Rental Housing Committee
Tentative Appeal Decision

Petitions C23240043

The Rental Housing Committee of the City of Mountain View (the "RHC") finds and concludes the following:

I. Summary of Proceedings

Initial Petitions

On December 15, 2023, Tenants Charisse Sare Turley and Michael Sean Turley, (collectively **"Petitioner**") filed a petition for downward adjustment of rent (the "**Petition**") (Tenant's Exhibit #1) related to the property located 310 Gladys Avenue, Unit [redacted], Mountain View, CA 94043 ("**Property**"). The Property is owned by Tom Pothen and Ivy Pothen, who were additionally represented by David Verbera, of VVM Corporation, dba Realty World Villa California (collectively "**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On June 3, 2024, a notice of hearing was issued with a hearing date scheduled for July 16, 2024 at 3:30 P.M.

The Petition requested a downward adjustment of rent on the basis that Respondent had failed to roll back Petitioner's rent to their rent on October 18, 2015 upon the effective date of the Community Stabilization and Fair Rent Act ("**CSFRA**") and had thereafter improperly imposed rent increases in excess of the Annual General Adjustments in 2019 and 2020.

On July 1, 2024, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Petitioner and Respondent were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing. A Notice of Hearing Officer's Written Order and Summary of Pre-Hearing Conference and Notice of the Hearing were served on the Parties on July 2, 2024. (HO Exhibits #4 and #5). Respondents filed responsive documents by July 8, 2024. The hearing was held on July 16, 2024, and the hearing record was closed on the same date. The Hearing Officer issued a decision on September 19, 2024 ("**HO Decision**"). The Hearing Officer's Decision was served on the parties on September 19, 2024.

Appeal

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

A timely appeal of the Decision was received from the Respondent on October 3, 2024. (**Appeal**").

II. Summary of Hearing Officer Decision

The Hearing Officer issued a detailed decision on the Petition summarizing the evidence and making findings of fact and conclusions of law. The Hearing Officer found the following:

1. Petitioner met their burden of proof that Respondent had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because Respondent failed to roll back Petitioner's rent to its level on October 19, 2015, as required by CSFRA Section 1702(b). As a result, Respondent did not substantially comply with the CSFRA, and Petitioners were entitled to a downward adjustment of rent.

2. Because Petitioner demonstrated by a preponderance of the evidence that Respondent had not substantially complied with the CSFRA due to their failure to roll back the rent, any rent increases imposed by Respondent between December 23, 2016 and October 31, 2023 are unlawful pursuant to CSFRA Section 1707(f)(1) and CSFRA Regulations, ch. 12, section B and are nullified.

3. Although Petitioner met their burden of proof that Respondent had also failed to register the Affected Unit with the Rent Stabilization Division in 2021, the issue of whether there should be any remedy for their non-compliance is moot because all rent increases since December 23, 2016 are nullified due to Respondent's failure to roll back Petitioner's rent.

4. Since Petitioner had vacated the Affected Unit at the time they filed the Petition and at the time of the Hearing, the Base Rent for the Affected Unit need not be rolled back for a new tenancy but may be set at market rate pursuant to CSFRA Section 1708 and state law. However, Respondent is required 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.

III. Appealed Elements of Hearing Officer Decision

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section III of this Appeal Decision identifies the elements of the Decision that are subject to appeal by the Respondent. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Respondent raises 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 Respondent that the rollback requirement did not apply to fixed-term leases.** The rollout of the CSFRA was not conducted in a transparent and helpful manner for owners; they were not provided proper notice, reminders or phone calls of the rollback requirement.

B. **The Hearing Officer erred or abused her discretion by failing to consider or give due weight to the fact that Petitioner knew about the rollback requirement but waited to file the petition.** There should be a statute of limitations for tenants to file a petition from the date they discover the landlord's violation of the CSFRA and/or the Regulations.

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 Respondent of the registration requirement in 2021.** They were not provided proper notice, reminders or phone calls of the registration requirement.

D. **The Hearing Officer abused her discretion by reaching a decision that is punitive to Respondent.** Respondent is appealing to the Rental Housing Committee for a reduction of the award provided by the Hearing Officer's decision on the basis that the Hearing Officer should have considered fairness and equity to both parties when reaching her decision.

E. **The Hearing Officer erred or abused her discretion by failing to consider Respondent's evidence of the "willful property destruction and damages" by Petitioner.** The Petitioner's actions constitute a serious crime and should have been considered by the Hearing Officer in reaching her decision.

IV. Decision Regarding Appealed Elements

A. **Hearing Officer Properly Considered the Advice Provided to Respondent by the City but Ultimately Concluded that It Was Respondent's Duty to Determine Its Obligations.**

The Hearing Officer did not err or abuse her discretion by concluding that Petitioner had met their burden of proof to demonstrate, by a preponderance of the evidence, that Respondent did not substantially comply with the CSFRA by failing to rollback Petitioner's Rent to its level on October 19, 2015, and that Petitioner was entitled to a downward adjustment of rent.

Petitioner argues that the Hearing Officer erred or abused her discretion in reaching the aforementioned decision because she did not consider or afford due weight to the fact that the City's Rent Stabilization Division told Respondent that the rollback requirement did not apply to fixed-term leases, and that Respondent just followed the City's advice.

CSFRA Regulations provide that at a petition hearing, the “Petitioner and other affected parties may offer any documents, testimony, written declarations, or other evidence that, *in the opinion of the Hearing Officer*, is credible and relevant to the requested rent adjustment" and the "Hearing Officer shall consider any relevant evidence if it is the sort of evidence which a reasonable person might consider in the conduct of serious affairs…." (CSFRA Regulations, ch. 6, sec. E.4.) The language of the regulations makes clear that a Hearing Officer has discretion not only to admit or omit evidence, but also to determine whether the evidence is credible or relevant.

In this case, the Hearing Officer not only admitted as relevant Respondent's testimony about the advice they received from the City staff person about the applicability of the rent rollback, but also addressed the impact of this evidence on her ultimate decision to award Petitioner a downward adjustment of rent based on the Respondent's failure to rollback Petitioner's rent to its level on October 19, 2015. In fact, the Hearing Officer spent two full pages addressing the Respondent's argument about the alleged lack of notification by the Rent Stabilization Division and the advice that Respondent received from the Rent Stabilization Division. In doing so, she cited legal authority supporting her ultimate legal conclusion that this evidence was not relevant to whether Respondent was liable to Petitioner for the failure to comply with the rollback requirement. In relevant part, the Hearing Officer explained:

> "Respondents presented several arguments as to why they should not be held accountable for their lack of substantial compliance with the CSFRA by failing to roll back the rent to the level of the lawful Base Rent. First, they said that they did not know about the rollback, and someone, whose name and position are unknown, at what was then called the Rent Stabilization Program

told Mr. Verbera that Respondents did not need to roll back the rent because the tenancy was memorialized in a lease rather than being month-to-month.

In *Minelian v. Manzella, 215 Cal. App. 3d 457 (1990),* the appellate court ruled against a landlord who appealed from an adverse judgment in an unlawful detainer suit. The tenant had stopped paying rent because she had been charged unlawful rent due to landlord's failure to roll back the rent under the Santa Monica Rent Control Charter Amendment (the 'SMRCCA'), and she used excess unlawful rent she paid over the course of over seven years as an offset against rent due. The tenant had argued that the collection of excess rent was a defense to the unlawful detainer action. In affirming the judgment of the lower court, the appellate court stated, 'our holding places the burden on the landlord, where it properly belongs, to ensure that only the lawful amount of rent is charged.' *Id.* at 468.

In order to ensure that only the lawful amount of rent is charged, the landlord must inform themselves about what that amount is. In other words, if one chooses to do business as a landlord in a local rent control jurisdiction, one must do the work to find out what the law says.

…

The point is that Respondents and Mr. Verbera did a poor job of informing themselves about the CSFRA and cannot rely on their ignorance as a defense. As the Minelian court pointed out: 'A maxim of jurisprudence is that: 'No one can take advantage of his own wrong (*citing* California Civil Code Section 3517).'" (HO Decision, pgs. 12-14.)

The Hearing Officer's factual conclusion that Respondent failed to meet their burden of informing themselves of the lawful rent for the Affected Unit is supported by evidence in the hearing record. For one, Respondent testified that, up to the date of the Hearing, they had never even read the CSFRA. (HO Decision, pgs. 5; 7.) Moreover, Respondent testified that "he was not aware of the requirements of the CSFRA, so he called the City to ask about the rent rollback." (HO Decision, pg. 5.) Respondent testified he did not inform the City staff person that Petitioner's tenancy dated back to 2012; he only told them that Petitioner was on a one-year lease that commenced on March 1, 2016. (HO Decision, pg. 5) It was reasonable, based on this testimony, for the Hearing Officer to conclude that if Respondent had read the CSFRA, they would have known that the information most relevant to their inquiry to the City was the date of inception of the Petitioner's tenancy. Moreover, even though the Parties agreed that Petitioners raised the issue of the rollback on at least one other occasion in 2022, based on the evidence submitted and Parties' testimonies, the instance in 2017 was the only time Respondent sought out any information about the rollback requirement.

Based on the foregoing, the Hearing Officer did not err or abuse her discretion in concluding the following: (1) it was Respondent's legal responsibility to inform themselves of the lawful rent for the Affected Unit, (2) Respondent failed to take reasonable actions to inform themselves of the rollback requirement, (3) Respondent failed to rollback Petitioner's Rent to its level on October 19, 2015 as required by the CSFRA, (4) the Respondent's failure meant Respondent did not substantially comply with the CSFRA, and (5) Petitioner was entitled to a downward adjustment of rent and rent refund based on Respondent's failure.

B. **Hearing Officer Considered that Petitioner Waited to File the Petition but Correctly Concluded that Neither the CSFRA nor the Regulations Establish a Statute of Limitations.**

The Hearing Officer did not err or abuse her discretion in concluding that the CSFRA (and the Regulations) required the Respondent to refund Petitioner all unlawful rents collected between December 23, 2016 through October 31, 2023.

On Appeal, Respondent argues that the Hearing Officer failed to consider or give due weight to the fact that Petitioner knew about the rollback requirement in 2016 but waited to file the petition until after they vacated the Affected Unit in 2023. As a result, Respondent asserts that the Hearing Officer should have imposed a statute of limitations on Petitioner's claim for unlawful rent.

In fact, the Hearing Officer's determination is supported by law. The CSFRA provides that upon its effective date, "no Landlord shall charge Rent in an amount that exceeds the sum of the Base Rent plus any lawful Rent increases actually implemented pursuant to" the Act. (CSFRA § 1706(a).) The "Base Rent" for a tenancy commencing on or before October 19, 2015, is the rent in effect on that date. (CSFRA § 1702(b)(1).) Further, the CSFRA prohibits a rent increase where "the Landlord has failed to substantially comply with all provisions of" the CSFRA "and all rules and regulations promulgated by the Committee." (CSFRA § 1707(f)(1).) A Landlord's failure to roll back the rent and refund any overpayment of rent means that the Landlord is out of substantial compliance with the CSFRA. (CSFRA Regulations, ch. 12, section B.)

The evidence and testimony were undisputed that the Petitioner's tenancy commenced in 2012, well before October 19, 2015. (HO Decision, pg. 9; Pet. Exh. #6.) The evidence established that, on October 19, 2015, Petitioner's rent was $1,395.00. (HO Decision, pg. 9; Pet. Exh. #10). On March 1, 2016, the Parties entered a one-year lease with a rent of $1,535.00 for the Affected Unit. (HO Decision, pg. 10; Pet. Exh. 8) When the CSFRA went into effect on December 23, 2016, Respondent did not roll back the rent for Affected Unit to $1,395.00, they continued charging $1,535.00 until they imposed a rent increase of 3.4 percent (or $52) that went into effect on March 1, 2018. (HO Decision, pg. 10; Pet. Exh. #10.) Thereafter, Respondent increased Petitioner's rent in 2019, 2020, 2022, and 2023. (HO Decision, pg. 10; Pet. Exh. #10.) Petitioner vacated the Affected Unit on October 31, 2023. (HO Decision, pg. 11; Res. Exh. #4.)

So, while Respondent does not dispute that they failed to roll back the Rent as required by the CSFRA, they argue that the Hearing Officer should have reduced the award to which Petitioner is entitled on the basis that Petitioner waited seven years to file the petition. In essence, Respondent argues that the Hearing Officer erred or abused her discretion because she did not apply the doctrine of laches,[1] the doctrine of forfeiture (waiver),[2] or a statute of limitations[3] when reaching her decision.

As it relates to the application of the doctrine of laches, the Hearing Officer determined that her authority to limit Petitioner's award was limited by the CSFRA, as follows: "Given that the Hearing Officer does not sit as a court of equity, only legal defenses can be considered. Thus, the Hearing Officer cannot consider laches, but can consider the doctrine of waiver or the application of the statute of limitations." (HO Decision, pg. 14.) Neither the CSFRA nor the Regulations authorize a Hearing Officer to fashion an

[1] Laches is a doctrine in equity whereby courts can deny relief to a claimant with an otherwise valid claim when the party bringing the claim unreasonably delayed asserting the claim to the detriment of the opposing party.
[2] Waiver is a legal doctrine whereby courts can deny relief to a complainant because the claimant intentionally relinquished or abandoned a known right, as inferred expressly by their consent or indirectly by their actions. Forfeiture is a related doctrine in law whereby courts can deny relief to a complainant because the claimant did not raise it or properly present it within the appropriate timeframe.
[3] A statute of limitations refers to a law that sets the maximum time after an event within which legal proceedings may be started.

equitable remedy, except in the limited case where all of the following conditions are met: (1) a decision has been issued on a petition, (2) the decision has become final, (3) one or more of the Parties requests a compliance hearing to resolve an ongoing dispute among the parties as to whether there has been compliance with the decision, and (4) there is credible evidence of repeated or continued violations of the CSFRA or the Regulations by one of the parties. (*See* CSFRA Regulations, ch. 6, sec. J.4.a. ("Where there is credible evidence of repeated or continued violations of provisions of the CSFRA or the Regulations by any party, the Hearing Officer may fashion an equitable remedy, including, but not limited to, submittal of rent records and receipts on a quarterly basis.")) Since the circumstances here do not satisfy the conditions outlined above, the Hearing Officer's determination that she lacked authority to apply the doctrine of laches to afford Respondent's relief was correct.

Moving onto the doctrine of waiver/forfeiture, the Hearing Officer then determined that the express language of the CSFRA prohibits waiver. Respondent's argument is essentially as follows: by continuing to sign the leases with which they were presented and continuing to pay rent for multiple years before filing the petition, Petitioner assented to a waiver of their right to petition for a downward adjustment of rent based on unlawful rent. However, CSFRA Section 1713 explicitly states: "Any provision of a Rental Housing Agreement, whether oral or written, which purports to waive any provision of this Article established for the benefit of the Tenant, shall be deemed to be against public policy and shall be void." As the Hearing Officer explained, to view the Petitioner's assent to each new lease or their monthly payment of rent as a waiver of their right to petition would constitute "an end-run around Section 1713" and "contradicts one of the purposes of the CSFRA, which is to protect tenants from excessively high rents." (HO Decision, pg. 14.) As the Hearing Officer also pointed out, the non-waivability principle in CSFRA Section 1713 is strengthened by the fact that, in California, the law abhors forfeitures, and a "condition involving forfeiture must be strictly interpreted against the party for whose benefit it is created." (Cal. Civ. Code § 1442.) "Ruling that the Petitioners waived their right to Petition would result in Petitioners' forfeiture of seven years of unlawful rent collected by Respondents." (HO Decision, pg. 14.) The Hearing Officer was well within her discretion to conclude that forfeiture of seven years' worth of unlawfully collected rent was an unduly harsh consequence of the Petitioner's decision to wait to file a petition until after they felt the filing would not impact their housing security.

Finally, with regard to the application of a statute of limitations, the Hearing Officer concluded that the Rental Housing Committee could have imposed a statute of limitations for recovery in downward adjustment petitions but its failure to do so evidenced its intent that no statute of limitations apply to such actions. The Hearing Officer's analysis accords with a widely accepted rule of statutory interpretation. "A familiar principle of statutory construction… is that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute." (*Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006); *see also Russello v. United States*, 464 U.S. 16, 23 (1983) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'").) As the Hearing Officer outlined, the Rental Housing Committee has limited recovery in the context of concessions and has limited the time for filing petitions in only three specific situations that are inapplicable to the existing case. (Ho Decision, pg. 15.) Based on the foregoing, it was reasonable for her to conclude that the Rental Housing Committee knew that it could impose a statute of limitations and "would have provided specifically for a statute of limitations in the broader context of rent rollbacks or unlawful rent petitions *if it had intended to*." (*Id.* (emphasis added).)

For the reasons outlined above, the Hearing Officer did nor err or abuse her discretion by refusing to apply laches, waiver, or a statute of limitations to the Petitioner's claim. She thoroughly considered evidence

that Petitioner waited until several years to file the petition, but based on established legal authority, concluded that said evidence did not alter Petitioner's right to recover all of the unlawful rent they had paid to Respondent between December 19, 2016 and October 31, 2023.

C. **Hearing Officer Did Not Award Petitioner Any Relief Based on the Respondent's Failure to Register the Affected Unit in 2021.**

Respondent next alleges 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 Respondent of the registration requirement in 2021.

While the Hearing Officer did conclude that Respondent 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 Petitioner. As it relates to Respondent's failure to register the Affected Unit in 2021, the Hearing Officer concluded as follows:

> "Pursuant to CSFRA Regulations Ch. 11, Section (D), Landlords were required to register all rental units by 'February 1, 2021, provided, however, that failure to complete registration by February 1, 2021 shall not be considered substantial noncompliance with the CSFRA unless such failure continues after March 1, 2021.' Pursuant to CSFRA Regulations Ch. 12, Section (B) and Table 1, Item 4, failure to register 'means a Landlord has not substantially complied with the CSFRA and therefore, cannot raise rents…'
>
> ***Given that all rent increases have been nullified***, that there is no mechanism for retroactively registering a rental unit so that it can be brought into compliance, and that the Affected Unit was registered in early 2022, ***the question of registration need not be discussed further***." (HO Decision, pg. 18-19 (emphasis added).)

Section VIII.2 of the HO Decision also says: "Although Respondents failed to register the Affected Unit with the Rent Stabilization Division in 2021, the issue of whether there should be any remedy for their non-compliance is moot as all rent increases since December 23, 2016 are nullified." (HO Decision, pg. 19.)

Since the HO Decision did not authorize any award based on the Respondent's failure to register the Affected Unit in 2021, this Appeal Decision does not reach the merits of Respondent's argument about whether the Hearing Officer erred or abused her discretion in concluding that Respondent had violated the CSFRA by failing to register the Affected Unit with the Rent Stabilization Division in 2021.

D. **Hearing Officer Did Not Abuse Her Discretion in Awarding Petitioner a Full Refund of All Unlawful Rent Paid Since December 2016 Because Neither the CSFRA Nor the Regulations Authorize a Hearing Officer to Fashion an Equitable Remedy.**

Respondent's next argument on appeal is that the Hearing Officer should have considered fairness and equity to both parties when reaching her decision and that her failure to do so resulted in a punitive decision to Respondent. This argument is essentially the same as Respondent's second argument that the Hearing Officer should have considered the Petitioner's delay in filing the petition in reaching her decision.

The CSFRA states that "a Landlord who demands, accepts, receives or retains any payment of Rent in excess of the lawful Rent shall be liable to the Tenant in the amount by which the payment or payments

have exceeded the lawful Rent" and "the Rent shall be adjusted to reflect the lawful Rent pursuant" to the CSFRA and the Regulations. (CSFRA § 1714(a).) For the reasons already detailed in Section IV.D. above, the Hearing Officer correctly concluded that she did not have authority to fashion an equitable remedy, and that neither the doctrine of waiver nor a statute of limitations applied to the instant situation. 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. **The Hearing Officer Correctly Decided that She Did Not Have Jurisdiction Over Issues Related to the Condition of the Affected Unit After Petitioner Vacated.**

Finally, Respondent's argue that the Hearing Officer erred or abused her discretion by failing to consider evidence submitted by Respondent of the condition of the Affected Unit upon Petitioner's departure. However, the Hearing Officer correctly concluded that she did not have jurisdiction to consider issues related to the condition of a rental unit after the tenant's departure.

The CSFRA provides that a "Hearing Officer appointed by the Committee shall conduct a hearing to act upon the Petition, and *shall have the power* to administer oaths and affirmations, and *to render a final decision on the merits of the Petition*, *subject to the provisions of this Article*." (CSFRA § 1711(a)(emphasis added).) The CSFRA only provides for four types of petitions – a petition for upward adjustment of rent by a landlord on the basis of fair rate of return; a petition for downward adjustment of rent by a tenant based on the landlord's failure to maintain a habitable premises; a petition for downward adjustment of rent by a tenant based on the landlord's decrease in housing services or maintenance; and a petition for downward adjustment of rent by a tenant based on the landlord's demand or retention of unlawful rent. (CSFRA § 1710.) The CSFRA Regulations also authorize a few other types of related petitions, including a specified capital improvement petition, tenant hardship petition, exemption status petition, and new or additional services petition. The issue of the condition of the Affected Unit upon the Petitioner's vacation of the unit does not fall within the subject matter of any of the above-mentioned types of petitions.

Moreover, a local government's power to make and enforce within their limits all local, police, sanitary and other ordinances and regulations is limited by the requirement that such actions not conflict with the general laws of the state. (Cal. Const., art. XI, § 7.) Of relevance here, state law governs a tenant's responsibilities and a landlord's rights related to the condition of a rental until upon termination of a tenancy. For example, the Civil Code provides that a landlord "may claim of the security only those amounts as are reasonably necessary for the purposes specified in" the law, but "may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies." (Civ. Code § 1950.5(e).) The statute specifies "cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy" as one of the purposes for which a landlord may retain all or a portion of a tenant's security deposit. (Civ. Code § 1950.5(b)(3).) Because state law already governs on this topic, a Hearing Officer administering a local law does not have jurisdiction over issues on this topic. In the HO Decision, the Hearing Officer concluded as such:

> "Finally, Respondents have submitted evidence of the very poor condition that Petitioners left the Affected Unit in after they vacated and the lack of a 30-day notice on the part of Petitioners. *The Hearing Officer has no jurisdiction over such issues*, so the rent refund to Petitioners cannot be

offset against any damages that might be owed to Respondents; however, Respondents may pursue damages in another forum." (HO Decision, pg. 19 (emphasis added).)

In conclusion, the Hearing Officer did not err or abuse her discretion in concluding that she did not have jurisdiction over the issue of the condition of the unit when Petitioners vacated the unit because neither the CSFRA nor the Regulations authorize a Hearing Officer to consider and/or to issue a decision about a tenant's liability for the condition of a unit after they have moved out.

V. **Conclusion**

As detailed above, the RHC denies the appeal in its entirety and affirms the Decision in its entirety:

A. Since Petitioner has vacated the Affected Unit, the Base Rent for the Affected Unit is not rolled back and respondent may set the rent for a new tenancy for the Affected Unit at market rate pursuant to CSFRA Section 1708 and state law.

B. Since Petitioner has vacated the Affected Unit, no additional payments of unlawful rent have been made during the pendency of this appeal. Therefore, Respondent shall refund to Petitioner $22,742.13 in unlawfully collected rent for the period from December 23, 2016 through October 31, 2023, as reflected in Table 1 of the HO Decision and in Attachment 1, Award Schedule, appended to the HO Decision.

C. Absent an action for writ of administrative mandamus, the total amount owed to Petitioner is due and payable to Petitioner immediately and if said amount is not paid, Petitioner shall be entitled to a money judgment in the amount of the unpaid payments in an action in court or any other administrative or judicial or quasi-judicial proceeding.

D. The payments and credits to Petitioner as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.

E. If a dispute arises as to whether any party has failed to comply with this decision, any party may request a Compliance Hearing in accordance with CSFRA Regulations, ch. 5, section J.1.