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February 27, 2025

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 Nos. C23240083 and C23240084

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 decrease in Housing Services and/or maintenance and unlawful rent. The Hearing on the Petition was held on October 22, 2024. The Hearing Officer's Decision was issued and served on the parties on December 20, 2024 ("HO Decision").

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
June 21, 2024	RHC accepted Petition Nos. C23240083 and C23240084
September 19, 2024	Notice of Hearing and Pre-Hearing Conference served on the Parties.
October 1, 2024	Pre-hearing telephone conference held.

October 1, 2024	Summary of Pre-hearing Conference Call and Order served on parties.
October 22, 2024	Hearing held.
October 22, 2024	Hearing record closed.
December 20, 2024	HO Decision issued and served on the Parties.
January 6, 2025	Appeal submitted by Appellant-Landlord.
February 18, 2025	Tentative Appeal Decision issued and served.
February 27, 2025	Appeal hearing before the Rental Housing Committee.

The Petition requested a downward adjustment of rent on the basis that the Landlord had reduced Housing Services and/or maintenance without a corresponding reduction in Rent and had demanded and retained unlawful Rent in violation of the Community Stabilization and Fair Rent Act ("CSFRA"). Specifically, the Petition alleged that (1) the sliding glass door to the shower does not close properly resulting in moldy buildup, (2) the vinyl flooring in the kitchen is lifting up causing an unsafe condition, (3) the carpet throughout the apartment is dirty and moldy requiring replacement, (4) the porcelain on the bathtub has peeled off resulting in the accumulation of mold, and (5) Landlord demanded and retained unlawful rent because their predecessor-in-interest ("Prior Owner") imposed several increases even though it had not substantially complied with the registration requirements in the CSFRA and the Regulations.

The Hearing Officer determined that Landlord had addressed all of the habitability and reduction in Housing Services issues, except the carpet, to Petitioner's satisfaction. As such, Petitioner withdrew his requests for relief related to the shower sliding door, the kitchen flooring, and the peeling bathtub porcelain.

As to the carpet issue, the Hearing Officer concluded Petitioner had met his burden of proof that Landlord had improperly reduced Housing Service(s) and/or maintenance in violation of CSFRA Sections 1702(h) and 1710(c) by failing to replace the 14-year-old carpet throughout the apartment. The Petitioner established that the carpet was worn out, dirty and moldy, and that he had informed Respondent of the condition. As a result, the Petitioner

was entitled to a total rent refund of 190.00 for the decrease in Housing Services and maintenance for the period from June 11, 2024, through June 30, 2024. Petitioner was also entitled to an ongoing monthly rent reduction of \$300.00, until such time that the subfloor is properly repaired or replaced, and a new carpet is installed in the Property in accordance with the City of Mountain View's inspection report.

Finally, the Hearing Officer decided Petitioner also met his burden of proof that Landlord had demanded and retained Rent exceeding the lawful Rent for the Property because both the Prior Owner and Landlord had failed to substantially comply with the requirements of the CSFRA at the time that they imposed one or more rent increases for the Property. Pursuant to CSFRA Section 1714(a), the current lawful Rent for the Property was \$1,448.00 per month, which was the Rent in effect immediately preceding the first unlawful Rent increase imposed on October 1, 2018. Petitioner was entitled to a rent refund of \$14,371.89 for the period from October 1, 2018, through June 21, 2024, plus any Rent paid in excess of the lawful Rent of \$1,448.00 for each month thereafter.

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

- A. The Hearing Officer erred or abused her discretion in concluding that Landlord was a proper party to the Petition. The imposition of strict liability imposed on a successor for the acts of a prior Landlord "violates traditional notions of fair play and substantial justice." Therefore, on equitable grounds, the Hearing Officer should not have held Landlord responsible for unlawful rent collected by the Prior Owner from October 2018 to March 2023.
- B. The Hearing Officer's decision that the Landlord was liable for unlawful rent violates due process and Equal Protection under the Fourteenth Amendment of the U.S. Constitution.

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 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.

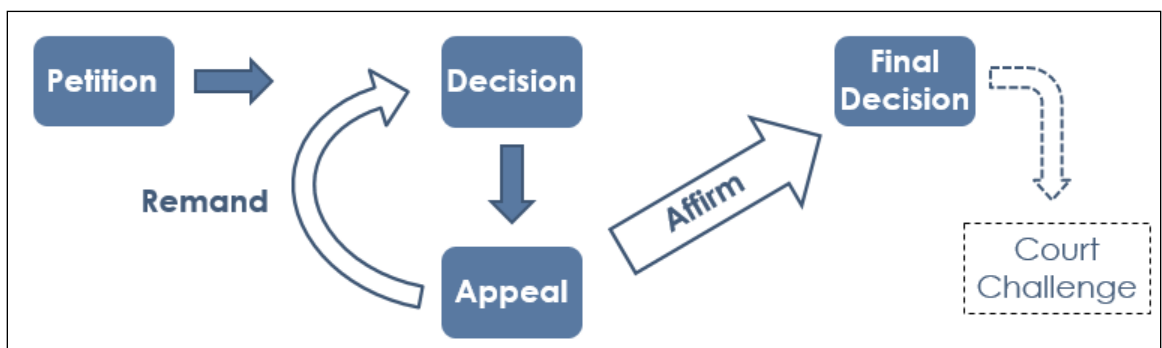
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and an appeal court: the trial court drafts a decision after weighing all the evidence, and the appeal court reviews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

- A. Appellant-Landlord alleges that the Hearing Officer erred or abused her discretion by holding Landlord liable for unlawful Rent collected by the Prior Owner at the time that the Prior Owner was out of substantial compliance with the requirements of the CSFRA and the Regulations. As Landlord acknowledges, however, the Hearing Officer correctly concluded that Landlord falls within the CSFRA's definition of "Landlord," which includes both the predecessor and successor of any owner or lessor. (CSFRA § 1702(j).) Moreover, there was substantial evidence in the hearing record to support the Hearing Officer's conclusions that: (1) the Prior Owner imposed an unlawful rent increase of 5.7 percent on October 1, 2018, when the Annual General Adjustment (AGA) for that period was 3.6 percent; (2) either the Prior Owner or the Respondent failed to complete the registration for the Property in 2021, 2022, 2023 and 2024; and the reduction in Housing Services and failure to maintain a habitable premises due to the carpet issue means that the Prior Owner and Respondent did not comply applicable health and safety laws as required by CSFRA Section 1707(f).
1. Despite the foregoing, Landlord argues Hearing Officer should have reduced the award to which Petitioner is entitled on the basis that holding a successor Landlord liable for the actions of a prior Landlord is inequitable. Landlord does not assert which equitable defenses might be applicable to the instant situation, and even if they had, the Hearing Officer lacked authority under the CSFRA and the Regulations to fashion an equitable remedy in this case.
 2. Even if the Hearing Officer did have the authority to consider equitable defenses, the Landlord failed to establish why it would be entitled to equitable relief. There is no evidence in the Hearing record demonstrating that Landlord made a good faith effort to inform itself about what its obligations would be as a Landlord in Mountain View, or to determine whether the Prior Owner was in substantial compliance with all applicable regulations before purchasing the Property.
- B. Appellant-Landlord also argues that the fact that the CSFRA allows a successor Landlord to be held liable for a predecessor's violations of the law violates constitutional due process requirements. Landlord not only fails to advance any reasonable argument for why its ownership of a rental property in Mountain View and its operation of rental housing business are insufficient to establish that the Rental Housing Committee has jurisdiction over Landlord, it also completely misunderstands the application of the "fair play and substantial justice" standard. Therefore, the mere fact that the Hearing Officer determined that Landlord was a proper party to the Petition does not violate Landlord's due process rights.
- C. Finally, while reviewing the Hearing record and the HO Decision for the purposes of Landlord's Appeal, the Rental Housing Committee became aware of seemingly erroneous findings of fact in the HO Decision that may impact the outcome of the

Petition and the rights and responsibilities of the Parties. These errors related to (1) the date on which the Hearing Officer determined that Landlord acquired possession of the Property and (2) the date on which the Hearing Officer determined that the Landlord received actual notice of the carpet issue in Petitioner’s unit. Based on the foregoing, the HO Decision should be remanded to the Hearing Officer with direction to: (1) harmonize the findings of fact in Section III of the HO Decision with the evidence in the hearing record and (2) if appropriate based on the corrected findings of fact, revise the award to Petitioner accordingly.

D. Pursuant to CSFRA Section 1714(a), the current lawful Rent for the Property is \$1,448.00 per month, which was the Rent in effect immediately preceding the first unlawful Rent increase imposed on October 1, 2018. Petitioner is also entitled to a rent refund of \$ \$17,445.89 for the period from October 1, 2018, through February 27, 2025, plus any Rent paid in excess of the lawful Rent of \$1,448.00 for each month thereafter.

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 Nos. <u>C23240083</u> and <u>C23240084</u>) 	
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-Tenant	
RHC Question and Answer with Respondent-Tenants	
RHC Deliberations and Decision	

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| <ul style="list-style-type: none">• Conclude Agenda Item |
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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 February 27, 2025, RHC meeting.

ATTACHMENTS

1. Tentative Appeal Decision for Petition Nos. C23240083 and C23240084
2. Decision of Hearing Officer (December 20, 2024)
3. Appellant-Landlord Appeal of Decision (January 6, 2025)