goldfarb lipman attorneys

1300 Clay Street, Eleventh Floor
Oakland, California 94612
510 836-6336

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supplemental 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 No. 24250033

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 and decrease in Housing Services. The Hearing on the Petition was held on February 19, 2025. The Hearing Officer's Decision was issued and served on the parties on April 17, 2025. ("HO Decision").

Table 1: Relevant Timeline

Date	Action
November 15, 2024	RHC accepted Petition No. C24250033
January 15, 2025	Notice of Hearing and Pre-Hearing Conference served on the Parties.
January 24, 2025	Pre-hearing telephone conference held.

January 27, 2024	Summary of Pre-hearing Conference Call and Order served on parties; Hearing rescheduled.
February 19, 2025	Hearing held.
February 19, 2025	Hearing Officer's Post-Hearing Order issued.
March 4, 2024	Notice of Post-Hearing Order served on the parties.
March 6, 2025	Hearing Record closed.
April 17, 2025	Hearing Officer's Decision issued and served on the parties.
May 2, 2025	Appeal filed by Respondent-Landlord.
June 2, 2025	Tentative Appeal Decision issued and served.
June 9, 2025	Respondent-Landlord filed Reply to Tentative Appeal Decision.
June 12, 2025	Appeal hearing before the Rental Housing Committee.

ANALYSIS

A. Respondent-Landlord's Reply to Tentative Appeal Decision

On June 9, 2025, Respondent-Landlord filed a timely Reply to the Tentative Appeal Decision (hereinafter "Reply"). The Reply raises the following additional issues:

1. The record does not support the Committee's conclusion that Respondent received adequate notice of the hearing, and the issues raised in the Petition.

2. The Committee's affirmation of the Hearing Officer's award for the mold and moisture issues ignores the evidence of limited impact on Petitioners and remediation efforts by Respondent.

3. As it relates to the sewer and drainage issues, the Tentative Appeal Decision inaccurately applies the standard in CSFRA § 1710(b)(2), which required continued notice of inhabitable conditions.

4. The Tentative Appeal Decision incorrectly affirms the Hearing Officer's decision regarding the electrical circuitry award because the record demonstrates the issues were stale and Respondent was not afforded an additional opportunity to cure.

5. Lastly, the Tentative Appeal Decision should not have affirmed the rent reductions awarded by the Hearing Officer because they are arbitrary and excessive by overlapping rent reductions for different issues during the same time periods.

B. Rental Housing Committee Response to Respondent's Reply

1. Due Process

As previously noted, the most fundamental requirements of procedural due process are: (1) adequate notice; and (2) an opportunity to be heard before a fair and impartial hearing body. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) Notice is necessary to give the party a chance to defend charges: (1) before property interests are disturbed; (2) before assessments or penalties are imposed; or (3) when a penalty or forfeiture might be suffered for the failure to act. (*People v. Swink* (1984) 150 Cal.App.3d 1076, 1079.) To satisfy the requirements of due process, the notice provided must be "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action affecting their property interest and afford them an opportunity to present their objections.'" (*Nasir v. Sacramento County Off. of the Dist. Atty.* (1992) 11 Cal.App.4th 976, 985 (citing *Mennonite Board of Missions v. Adams* (1983) 462 U.S. 791, 795.)

In determining whether the notice provided by an agency satisfies strictures of due process, it important to remember that "'[d]ue process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts." (*Hannah v. Larche* (1960) 363 U.S. 420, 442.) In some instances, "due process may require only that the administrative agency comply with the statutory limitations on its authority." (*People v. Ramirez* (1979) 25 Cal.3d 260, 269.)

In its response to the Tentative Appeal Decision, Respondent argues that the record does not support the conclusion in the Tentative Appeal Decision that Respondent was provided adequate notice of the issues in the Petition.

Firstly, it is worth noting that, based on the authorities cited above, due process requires that the notice "apprise interested parties of the pendency of the action." The sufficiency

of notice was the question addressed by the California Supreme Court in *Horn*, which is the case cited by the Respondent to support its argument regarding due process. There, the petitioner found out, by chance, that the Board of Supervisors had approved a tentative map for his neighbor's proposed subdivision. (*Horn*, *supra*, 24 Cal.3d at 610.) The Supreme Court concluded that notice of the approval of the subdivision failed due process where the relevant environmental documents were posted only at central public buildings and the notice was mailed only to those persons who specifically requested it. (*Id.* at 617-18.) The Court held this practice unfairly placed the burden of obtaining notice on the affected citizens themselves. (*Id.*)

The instant case is clearly distinguishable from Horn. Here, Respondent received notice of the Petition from both the Petitioner and the City's Rent Stabilization Division. It is clear from that fact that Respondent responded to the Petition, appeared at the Pre-Hearing Conference, and appeared at the Hearing, that these notices adequately apprised Respondent of the pendency of the Petition, including when and how to appear to represent its objections to the Petition.

Nonetheless, Respondent argues that the guarantee of due process requires that Petitioners have specifically pled each of the issues on the Petition forms. While such strict requirements may be necessary in formal legal proceedings, what form of due process is required in an administrative hearing is more elusive. (*Hannah v. Larche*, *supra*, 363 U.S. at 442; see also *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 565 ("However, there is no precise manner of hearing which must be afforded; rather the particular interests at issue must be considered in determining what kind of hearing is appropriate. A formal hearing, with full rights of confrontation and cross-examination is not necessarily required.").)

Despite Respondent's assertions to the contrary, nothing in the CSFRA or the Regulations requires the issues to be specifically pled on the Petition forms only. As noted in the Tentative Appeal Decision, Petitioners raised the issue of the water heater "in the Petition" by including a video showing the issue in their initial evidentiary submissions concurrent with the filing of the Petition. (Petitioner's Exhibit #38.) As it relates to the bathtub clogging, the Petition generally notes "plumbing problems" and "sewer pipes clogging" without further description. For unexplained reasons, Respondent takes issue only with Petitioners' further description of the bathtub clogging at the hearing and not with any of Petitioners' other additional details such as the toilet clogging or the main sewer drain backing up.

Of note, despite Respondent's claim that it was not made aware of these two issues until the Hearing, these issues were addressed in its pre-hearing submissions on February 10, 2025. (Respondent's Exhibit #8). For example, on page 12 of Respondent's Exhibit #8, Respondent submitted a work order wherein the Petitioner states, in relevant part: "Also the tub has been clogged for a while I find myself buying draino at lease [sic] once a week so would like that looked at." On the following page, Respondent's notes indicate: "Maintenance technician Jose Sanchez took care of the leaks and clogs…" On page 12 of the same exhibit, Respondent submitted a May 13, 2023 invoice from its contractor, Triple

"A" Plumbing Services, which includes the following verbiage in the description of the work: "Upon arrival went to back yard of unit 17 and found a 30 gallons water heater, that makes loud noises when kicks on, possibly lots of sediments inside tank due to hard water." On page 40, Respondent submitted an email from Petitioner that states: "Also I would like the water heater to be checked it makes super loud noise and rumble all night or whenever someone turns the water." Both issues were also noted by the City's Multifamily Housing Program Inspection Report, which Respondent submitted. (Respondent's Exhibit #4.)

From the inclusion of these documents in its submissions, it is reasonable not only to conclude that Respondent knew of these issues before the hearing, but also that it had ample opportunity to raise its objections to all of these issues. Respondent has failed to indicate how it was not given a fair opportunity to defend itself and/or how the alleged lack of notice prejudiced it at the hearing.

Respondent argues, however, that because its counsel inquired about these two issues at the Hearing, it objected to consideration of these issues by the Hearing Officer. Not so. Respondent's counsel did ask whether these two issues were listed on the Petition forms. However, a singular question regarding what was in the Petition forms does not amount to a valid objection, especially when considered in light of the fact that Respondent's counsel had already confirmed that these issues *were* raised by the Petition.

Moreover, Respondent thereafter proceeded in a manner that indicated it did not object – Respondent's representatives presented testimony regarding both issues, Respondent cross-examined Petitioners on these issues, and Respondent submitted documentary evidence related to these issues in response to the Post-Hearing Order.

For all of the foregoing reasons and the reasons already outlined in the Tentative Appeal Decision, the Hearing Officer's consideration of the bathtub clogging and the excessive noise from the water heater did not violate due process.

2. Mold and Moisture Issues

Respondent argues that the Tentative Appeal Decision improperly affirmed the Hearing Officer's finding regarding the mold and moisture conditions "despite limited evidence of actual health hazards, temporary conditions tied to seasonal weather, and the Respondent's substantial mitigation measures."

Respondent argues that there was limited evidence of "health hazards." Civil Code § 1941.1(a)(1) provides that a rental unit "shall be deemed untenantable…if it substantially lacks…[e]ffective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors." By the language of this section, the mere failure to provide effective weatherproofing – such as the faulty windows in the unit – was sufficient to deem the Affected Unit "untenantable."

However, assuming that the Hearing Officer further relied on Health and Safety Code § 17920.3(a)(11) and (13) in reaching her decision that Respondent was liable, there is sufficient evidence in the record to support the conclusion that the mold and moisture in the Affected Unit more likely than not posed a health hazard. For one, Petitioners submitted documentary evidence that there was visible mold growth on their personal belongings. (Petitioners' Exhibit #37.) Moreover, they submitted evidence that their daughter had been hospitalized due to breathing trouble and an irregular EKG, and that her cardiologist had opined the mold and moisture conditions in the Affected Unit may have contributed to her condition by exacerbating her asthma. (Petitioners' Exhibits #42 and 59.) Finally, the mold and moisture were documented in the City's MFH Program Inspection Report, indicating that a code enforcement officer had concluded the condition rose to a level of hazard and required abatement. (Respondent's Exhibit #4.)

Moreover, Respondent's response to the Tentative Appeal Decision ignores that standard in the CSFRA. Respondent argues that both the HO Decision and the Tentative Appeal Decision ignore Respondent's mitigation efforts. However, the CSFRA does not require "mitigation," it requires correction. (CSFRA § 1710(c)(2) ("…demonstrate that the Landlord was provided with reasonable notice and opportunity *to correct* the conditions that form the basis for the Petition.").) Therefore, to reiterate from the Tentative Appeal Decision, "nothing in the CSFRA prohibits a Hearing Officer from awarding a rent reduction where the Landlord has taken steps to correct the condition but has been unsuccessful."

Finally, Respondent argues that the "the hearing record shows that tenants delayed reporting these issues." The one delay referred to in the Appeal – that Petitioners did not report the mold and moisture issues until eight months into their tenancy in December 2023 – is appropriately addressed by other testimony and evidence in the record. Namely, that the issue was seasonal. Respondent points to no other evidence in the record demonstrating an inappropriate delay in reporting. Rather, Respondent argues that the refusal of entry on October 26, 2024 by Petitioners "should have limited the period of rent reduction." However, for the reasons already explained in the Tentative Appeal Decision, there was sufficient evidence in the record to support the Hearing Officer's conclusion that the single denial of entry was justified by the fact that Petitioners wanted to preserve the condition of the Affected Unit until the City had an opportunity to inspect the unit.

The Reply raises no new basis upon which to overturn or modify the Hearing Officer's decision to award a rent reduction based on moisture and mold conditions in unit.

3. Plumbing and Drainage Issues

As it relates to the plumbing and drainage issues in the Affected Unit, Respondent argues that the Tentative Appeal Decision misapplies the standard for reasonable notice to the landlord. Specifically, Respondent argues that CSFRA § 1710(b)(2) "requires *ongoing notice* and an opportunity to correct" and that the Petitioners' testimony that they stopped reporting the bathtub clog undermines the finding of a continuing habitability issue.

It is unclear how Respondent reaches this conclusion. Neither the word "ongoing" nor any synonym thereof appears in that section of the CSFRA. In fact, a reading that a tenant must continue to report an issue when the landlord has failed to take corrective action and/or ignored their requests would lead to absurd outcomes. In essence, a requirement to continually notify would mean that a tenant could never recover under the CSFRA if there was any period during which they did not re-notify the landlord of an ongoing issues.

Nevertheless, Respondent contends that "Without continued notice, a landlord cannot cure or mitigate, and tenants cannot retroactively revive those claims many months later." This may be true where the landlord has addressed and/or corrected the issue. However, that is not what the record before the Hearing Officer demonstrated. Rather, the last two times that Petitioners reported the issue, they were ignored by Respondent's responsible representatives. (Respondent's Exhibit #8.) Certainly, renotification would be appropriate where the landlord takes action that the landlord believes will correct an issue and it does not; however, it would not be reasonable expect a tenant to renotify their landlord repeatedly where the landlord has failed to respond whatsoever.

4. Electrical Circuitry

Next, with regard to the electrical circuitry issues in the Affected Unit, Respondent argues that "No evidence shows that electrical conditions remained unresolved during the remaining months of tenancy…."

This is an inaccurate representation of the evidence in the record. For one, oral testimony *is* evidence. While corroborating documentary and photographic evidence may be submitted to *strengthen* oral testimony, these other forms of testimony are not required in order for a Hearing Officer to consider and/or rely on oral testimony. This is especially true where the applicable standard is "preponderance of the evidence." The oral testimony from Petitioners at the hearing was that the electrical circuitry issues persisted even after the last time they reported the issue, and the Hearing Officer found this testimony to be credible. Respondent has put forth no legal or factual bases upon which to find the Hearing Officer's reliance on Petitioners' testimony to be erroneous or an abuse of discretion.

Moreover, there is additional evidence in the record – namely, the City's Multifamily Housing Program Inspection Report (Respondent's Exhibit #4) – that supported the conclusion that the electrical issues persisted even after Petitioners stopped reporting it and were only resolved after the Petitioners vacated the Affected Unit.

Respondent also restates its assertion that "The CSFRA does not allow rent reductions for abandoned or dormant complaints." Again, there is no basis in either the CSFRA or the Regulations for a Hearing Officer or the Rental Housing Committee to consider equitable defenses such as laches or unclean hands. Moreover, there is no applicable statute of limitations. The Hearing Officer did not err or abuse her discretion in deciding that

Petitioners were entitled to a rent reduction for the period from August 3, 2023 through January 4,2 205.

5. Rent Reductions

Finally, Respondent argues that "the combined rent reductions – spanning mold, plumbing, electrical, and noise – compound into an excessive total without sufficient ground in rental value loss." Respondent's argument relies on a misconception that rent reductions for different conditions cannot be applied during the same timeframe: "For example, the 34% award for bedroom moisture and the 8.5% award for electrical issues overlapped without any evidence that both rendered the unit simultaneously uninhabitable to that extent."

These two issues are unrelated. The mere fact that two untenantable conditions existed simultaneously in the Affected Unit is not a basis on which to overturn the Hearing Officer's decision. The rent reductions that overlapped in time in the HO Decision were adequately supported by the Hearing Officer's explanations. The moisture and mold issues were awarded for reduction in value for the bedrooms and bathroom while the electrical issue rent reduction was awarded for the insufficient circuitry in the kitchen that resulted in short circuiting throughout the apartment.