

M David Kroot
Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
Dianne Jackson McLean
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
William F. DiCamillo
Amy DeVaudreuil
Barbara E. Kautz
Rafael Yaquián
Celia W. Lee
Dolores Bastian Dalton
Joshua J. Mason
Jeffrey A. Streiffer
Elizabeth R. Klueck
Jhaila R. Brown
Gabrielle B. Janssens
Rye P. Murphy
Benjamin Funk
Aileen T. Nguyen
Katie Dahlinghaus
Brandon V. Stracener
Matthew S. Heaton
Nazanin Salehi
Erin C. Lapeyrolerie
Minda Bautista Hickey
Jocelyn A. Portales
Colleen A. Wisel
Thomas J. Levendosky

Los Angeles
213 627-6336

San Diego
619 239-6336

Goldfarb & Lipman LLP

March 28, 2024

memorandum

To
Mountain View Rental Housing Committee

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

RE
Appeal of Hearing Officer's Decision Re: Petition No. C22230037

RECOMMENDATION

To consider the Tentative Appeal Decision and either accept the Tentative Appeal Decision or modify the Tentative Appeal Decision with instructions to staff citing appropriate evidence in the record to support the changes.

BACKGROUND

The instant appeal arises out of a petition for downward adjustment of rent ("Petition") based on failure to maintain a habitable premises due to a lack of hot water. The hearing on the Petitioner was held on May 9, 2023. The Hearing Officer's Decision was issued on June 9, 2023 ("HO Decision") and was appealed to the Rental Housing Committee (RHC). The RHC heard the Appeal on September 25, 2023, and adopted the Appeal Decision which remanded part of the HO Decision for further fact gathering regarding the appropriate standard for hot water temperate in residential dwelling units. The Remand Hearing was held on November 2, 2023, and the Hearing Officer issued a decision on January 26, 2024 ("HO Remand Decision").

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
March 2, 2023	RHC accepted Petition No. C22230037
May 2, 2023	Pre-hearing telephone conference held
May 3, 2023	Written Summary of Pre-hearing Conference and the Hearing Officer's Request for Documents served on parties
May 9, 2023	Hearing held
May 9, 2023	Hearing closed and Hearing Record closed
June 9, 2023	Hearing Decision delivered

<u>Date</u>	<u>Action</u>
June 12, 2023	Hearing Officer Decision served on the Landlord and Tenant
June 22, 2023	Appeal submitted by Appellant-Landlord
September 15, 2023	Tentative Appeal Decision issued
September 25, 2023	Appeal Hearing before the RHC
November 2, 2023	Remand Hearing held
January 26, 2024	Hearing Officer Remand Decision issued and served on Parties
February 8, 2024	Appeal of Remand Hearing Decision submitted by Appellant-Landlord
March 18, 2024	Tentative Appeal Decision issued
March 28, 2024	Appeal hearing before the Rental Housing Committee

On remand, the Hearing Officer determined that a reasonable standard for minimum hot water temperature is “not less than 110 degrees Fahrenheit” as indicated in the International Property Maintenance Code [P] 505.4, which was provided to the Hearing Officer by the City of Mountain View’s Multifamily Housing Inspection Department. Based on this standard, the Hearing Officer concluded that the Landlord’s failure to provide the 110-degree minimum water temperature required still constituted a failure to maintain a habitable premises, and that the Landlord had received sufficient notice from the Tenant and an opportunity to cure.

As such, the Hearing Officer awarded the Tenant an eight percent (8%), rather than a ten percent (10%), downward adjustment of rent due and a rent refund, and provided that if the issue was not successfully addressed by April 30, 2024, beginning May 1, 2024, the amount of the rent reduction shall be increased by one percent (1%) per month, not to exceed an aggregate of twelve percent (12%) per month. Based on the Tenant’s Rent of \$2,245.00 per month, Tenant was entitled to a rent credit of \$5.99 per day (or \$179.60 per month) since December 1, 2022, for each day the minimum water temperature requirement was not met. This Rent credit would continue until such time that the Landlord adequately addressed the issue, as further detailed in the HO Remand Decision.

Appellant-Landlord raised the following three issues on appeal:

- A. The Hearing Officer erred or abused his discretion in relying on the International Property Maintenance Code standard of 110-degrees Fahrenheit.
- B. The Hearing Officer erred or abused his in determining that Landlord had failed to adequately address the hot water temperature issue.
- C. The Hearing Officer erred in calculating the rent credit for the property.
- D. The Hearing Officer erred or abused her discretion in determining that the Rent for the Property should be reduced by \$450 per month based on the Landlord’s failure after notice to comply with the warranty of habitability.

All other elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section C of this report below. All parties to the Appeal are entitled to respond to the Tentative appeal Decision. Responses to the Tentative Appeal Decision were due on March 25, 2024. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

ANALYSIS

A. Role of the RHC

The role of the RHC is not to re-weigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal "*de novo*" pursuant to Regulation Chapter 5, Section H.5.a. *De novo* review would require the RHC to open the hearing record and hold a new, formal hearing. Staff does not recommend *de novo* review for this appeal, because there is sufficient evidence in the record on which the Committee may base its decision.

For questions of law (including statutory interpretation), the RHC must exercise its independent judgment without assuming that the Hearing Officer's ruling is correct or affording deference to the Hearing Officer's interpretation. Even though the RHC exercises its independent judgment, its review is still based on the evidence in the record for the petition hearing.

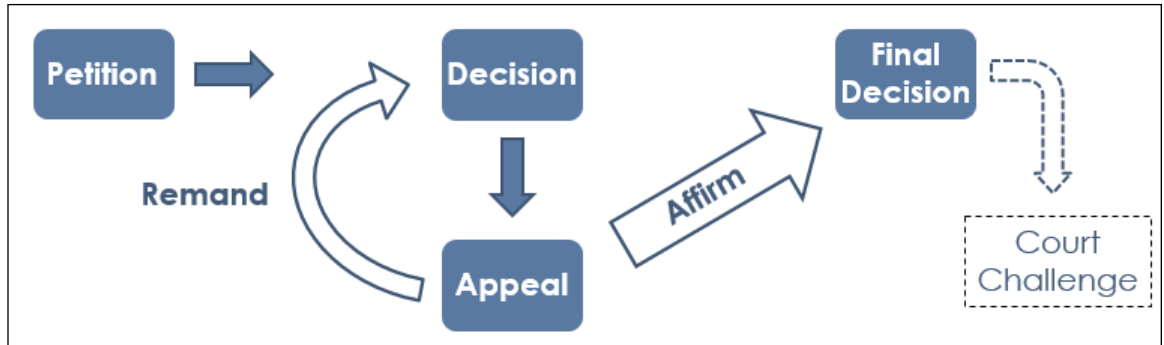
For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and appeal court: the trial court drafts a decision after weighing all the evidence and the appeal court reviews the decision to verify whether the decision was adequate. Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does not mean that RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the hearing.

B. Review: Affirming, Reversing and/or Remanding the Appealed Element of the Decision After Remand

Petitions define the scope of the Hearing Officer's review. Appeals define the scope of RHC review of the Hearing Decision. The portions of the Hearing Decision that were not appealed by any party are considered final. The Tentative Appeal Decision reviews only those portions of Hearing Decision that were appealed by the parties.

The process for an appeal can result in multiple appeal hearings before the RHC if a Hearing Decision is remanded to the Hearing Officer. A summary graphic visualizing the appeal procedure is provided below.

Graphic 1 Visualization of Appeal Procedure



C. Tentative Appeal Decision - Appeal Elements

The Tentative Appeal Decision recommends denying the Remand Appeal as to issues A and B and grants the Remand Appeal as to issue C. In summary:

- A. Appellant-Landlord alleges that the Hearing Officer erred in applying the minimum water temperature standard from the IPMC because other standards, such as the OSHA and EPA standards, should have been considered. However, there is sufficient evidence in the record to demonstrate that the IPMC standard adopted by the Hearing Officer was a reasonable and fair standard. Moreover, the record demonstrates that the Landlord had sufficient opportunity at the Remand Hearing to present all of the potential standards to be considered by the Hearing Officer and failed to raise either the OSHA or EPA standard as options. The Appeal Decision and Remand Order directed the Hearing Officer to determine an appropriate standard to be applied based on information gathered from the parties and any experts; the Hearing Officer complied with the Appeal Decision and Remand Order and therefore did not abuse his discretion in concluding that the IPMC was the appropriate standard.
- B. Appellant-Landlord argues that the Hearing Officer erred or abused in determining that Landlord had failed to adequately address the hot water issue at the property because the Landlord has taken incentive and expense to fix the problem to the best of their ability given the characteristics of the housing. However, the Landlord is barred from raising this issue in this Remand Appeal because it failed to raise this issue in its original Appeal (the time for which has elapsed) and this issue was not dealt with again at the Remand Hearing.
- C. Lastly, Appellant-Landlord contends that the Hearing Officer erred in his calculation of the rent credit because he relied on the incorrect Rent for the Property. Appellant-Landlord is correct. The HO Decision determined that the lawful Rent for the Property was \$2,200.00. There is no evidence that the lawful Rent for the Property has changed since the Hearing. Nonetheless, the HO

Remand Decision uses a Rent of \$2,245.00 to calculate the rent credit. The Petitioner’s Rent is \$2,200 per month, and assessing the eight percent (8%) reduction, Petitioner is entitled to a rent credit of \$5.87 per day or \$176.00 per month.

D. Appeal Hearing Procedure

Each party to the appeal will have an opportunity to present their arguments to the RHC and respond to the other party's presentation. As noted above, the parties are not to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals (Gov. § 54954.3(a)). Finally, RHC members may have questions for staff and/or the parties. The following schedule for the appeal hearing is proposed to facilitate the orderly participation of all parties.

Schedule of Appeal(s) of Hearing Decision(s)

- Public Comment Period applicable for all Appeals on the agenda

Appeal Hearing (CSFRA Petition Nos. C22230037)

Staff Report & Presentation

Appellant-Landlord Presentation of Argument	10 minute maximum
---	-------------------

Respondent-Tenant Presentation of Argument	10 minute maximum
--	-------------------

Appellant-Landlord Presentation of Rebuttal	5 minute maximum
---	------------------

Respondent-Tenant Presentation of Rebuttal	5 minute maximum
--	------------------

RHC Question and Answer with Staff

RHC Question and Answer with Appellant-Landlord

RHC Question and Answer with Respondent-Tenants

RHC Deliberations and Decision

- Conclude Agenda Item

FISCAL IMPACT

Adoption of the Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a Hearing Decision to the RHC (as opposed to directly appealing to the courts) is to ensure that Hearing Decisions are legally defensible, and so the appeal process to the RHC reduces the overall risk of legal liability and litigation expenses. As discussed above, the Tentative Appeal Decision recommends upholding the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

PUBLIC NOTICING — Agenda posting

ATTACHMENTS

1. Tentative Remand Appeal Decision for Petition No. C22230037
2. Remand Decision of Hearing Officer (January 26, 2024)
3. Appellant-Landlord Appeal of Remand Decision (February 8, 2024)
4. RHC Appeal Memo for Petition No. C22230037 (September 25, 2023)
5. Tentative Appeal on Decision for Petition No. C22230037 (September 15, 2023)