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July 25, 2024

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. C23240032

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 record to support the changes.

BACKGROUND

The instant appeal arises out of a petition for downward adjustment of rent ("Petition") based on unlawful rent. While Tenant-Petitioner did file two petitions, including one for failure to maintain a habitable premises/decrease in Housing Services, and the Hearing Officer's Decision addresses both petitions, the Appeal only relates to the first petition based on unlawful rent, petition number C23240032. The hearing on the Petition was held on February 16, 2024 (the "Hearing"), and the Hearing record was closed on February 23, 2024. The Hearing Officer's Decision was issued on April 24, 2024 ("HO Decision") and served on the parties on the same date. Landlord-Responded filed a timely appeal of the HO Decision on May 8, 2024 ("Appeal").

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
November 22, 2023	Tenant filed Petition No. 23240032
December 22, 2023	Petition No. 23240032 accepted

January 25, 2024	Pre-hearing Conference held with parties
January 26, 2024	First Written Summary of Pre-hearing Conference and the Hearing Officer's Request for Documents served on parties
February 16, 2024	Hearing held
February 23, 2024	Hearing Record closed
April 24, 2024	Hearing Officer Decision issued
April 24, 2024	Hearing Officer Decision served on parties
May 8, 2024	Appeal filed by Respondent-Landlord
July 16, 2024	Tentative Appeal Decision issued and served on parties
July 25, 2024	Appeal Hearing before the Rental Housing Committee

The Petition requested a rent rollback and refund on the basis that Respondent had incorrectly calculated Petitioner's Base Rent by failing to include two months' worth of concessions provided for in Petitioner's rental agreement. The Parties entered a rental agreement on November 1, 2020 for a term of twelve (12) months and a monthly rent of \$2,350 plus utilities charges (water, sewer and trash) not to exceed \$320.00 per month, billed through a ratio utility billing system. However, the lease provided for two (2) months of concessions, to be provided in January 2021 and July 2021, where rent was reduced to \$0 on the condition that Petitioner paid the rent timely by the first of each month.

The Hearing Officer determined Petitioner met her burden of proof that Respondent had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because Landlord had charged a total of \$23,500.00 for the entire initial twelve (12) months, or an average \$1,958.33 per month, which Petitioner paid. In addition, Petitioner was invoiced for and paid utility charges of \$900.63 to the Respondent over the initial twelve (12) months of the lease. Therefore, the lawful Base Rent for the Premises was \$2,033.39 (\$1,958.33 in average premises rent plus \$75.05 in average utilities paid over the initial twelve-month term of the lease).

Hearing Officer concluded that the Respondent was responsible for unlawful retention of rent in excess of the amount permitted by the CSFRA on the basis that the subsequent rent increases imposed by Respondent in 2022 and 2023 were unlawful pursuant to CSFRA Sections 1706(a) and (b) and 1707(a) because they were not calculated off the correct Base Rent. Based on the limitation in CSFRA Regulations, Chapter 4, section G(6), Respondent owed Petitioner a total rent refund based on unlawful rent collected in the amount \$7,596.30 for the one (1) year period from November 2022 through October 2023.

Appellant-Landlord raises one issue in the Appeal. **The Hearing Officer erred in calculating the Base Rent for the Premises because she did not include the Utilities Charges that the Tenant paid directly to the third-party billing provider, Conservice.** The total utility payments sent by the Tenant to the Landlord from November 1, 2020 through April 30, 2021 was \$900.63, while the total utility payments sent directly to Conservice from May 1, 2021 through October 31, 2021 were \$1,193.42. The total of these two amounts should have been used in the Base Rent calculation, rather than just the former amount.

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 22, 2024. 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 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 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

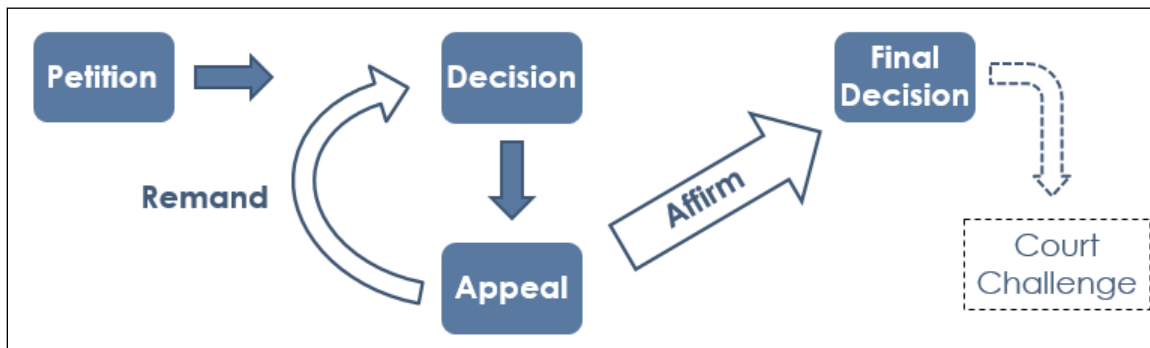
decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does not mean that RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the hearing.

B. 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



C. Tentative Appeal Decision - Appeal Elements

The Tentative Appeal Decision recommends remanding the decision to the Hearing Officer with instruction to gather further evidence and testimony regarding the amounts of Utility Charges “actually paid by the Tenant” during the initial term of the Petitioner’s tenancy, to provide further analysis regarding the Hearing Officer’s decision of which Utility Charges should be included in the calculation of Petitioner’s Base Rent, and to revise the HO Decision accordingly, if appropriate.

There exists a discrepancy in the record between the amounts of Utility Charges reflected in Petitioner’s rent ledger, the amounts in the rent roll submitted by Respondent and the amounts shown in the Conservice bills. This discrepancy was not addressed by either party at the hearing. The HO Decision does not explain why the Hearing Officer included only

the \$900.63 from the four charges on the rent ledger in the calculation of Petitioner’s Base Rent and does not indicate whether the Hearing Officer considered the Conservice billing statements in reaching her conclusion. Because the record is unclear as to why such discrepancies exist between the amounts in the rent ledger, in the rent roll, and in the Conservice bills and because the proper calculation of the Base Rent impacts every other aspect of the HO Decision (including the calculations of any rent reductions for failure to maintain a habitable premises and decrease in Housing Services), the Tentative Appeal Decision recommends, in the best interest of both parties, to remand the decision to the Hearing Officer for further fact finding and, if appropriate, revision of the HO Decision.

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 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 facilitates the orderly participation of all parties.

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

- Public Comment Period applicable for all Appeals on the agenda

Appeal Hearing (CSFRA Petition Nos. C23240032)	
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 Decision recommends remanding the decision to the Hearing Officer for additional fact gathering and revision. If the RHC accepts the Tentative Appeal Decision, additional staff and Hearing Officer time will be expended on scheduling and holding a second hearing, and on revising the decision, as necessary. However, this is not anticipated to have an impact on the RHC budget, which already accounts for staff and Hearing Officer time related administration of the petition process.

PUBLIC NOTICING — Agenda posting, posting on the City’s website, and email to distribution list.

ATTACHMENTS

1. Tentative Appeal Decision for Petition Nos. C23240032
2. Decision of Hearing Officer (April 24, 2024)
3. Appellant-Landlord Appeal of Decision (May 8, 2024)