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July 24, 2025

memorandum

To
Mountain View Rental Housing Committee

From
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Nazanin Salehi, Special Counsel to the Rental Housing Committee

RE
Appeal of Hearing Officer's Decision Re: Petition Nos. 24250022 and C24250023

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 a habitable premises/decrease in Housing Services and unlawful rent. The Hearing on the Petition was held on January 14, 2025. The Hearing Officer's Decision was issued on May 2, 2025 and served on the parties on May 6, 2025. ("HO Decision").

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
October 3, 2024	RHC accepted Petition Nos. <u>24250022</u> and <u>C24250023</u>
November 5, 2024	Notice of Hearing and Pre-Hearing Conference served on the Parties.
November 14, 2024	Notice of Postponement served on the Parties.

December 2, 2024	Pre-hearing telephone conference held.
December 2, 2024	Summary of Pre-hearing Conference Call and Order served on parties; Hearing rescheduled.
January 14, 2025	Hearing held.
January 16, 2025	Hearing Officer's Post-Hearing Order issued, and Notice of Post-Hearing Order served on the parties.
January 23, 2025	Hearing Record closed.
February 28, 2025	Hearing Officer's Second Post-Hearing Order issued, and Notice of Second Post-Hearing Order served on the parties; Hearing Record reopened.
May 2, 2025	Hearing Officer's Decision issued.
May 6, 2025	Hearing Officer's Decision served on the parties.
May 21, 2025	Appeal filed by Respondent-Landlord.
July 14, 2025	Tentative Appeal Decision issued and served.
July 24, 2025	Appeal hearing before the Rental Housing Committee.

The first Petition requested a downward adjustment of rent on the basis that the Landlord had failed to maintain Petitioner's unit (the "Affected Unit") in a habitable condition and had decreased Housing Services/maintenance in violation of the Community Stabilization and Fair Rent Act ("CSFRA"). Specifically, the Petition alleged the following conditions: (1) infestation of cockroaches and spiders in the Affected Unit; (2) flooding and water encroachment from the shower in the master bathroom; (3) repeated clogging of both the toilets in the Affected Unit; (4) damage from the flooded bathroom above the Affected

Unit; (5) sewage overflows below the windows of and on the walkways near the Affected Unit; (6) damaged baseboards throughout the Affected Unit; (7) large gaps around the bottom and sides of the front door of the Affected Unit; (8) a leaking dining room window; (9) broken shelving and doors in the kitchen cabinets; (10) a lack of a secure area for holding residents' packages (resulting in stolen packages); and (11) a change in the residents' online portal.

The second Petition requested a downward adjustment of rent on the basis that the Landlord unlawfully demanded and retained Rent in excess of the amount permitted by the CSFRA. The bases of the unlawful rent claims were (1) Landlord was not substantially compliant with the CSFRA in 2021, 2022 and 2023 due to habitability issues and therefore rent increases imposed during those years are invalid and (2) Landlord overcharged Petitioner for gas and electricity prior to July 8, 2014.

The Hearing Officer concluded as follows:

1. Petitioner demonstrated by a preponderance of the evidence that there was a reduction in Housing Services/Maintenance based on persistent toilet clogging. As a result, they were entitled to a four percent (4%) rent reduction, or total rent refund of \$4,531.60, for the period from September 1, 2021 through January 31, 2025, and an ongoing rent reduction of \$117.98 per month until Landlord corrected the condition.
2. Petitioner demonstrated by a preponderance of the evidence that there was a reduction in Housing Services/maintenance based on leaky dining room window in the Affected Unit. As a result, they were entitled to a two (2%) rent reduction, or total rent refund of \$5,033.50, for the period from January 1, 2017 through January 31, 2025, and an ongoing rent reduction of \$58.99 per month until Landlord corrected the condition.
3. Petitioner did not meet her burden of proof with respect to the other habitability or reduction in Housing Services/maintenance issues.
4. Petitioner did not meet her burden to show that any habitability conditions exist such that the Landlord would be out of substantial compliance with the CSFRA. Therefore, no rent increases for 2021, 2022, and 2023 were invalidated.
5. Hearing Officer had limited jurisdiction and is not authorized to make any determinations regarding housing discrimination under state and federal laws.
6. Hearing Officer's authority is limited to claims under the CSFRA after law took effect on December 23, 2016 so cannot consider Petitioner's claim for utilities reimbursements prior to that date.

The Appellant-Landlord raised the following three issues on appeal:

- A. The Hearing Officer erred or abused her discretion in concluding that Petitioners had met their burden of proof regarding the repeated toilet clogs because the Petitioner did not establish how many times the toilets were clogged and did not report each instance that the toilets were clogged to Landlord. Moreover, the 4-percent rent reduction over the course of 41 months was excessive.
- B. The Hearing Officer erred or abused her discretion in awarding a rent reduction for the leaky dining room window because Petitioner did not report each the time window leaked to Landlord and therefore Landlord was not able to respond to each instance. Additionally, the 2-percent rent reduction over 97 months is not supported by evidence in the record.
- C. The ongoing and indefinite nature of the rent reductions awarded by the Hearing Officer are excessive and should be removed from the HO Decision.

All other 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 July 21, 2025. 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

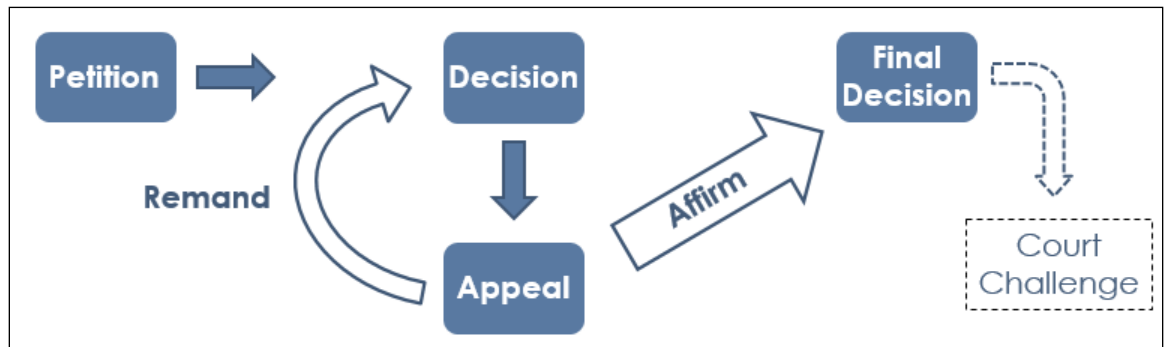
the evidence could have reached the same decision. Substantial evidence does not mean that the RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the Hearing.

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 may 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 HO Decision in part and remanding the HO Decision in part. In summary:

- A. Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion by concluding that Petitioner had met her burden of proof regarding the repeated toilet clogs in the Affected Unit and was entitled to a rent refund and ongoing four percent (4%) rent reduction until Landlord corrected the issue.
 1. The Hearing Officer's decision regarding the decrease in maintenance is supported by substantial evidence in the record, including work orders submitted by the Petitioner over a period of four years and testimony from the Landlord's own witness that confirmed he had received and responded to multiple complaints about the toilets in the Affected Unit.

2. The CSFRA does not require a landlord's failed attempts to correct a condition and does not require a tenant to continue notifying their landlord of a recurring condition each time it happens. The record clearly establishes that the toilet(s) clogging was a repeated issue, and the Landlord should have taken action sufficient to ensure that the issue did not recur frequently.
 3. The four percent (4%) rent reduction over the course of 41 months was not excessive because both the Petitioner and her co-tenant testified that they had to plunge the toilet(s) at least one or two times per day, and that anytime management did come out to unclog the toilet, the efforts they undertook only resolved the clogging for a couple of days before it recurred.
- B. Appellant-Landlord also argues that the Hearing Officer erred or abused her discretion by holding that Petitioner had met her burden of proof regarding the leaky dining room window in the Affected Unit, and by awarding a rent refund over the course of 97 months and an ongoing rent reduction of two percent (2%).
1. There is substantial evidence in the record – including testimony from Petitioner, a demand letter from Community Legal Services in East Palo Alto to Landlord on behalf of Petitioner, and testimony from Landlord's maintenance lead – to support the Hearing Officer's conclusion that it was more likely true than not true that there was a recurring window leak that was not timely or adequately cured by Respondent.
 2. However, the Hearing Officer's decision to award a 97-month rent reduction (from January 1, 2017 through the date of the Hearing) is not supported by the record. The HO Decision should consider the first time after the CSFRA went into effect that Petitioner notified Respondent of the issue and calculate the award from the reasonable date by which the Respondent should have corrected the issue after that notification by Petitioner. Moreover, the record demonstrates that the leaking window was only an issue during the rainy months of the year. As such, the HO Decision will be remanded to the Hearing Officer with direction to modify the award for this condition. In modifying the award, the Hearing Officer shall (1) explain how the intermittent nature of the issue was factored into the amount and/or length of the revised award and (2) ensure that any ongoing rent reduction is appropriately limited to the seasons when the leaky window is likely to pose an issue for the Petitioner.
- C. Finally, Appellant-Landlord contends ongoing and indefinite nature of the rent reductions awarded by the Hearing Officer makes them excessive, and therefore the ongoing reductions should either be removed from the HO Decision or given a more definite end date. However, nothing in the CSFRA or the Regulations limits the Hearing Officer's authority to order an ongoing rent increase where the issue is unresolved. Additionally, the ongoing rent reductions were not "indefinite," in that

the Hearing Officer provided that the rent reductions would end when the conditions were corrected. If the Landlord has taken steps to resolve the problems and there continues to be disagreement between the parties about whether the issues have been permanently resolved, either party may request a Compliance Hearing (pursuant to CSFRA Regulations, Ch. 5, Section J(1)).

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 § 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)

- Public Comment Period applicable for all Appeals on the agenda
- Appeal Hearing (CSFRA Petition Nos. 24250022 and C24250023)

Staff Report & 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

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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, posting on the City's website, and email to distribution list.

ATTACHMENTS

1. Tentative Appeal Decision for Petitions Nos. 24250022 and C24250023
2. Decision of Hearing Officer (May 2, 2025)
3. Appellant-Landlord Appeal of Decision (May 21, 2025)