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February 27, 2025

memorandum
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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. C23240081 and C23240082

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, a decrease in housing services, and a demand for and retention of unlawful rent. The Hearing was held in two sessions in order to accommodate all parties' schedules: one on September 25, 2024, and another on October 1, 2024. The Hearing Officer's decision was issued and served on the parties on December 16, 2024 ("HO Decision"). Appellant-Landlord filed a timely appeal of the HO Decision on December 31, 2024.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
July 17, 2024	RHC accepted Petition Nos. C23240081 and C23240082.
August 14, 2024	Pre-hearing telephone conference held.
August 15, 2024	Hearing Officer Order summarizing Pre-hearing conference and request for additional evidence served on parties.

September 25, 2024	Initial Hearing held.
September 26, 2024	Hearing Officer Notice of Further Hearing served on parties.
October 1, 2024	Hearing continued and closed.
October 14, 2024	Post-hearing Order served on parties.
October 15, 2024	Hearing Record closed.
December 16, 2024	HO Decision issued and served on parties.
December 31, 2024	Appeal submitted by Appellant-Landlord.
February 18, 2025	Tentative Appeal Decision issued and served.
February 27, 2025	Appeal hearing scheduled before the Rental Housing Committee.

The Petition requested a downward adjustment of rent on the basis that the Landlord had (1) failed to maintain a habitable Unit by failing to maintain safe and secure common areas and failing to safeguard Petitioner's privacy and safety; (2) had decreased housing services by failing to fix automatically closing and locking doors to common areas in the apartment building and failing to maintain an accurate electrical meter for Petitioner's Unit; and (3) Landlord had unlawfully increased Petitioner's Rent by failing to roll back his Rent as required by the Community Stabilization and Fair Rent Act ("CSFRA").

The Hearing Officer determined that Petitioner had met his burden of proof that Landlord 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 \$13,100.52 for retention of unlawful rent.

The Hearing Officer determined that Petitioner had met his burden of proof that Petitioner had experienced a decrease in housing services due to Landlord's failure to maintain the self-closing and self-locking mechanisms of the exterior doors. The Hearing Officer ordered a \$6,100.00 for the reduction in housing services.

The Hearing Officer determined that Petitioner had experienced a harm related to inaccurate electrical metering that resulted from the prior owner's renovation activities. The Hearing Officer ordered a rent refund of \$5,200.00 for electrical services that were billed to Petitioner but were used by a different Unit.

The Hearing Officer determined that Petitioner had not met his burden of proof that Landlord had invaded Petitioner's privacy by allegedly interfering with Petitioner's computer network or hacking Petitioner's computer.

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

- A. The Hearing Officer erred in finding a reduction in housing services related to the self-closing or self-locking exterior doors.
- B. The Hearing Officer erred in finding that Petitioner had been overcharged on utilities due to the electrical meter error.
- C. The Hearing Officer's entire decision should be reversed because the Petition was improperly served.

All parties to the Appeal are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Appeal Decision were due on February 24, 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

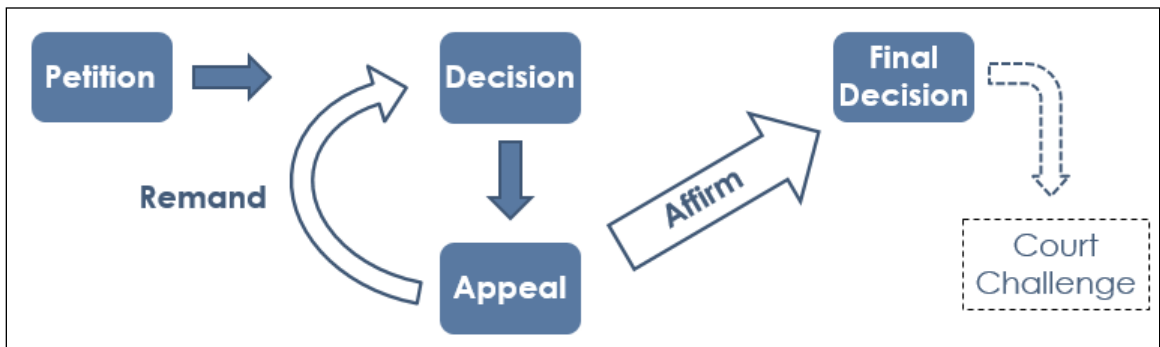
evidence does **not** mean that the RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the Hearing.

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 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 part, and remanding in part. In summary:

- A. Appellant-Landlord argues that the Hearing Officer erred in finding a reduction in housing services related to self-closing and self-locking doors. Appellant-Landlord asserts that doors never had a self-closing and self-locking mechanism, thus there has been no reduction in housing services. However, Appellant-Landlord provided no evidence or testimony to counter Petitioner's testimony that all exterior doors once had a self-closing and self-locking mechanism, and that the prior owner's actions impaired the self-closing and self-locking mechanisms of the exterior doors, including changing the locking mechanism of the front door that has resulted in a less secure common area. The Hearing Officer appropriately weighed the evidence presented and reasonably concluded that the new, less-secure doors represented a decrease in housing services.

- B. Appellant-Landlord argues the Hearing Officer's decision to award Petitioner \$200/month to compensate for the electrical meter issue is not backed by the evidence in the Hearing Record. Both parties agree that there was some type of issue with the electrical meter, but neither party clearly discussed the exact problem. On one hand, the Petitioner stated that he was being charged for two Units in the building in addition to his own Unit. But the evidence in the record also supports the theory that Petitioner's electrical meter was swapped with a different Unit. Neither party offered any evidence in the form of paid electrical bills. The Tentative Appeal Decision proposes remanding this issue to the Hearing Officer to determine (1) the exact issue with the electrical meter (which has since been resolved by an electrician) and (2) the extent of the financial damage that may have affected Petitioner before issuing any reductions in rent for an inaccurate electrical meter.
- C. Appellant-Landlord argues that the entire decision should be reversed because the Petitioner served the Petition on Ms. Kim, a real estate agent who represented Appellant-Landlord when Appellant-Landlord acquired the Property in April 2024. Ms. Kim was Petitioner's first point of contact regarding the sale of the Property and the transition from the prior owner to Appellant-Landlord. Ms. Kim informed Petitioner of where to pay rent and asked to share Petitioner's phone number with Respondent. Ms. Kim forwarded the Petition to Appellant-Landlord authorized representatives. Further, upon acquiring the rental property, Appellant-Landlord did not provide Petitioner with any contact information about the new owners or the property management company in place within the statutorily mandated 15-day window. (See California Civil Code Sections 1962(a), 1962(c)). The Hearing Officer weighed the evidence presented and found that Ms. Kim had apparent authority to act on behalf of Appellant-Landlord because Petitioner reasonably believed Ms. Kim to be acting in a role that included property management responsibilities. Although Petitioner was sent accurate contact information for the Appellant-Landlord and property managers three days before filing the Petition, Petitioner served Petition on a party he reasonably thought capable of receiving service (Ms. Kim). Respondent has not been deprived of their ability to review the claims and evidence filed with the Petition, respond and provide its own evidence, appear at all prehearing and hearing meetings, and submit an appeal.

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. C23240081 and C23240082) 	
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-Tenant	
RHC Deliberations and Decision	
<ul style="list-style-type: none"> 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 February 27, 2025, RHC meeting.

ATTACHMENTS

1. Tentative Appeal Decision for Petition Nos. C23240081 and C23240082 (February 18, 2024)
2. Decision of Hearing Officer (December 16, 2024)
3. Appellant-Landlord Appeal of Decision (December 31, 2024)