

DATE: December 18, 2023

TO: Rental Housing Committee

FROM: Anky van Deursen, Manager, Rent Stabilization Division
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Nazanin Salehi, Special Counsel to the Rental Housing Committee

SUBJECT: Appeal of Hearing Officer’s Decision, Petition No. C22230052

RECOMMENDATION

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 tenant petition for downward adjustment of rent (“Petition”) based on the landlord’s failure to maintain a habitable premises. The hearing on the Petition was held on August 30, 2023, and the Hearing Officer’s Decision was issued on October 10, 2023 (“HO Decision”) and served on the parties on October 16, 2023.

Table 1: Relevant Timeline

Date	Action
May 16, 2023	Rental Housing Committee accepted petition regarding 222 Escuela Avenue, No. 169, Petition No. C22230052
August 17, 2023	Prehearing telephone conference held
August 24, 2023	Written summary of prehearing conference and the Hearing Officer’s Request for Documents served on parties
August 30, 2023	Hearing held and closed
August 30, 2023	Hearing record closed
October 10, 2023	Hearing Decision delivered
October 16, 2023	Hearing Decision served on the landlord and tenant
October 25, 2023	Appeal submitted by appellant-landlord
December 8, 2023	Tentative Appeal Decision issued
December 18, 2023	Appeal hearing before the Rental Housing Committee

The Petition requested a rent refund on the basis that the landlord has failed to maintain a habitable premises due to a serious moisture and mold problem that was allowed to grow over an extended period of time.

The Hearing Officer determined that the landlord was liable for a reduction in the habitability of the Property for the period from January 4, 2023 through July 1, 2023 based on the wall moisture and mold issue. The HO Decision determined that the tenant established that the moisture issue commenced on or around October 21, 2021. However, for a variety of reasons, including, but not limited to, the landlord addressing the issue to the tenant's satisfaction on one occasion and the tenant's failure to let the landlord enter the unit on a number of occasions in December 2022, the tenant had only met their burden of proof with regard to the landlord's failure to maintain a habitable premises for the period commencing January 4, 2023 and concluding July 1, 2023, when the landlord finally completed repairs to the wall.

The HO Decision also explained that the landlord's argument that the tenants substantially contributed to the mold condition (under Civil Code Section 1941.2) is undermined by evidence presented at the hearing demonstrating that the tenants: (1) had their dehumidifier on as directed and only turned it off when they were sleeping; (2) moved all furniture away from the wall as directed by the landlord; and (3) ventilated the room whenever weather conditions permitted.

The Hearing Officer held that, for the period between January 4, 2023 through July 1, 2023, the petitioner was entitled to a forty percent (40%) reduction in rent. This reduction was granted based on testimony presented by the tenants regarding the impact of the moisture and mold condition on their use of the Property and the health of the tenants' family. The HO Decision concluded that the tenants were entitled to a total rent refund of \$7,050.60 from the landlord.

The appellant-landlord raised the following four issues on appeal:

1. The Hearing Officer erroneously held that the landlord did not challenge the tenants' testimony regarding the the moisture issue.
2. The Hearing Officer erred in holding that repairs to the wall were completed on July 1, 2023 rather than January 4, 2023.
3. The Hearing Officer abused his discretion by concluding that one of the photos demonstrating the condition of the wall was taken in May 2023, as presented by the tenants, rather than December 2022.
4. During the hearing, the Hearing Officer improperly demonstrated bias toward the tenants.

In addition, the appeal emphasized that the landlord's testimony throughout the hearing was truthful and expressed issue with the Hearing Officer's accusation that the landlord lied in their testimony. The Tentative Appeal Decision does not address this part of the appeal as it is not clear how the Hearing Officer's allegedly offensive characterization of the landlord's testimony in the HO Decision altered the outcome of the Petition.

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 December 13, 2023. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

ANALYSIS

A. Role of the Rental Housing Committee

The role of the Rental Housing Committee (RHC) is not to reweigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal "*de novo*" pursuant to Regulations 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 RHC 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 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. Figure 1 below shows a visualization of the appeal procedure.

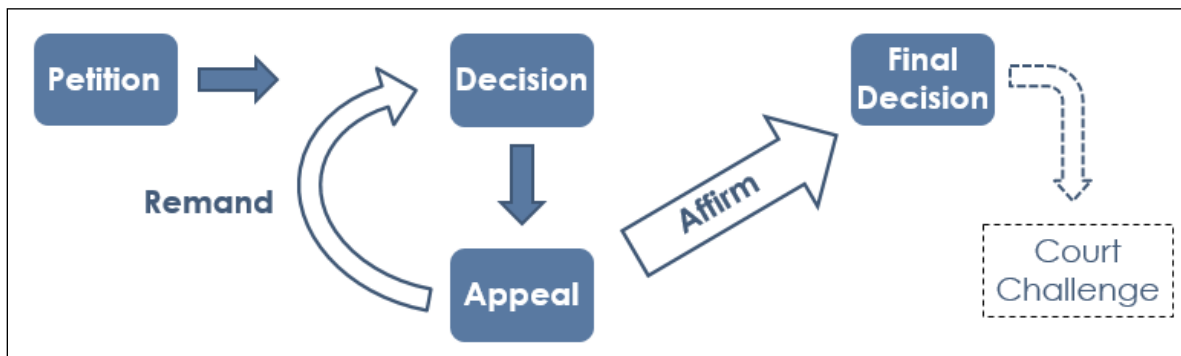


Figure 1: Visualization of Appeal Procedure

C. Tentative Appeal Decision—Appeal Elements

The Tentative Appeal Decision recommends affirming the Prehearing Order and Hearing Decision in their totality. In summary:

1. The appellant-landlord alleges that the Hearing Officer erroneously held that the landlord did not challenge tenants' testimony regarding the moisture issue. However, the Hearing Officer's findings regarding testimony that was not challenged by the landlord does not alter the outcome of the Petition. With the exception of one aspect of the tenants' testimony regarding rainwater entering the Property in October 2021, which was actually contested by the landlord, all of the other testimony that the Hearing Officer concluded was not challenged relates to the time period prior to January 4, 2023. As it relates to the January 4, 2023 repair date, the HO Decision specifically states: "[t]he main point of contention is Landlord testified that all Wall repair was completed on January 4, 2023. Tenants vehemently disagree and testified the work was not done until the June/July 2023 time frame." Therefore, the HO Decision aligns with the appellant's own characterization of their testimony

regarding the January 4, 2023 repair date and the parties' disagreements about whether this date was the date on which the issue was resolved by the landlord.

2. The appellant next argues that the Hearing Officer erred in holding that repairs to the wall were completed on July 1, 2023 rather than January 4, 2023. There is sufficient evidence in the record to support the Hearing Officer's conclusion that the wall was not repaired until July 1, 2023. The tenants' testimony and evidence and the landlord's log for the unit indicate that the tenants filed two maintenance requests related to the wall after January 4, 2023. The tenants' testimony also indicated that they filed the Petition in May 2023 because the issue persisted and remained unaddressed by the landlord through that date and that the landlord's maintenance technician returned sometime between June and July 2023 to complete the repairs. On the other hand, the landlord's only evidence that the repairs were completed on January 4, 2023 was a note in the maintenance log stating their maintenance technician "returned and painted wall" on that date and thereafter advised the tenants to keep their air mattress away from the wall and open the windows for ventilation and to prevent condensation on the windows. The landlord presented no photos or videos demonstrating the condition of the wall prior to August 12, 2023. Therefore, the Hearing Officer's holding that the wall was not repaired until July 1, 2023 was adequately supported by evidence in the record.
3. Third, the appellant asserts the Hearing Officer abused his discretion by concluding that one of the photos demonstrating the condition of the wall was taken in May 2023, as presented by the tenants, rather than December 2022. Despite the appellant's assertion that the properties of the photograph in question be reviewed to ensure its accuracy and reliability, the formal rules of evidence do not apply in hearings on Individual Rent Adjustment petitions (Community Stabilization and Fair Rent Act Regulations, Chapter 6, Section E.4.). Furthermore, there was ample testimonial and circumstantial evidence, such as that the picture was included as an attachment to the April 1, 2023 maintenance request submitted by the Tenant, to support the Hearing Officer's conclusion that the photo reflected the condition of the wall in April 2023.
4. Finally, the appellant-landlord argues that, during the hearing, the Hearing Officer improperly demonstrated bias toward the tenants. However, throughout the hearing, the Hearing Officer complimented both parties regarding their presentation of their cases, their attentiveness, and their professionalism. The Hearing Officer's apparent practice of complimenting and encouraging both parties throughout the hearing does not rise to a level of improper bias. His impartiality is evidenced by the careful consideration of all of the evidence from both parties and reasoned conclusion in 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 (Government 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.

Table 2: Schedule of Appeal of Hearing Decision

•	Public comment period applicable for all appeals on the agenda.																		
•	Appeal hearing:																		
	<table border="1"> <tr> <td>Staff report and presentation</td> <td></td> </tr> <tr> <td>Appellant-landlord presentation of argument</td> <td>10-minute maximum</td> </tr> <tr> <td>Respondent-tenant presentation of argument</td> <td>10-minute maximum</td> </tr> <tr> <td>Appellant-landlord presentation of rebuttal</td> <td>5-minute maximum</td> </tr> <tr> <td>Respondent-tenant presentation of rebuttal</td> <td>5-minute maximum</td> </tr> <tr> <td>RHC question and answer with staff</td> <td></td> </tr> <tr> <td>RHC question and answer with appellant-landlord</td> <td></td> </tr> <tr> <td>RHC question and answer with respondent-tenant</td> <td></td> </tr> <tr> <td>RHC deliberations and decision</td> <td></td> </tr> </table>	Staff report and 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	
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RHC deliberations and decision																			
•	Conclude agenda item.																		

FISCAL IMPACT

Any RHC Appeal Decision 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—Agenda posting and email to distribution list.

AVD-KMT-NS/KG/6/HSN/RHC

847-12-18-23M

- Attachments:
1. Tentative Appeal Decision for Petition No. C22230052 (December 10, 2023)
 2. Decision of Hearing Officer (October 10, 2023)
 3. Appellant-Landlord Appeal of Decision (October 25, 2023)