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November 14, 2024

memorandum

To
Mountain View Rental Housing Committee

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

RE
Appeal of Hearing Officer's Decision Re: Petition No. C23240043

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 unlawful rent. The Hearing on the Petition was held on July 16, 2024. The Hearing Officer's Decision was issued on September 19, 2024 ("HO Decision") and served on the parties on September 19, 2024.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
December 15, 2023	RHC accepted Petition No. C23240043.
June 3, 2024	Notice of Hearing and Pre-Hearing Conference served on the Parties.
July 1, 2024	Pre-hearing telephone conference held.
July 2, 2024	Summary of Pre-hearing Conference Call and Order served on parties.

July 16, 2024	Hearing held and Hearing Record closed.
September 19, 2024	HO Decision issued and served on the Parties.
October 3, 2024	Appeal submitted by Appellant-Landlord.
November 4, 2024	Tentative Appeal Decision issued and served.
November 14, 2024	Appeal hearing before the Rental Housing Committee.

The Petition requested a downward adjustment of rent on the basis that the Landlord had (1) failed to roll back the Tenant's rent to their rent on October 19, 2015 upon the effective date of the Community Stabilization and Fair Rent Act ("CSFRA") and (2) had thereafter imposed rent increases in excess of the Annual General Adjustments authorized by the Rental Housing Committee in 2019 and 2020.

The Hearing Officer determined that Tenant had met their burden of proof that Landlord had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because Landlord failed to roll back Tenant's rent to its level on October 19, 2015, as required by CSFRA Section 1702(b). As a result, Landlord did not substantially comply with the CSFRA, and Tenant was entitled to a downward adjustment of rent. Moreover, because Landlord had not substantially complied with the CSFRA due to their failure to roll back the rent, any rent increases imposed by Landlord between December 23, 2016 and October 31, 2023 were unlawful pursuant to CSFRA and the Regulations. The Hearing Officer ordered that the Landlord refund to the Tenant all unlawfully collected rent, totaling \$22,742.13, for the period from December 23, 2016 through October 31, 2023, when the Tenant vacated the Affected Unit.

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

- A. The Hearing Officer erred or abused her discretion by failing to consider or give due weight to the fact that an employee of the City's Rent Stabilization Division told the Landlord that the rollback requirement did not apply to fixed-term leases.
- B. The Hearing Officer erred or abused her discretion by failing to consider or give due weight to the fact that Tenant knew about the rollback requirement in 2016 but waited to file their petition until after they vacated the unit in 2023.
- C. The Hearing Officer erred or abused her discretion by failing to consider or give due weight to the fact that the Rent Stabilization Division did not provide sufficient notification to Landlord of the registration requirement in 2021.
- D. The Hearing Officer abused her discretion by reaching a decision that is punitive to the Landlord.

- E. The Hearing Officer erred or abused her discretion by failing to consider the evidence submitted by Landlord of the "willful property destruction and damages" by Tenant at the time that they vacated the unit.

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 November 12, 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 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.

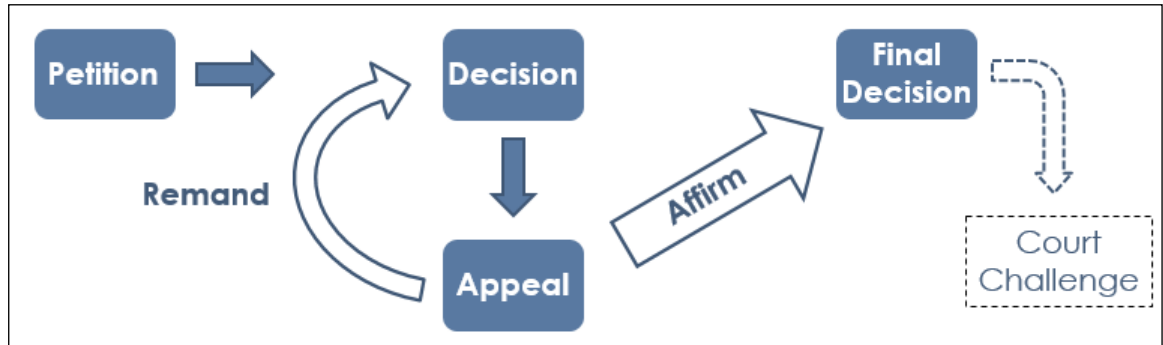
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and an appeal court: the trial court drafts a decision after weighing all the evidence, and the appeal court reviews 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 its totality. In summary:

- A. Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion by failing to consider or give due weight to the fact that a City employee informed Appellant that the rollback requirement did not apply to fixed-term leases. However, the Hearing Officer both admitted and considered Landlord's testimony about the advice received from City staff about the applicability of the rollback, but ultimately determined that the evidence was not relevant to whether Landlord was liable to Tenant for the failure to comply with the rollback requirement. The Hearing Officer's factual conclusion that Landlord failed to fulfill their obligation to inform themselves of the lawful rent for the Affected Unit is supported by substantial evidence in the hearing record. Based on the foregoing, the Hearing Officer did not err or abuse her discretion in concluding the following: (1) it was Landlord's legal responsibility to inform themselves of the lawful rent for the Affected Unit, (2) Landlord failed to take reasonable actions to inform themselves of the rollback requirement, (3) Landlord failed to rollback Tenant's Rent to its level on October 19, 2015 as required by the CSFRA, (4) the Landlord's failure meant Landlord did not substantially comply with the CSFRA, and (5) Tenant was entitled to a downward adjustment of rent and rent refund based on Landlord's failure.
- B. Appellant-Landlord next argues that the Hearing Officer erred or abused her discretion in concluding that Landlord was required to refund Tenant for all unlawful rents collected between December 23, 2016 and October 31, 2023 even though Tenant waited several years to file their petition for downward adjustment

based on unlawful rent. Landlord's argument on this point also fails. The Hearing Officer's decision is supported by law because (1) the Hearing Officer could not apply the doctrine of laches because Hearing Officers lack authority to fashion an equitable remedy or consider equitable defenses, (2) the Hearing Officer could not apply the doctrine of waiver/forfeiture because the express language of CSFRA Section 1713 prohibits waiver of a Tenant's rights under the CSFRA and the law requires that any "condition involving forfeiture must be strictly interpreted against the party for whose benefit it is created," and finally, (3) neither the CSFRA nor the Regulations either expressly or implicitly impose a statute of limitations on a Tenant's exercise of their right to petition for a downward adjustment of rent.

- C. Appellant-Landlord contends that the Hearing Officer erred or abused her discretion by failing to consider or give due weight to the fact that the Rent Stabilization Division did not provide sufficient notification to the Landlord of the registration requirement in 2021. While the Hearing Officer did conclude that Landlord did not register the Affected Unit in 2021 as required by the CSFRA and the Regulations, this finding did not affect the Hearing Officer's final decision or the award that the Hearing Officer authorized to Tenant. Therefore, the Tentative Appeal Decision does not reach the merits of Landlord's argument on this point.
- D. Thereafter, Appellant-Landlord argues that the Hearing Officer should have considered fairness and equity to both parties when reaching her decision, and her failure to do so resulted in a punitive decision to Landlord. This argument is essentially the same argument as put forth in (B) above. For the reasons already explained, the Hearing Officer correctly concluded that she did not have the authority to fashion an equitable remedy, and that neither the doctrine of waiver nor a statute of limitations applied to the Tenant's claims. Based on the express language of CSFRA Section 1714(a), she ordered Respondent to refund to Petitioner all unlawfully collected rent, in the amount of \$22,742.13, for the period from December 23, 2016 through October 31, 2023.
- E. Finally, Appellant-Landlord asserts that the Hearing Officer erred or abused her discretion by failing to consider evidence submitted by Landlord of the condition of the Affected Unit after Tenant vacated. The CSFRA limits the jurisdiction of the Rental Housing Committee and its appointed Hearing Officers to the four types of petitions enumerated in CSFRA Section 1710 and the CSFRA Regulations authorize a few other types of petitions. The issue of the condition of the Affected Unit upon the Tenant's vacation of the unit does not fall within the subject matter of any of these types of petitions. Additionally, state law governs issues related to a tenant's responsibilities and a landlord's rights related to the condition of a rental until upon termination of a tenancy. Therefore, the Hearing Officer appropriately concluded that she did not have jurisdiction to issue of the condition of the unit when Tenant departed the unit.

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)	
<ul style="list-style-type: none"> Public Comment Period applicable for all Appeals on the agenda Appeal Hearing (CSFRA Petition No. <u>C23240043</u>) 	
Staff Report & Presentation	
Appellant-Tenant Presentation of Argument	10 minute maximum
Respondent-Landlord Presentation of Argument	10 minute maximum
Appellant-Tenant Presentation of Rebuttal	5 minute maximum
Respondent-Landlord Presentation of Rebuttal	5 minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Tenant	
RHC Question and Answer with Respondent-Tenants	
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

November 14, 2024

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See agenda posting for November 14, 2024, RHC meeting.

ATTACHMENTS

1. Tentative Appeal Decision for Petition No. C23240043
2. Decision of Hearing Officer (September 19, 2024)
3. Appellant-Landlord Appeal of Decision (October 3, 2024)
4. Appellant-Landlord Answer to Tentative Appeal Decision (November 12, 2024)