day deadline. This indicates that Respondent was aware of the 10-day deadline to appeal the Hearing Decision but failed to take ordinary care and prudence to file the request for an appeal not only within the 10-day deadline but also within a reasonable time thereafter.
3. Respondent has not provided any evidence that conditions outside of her control prevented her from timely filing a request for appeal.
  4. Granting Respondent's nearly six-month late request for an appeal of the Hearing Decision would not serve the interests of justice and would unfairly prejudice Petitioner. Petitioner has understood the Hearing Decision to be final for over half a year and has been awaiting Respondent's compliance with the requirements of the Hearing Decision for that same time period.

**FISCAL IMPACT**

Staff has carefully weighed all the legal arguments put forth by the Appellant and believes the recommendation reflects the most prudent outcome. Nonetheless, a decision by the RHC to adopt or deny Respondent's appeal could potentially lead to litigation, which would have fiscal impacts. The RHC's budget includes a reserve for projected litigation costs.

**PUBLIC NOTICING**—Agenda posting.

KMT-NS-AVD/KG/4/HSN/RHC  
847-08-21-23M-2

- Attachment: 1. Landlord's Request for Appeal of Petition Hearing Decision issued February 22, 2023, in Petition No. 22230012