

CITY OF MOUNTAIN VIEW
HEARING OFFICER DECISION PURSUANT TO
THE COMMUNITY STABILIZATION AND FAIR RENT ACT (“CSFRA”)

Rental Housing Committee Case No.:	C23240065
Address and Unit(s) of Rental Property:	1921 California Street, Unit ■■■, Mountain View, CA 94040
Petitioner Tenant Name(s):	Evan Crowe
Respondent Landlord Name(s):	Le Parc Dauphine Apartments, LLC
Date(s) of Hearing:	August 20, 2024
Place of Hearing:	Online via Zoom
Date Hearing Record Closed:	September 4, 2024
Date of Decision:	October 2, 2024
Date of Mailing:	See attached Proof of Service.
Hearing Officer:	Barbara M. Anscher

I. PROCEDURAL HISTORY

1. On May 13, 2024, Petitioner Evan Crowe (“Petitioner,” “Tenant,” or “Mr. Crowe”) filed with the City of Mountain View Rent Stabilization Division (the “City” or “Rent Stabilization Division”) a Petition for a downward rent adjustment, specifically alleging a reduction in Housing Services or maintenance (the “Petition”) for 1921 California Street, Unit ■■■ (the “Affected Unit”).
2. On June 12, 2024, the City served on the parties a Notice of Acceptance and Forwarding of Petition, with a Hearing Information Sheet, Response Notice Form, Authorized Representative Form, and Proof of Service attached.
3. On July 3, 2024, the City served a Notice of Prehearing Meeting on the parties, setting a Prehearing Meeting date for July 17, 2024 at 3:30 p.m. and a tentative Hearing date of August 12, 2024 at 3:30 p.m. Attached to the Notice were a Hearing Information Sheet and Proof of Service.
4. On July 3, 2024, Respondent requested a postponement of the Prehearing Meeting and the Hearing, and the Hearing Officer granted the request for good cause shown. On July 3, 2024, the City served a Notice of Hearing Officer Granting Postponement of Prehearing Meeting and

Hearing On Petition. The Prehearing Meeting was set for July 30, 2024 and the Hearing for August 20, 2024.

5. On July 9, 2024, Respondent filed a Representative Authorization Form and a Petition Response Notice with supporting documents.

6. A Prehearing Meeting was held by videoconference on July 30, 2024 at 3:30 p.m., as duly noticed. At the Prehearing Meeting, the Hearing Officer explained the hearing procedure and the burden of proof, answered the parties' questions, and discussed whether additional evidence would be requested.

7. On July 30, 2024, after the Prehearing Meeting, the Hearing Officer issued a Prehearing Order. The parties were granted until August 12, 2024 to submit documents requested by the Hearing Officer and to submit witness lists.

8. A Notice of Hearing Officer Prehearing Order and Notice of Hearing were served on the parties by the City on July 31, 2024. The Hearing was set for August 20, 2024 at 1:00 p.m.

9. The parties submitted additional documentary evidence prior to August 12, 2024, and Respondent submitted notice that two non-party witnesses would testify at the Hearing.

10. A Hearing was held on August 20, 2024, as duly noticed.

11. On August 20, 2024, after the Hearing, the Hearing Officer issued a Post-Hearing Order requesting further evidence from the parties on or before August 26, 2024. The City served a Notice of Hearing Officer Post-Hearing Order on all parties on August 21, 2024.

12. The parties submitted the requested documents on or before August 26, 2024. Respondent also submitted a document titled "Three-Day Notice to Perform Conditions and/or Covenants or Quit," dated May 30, 2024. This document was not requested by the Hearing Officer, nor was it discussed at the Hearing. The Hearing Officer has decided to admit it for limited purposes, which will be discussed below.

13. The Hearing Officer issued a Post-Hearing Order closing the Record on September 4, 2024. The City served a Notice of Hearing Officer Post-Hearing Order on the parties on September 9, 2024.

14. The Record was closed on September 4, 2024.

II. HEARING ATTENDANCE

Petitioner Evan Crowe appeared at the Hearing; and Jeff Zell ("Mr. Zell"), of property manager Zell Associates, Inc. ("Property Manager"), appeared on behalf of Respondent-Landlord Le Parc Dauphine Apartments, LLC ("Respondent," or "Landlord").

Joann Pham attended the Hearing on behalf of the Rent Stabilization Division.

III. WITNESSES

The following persons, duly sworn, testified at the Hearing and presented the following testimony:

Evan Crowe

Mr. Crowe testified that the drain in the bathroom sink runs slowly on an intermittent but recurring basis. He said that it makes it difficult to use the sink. When he brushes his teeth, the toothpaste just sits there, and the entire sink can fill with water when he is trying to use it.

He said that when the plumber or maintenance technician would come to work on the sink, it might not seem so bad, and the intermittent nature of the problem led the property manager to think that there was no problem, but it would always recur.

Mr. Crowe testified that the issue with the sink started on or about September 24, 2023. At that time, he did not know about how to send a maintenance request, so he sent text messages which he no longer has. At that time, the shower/tub was also clogged. Maintenance staff worked on both drains, but the problems persisted.

Mr. Crowe said that on October 12, 2023, a professional plumber came to repair the sink and the shower/tub drain. The shower drain problem was taken care of by the plumber, but the sink was not permanently repaired. The plumber told Mr. Crowe that he could not properly snake the sink because he could not take the drain cap off. Mr. Crowe told the plumber that the problem was occurring frequently, and the plumber suggested an acid pour, which he noted on the plumbing invoice.

Mr. Crowe said that in an exchange of emails with on-site property manager Prashant Aswani (the "Mr. Aswani"), he was told by Mr. Aswani that no further action was needed and that they would not do the acid treatment.

Between October 2023 and February 2024, the problem persisted, and Mr. Crowe said that he filed maintenance requests, and Mr. Aswani sent the maintenance technician to snake out the drain. In mid-February, a plumber removed the lower pipe and snaked it. Mr. Crowe said that the plumber did not find much debris in the drain. The sink was still running slowly, so he came again the next day. About a week later, the issue started up again. On March 11, 2024, Mr. Crowe emailed Mr. Aswani, who said that no further work would be done. At that point, Mr. Crowe decided to file a Petition.

Mr. Crowe said that whenever he sent maintenance requests, he included pictures of the sink filled with water, but Mr. Aswani said that the sink was working fine. The issue is still ongoing.

Mr. Crowe said he thought there were multiple reasons why the sink could be clogging. It could be a build-up from years of tenants, since the Affected Unit is in an old building. That is why the first plumber suggested an acid treatment. The second plumber mentioned "scale build-up;" Mr. Crowe called this plumber, who told him scale build-up is due to hard water in the drain. He

was told that scale build-up cannot be cleared with a snake, and Mr. Crowe believes that someone should see if the drain needs to be replaced. Mr. Crowe also said that Mr. Aswani in his email of March 11, 2024 said that the problem was a design issue, which Mr. Crowe says could be possible. However, Mr. Crowe said if it was the design of the drain that was causing the problem, it would have been nice to have had the drain replaced by a type of drain that works better, but that repair was never offered.

In response to submissions by Respondent, which imply that Mr. Crowe caused delays in repairing the drain because he had to be there because of his cat, Mr. Crowe stated that he did not want to be there when repairs were done. Maintenance staff came to his unit without him there, but Mr. Aswani requested that he be there when the plumbers came. Mr. Crowe also said that the statements submitted by Respondent's maintenance staff that the sink was functioning without any problems were misleading; they were not testing the sink immediately before and after it was worked on, but came randomly.

Mr. Crowe said that he felt that Respondent had not responded adequately to his complaints, that there is only one bathroom in the Affected Unit, which forces him to use a sink that is not functioning as it should, and that a \$500.00 a month reduction is fair since he has no alternative in the Affected Unit besides the bathroom sink.

Mr. Crowe also testified that the rent was \$2,275.00 when he moved in on August 18, 2023 and that Respondent increased it effective August 18, 2024 to \$2,388.75.

Upon cross-examination by Mr. Zell, Mr. Crowe testified that when he filed maintenance requests, maintenance technicians were dispatched in a timely fashion. He said that he does not believe that the rent refund he is asking for is unreasonable; in fact, he said that a 100 percent refund would be reasonable because the lease guarantees a sink that works properly, and the current one does not, yet he is paying the rent that he would pay for a rental unit with a properly-functioning sink. Mr. Crowe admitted that the water drains eventually, but since the plumbers have stopped coming to repair it, the draining is slow almost 100 percent of the time. He said that the water should drain down the sink and not form a pool. He said that his gym has the same style of drain, and the water does not form a pool.

In answer to questions by Mr. Aswani, Mr. Crowe said that when he looked at the Affected Unit prior to renting, he saw a clean sink and assumed that it drained properly like most sinks. Mr. Crowe said that he complained about the sink in September 2023 but does not have a record of it. The first written record of his complaints dates from October. Mr. Crowe also said that when he shaves, he first puts a trash bag over the sink so that hair will not get into the drain. He said that he only lets toothpaste, hand soap and water go down the drain. Mr. Crowe said that when the plumber came in October 2023, even though Mr. Aswani claimed that the plumber removed hair from the shower/tub and sink drains, Mr. Crowe saw him remove hair from the shower/tub drain and not the sink drain. Mr. Crowe also said that the sink and shower/tub drains connect to his neighbor's rental unit, so he is not sure if the hair was even his.

In response to Mr. Zell's question as to why Mr. Crowe has not moved out since the sink problem is worth so much to him, Mr. Crowe said that the Affected Unit is located in a convenient area, that moving is expensive, and that the lease does not expire until August 31, 2024.

In response to questions from the Hearing Officer, Mr. Crowe said that he did not file requests for maintenance in December 2023 and January 2024 because he was traveling and did not have time to deal with the problem. He filed several requests in February 2024 because the problem had become worse, and he was not traveling at that time. Mr. Crowe described the drain as consisting of a round piece of metal with small holes in it. It lies flat against the sink and does not lift up like a "mushroom"-type drain. He stated that it should not be possible to purposefully fill the sink with water using this kind of drain. Mr. Crowe said that the sink eventually drains, but it takes time. He estimated that the usual amount of time it takes to drain if he is just washing his hands is about five to 10 seconds. When he is brushing his teeth and the water is on the entire time, it can take about 30 seconds or more to drain. He said that because the water does not drain, it does not seem clean when he is using soap or toothpaste because it disperses across the basin, and he ends up with a layer of soap or, more often, toothpaste in the sink.

Mr. Crowe said that the issue is the drain, not his perception. He would be fine with a sink that drains quickly as the water runs, as it did in videos from August 29, 2023 and February 2, 2024 shown by Respondent. However, Mr. Crowe said that another video dated October 27, 2023 submitted by Respondent showed the drain not draining and not working properly. He believes that he is entitled to retroactive compensation due to Respondent's unwillingness to solve the issue and for the inconvenience of having to stay in the Affected Unit waiting for plumbers. He also said he would be happy if the problem can be repaired by changing the type of drain.

Jeff Zell

Mr. Zell testified that the Property was built in 1961. The plumbing was designed back-to-back as well as vertically aligned, so if one rental unit has a plumbing problem, its neighbor has that problem also. He said that he has not seen that happening with the Affected Unit. He said that his maintenance staff has responded within a reasonable time with respect to Petitioner's requests, and they have accommodated Petitioner's pet. He stated that all drain technology is the same, meaning that drains run into p-traps under the sink and then run out the back through pipes in the walls. Whether the drain is a "mushroom" cap or not is irrelevant. He also said that maintenance technician Orlando A. Guido ("Mr. Guido") drilled holes in the drain to try to get it to drain more quickly. He testified that there is no solution short of opening the walls and replacing the plumbing and sewer pipes, and that probably would not be sufficient because of the age of the building. Mr. Zell stated that a delay of five to 10 seconds in water draining is normal and that requesting a 26.2 percent rent reduction for a slow drain is unreasonable. Mr. Zell also stated that the five percent rent increase that Mr. Crowe testified about is lawful under the CSFRA.

Mr. Zell said that Respondent has done everything they could, that no one else is complaining about the problem, and that he does not have enough profit margin in the building to make it feasible to repair the drain problem.

Upon questioning by Petitioner, Mr. Zell said that if he leaves his faucets on full force at Mr. Zell's own home, the sinks will overflow. He also said that the sink drainage problem in the Affected Unit was not disclosed to Mr. Crowe because it was not an item that needed to be disclosed. He stated that even if everyone were to agree that the sink does not drain as fast as it should, it is not worth a 26.2 percent reduction of rent.

Upon questioning by the Hearing Officer, Mr. Zell said that he is both the owner and the property manager of the Property. He said that he did not do the acid treatment suggested by the first plumber because the second plumber and maintenance staff said it was not necessary. He said it was not going to solve the problem, if there is one, and it could damage the pipes. Mr. Zell said there were no work orders for Unit ■■■, the rental unit adjacent to the Affected Unit, and that the plumber did not say that he looked at Unit ■■■. Mr. Zell also said that the "scale build-up" mentioned by the second plumber meant that "maybe there was some scaly stuff" in the drain. He said that they snaked the drain several times and that was all they could do, and it solved the problem. He said that the four work orders opened in response to requests from Mr. Crowe, other than the two requests for which plumbers were called, were when maintenance staff pulled out hair stuck together with toothpaste. There are no written records of the work done by maintenance staff. Mr. Zell said that if Petitioner submitted new maintenance requests for the sink, Mr. Guido would be sent out first and then, if that did not resolve the problem, a plumber would be sent. He stated that if Petitioner complained as often as once a week, they would give up. He said that he cannot afford to have a plumber come once a week because of a slow drain because there is not enough profit margin in rentals. He stated that if Mr. Crowe sees moving as an option, he would be happy with that. Mr. Zell also said that he thought that the drain in the sink could be replaced by a mushroom drain, but he felt that that solution would not change Mr. Crowe's perception of the problem. He said that there were a variety of drain types in use in the Property and that all sinks have different speeds of draining.

Mr. Zell said that the issue is one of Petitioner's perception, that it is intermittent, and that it does not warrant a 26.2 percent reduction in rent.

Prashant Aswani

Mr. Aswani testified that he has been resident manager of the Property for four years, and the plumbing issues at the Property have always been handled in a timely manner and resolved. He said that two plumbers came to work on the sink. Mr. Aswani had the second plumber come to his own rental unit because he thought the bathtub was not draining well. He said that the plumber told him it was important to consider how the tub was draining rather than the time it took to drain. Mr. Aswani said that the water pressure was very high in the Property and as a result the sink will fill faster than the drain can work.

Mr. Aswani said that all of the plumbing is up to code and that the pipes have been snaked. He also said that the tenant in the adjacent rental unit has not complained about slow drainage. He feels that they have done everything that they could, that there is no problem with the sink, and that any problem that existed has been resolved.

Mr. Aswani stated that the plumber said that the water in the sink was not stagnant, that it was draining. He showed three videos which he said were from August 29, 2023, October 27, 2023 and February 2, 2024 and which he said showed the sink filling and draining at the same time, which was normal. Based on those videos, he stated the problem had been resolved.

Upon questioning by Mr. Crowe, Mr. Aswani said that he did not disclose the problem to Mr. Crowe when he came to look at the Affected Unit prior to renting because he did not know that the problem existed since the prior tenant and the adjacent tenant never complained. He also said that prospective tenants are free to turn on the faucets when they look at rental units. Mr. Aswani stated that he was not sure about the accuracy of the dates of the videos he showed because one of them, dated August 29, 2023, was taken before Mr. Aswani believes Mr. Crowe complained about the problem. He said that he cannot respond to whether Mr. Crowe's videos showed normal operation of the sink because they did not start with a completely empty sink.

Upon questioning by the Hearing Officer, Mr. Aswani said that the plumber knew that the Affected Unit shares its plumbing with Unit ■■■, and Mr. Aswani did not know if the plumber went into Unit ■■■ or not, but because he has no record of entry or any complaint by the tenant in Unit ■■■, it is likely that the plumber did not look at the sink drain in Unit ■■■. Mr. Aswani also testified that after Mr. Guido cleaned the p-trap under the sink, Petitioner still complained that the sink was draining slowly. After that, the plumber came and snaked it out farther from the wall and found toothpaste and hair.

Mr. Aswani stated that the maintenance requests from Petitioner were intermittent, that 30 seconds to drain is not a long time, and that there was no standing water but the drain was just draining slowly. He sees this issue as a personal preference rather than a problem.

Orlando Guido

Mr. Guido, maintenance technician for the Property, explained that the reason the drain speed was different among the three videos that Respondent showed was because sometimes when the faucet is turned on, it causes air bubbles in the drain which keep it from draining quickly. But after that, it drains well. Mr. Guido said he thought Mr. Crowe was just turning on the water too high. Mr. Guido said that when the second plumber referred to "scale build-up" in the drain, he did not know what he was referring to because he does not know what "scale build-up" means. Mr. Guido said that when he worked on the drain, he found toothpaste and hair stuck together in the p-trap and blocking the drainage. He said that when the drain runs slowly, the p-trap just needs to be snaked out again, which is what he does when he works on the sink. When the problem persisted after he worked on it, he suggested calling a plumber who could remove the p-trap and snake the lines out from the wall to the main drain.

IV. EVIDENCE

The following documents were submitted prior to the Hearing and marked and entered into evidence without objection:

Hearing Officer Exhibits

1. Notice of Acceptance and Forwarding of Petition, dated 6/12/2024, with Hearing Information Sheet, Response Notice Form, Authorized Representative Form, and Proof of Service
2. Notice of Prehearing Meeting and Hearing Date, dated 7/3/2024, with Hearing Information Sheet and Proof of Service
3. Notice of Hearing Officer Granting Postponement, dated 7/3/2024, with Hearing Information Sheet and Proof of Service
4. Pre-Hearing Order, dated 7/30/2024
5. Notice of Hearing Officer Prehearing Order and Notice of Hearing, with attached Pre-Hearing Order, Hearing Information Sheet, and Proof of Service, dated 7/31/2024

Petitioner's Exhibits

1. Notice of Submission and Proof of Service, dated 5/13/2024
2. Tenant Petition for Downward Adjustment of Rent, dated 5/13/2024
3. Excel Worksheets for Petition
4. Emails between Evan Crowe and Prashant Aswani, dated 10/12/2023
5. Emails between Evan Crowe and Prashant Aswani, dated 2/7/2024
6. Email from Prashant Aswani to Evan Crowe, dated 2/28/2024, and emails between Evan Crowe and Prashant Aswani, dated 3/11/2024
7. Lease Renewal Agreement, dated 7/14/2023
8. Records of Seven Maintenance Requests Submitted By Petitioner
9. Eight Photographs of Sink, dated 10/18/2023 through 5/5/2024
10. Text messages between Evan Crowe and Prashant Aswani, no date
11. Video dated 10/10/2023
12. Video dated 11/17/2023
13. Video dated 1/5/2024
14. Video dated 2/1/2024

15. Video dated 3/2/2024
16. Video dated 5/5/2024
17. Video dated 8/5/2024

Respondent's Exhibits

1. Representative Authorization Form, dated 6/25/2024
2. Petition Response Form, dated 6/25/2024
3. Plumbing Invoice, dated 10/12/2023
4. Plumbing Invoice, dated 2/9/2024
5. Statement by Orlando J. Guido re work performed 10/27/2023
6. Statement by Orlando A. Guido re work performed 2/2/2024
7. Chart of Work Orders, dated 10/13/2022 through 5/1/2024
8. Chart of Work Orders, dated 10/10/2023 through 2/23/2024
9. Work Order #2572, dated 10/10/2023
10. Work Order #2635, dated 10/27/2023
11. Work Order #3110, dated 2/1/2024
12. Work Order #3140, dated 2/6/2024
13. Work Order #3188, dated 2/20/2024
14. Work Order #3206, dated 2/23/2024
15. Witness Listing for Orland Guido, dated 8/9/2024
16. Witness Listing for Prashant Aswani, dated 8/9/2024

The following documents were submitted after the Hearing and marked and entered into evidence without objection:

Hearing Officer's Exhibits

6. Post-Hearing Order, dated 8/20/2024
7. Notice of Hearing Officer Post-Hearing Order, dated 8/21/2024

Petitioner's Exhibits

18. Notice of Rent Increase, dated 6/5/2024

19. Video dated 8/22/2024

Respondent's Exhibits

17. Notice of Rent Increase, dated 6/5/2024

18. Screenshots, dated 10/27/2023 and 2/2/2024

19. Video, dated 10/27/2023

20. Video, dated 2/2/2024

21. Three-Day Notice to Perform Conditions and/or Covenants or Quit, dated 5/30/2024

V. ISSUES PRESENTED

1. Whether the allegation by Petitioner that Respondent has failed to make appropriate repairs to a sink that drains slowly on an intermittent basis constitutes a decrease in Housing Services and/or maintenance.
2. Whether Respondent failed to be in substantial compliance with the CSFRA because they did not decrease the rent while allegedly decreasing Housing Services and maintenance.
3. Whether Respondent demanded a rent increase in contravention of the Lease and the CSFRA.

VI. FINDINGS OF FACT SUPPORTING THIS DECISION

1. Petitioner occupied the Affected Unit on August 18, 2023 pursuant to a Lease dated July 14, 2023 (the "Lease"). Petitioner's rent during the initial term of the Lease was \$2,275.00. The Affected Unit is a one-bedroom rental unit in an apartment complex known as Le Parc Dauphine Apartments (the "Property"). The Affected Unit has a living room, kitchen, bathroom, and bedroom. The Property was built in 1961.
2. The owner of the Property is Le Parc Dauphine Apartments, LLC. Jeff Zell is the managing partner of the owner. Zell Associates, Inc. is the Property Manager. Prashant Aswani is the on-site, resident manager.
3. Paragraph 2 of the Lease states that the term of the Lease is one year and 14 days, from August 18, 2023 through August 31, 2024.
4. The monthly rent for the Affected Unit was increased to \$2,388.75 effective August 19, 2024, pursuant to a notice of rent increase dated June 5, 2024.
5. The bathroom sink in the Affected Unit is what is commonly known as a vessel sink, meaning that it sits on the countertop, rather than being mounted underneath the countertop. The sink has a flat drain which consists of a round piece of metal with holes in it. There is no mechanism

for closing the drain so that the sink can fill with water, as opposed to a pop-up drain which can be opened and closed.

6. During the first month of his occupancy of the Affected Unit, Petitioner noticed that the sink was draining very slowly on an intermittent basis. Petitioner testified that he notified Mr. Aswani by text on September 24, 2023, but he did not have a record of that text message.

7. A request for maintenance was posted on October 10, 2023, stating that the shower drain and sink drain were clogged. Respondent submitted a work order showing the call date as October 10, 2023 and the completion date as October 17, 2023.

8. On October 12, 2023, Petitioner exchanged a series of emails with Mr. Aswani about the sink being clogged. Mr. Aswani stated that he spoke to the plumber who looked at the drains, that the plumber snaked them out, and that the issue was resolved.

9. Petitioner responded to Mr. Aswani's October 12, 2023 email by stating that the plumber had told him that the sink drain should be acid cleaned and queried whether Mr. Aswani would be having that done. Mr. Aswani replied that he would not be scheduling that service since the drains were no longer clogged.

10. Petitioner replied by writing: "[the plumber] mentioned that the sink drain is likely coated with a bunch of soap scum and toothpaste which is why it is getting clogged often. He also said it is impossible to snake it since the drain cap isnt removable and so all he could do is essentially plunge it, which he said is only a temporary fix, which is why he recommends the acid pouring. I would rather have the problem fixed once and for all so if the professional recommended the acid pouring, that would be my preferred course of action."

11. Mr. Aswani replied that the plumber said if the problem persists, it would be appropriate to do the acid wash, and Petitioner said he would monitor the problem and keep Mr. Aswani informed.

12. A plumbing invoice submitted by Respondent dated October 12, 2023 says that the drains were snaked and recommends an acid treatment on the sink drain.

13. Petitioner submitted five additional maintenance requests for the sink being clogged between October 27, 2023 and February 23, 2024. The maintenance requests describe the sink as intermittently clogging or draining very slowly.

14. Respondent submitted work orders for Petitioner's maintenance requests. All of the work orders state that the work was completed.

15. Orlando J. Guido, who is not identified with respect to his role, submitted an undated statement saying that he examined the sink on October 27, 2023 after a plumber had worked on it and that there was nothing wrong with the sink.

16. Maintenance technician Orlando A. Guido submitted a statement saying that he examined the sink on February 2, 2024 after a professional plumber had worked on it and that there was nothing wrong with the sink.

17. Respondent submitted a plumbing invoice dated February 9, 2024, which states that the plumber was called to deal with a slow-draining sink in the Affected Unit. The invoice describes the sinks in the Affected Unit and the adjacent rental unit ■ as “back-to-back.” The plumber snaked the sink and described the problem as “[s]cale build up.” Testimony indicated that neither Mr. Zell, Mr. Aswani, nor Mr. Guido discussed with the plumber what he meant by “scale build up.”

18. Mr. Zell described the plumbing in the Property as back-to-back and vertically aligned. He said that when a rental unit has a plumbing problem, the same problem appears in the adjacent rental unit. Mr. Zell and Mr. Aswani said that the tenant in rental unit ■ had not complained about a slow-draining sink and consequently neither the maintenance staff nor a plumber had checked the bathroom sink in Unit ■.

19. Respondent did not submit plumbing invoices or any other records of what repairs were done in response to four of the six work orders that were opened in connection with the sink. Mr. Zell testified that Mr. Guido snaked out the p-trap those four times and found hair and toothpaste. Mr. Guido said that when the problem persisted after he snaked out the p-trap, he suggested calling a plumber who could snake the pipes from the wall outward.

20. On February 28, 2024, Mr. Aswani sent an email to Petitioner stating that the sink is not clogged but instead because it is a countertop sink, it drains more slowly than an overflow style sink. The slow draining is simply part of the design of the sink. On March 11, 2024, Petitioner responded that the sink was not operating normally. Mr. Aswani replied that he had spoken to plumbers who said that the sink was draining normally and that it was functioning as designed.

21. Petitioner testified that he filed the Petition in response to Mr. Aswani’s email of March 11, 2024 because he deduced from the email that Respondent had no intention of finding a long-term solution to the problem with the sink.

22. Petitioner testified that the sink takes 30 seconds or more to drain when he brushes his teeth. The water forms a pool, toothpaste gets dispersed around the sink because the water does not go down the drain, and consequently, it leaves toothpaste scum on the sink. He said that while the problem was consistent but intermittent in the past, since maintenance has stopped, the problem is practically constant.

23. Petitioner also testified that when he shaves, he places a plastic bag over the sink so that hair will not go down it.

24. Petitioner submitted eight photos and seven videos showing water accumulating in the sink without draining properly, all taken between October 2023 and May 2024. He submitted an

additional video dated August 22, 2024, which depicts the sink filling with what appears to be at least a half inch of water within 31 seconds of the faucet being turned on and taking 17 seconds to drain once the faucet is turned off.

25. Respondent submitted two videos of the sink, one from October 27, 2023 and the other from February 2, 2024. In the October 27, 2023 video, the water is left running for approximately one minute, during which time what appears to be more than a half inch of water accumulates in the sink. It takes 27 seconds to drain after the faucet is turned off. In the February 2, 2024 video, the faucet is left on for approximately one minute and nine seconds, and the water appears to be draining normally and does not leave a pool in the sink. When the water is turned completely off, it takes less than a second for any water left in the sink to drain.

26. Mr. Guido testified that he thought the problem was caused by Petitioner turning on the water too high. He said that the water sometimes backed up in the sink because when the faucet is turned on, it causes air bubbles in the drain which keep it from draining quickly.

27. Mr. Guido also said that when the drain runs slowly, the p-trap needs to be snaked out.

28. Mr. Zell testified that Mr. Guido drilled holes in the drain to try to get it to drain more quickly.

29. Mr. Zell also testified that there is no solution to the problem short of opening up the walls and replacing the pipes, and he speculated that that probably would not be sufficient because of the age of the building. Mr. Zell also said that he and his staff have done all they could do and that he does not have enough profit margin in the building to make it feasible to repair the drain problem. He also said that snaking the drain and pipes had solved the problem.

30. Mr. Aswani testified that the problem resulted from the high water pressure in the Property which causes the sink to fill faster than the drain can work.

31. Mr. Zell testified that the problem is one of Petitioner's perception, not a real problem. Mr. Aswani testified that any problem that existed has been resolved and that he sees the issue as one of Petitioner's personal preference rather than a real problem.

32. In his testimony, Mr. Zell queried Petitioner as to why he did not move out if the sink bothers him so much and stated that he would be happy for Petitioner to move out.

33. After the Hearing, Respondent submitted a document titled "Three-Day Notice to Perform Conditions and/or Covenants or Quit," dated May 30, 2024.

VII. DISCUSSION

Decrease in Housing Services or Maintenance

Pursuant to CSFRA Section 1710(c), a decrease in Housing Services or maintenance, without a corresponding reduction in Rent, is considered an increase in Rent, and a tenant may file a Petition requesting an adjustment downward in the Rent “based on a loss in rental value attributable to a decrease in Housing Services or maintenance.” The Petition must specify the “circumstances allege[d] to constitute a decrease in Housing Services or maintenance, and demonstrate that the Landlord was provided with reasonable notice and an opportunity to correct” the condition.

“Housing Services include, but are not limited to, repairs, maintenance...and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit.” *See*, CSFRA Section 1702(h).

Petitioner bears the burden of proving the decrease in Housing Services or maintenance by a preponderance of the evidence. *See*, CSFRA Section 1711(h).

Petitioner has alleged that Respondent has failed to make appropriate repairs to the bathroom sink and that this failure constitutes a decrease in maintenance. Failure to repair the sink may constitute a decrease in Housing Services as well. *See*, CSFRA Section 1702(h). The first question that arises is whether the sink suffered from a condition in need of repair or maintenance. Mr. Zell and Mr. Aswani testified that there is nothing wrong with the functioning of the sink, that the problem was simply Petitioner’s preference for a sink that would drain more quickly. Mr. Aswani, in emails to Petitioner of February 28, 2024 and March 11, 2024, said that the sink has nothing wrong with it and is functioning as designed.

Petitioner presented photos and videos demonstrating that the sink on numerous occasions has filled with water and taken a longer than normal amount of time to drain. Petitioner’s evidence depicts accumulated water covering the entire bottom of the sink, yet the sink has no drain cover to keep the water in. That is not normal; in a normally-operating sink, it would not be possible to fill the basin with water without covering the drain. The normal functioning of the sink is demonstrated by the video dated February 2, 2024 submitted by Respondent, which shows the sink draining as the water runs into it from the faucet. When the faucet is turned off, the very small amount of water left in the sink takes approximately one second to drain. However, the additional video submitted by Respondent dated October 27, 2023, shows the sink doing what Petitioner’s photos and videos demonstrate: filling with a pool of water that covers the bottom of the sink and taking 27 seconds to drain once the faucet is turned off.¹ The foregoing evidence demonstrates that the sink sometimes works properly and frequently does not, as described by Petitioner in testimony and in the Petition, which describes the problem as intermittent.

¹ This evidence contradicts the statement of Orlando J. Guido, submitted by Respondent, which says that he examined the sink on October 27, 2023 and found nothing wrong with it.

Mr. Zell and property management staff argued that the sink and drain were operating normally; however, they also said that (1) the sink drained slowly because of water pressure and/or air bubbles; (2) the sink drained slowly because of being clogged by hair and toothpaste; (3) all they could do to fix the problem is snake out the pipes; and (4) fixing the problem would require replacing the plumbing and sewer lines. This contradictory evidence leads to the conclusion that in fact there is a problem with the sink that Property Manager and maintenance staff either do not know how to repair, do not want to figure out how to repair, most likely because of cost, or do not want to repair at all, also likely because of cost. For the foregoing reasons, the weight of the evidence demonstrates that there is a problem with the sink so that it does not operate normally.

The second question that arises is whether there was a failure to maintain or repair the sink which would constitute a decrease in Housing Services or maintenance. A decrease in Housing Services or maintenance means that Housing Services or maintenance were at a certain level at the commencement of or during the tenancy and then were reduced without a corresponding decrease in rent. Property Manager initially sent maintenance staff and plumbers to attempt to address the problem, and the p-trap or other pipes were snaked out several times. However, despite the recurring nature of the problem, Property Manager and maintenance staff did not seek a permanent solution. They did not try the acid wash recommended by the first plumber, they did not discuss with the second plumber what he meant by “scale build-up,” and they did not seek any additional professional opinions despite the fact that they received two different diagnoses by the two different plumbers. They also failed to test the possible hypotheses for what was causing the problem. For example, they could have changed the type of drain to see if that made a difference. They could have changed the type of sink to an undermount sink to see if that made a difference. They could have hired someone to photograph or film an inspection of the drainage and/or sewer pipes to see if the problem emanated from there. And, they could have checked the sink and pipes in the adjacent rental unit, Unit ■■■, to see if the problem was coming from that side.

By email of March 11, 2024, after Petitioner complained about the problem again, Mr. Aswani made it clear that in his view, nothing was wrong with the sink, and Petitioner logically took that to mean that Property Manager was not going to seek a permanent solution to the problem. On that date, when Property Manager announced that it would cease addressing the problem, the decrease in Housing Services, i.e., repairs, and decrease in maintenance began. At that point, it was no longer fair for Petitioner to pay the amount of the initial rent for the Affected Unit. He had bargained for a rental unit which would be properly maintained, and he did not get the benefit of his bargain. He ended up with a sink that takes an abnormal amount of time to drain, which leaves scum on the surface of the sink, and which Property Manager has decided not to repair.

The final question that arises is how to value the decrease in Housing Services and maintenance. The Petitioner is requesting \$500.00 per month, which is 22 percent of the rent

being charged at the time of filing the Petition. The Affected Unit consists of four rooms: a living room, a bedroom, a kitchen, and the bathroom where the sink is located, each of which can be valued at 25 percent of the monthly rent. The bathroom has three usable components: the sink, shower and/or bathtub, and the toilet. Each of those components is worth 33 percent of the value of the bathroom and 8.25 percent of the monthly rent.² The sink has two functions: water comes out of the faucet, and water goes down the drain. One of these functions, drainage, is not happening as it should, thus warranting a reduction of half the value of the sink, or 4.125 percent of monthly rent. Since monthly rent is \$2275.00³, the monthly reduction is \$93.84.

Rent Refund for Decrease in Housing Services and Maintenance

Pursuant to CSFRA Section 1714(a), “When a Landlord demands, accepts, receives, or retains any payment or payments in excess of the lawful Rent pursuant to this Article and the regulations promulgated hereunder, including violation of the provisions ensuring ...maintenance of Housing Services, the Tenant may file a Petition pursuant to Section 1710...A Landlord who demands, accepts, receives, or retains any payment of Rent in excess of lawful Rent shall be liable to the Tenant in the amount by which the payment or payments have exceeded the lawful Rent. In such a case, the Rent shall be adjusted to reflect the lawful Rent pursuant to this Article and its implementing regulations.” Thus, Petitioner is entitled to a decrease in monthly rent and a refund of past amounts paid to Respondent which were in excess of the lawful rent.

The period of March 11, 2024 until the Hearing date of August 20, 2024, constitutes 5 months and 9 days. The monthly rent charged by Respondent for that time period was \$2,275.00. The total amount to be refunded through the date of the Hearing is $(\$93.84 \times 5) + ((\$93.84/31) \times 9)$, which equals \$496.44.

Respondent shall also reduce the monthly rent going forward from the Hearing date by \$93.84, or 4.125 percent of the monthly rent, whichever is greater, until the sink is functioning properly, which means that the water drains while the faucet is running 100 percent of the time.

Rent Increase—Substantial Compliance

Evidence was presented that Respondent noticed a five percent increase in rent effective August 19, 2024.

Pursuant to CSFRA Section 1714(a), quoted above, the charging of rent above the lawful amount resulting from a decrease in Housing Services or maintenance is prohibited by the CSFRA. A landlord who does not decrease rent due to a decrease in Housing Services or maintenance is thus in contravention of the CSFRA. Pursuant to CSFRA Section 1707(f), “[n]o Rent increase shall be effective if the Landlord: (1) has failed to substantially comply with all

² Calculated as $.25 \times .33$.

³ See the discussion below about the rent increase.

provisions of this Article and all rules and regulations promulgated by the [Rental Housing] Committee...” Pursuant to CSFRA Regulations Ch. 12, Section (B), “[i]f a Landlord has ever charged more than the Rent allowed under the CSFRA,” and has failed to refund the overpayment of Rent, the Landlord is not in substantial compliance with the CSFRA.

Because Respondent has been charging unlawful rent as a result of a decrease in Housing Services or maintenance since March 11, 2024, Respondent is not in substantial compliance with the CSFRA. Therefore, the rent increase effective August 19, 2024 was prohibited under CSFRA Section 1707(f)(1) and must be nullified. The rent is rolled back to \$2,275.00, and Petitioner is entitled to a refund of all amounts Respondent has collected over the lawful amount.

The lawful rent for August 19, 2024 through August 31, 2024 was $((\$2,275.00/31) \times 12)$, or \$880.65. The rent paid by Petitioner for that period was $((\$2,388.75/31) \times 12)$, or \$924.68. The amount to be refunded for that time period is \$44.03. If any additional amounts have been collected above the lawful rent of \$2,275.00 those amounts must also be refunded, as discussed in Section IX, below.

Once Respondent has refunded all unlawful rent as set forth herein, i.e., the amounts collected over the lawful rent of \$2,275.00 and the amount of \$496.44 awarded for the decrease in Housing Services and maintenance, and provided that Respondent otherwise complies with this Decision,⁴ Respondent may increase the Rent, provided that he does so in a manner that is consistent with the CSFRA and California law.

Rent Increase – Rent Demanded in Contravention of the Lease and the CSFRA

As set forth in Paragraph 2 of the Lease, the term of the Lease is from August 18, 2023 through August 31, 2024. Respondent noticed a five percent increase in rent effective August 19, 2024, prior to expiration of the Lease. Between August 19, 2024 and August 31, 2024, Respondent was charging higher monthly rent than allowed under the Lease and the CSFRA.

Pursuant to Section 1708(c) of the CSFRA, a Landlord can only increase the initial rent established in a tenancy in accordance with the provisions of the CSFRA. Section 1702(b)(2) sets the Base Rent for the initial term of a tenancy as the initial rent charged. Pursuant to CSFRA Sections 1702(a) and 1707(b), once the initial rent of the initial term of a tenancy is established, it can only be increased by the amount of the lawful Annual General Adjustment once every 12 months after the expiration of the initial term. Under the CSFRA, Respondent was only allowed to impose a rent increase effective September 1, 2024, after the initial term of the Lease had expired. By increasing the rent effective August 19, 2024, Respondent demanded higher rent for 12 days than was legally permissible. Pursuant to CSFRA Section 1714(a), a Landlord who demands and accepts unlawful rent must refund the overpayments to the Tenant.

⁴ Compliance with this Decision includes a monthly refund of 4.125 percent of monthly rent until the sink functions normally 100 percent of the time.

Therefore, Petitioner is entitled to a refund of the amounts paid in excess of \$2,275.00 for the period of August 19, 2024 through August 31, 2024.

Additionally, as discussed above, a Landlord who charges unlawful rent fails to be in substantial compliance with the CSFRA. See CSFRA Regulations Ch. 12, Section (B). This is another ground for nullifying the rent increase because, pursuant to CSFRA Section 1707(f)(1), a Landlord may not impose a rent increase if they are not in substantial compliance with the CSFRA and its rules and regulations. By charging unlawful rent from August 19, 2024 through August 31, 2024, Respondent was not in substantial compliance with the CSFRA, and the rent increase imposed effective August 19, 2024 must be nullified. The amount to be refunded has already been discussed above; the remedy for charging unlawful rent is not cumulative.

Retaliation

During his testimony, Mr. Zell twice suggested that Petitioner move out. Additionally, Respondent filed a three-day notice that they likely served on Petitioner on May 30, 2024, just over two weeks after the Petition was filed.⁵ Pursuant to CSFRA Section 1705(d), a Landlord may not attempt to recover possession of a rental unit in retaliation for a Tenant exercising rights under the CSFRA. While the Hearing Officer does not have jurisdiction over this issue, a judicial officer in another forum might construe the act of pressuring a Tenant to vacate a rental unit or threatening a Tenant with eviction as an act of retaliation for filing a Petition under the CSFRA.⁶

VIII. CONCLUSIONS OF LAW

1. Respondent's failure to adequately maintain and repair the bathroom sink in the Affected Unit so that it drains normally on a consistent basis constitutes a decrease in Housing Services and maintenance pursuant to CSFRA Sections 1702(h) and 1710(c).
2. Pursuant to CSFRA Section 1714(a), Petitioner is entitled to a decrease in monthly rent and a refund of past amounts paid to Respondent which were in excess of lawful rent due to reduced Housing Services and maintenance.
3. Pursuant to CSFRA Section 1714(a), demanding rent above the lawful amount as a result of a decrease in Housing Services and maintenance is prohibited, and, pursuant to CSFRA Regulations Ch. 12, Section (B), collection of said unlawful rent without refunding it results in lack of substantial compliance with the CSFRA.

⁵ It is not entirely clear that the three-day notice was actually served because the proof of service is not complete.

⁶ Respondent submitted the three-day notice after the Hearing. It was not requested by the Hearing Officer, nor was it mentioned during the Hearing, and there was no explanation from Respondent as to why it was submitted. It was admitted into evidence purely because of its relevance to retaliation under CSFRA Section 1705(a).

4. Pursuant to CSFRA Section 1707(f)(1), the rent increase demanded by Respondent effective August 19, 2024 must be nullified due to lack of substantial compliance with the CSFRA and all amounts paid above the initial rent of \$2,275.00 must be refunded.

5. The rent increase effective August 19, 2024 is also nullified pursuant to CSFRA Section 1707(f)(1) because it was imposed prior to the expiration of the initial Lease, thus resulting in the collection of unlawful rent and the entitlement of Petitioner to a refund of unlawful rent.

IX. DECISION

1. The current lawful rent for the Affected Unit is set at \$2,275.00.

2. Respondent shall refund to Petitioner the amount of \$496.44 for decreases in Housing Services and maintenance for the period of March 11, 2024 through August 20, 2024, as reflected in Attachment 1, Award Schedule, appended hereto.

3. Respondent shall refund to Petitioner \$44.03 in unlawfully collected rent for August 19, 2024 through August 31, 2024, as reflected in Attachment 1, Award Schedule, appended hereto.

4. Respondent shall refund to Petitioner (a) the total amount of \$540.47, plus (b) any additional amounts exceeding the current lawful rent of \$2,275.00 for the Affected Unit that may have been paid or be paid by Petitioner after August 31, 2024. If there is a factual dispute between Petitioner and Respondent about the amount to be refunded under this paragraph 4, either party may request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, Section J(1). All payments ordered in this Decision are set forth in Attachment 1, Award Schedule, appended hereto.

5. In the event that Petitioner does not receive full payment of \$540.47 from Respondent as ordered in this Decision on or before November 1, 2024, Petitioner shall be entitled to withhold rent payments until such time as he has withheld a total of \$540.47, less any sums Respondent has paid directly to him pursuant to this Decision. Petitioner may refer to Attachment 1, Award Schedule, appended hereto, for a Credit Schedule setting forth the amounts he may withhold. As set forth in Paragraphs 10 and 11, below, Respondent may not issue a rent increase to Petitioner until Petitioner has received from Respondent all amounts ordered by this Decision to be paid.

6. Commencing on August 21, 2024 and until such time as Respondent remedies the decrease in Housing Services and maintenance discussed in this Decision, Petitioner shall deduct a downward adjustment of rent in the amount of \$93.84 from monthly rent payments, or 4.125 percent of monthly rent payments, whichever is greater, pursuant to CSFRA Regulations, Ch. 5, Section F(2)(a).

In the event that Petitioner is deducting rent pursuant to Paragraph 5 of this Section IX, amounts due under this paragraph 6 shall be considered outstanding debt of Respondent owed to Petitioner and subject to Paragraph 8 of this Section IX.

7. In the event that this Decision is appealed, the final appeal decision shall include an updated refund schedule as applicable. Additionally, if this Decision is appealed, pending the outcome of the appeal, this Decision will not be considered final, and Petitioner shall continue to pay the monthly rent of \$2,388.75 until the appeal decision is final.

8. In the event that either Petitioner or Respondent terminates Petitioner's tenancy for any reason prior to delivery of the payments ordered by this Decision, the total amount then owed shall become 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.

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

10. Subject to Paragraph 11, below, and pursuant to CSFRA Sections 1706(a), (b) and 1707(c), (f), Respondent may not issue a Rent increase for the Affected Unit until (1) all refunds due to Petitioner are fully paid, and (2) Respondent has provided written notice to Petitioner of the rent increase at least 30 days in advance of such increase in the manner prescribed by the CSFRA and California law. It should be noted that CSFRA Regulations Ch. 7, Section (B)(1) requires that a notice in substantially the same form as that promulgated by the Rental Housing Committee must be served on Tenants for all rent increases.

11. In addition to abiding by the requirements of Paragraph 10, above, Respondent may not issue a rent increase for the Affected Unit if Respondent is in violation of any of the provisions set forth in CSFRA Section 1707(f)(1)-(3) and CSFRA Regs. Ch. 12, Section (B), which require substantial compliance with the CSFRA and include, among other things, charging only lawful amounts of rent, registering the Property annually with the Rent Stabilization Program (see CSFRA Regs. Ch. 11), refunding all unlawfully charged rents for all Tenants, and maintaining the Property in habitable condition according to state law and the CSFRA, including making all repairs ordered hereunder or required by the City Building Department, Code Enforcement or other department of the City of Mountain View as a result of Multi-Family Housing Program Inspections. Only when Respondent has complied with all of the provisions of this paragraph and paragraph 10, above, may Respondent issue a rent increase, provided that they do so in a manner consistent with the CSFRA and California law.

12. Should a rent increase demanded of Petitioner by Respondent include banked rent increases, Petitioner may file a Hardship Petition, if he meets the criteria of CSFRA Regulations, Ch. 7, Section (C). Any Hardship Petition must be filed with the Rent Stabilization Division within 10 days of the effective date of the rent increase.

13. If a dispute arises as to whether any party has failed to comply with this Decision, any party may request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, Section J(1).

IT IS SO ORDERED.

Handwritten signature of Barbara M. Anscher in blue ink, written over a horizontal line.

Date: October 2, 2024

Barbara M. Anscher, Hearing Officer

Hearing Officer Decision re Unlawful Rent

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Additional Services Paid	Lawful Rent	Payments in Excess by Petitioner
8/19/2024-8/31/2024	\$ 924.68	\$ -	\$ 880.65	\$ 44.03
9/2024	TBD	TBD	\$ 2,275.00	TBD
10/2024	TBD	TBD	\$ 2,275.00	TBD
TOTAL*				\$ 44.03

* The total does not include the potential amounts overpaid after 9/1/2024

Hearing Officer Decision re Failure to Maintain Habitable Premises and Reduction in Housing Services or Maintenance

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue Persisted	Monthly Rent	Percentage of Rent Reduction	Total Rent Reduction Awarded
Sink drainage	3/11/2024	8/20/2024	5.30	\$ 2,275.00	4.125%	\$ 496.44
Sink drainage	8/21/2024	TBD	TBD	\$ 2,275.00	4%	\$93.84/ month
TOTAL**						\$ 496.44

** The total does not include the potential amounts overpaid after 8/21/2024

TOTAL REFUND OWED TO PETITIONER* \$ 540.47**

Credit Schedule

Month/Year of Rent Payment	Unpaid Rent Owed to Landlord	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
11/2024	\$ 2,275.00	\$ 540.47	\$ 1,734.53
TOTAL***		\$ 540.47	

*** The total does not include the potential amounts overpaid after 9/1/2024 or 8/21/2024 (as indicated at * and **)