

Tentative Appeal Decision
Petition No. C23240032

Rental Housing Committee
Tentative Appeal Decision

Petition No. C23240032

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

I. Summary of Proceedings

On November 22, 2023, Tenant Abdul Campos (collectively "**Petitioner**") filed two petitions for downward adjustment of rent (the "**Petitions**") (Tenant's Exhibit #1 and #2) related to the property located 2200 California Street ■■■, Mountain View ("**Property**"). The petitions were accepted by the Rent Stabilization Division of the City of Mountain View on December 22, 2023. The Property is owned by The Arbors at Mountain View, which was represented in the petition proceedings by property manager, Ferdi DeLuna ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**."

The first Petition requested a downward adjustment of rent based on unlawful rent because 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 second Petition requested a downward adjustment of rent on the basis that Respondent had failed to maintain the property in a habitable condition and had improperly decreased Housing Services without a corresponding reduction in Rent based on several conditions.¹

On January 9, 2024, a notice of hearing was issued with a hearing date scheduled for February 16, 2024, at 9:30 a.m. On January 25, 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 January 26, 2024. (HO Exhibit #4).

The hearing was held on February 16, 2024 (the "**Hearing**"). The Hearing Officer issued a Post-Hearing Order on February 19, 2024, holding the evidentiary record open through February 23, 2024 to allow additional evidence to be submitted. The hearing record was closed on February 23, 2024. The Hearing Officer issued a decision on April 24, 2024 ("**HO Decision**"), which was served on the Parties on the same date.

A timely appeal of the Decision was received from the Respondent on May 8, 2024 (**Appeal**).

Procedural Posture

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

¹ Respondent's Appeal relates only to the first petition based on unlawful rent, petition number C23240032, not the second petition based on failure to maintain a habitable premises and reduction in Housing Services, petition number C23240033, so this Tentative Appeal Decision does not detail the claims in the second petition and/or the Hearing Officer's decision on those issues.

"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.

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.

As it relates to unlawful rent, the Hearing Officer found the following:

1. Petitioner met his burden of proof that Respondent had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA. 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.

2. Respondent charged Petitioner monthly as follows from the inception of the lease: \$2,350.00 for ten (10) months and \$0 for two (2) for a total of \$23,500.00 for the entire initial twelve (12) months, or an average \$1,958.33 per month, which Petitioner paid. Respondent provided the concessions even though the parties agree that Petitioner occasionally paid late, or in several partial payments over time, during the first twelve (12) months. Despite the fact that the addendum provided Respondent could recollect full rent from Petitioner upon Petitioner's default on these conditions, Respondent could not calculate the Base Rent as if the concessions had been invalidated because (1) the provision in the addendum was void since the strict link of timely payments to rent concessions in 2020 was a violation of the state emergency tenant protections that were in place to prevent undue hardship and displacement and (2) there was no evidence Respondent made any demand on Petitioner for payment of the two (2) months of rent reduced by the concessions.

3. 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).

4. On September 23, 2022, Respondent issued a Notice of Change of Monthly Rent which raised Petitioner's premises rent from \$2,350.00 to \$2,467.50 effective November 1, 2022, plus a "not to exceed" amount of utilities from \$320.00 to \$336.00; it appears these increases were calculated using the 2021 AGA of 5 percent.² On September 25, 2023, Respondent issued a Notice of Change of Monthly Rent which raised Petitioner's premises rent from \$2,467.50 to \$2,640.00 effective November 1, 2023 plus a "not to exceed" amount for utilities from \$336.00 to \$359.52; Respondent based their calculations on the AGA for 2023 of 5 percent plus a banked AGA for 2021 of 2 percent. Both of these rent

² Although the Hearing Officer did not specifically make a finding regarding any AGA increase after the lease expired on October 31, 2021, the evidence in the Hearing record demonstrates that Respondent did not seek to impose any AGA increase at any time between November 1, 2021, when the lease expired, and November 1, 2022, when it increased the rent from \$2,350.00 to \$2,467.50. The allowable AGA for the period from September 1, 2021 through August 31, 2022 was 5 percent.

increases were not allowed because they were improperly calculated, and the illegal rents collected by Respondent are recoverable by Petitioner.

5. 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.

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 one (1) issue on 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.

IV. Decision Regarding Appealed Elements

A. The Hearing Record Is Unclear As to the Amounts Demanded and Paid by Tenant for Utility Charges During the Initial Lease Term.

Respondent argues that the Hearing Officer erred by excluding payments made to the third-party billing service for utilities charges in the calculation of the Base Rent for the Premises. Specifically, Respondent argues that the Base Rent calculation in Section VIII(A) of the Decision only incorporated \$900.63 in utilities charges that the Tenant paid directly to Landlord but excluded the \$1,193.42 billed by Conservice on behalf of Landlord during the initial term of the tenancy.

Respondent is correct that Rent includes all Utilities Charges paid by the Landlord. The CSFRA's definition of Rent regulates all periodic payments for the use and occupancy of a Covered Rental Unit, including Housing Services, and including, but not limited to, Utility Charges:

"All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and **attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges³, pets, furniture, and/or subletting.**" (CSFRA § 1702(p).) (emphasis added)

CSFRA § 1702(h) further reiterates that:

³ CSFRA § 1702(v) defines Utility Charges as follows: "Any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of a Rental Unit."

“Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, **Utility Charges that are paid by the Landlord**, refuse removal, furnishings, telephones, parking, the right to have a specified number of occupants, and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.” (emphasis added)

The relevant language in CSFRA § 1702(h) – “Utility Charges that are paid by the Landlord” – does not draw any distinction between Utilities Charges that are paid by the Landlord and billed directly to the Tenant and those that are paid by the Landlord and billed indirectly to the Tenant through a third-party billing service (such as Conservice) that allocates Utilities Charges to Tenants and collects payment for Utilities Charges on behalf of the Landlord.

Pursuant to CSFRA § 1702(b)(2), the Base Rent for a tenancy commencing after October 19, 2015, such as Petitioner’s tenancy, is the “initial rental rate charged upon initial occupancy, provided that amount is not a violation of” the CSFRA or any provision of state law. § 1702(b)(2) further provides “[t]he term ‘initial rental rate’ means **only the amount of Rent actually paid by the Tenant** for the initial term of the tenancy.”

Here, the rent ledger demonstrates that the Respondent directly charged and Tenant paid the following amounts of Utilities Charges during the initial term of the tenancy: \$378.75 on February 5, 2021, \$185.49 on March 19, 2021, \$161.49 on April 7, 2021, and \$174.90 on May 12, 2021. (See Resp. Exh. #6.) Taken together, these amounts total the \$900.63 that the Hearing Officer cited in her calculation of the Base Rent. (HO Decision at pg. 12.)

However, copies of Conservice bills provided by the Respondent (Resp. Exh. #5) demonstrate that Petitioner was billed and paid the following amounts for each month of the initial term of the tenancy:

11/2020 - \$197.74
12/2020 - \$181.01
01/2021 - \$185.49
02/2021 - \$161.49
03/2021 - \$174.90
04/2021 - \$188.34
05/2021 - \$185.15
06/2021 - \$208.47
07/2021 - \$208.47
08/2021 - \$201.92
09/2021 - \$195.07
10/2021 - \$209.39

Together, these amounts total \$2,297.44, which exceeds both figures provided by Respondent in its Rent Roll - \$1,892.98 for Utility Amount Billed and \$1,913.06 for Utility Amount Paid. (See Resp. Exh. #10.) This figure also differs from the sum of the amounts noted by Respondent in the Appeal; the sum of \$900.63 and \$1,193.42 is \$2,094.05. (See Appeal at pg. 2.) Moreover, it is worth noting that the amounts charged for each month in the Conservice invoices were billed to the Tenant on a two-month delay (e.g., the

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charges for August 1, 2021 through August 21, 2021 were billed to the Tenant on September 18, 2021 and were due on October 1, 2021).

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 Rental Housing Committee concludes that it is 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.

V. Conclusion

As detailed above, the Rental Housing Committee remands 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.