

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
REGULAR MEETING**

**May 9, 2019**

**7:00 P.M.**

**CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
  - a. Board Minutes for approval April 25, 2019
4. OPEN FORUM
5. OLD BUSINESS
  - None
6. NEW BUSINESS
  - A. Appeal Hearings in:
    - i. T18-0328, Amberg v. Rockridge Real
    - ii. T18-0089, Billingsley v. Marr
    - iii. L17-0233, Udinsky v. Tenant  
L17-0236, Udinsky v. Tenants
  - A. Establishment of Policy Committee
    - i. Membership
    - ii. Topics for consideration
    - iii. Coordination with staff re logistics-staffing, room, agenda
7. SCHEDULING AND REPORTS
8. ADJOURNMENT

**Accessibility.** This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email [sshannon@oaklandca.gov](mailto:sshannon@oaklandca.gov)

or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a [sshannon@oaklandca.gov](mailto:sshannon@oaklandca.gov)

o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [sshannon@oaklandca.gov](mailto:sshannon@oaklandca.gov) 或致電 (510) 238-3715 或 711 California relay service。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

**Service Animals/Emotional Support Animals:** The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
Full Board Meeting  
April 25, 2019  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB was called to order at 7:10 p.m. by Board Chair Jessie Warner

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. Hall	Tenant	X		
H. Flanery	Tenant Alt.	X		
E. Lai	Homeowner Alt.	X		
R. Stone	Homeowner	X		
J. Warner	Homeowner	X		
K. Friedman	Landlord			X
B. Scott	Landlord Alt.	X		
T. Williams	Landlord	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney
Barbara Kong-Brown	Senior Hearing Officer
Kelly Rush	Program Analyst 1

**3. CONSENT ITEMS**

- a. Approval of Minutes from March 28, 2019, and April 11, 2019

E. Lai moved to approve the minutes, with friendly amendment, seconded by B. Scott regarding L17-0177, to reflect Flanery's vote as aye on the second vote, and to reflect when the discussion of the ad hoc committee occurred.

The Board voted as follows:

Aye: T. Hall, H. Flanery, R. Stone, J. Warner, B. Scott, T. Williams  
Nay: 0  
Abstain: 0

The Board approved the minutes by consensus.

**4. OPEN FORUM SPEAKERS**

James Vann

**5. OLD BUSINESS**

a. Discussion of Ad Hoc Committee

J. Warner moved to discuss this item after the appeal hearings. B. Scott seconded. The Board voted as follows:

Aye: T. Hall, H. Flanery, E. Lai, R. Stone, J. Warner, B. Scott, T. Williams

Nay: 0

Abstain: 0

The motion was passed by consensus.

**6. NEW BUSINESS**

a. Appeals Hearings

i. L18-0081, Vu v. Tenant

J. Warner moved to dismiss this case pending a showing of good cause. R. Stone seconded.

The Board voted as follows:

Aye: T. Hall, H. Flanery, E. Lai, R. Stone, J. Warner, B. Scott, T. Williams

Nay: 0

Abstain: 0

The motion was passed by consensus.

ii. T17-0529, Beane v. Tilt Up Development

Appearances: Albert Sukoff      Owner Appellant

No Appearance by Tenants

The tenant contested several rent increases and alleged decreased housing services. The owner appealed from a hearing decision which granted the tenant restitution for overpaid rent on the grounds that the tenant never received the RAP notice.

The owner contended that he was exempt from the Rent Adjustment Ordinance on the grounds of new construction based on a prior case in which he submitted a

certificate of occupancy dated October 17, 2008. The hearing decision stated it does not matter what documents were filed in a prior case and because the owner did not file a response on a form prescribed by the Rent Adjustment Program he was not allowed to present documentary evidence or testify.

After arguments made by the parties, questions and Board discussion, R. Stone moved to remand, with a friendly amendment by B. Scott, which was accepted, to hold a new hearing to provide the owner the opportunity to file a response on a form prescribed by the RAP, accompanied by all documents requested by the hearing officer for the July 19, 2018, hearing, to provide an opportunity for the tenant to respond and for the hearing officer to consider this evidence and decide the exemption issue based on that evidence.

The Board voted as follows:

Aye: H. Flanery, R. Stone, B. Scott, T. Williams

Nay: T. Hall, J. Warner

Abstain: 0

The motion carried.

#### **5a. Discussion of Ad Hoc Committee**

Board discussed suggestions by the Program Manager of the types of issues feasible for the committee, staffing, and jurisdiction of the board, e.g. Board policies and procedures. The Board discussed procedure for determining who was interested, staffing and budget issues, and that the ad hoc committee should decide what issues it wants to tackle and in what order. There was discussion about clarifying the regulations so people know how to proceed, and move forward, put the committee together, discuss a procedure for selection of committee members, define the issues and prioritize them, when the committee should start meeting, and work with the administration to move forward. The Board discussed formation of an issue oriented committee which would be fluid, and members could rotate in based on the issues. Various topics were also discussed.

The Board has authority to revise regulations, confirmed by the City Council. 8.22.040 D of the Ordinance allows the Board to recommend housing policy to the City Council when requested by the City Council or when the Board otherwise acts to do so.

There was discussion of formation of a policy committee, rather than an ad hoc committee.

#### **5b. Board Attendance Policy**

Staff responded to questions raised by the Board at the prior Board meeting.

J. Warner moved to have board members notify staff if they are unavailable to attend a meeting but it is not the member's duty to find a replacement. H. Flanery seconded.

The Board voted as follows:

Aye: T. Hall, J. Warner, H. Flanery, R. Stone, B. Scott, T. Williams

Nay: 0

Abstain: 0

The motion was approved by consensus.

J. Warner moved to remove the requirement of posting Board attendance on the Rent Board website. T. Hall seconded.

The Board voted as follows:

Aye: T. Hall, J. Warner, H. Flanery, B. Scott, T. Williams

Nay: 0

Abstain: R. Stone

The Board also requested clarification about the attendance requirement in accordance with the Rent Ordinance.

## 7. SCHEDULING & REPORTS

- a. Establishment of a Policy Committee, Initial Agenda of Topics, and Selection of Committee Members, and Coordination with RAP Staff re Staffing and Logistics
- b. Revised Board Attendance Policy will be scheduled for a future Board meeting

## 8. ADJOURNMENT

The meeting was adjourned by consensus at 9:15 p.m.

## CHRONOLOGICAL CASE REPORT

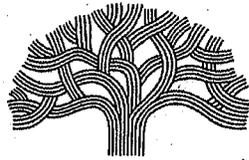
Case No.: T18-0328  
Case Name: Amberg v. Rockridge Real Estate, LLC  
Property Address: 3921 Harrison Street, #302, Oakland, CA  
Parties: Julie Amberg (Tenant)  
Nathaniel Reinke (Owner Representative)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	June 21, 2018
Owner Response filed	October 2, 2018
Administrative Decision mailed	November 28, 2018
Tenant Appeal filed	December 13, 2018

T18-0328 MS/MA

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**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

2018 JUN 21 PM 2:23

**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed.

**Please print legibly**

Your Name <b>Julie E. Amberg</b>	Rental Address (with zip code) <b>3921 Harrison Street, Apt. 302 Oakland, CA 94611</b>	Telephone: <b>510-506-6006</b> E-mail:
Your Representative's Name <b>Stanley L. Amberg</b>	Mailing Address (with zip code) <b>11 Carolyn Lane Chappaqua, NY 10514</b>	Telephone: <b>914-263-7341</b> Email: <b>stan.amberg@gmail.com</b>
Property Owner(s) name(s) <b>Rockridge Real Estate, LLC</b>	Mailing Address (with zip code) <b>1373 Clay Street San Francisco, CA 94109</b>	Telephone:  Email:
Property Manager or Management Co. (if applicable) <b>Nathaniel Reinke</b>	Mailing Address (with zip code) <b>Rockridge Real Estate, LLC 1373 Clay Street San Francisco, CA 94109</b>	Telephone: <b>415-710-7284</b> Email: <b>rockridge.re@gmail.com</b>

Number of units on the property: **16**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

<input type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input checked="" type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

**II. RENTAL HISTORY: (You must complete this section)**

**Attached Part II to this Petition gives this information.**

Date you moved into the Unit: July 1996 Initial Rent: \$ 850.00 /month *see*

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Not sure at this time If never provided, enter "Never."  
*A notice related to the Rent Adjustment Program was in envelope on 05/22/2018 (May 22, 2018)*

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No   
*(The unit and property (3921 Harrison St.) are covered by Oakland Rent Regulation)*

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

**SEE ATTACHED**

do not tape to my unit. I will be in charge of the unit. No more.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<del>05/22/2018</del>	07/01/2018	\$ 1215.99	\$ 1337.59	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<i>on or after 08/04/14</i>	10/04/2017	\$ 1215.99	\$ 1850.83	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>I don't recall</i>
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

*at this time. see*

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

T12-0151, L-15-0073, L14-0065, L15-0073

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section. Attached Part III to this Petition gives this information.

- Are you being charged for services originally paid by the owner? [X] Yes [ ] No
Have you lost services originally provided by the owner or have the conditions changed? [X] Yes [ ] No
Are you claiming any serious problem(s) with the condition of your rental unit? [X] Yes [ ] No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
3) when you notified the owner of the problem(s); and
4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

IV. VERIFICATION: The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Tenant's Signature [Handwritten Signature]

06/21/2018 Date

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**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

06/21/2018  
Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

**File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): other Oakland residents

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Part II of Julie Amberg Petition

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Part II. Rental History and Contested Rent Increases

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I moved into Unit 302, 3921 Harrison Street, Oakland, CA 94611 in July, 1996. The initial rent was \$850/month.

The current owners of the property at 3921 Harrison Street, Oakland, CA 94611 ("the Property") purchased it on June 23, 2017. The Grant Deed for that sale is Exhibit 3 to this Petition. The Grant Deed identified Rockridge Real Estate, LLC as undivided 19.717%, and Reinke, LLC as undivided 80.283% grantees as Tenants In Common ("the Current Owners").

One of the Current Owners, Rockridge Real Estate, LLC ("Rockridge"), sent me a copy of "Notice of Changes To The Rent Adjustment Ordinance" on August 4, 2017.

My unit 302 is not subsidized or controlled by any government agency other than being covered by the Oakland Rent Adjustment Program.

This Petition contests the following rent increases:

- (1) The rent increase noticed to me by Rockridge on August 4, 2017 "Sixty (60) Day Notice Of Change In Monthly Rent." Exhibit 1. The rent increase notice stated that the rent increase would go into effect on October 4, 2017. The monthly rent increase is from \$1215.99 to \$1,850.83, which is a monthly increase of \$634.84.
  - (a) I have previously contested the capital-improvements basis of the August 4, 2017 rent increase. I did that in RAP Case No. L15-0073, 525, 655 Hyde Street CNML, Properties, LLC v. Tenants. The July 19, 2017 Hearing Decision in that case is currently under appeal. I have informed Rockridge that the rent increase will not be paid until there is a final decision by the Rent Board and/or by a court. OMC 8.22.070 D.2. and D.5.
  - (b) This Petition contests the August 4, 2017 rent increase on four additional grounds.
    - (i) The first additional ground is that the Current Owners are precluded, by their unclean hands, from maintaining the petition in L15-0073 and from obtaining any relief under that petition. Their hands are unclean because of their willful and deliberate violation of 25 California Code of Regulations Section 42. The violation is stated in detail in Part III of this Petition. 25 CCR Section 72 together with Section 17995 of California Health and Safety Code make any person who violates Section 42 of 25 CCR guilty of a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding 6 months, or by both such fine and imprisonment. This ground was not available on the December 15, 2015 date when the owner's petition was submitted in L15-0073.
    - (ii) The second additional ground is that any part or all of the rent increase I may be asked to pay pursuant to the August 4, 2017 rent increase notice, or any other rent increase notice based on L15-0073, is barred by OMC 8.22.070 A.1.a. The rent on my unit 302 was previously increased in each of the years 2012, 2013, 2014, 2015, 2016 and 2017 by reason of the

Part II of Julie Amberg Petition

capital improvement pass throughs which I paid pursuant to the November 28, 2012 Hearing Decision in RAP Case No. T12-0151, *Amberg v. Lapham Company*.

- (iii) The third additional ground is that any part or all of the rent increase that I may be asked to pay pursuant to the August 4, 2017 rent increase notice, or any other rent increase notice based on L15-0073, is also barred under OMC 8.22.070 A.1.a. by any rent increase I may be required to pay pursuant to the May 17, 2018 notice of rent increase described below. This ground was not available on the December 15, 2015 date when the owner's petition was submitted in L15-0073.
- (iv) The fourth additional ground is that any part or all of the rent increase I may be asked to pay pursuant to the August 4, 2017 notice, or any other rent increase notice based on L15-0073, is barred because the Current Owners have violated OMC 8.22.640, including without limitation 8.22.640 A.1. and E.2., in bad faith. This Petition shall serve as notice to the Current Owners pursuant to OMC 8.22.650. Tenant Amberg reserves all rights and remedies under OMC 8.22.650 and 670.

- (2) The rent increase noticed to me by Rockridge by a letter dated May 17, 2018 "Thirty (30) Day Notice Of Change In Monthly Rent". Exhibit 2. I received the letter on May 22, 2018, when I found it taped to the door of my apartment. The notice stated that the monthly increase is from \$1,215.99 to \$1,337.59, which is a monthly increase of \$121.60. The stated basis of the rent increase is banked CPI. The increase purports to go into effect July 1, 2018. In this Petition, I am contesting the May 17, 2018 rent increase on the following grounds:
- (a) The Current Owners have decreased housing services. OMC 8.22.070 B.2.c. This is explained in Part III of this Petition.
- (b) The banking CPI rent increase in the May 17, 2018 notice is not correctly calculated. OMC 8.22.070 B.2.e. The errors include, without limitation, failing to account for the rent increases I paid for capital improvements in each of the years 2012, 2013, 2014, 2015, 2016 and 2017. My rent was increased in each of the years 2012, 2013, 2014, 2015, 2016 and 2017 by reason of capital improvement pass throughs which I paid pursuant to the November 28, 2012 Hearing Decision in RAP Case No. T12-0151, *Amberg v. Lapham Company*.
- (c) The banking CPI rent increase in the May 17, 2018 notice is not correctly calculated for an additional reason. To the best of my recollection, I paid a CPI rent increase for each of the years 2008, 2009, 2010 and 2011. My recollection is confirmed by the tables attached to the May 17, 2018 Rockridge letter. The tables admit that my rent would be increased on 7/1/11 by \$23.84, bringing the rent to "\$1,216". The only way my rent could have been increased in steps (as shown in the tables) from \$1,117, in 7/1/07, to \$1,216.00, in 7/1/11, is for me to have actually paid the CPI rent increases (as shown in the tables) on or about 7/1/08, 7/1/09, 7/1/10, and 7/1/11. The May 17 Rockridge letter admits that my "Current Rent" is "\$1,215.99". The only way my current rent could be \$1,215.99 is for me to have actually paid the

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Part II of Julie Amberg Petition

CPI rent increases stated in the tables for each of the years 2008, 2009, 2010, and 2011.

- (d) Any part or all of the rent increase I may be asked to pay pursuant to the May 17, 2018 notice, or any other rent increase notice based on CPI banking for the years 2008, 2009, 2010, and 2011, is barred because I paid the applicable CPI rent increase for each of those years.
- (e) Any part or all of the rent increase I may be asked to pay pursuant to the May 17, 2018 notice, or any other rent increase notice based on CPI banking, is barred by OMC 8.22.070 A.1.a. My rent was increased in each of the years 2012, 2013, 2014, 2015, 2016 and 2017 by reason of capital improvement pass throughs which I paid pursuant to the November 28, 2012 Hearing Decision in RAP Case No. T12-0151, *Amberg v. Lapham Company*.
- (f) Any part or all of the rent I may be asked to pay pursuant to the May 17, 2018 notice, or any other rent increase notice based on CPI banking, is barred by OMC 8.22.070 A.1.a. by reason of the rent increase I am being asked to pay in the August 4, 2017 notice of rent increase.
- (g) The Current Owners are precluded by reason of unclean hands from asserting any rent increase. Their hands are unclean because of their willful and deliberate violation of 25 California Code of Regulations Section 42. The violation is stated in detail in Part III of this Petition.
- (h) Any part or all of the rent increase I may be asked to pay pursuant to the May 17, 2018 notice, or any other rent increase notice based on CPI banking, is barred because the Current Owners have violated OMC 8.22.640, including without limitation 8.22.640 A.1. and E.2., in bad faith. This Petition shall serve as notice to the Current Owners pursuant to OMC 8.22.650. Tenant Amberg reserves all rights and remedies under OMC 8.22.650 and 670.

Tenant Amberg previously filed a petition in the RAP for this rental unit. It is the petition in T12-0151, identified above.

Other relevant RAP petitions are the petitions in L15-0073, identified above, and L14-0065, *525, 655 Hyde Street CNML, Properties, LLC v. Tenants*. In L14-0063, the landlord petitioned to exempt the Property from the Rent Adjustment Program on the ground of substantial rehabilitation. The Hearing Officer's decision denied the petition. The Hearing Officer's decision was affirmed by the Rent Board. One or more of the Current Owners have petitioned the Superior Court for a writ of administrative mandamus.

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RENT ADJUSTMENT PROGRAM

2018 JUN 21 PM 2:24

Part III of Julie Amberg Petition

Part III. Description of Decreased or Inadequate Housing Services

I am being charged for services originally paid by the previous owner.

I have lost services originally paid by the previous owner, and conditions have changed.

I am claiming serious problems with the condition of my rental unit and the building.

The property at issue is located at 3921 Harrison Street, Oakland, CA. It is an apartment house with 16 apartments ("the Property"). I have continuously resided in apartment #302 at the Property since July 1996. To the best of my recollection, a manager of the Property has resided at the Property from the beginning of my tenancy in 1996 through June 2017. During that time, the resident manager provided housing services to me and the other tenants at the Property. Those services included, without limitation, keeping watch for – and reporting -- fires and floods, keeping watch for – and reporting -- breakdown of heat and elevator services, keeping watch for – and reporting – breakdown of other equipment such as building locks and the garage door, keeping watch for – and reporting – vandalism such as tampering with mail boxes, managing the disposal of trash and garbage, and keeping the interior hallways and other areas clean. I relied on those services for the safety and well-being of myself and my young child.

Since approximately June 30, 2017, no manager has resided at the Property. Since that date, I have suffered and continue to suffer an ongoing decrease in housing services by reason of my being deprived of the services of a resident manager at the Property.

The current owners of the Property purchased it on June 23, 2017. The Grant Deed for that sale is Exhibit 3 to this Petition. The Grant Deed identified Rockridge Real Estate, LLC as undivided 19.717%, and Reinke, LLC as undivided 80.283% grantees as Tenants In Common ("the Current Owners").

On information and belief, one or more principals, agents or employees of the Current Owner knew or reasonably should have known, before and/or on the June 23, 2017 purchase of the Property, that a manager of the Property had been residing in, and was then residing in, the Property.

On information and belief, on or before June 30, 2017 one or more principals, agents or employees of the Current Owner terminated the services of the person(s) who was/were the resident manager of the Property.

A letter dated June 12, 2018 to "Dear Resident" of the Property, which I received on that date, was signed by Nathaniel Reinke and identified him as "3921 Harrison St Property Manager." A copy of the letter is Exhibit 4 to this Petition.

Mr. Reinke has never resided at the Property. He has not identified to me anyone else residing at the Property as the resident manager of the Property.

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RENT ASSISTANCE PROGRAM

Part III of Julie Amberg Petition

Section 42 of 25 California Code of Regulations states, "A manager ... or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments, ... in the event that the owner of the apartment house ... does not reside on the premises."

To the best of my knowledge, information and belief, no "manager" or "responsible person" or "owner" has resided at the Property after June 30, 2017.

I first learned of 25 CCR Section 42 in June 2018. I first learned in June 2018 that the law requires a manager or responsible person or an owner to reside at the Property. This Petition is being filed less than 90 days after I first learned that the law requires a manager or responsible person or an owner to reside at the Property.

I and the other tenants residing at the Property have effectively and unlawfully been given a rent increase by reason of the reduction of housing services caused by the failure of the Current Owners of the Property to have a manager or responsible person or owner reside at the Property after June 30, 2017.

On information and belief, the Current Owners of the Property have been unlawfully and unjustly enriched by their failure to comply with 25 CCR Section 42 after June 30, 2017. The most recent resident manager of the Property resided in apartment 303, in June 2017. I believe the resident manager vacated apartment 303 on or about June 30, 2017. I do not now know the precise rent which the resident manager was paying, but will request that information at the hearing of this Petition. I understand that a resident manager of an apartment building such as the Property is an employee of the owner of the building. California Industrial Welfare Commission Order No. 5-001, Section 10, states that in 2017 no more than \$564.81/month (\$593.05 in 2018) may be credited against an employer's minimum wage obligation. A posting on Zillow.com states that on October 17, 2017 apartment 303 was being offered for rent at \$2,595/month. By failing to have a manager reside at the Property, the Current Owners of the Property were unlawfully and unjustly enriched by at least the difference between \$2,595/month and \$564/81/month (= \$2,030.10/month) for each of the months in 2017 when there was no resident manager at the Property, and by at least the difference between \$2,595/month and \$593.05/month (= \$2,001.95/month) for each of the months in 2018 when there was no resident manager at the Property. The amount the Current Owners were unlawfully and unjustly enriched in 2017 was at least \$12,180.60; in 2018, at least \$12,011.70. The total for 2017 and 2018 is at least \$24,192.30. The amount (at least \$24,192.30) by which the Current Owners of the Property was unlawfully and unjustly enriched is a proper measure of the value of the decreased housing services for the 16 apartments at the Property. I resided in apartment 302 during the entire time (July 2017 to the present date) when no manager resided at the Property, and therefore at least 1/16 of \$24,192.30, i.e., at least \$1,512.02, is a proper measure of the value of the decreased housing services suffered by me to date. On that basis, I respectfully Petition for an immediate one-time downward adjustment of my rent in the amount of at least \$1,512.02, and, in addition, I respectfully Petition for an ongoing downward adjustment of my rent in the amount of at least \$125.12/month starting no later than July 1, 2018 and continuing thereafter until a manager of the Property resides at the Property.

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RENT ARBITRATION PROGRAM  
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Part III of Julie Amberg Petition

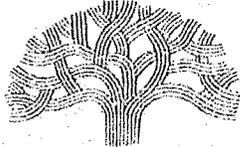
In addition, the Current Owners of the Property were unlawfully and unjustly enriched by the amounts the Current Owners would have had to pay to the State of California for State disability taxes and unemployment taxes for a resident manager, and the Current Owners were unlawfully and unjustly enriched by the amounts the Current Owners would have had to pay to the Federal Government as the Current Owners' one-half share of the resident manager's Social Security and Medicare taxes. I am not now able to quantify those amounts, but will attempt to do so after discovery of information from the Current Owners of the Property and the prior owner, which information will be requested at the hearing of this Petition.

In addition, the Current Owners were unlawfully and unjustly enriched by the wages and benefits the Current Owners would have had to pay and provide (but failed to pay and provide) a resident manager. The minimum wage in Oakland in 2017 was \$12.86/hour; in 2018, it is \$13.23/hour. I am not now able to quantify the number of hours a resident manager would have worked and been paid, but will attempt to do so after discovery of information from the Current Owners of the Property and the prior owner, which information will be requested at the hearing of this Petition.

The Current Owners of the Property have violated OMC 8.22.640, including without limitation 8.22.640 A.1. and E.2., in bad faith. This Petition shall serve as notice to the Current Owners pursuant to OMC 8.22.650. Tenant Amberg reserves all rights and remedies under OMC 8.22.650 and 670.

Tenant Amberg reserves the right to amend and/or supplement this Petition to take into account information discovered in the future.

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RENT ARBITRATION PROGRAM  
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CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

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CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
For date stamp.

2018 OCT -2 AM 8:49

**PROPERTY OWNER**  
**RESPONSE**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.**

**CASE NUMBER T - -**

7-18-0328

*AMBERG*

Your Name <i>Rockridge Real Estate</i>	Complete Address (with zip code) <i>1373 Clay Street, Apt #11 San Francisco, CA 94109</i>	Telephone: <i>415-710-7284</i>
		Email: <i>rockridge.re@gmail.com</i>
Your Representative's Name (if any) <i>Nathaniel Reinke</i>	Complete Address (with zip code) <i>1373 Clay Street, Apt #11 San Francisco, CA 94109</i>	Telephone: <i>415-710-7284</i>
		Email: <i>rockridge.re@gmail.com</i>
Tenant(s) Name(s) <i>Julie Amberg</i>	Complete Address (with zip code) <i>3921 Harrison Street, Apt #302 Oakland, CA 94611</i>	
Property Address (If the property has more than one address, list all addresses) <i>3921 Harrison Street Oakland, CA 94611</i>		Total number of units on property <i>16</i>

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 00198122  
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes  No  APN: 12-929-11  
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 06 / 24 / 2017

Is there more than one street address on the parcel? Yes  No

Type of unit (Circle One): House / Condominium/ Apartment, room, or live-work

**I. JUSTIFICATION FOR RENT INCREASE** You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

**Board Regulations.** You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases )</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
07/01/2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10/15/2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are justifying additional contested increases, please attach a separate sheet.

**II. RENT HISTORY** If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on July 20, 1996

The tenant's initial rent including all services provided was: \$ 875.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?  
 Yes  No  I don't know

If yes, on what date was the Notice first given? June 24, 2017

Is the tenant current on the rent? Yes  No

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
9/14/2018	10/15/2018	\$ 1215.99	\$ 1337.58	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5/17/2018	07/01/2018	\$ 1215.99	\$ 1337.59	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<i>This notice was rescinded on 9/14/18 and all overpayment of rent was reimbursed</i>				
08/04/2017	10/04/2017	\$ 1215.99	\$ 1850.83	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

### III. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). **If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:**

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.

On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** less than 30 days.

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.

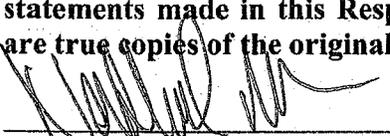
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

### IV. DECREASED HOUSING SERVICES

If the petition filed by your tenant claims **Decreased Housing Services**, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

### V. VERIFICATION

**I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.**

  
\_\_\_\_\_  
Property Owner's Signature

9/27/2018  
Date

**IMPORTANT INFORMATION:**

**Time to File**

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

**File Review**

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

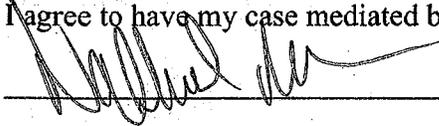
**Mediation Program**

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

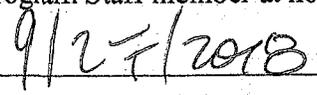
If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

**If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff member at no charge.

  
\_\_\_\_\_

Property Owner's Signature

  
\_\_\_\_\_

Date

September 27, 2018

Addendum to Property Owner Response: Case # T-18-0328

AMBERLO

Response to tenant's Grounds for Petition:

- (a) Calculations were based on the City of Oakland's Rent Adjustment Program's Banked Rent Calculator. They were not calculated incorrectly.
- (b) The banked rent increases are NOT greater than ten percent (10%) as outlined in the City of Oakland's Rent Adjustment Program's Banked Rent Calculator. A copy of this was provided to the tenant at the time of the increases and they are attached to this addendum.
- (c) Prior approval is not required for banked rent increases.
- (d) N/A
- (e) The Rent Adjustment Program (RAP) notice is attached to any and all notices that I deliver. It was attached to all of the rent increases that are in question.
- (f) The rent increase notices were delivered properly. The notices were posted to the door and mailed via USPS first class mail.
- (g) Although I would disagree that the Aug 4, 2017 60 day notice of a cap-ex rent increase was an "actual" rent increase due to the fact that the staff hearing officer noted in her decision dated July 19, 2017 which is attached, order #3 of the decision, states that "The effective date of the increase(s) is March 1, 2016", in the interest of moving the process along more quickly I have rescinded the March 17, 2018 30 day banked rent increase. I included a check to the resident for the "overpayment" of rent for the months July, August and September the three months prior to the rent increase being rescinded. On the same day the March 17, 2018 notice was rescinded I reissued a new 30 day notice of banked rent increase along with the banked rent calculator both of which were delivered on September 14, 2018. The new rent increase notice and banked rent calculator were both posted to the tenant's door as well as mailed via USPS on September 14, 2018. The City of Oakland Rent Adjustment Program (RAP) notice was also included along with this new rent increase. The new rent increase notice falls outside of the 12 months since the August 4, 2017 60 day notice would have gone into effect, should it be ruled that that notice was an actual rent increase even though the staff hearing officer's decision states otherwise. The staff hearing officer's decision is attached.
- (h) The tenant makes no specific claim of health, safety, fire or building code violations in her attached statement. She has never noticed me of any issues with her unit. I have multiple times asked her of any issues in the unit and she has never told me of any. None of these health, safety, fire or building code violations exist on the property or in her unit.
- (i) There is a resident manager at the building. I, Nathaniel Reinke, act as an agent for Rockridge Real Estate the Property Manager. Property manager should not be confused for the resident manager. These are two separate and distinct positions. There is no requirement that I notify the tenant of who my resident manager is. The resident manager works for the Property manager, Rockridge Real Estate.

000022

(j) N/A

(k) No other rent increase has gone into effect for this tenant in years. Her rent to this day remains the same as it was five years ago.

(l) I have no clue what the tenant is referring to. We are in the process of exempting the property but no final decision has been made. We continue to follow all City of Oakland Rent Adjustment Program rules and regulations.

(m) N/A

(n) N/A

#### Response to Part III: Tenant's Description of Decreased or Inadequate Housing Services

- There are no services that were originally paid by the owner that the tenant is now paying for.
  - There are no lost services originally provided by the owner nor have any conditions changed.
  - There are no serious problem(s) with the condition of the tenant's rental unit. I have inquired multiple times about any issues in Ms. Amberg's unit and have never been told of any.
1. There are no lost housing services. She claims there is no resident manager. This is not true. There is a resident manager living onsite. Her claim is that Rockridge Real Estate, and Nathaniel Reinke is its agent, is acting as property manager and that they do not live onsite so they are in violation of the resident manager regulations. While it is true Rockridge Real Estate with Nathaniel Reinke as its agent are the property manager and they do not live onsite they are not the resident manager. There is a resident manager who lives onsite.
  2. There have been no losses or problems.
  3. Ms. Amberg has never notified me of any of the issues mentioned in her tenant petition.
  4. There are no lost services nor any problems and as such there can be no dollar amount to the absence of a loss. The tenant does not even try to attribute a dollar amount.



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

CITY OF OAKLAND

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721

FAX (510) 238-6181

TDD (510) 238-3254

## ADMINISTRATIVE DECISION

**CASE NUMBER:** T18-0326 Garcia v. Rockridge Real Estate, LLC  
T18-0327 McMahon et al v. Rockridge Real Estate, LLC  
T18-0328 Amberg v. Rockridge Real Estate, LLC

**PROPERTY ADDRESS:** 3921 Harrison Street, Oakland, CA

**PARTIES:** Kate Garcia, Tenant  
Fernando Garcia, Tenant  
Mari Oda, Tenant  
Todd McMahon, Tenant  
Julie Amberg, Tenant  
Nathaniel Reinke, Owner Representative

### BACKGROUND

#### T18-0326 Garcia v. Rockridge Real Estate, LLC

Tenants Kate and Fernando Garcia filed a petition on June 21, 2018, contesting a rent increase notice dated May 17, 2018, which proposed to raise their rent from \$1,276.42 to \$1,404.06, effective July 1, 2018, as well as all prior rent increases.

#### July 1, 2018 Rent Increase

The owner served a notice to the tenants rescinding the July 1, 2018, rent increase on September 13, 2018, and reimbursed the tenants in the amount of \$382.92 for three months of rent overpayments in July, August, and September. The owner notified the Rent Adjustment Program of the rescission on October 2, 2018. It is undisputed that the July 1, 2018, rent increase was rescinded and all rent overpayments were returned to the tenants. Therefore, this claim is dismissed.

#### Rent Increases from 2008 through 2017

For a petition contesting a rent increase, the petition must be filed within ninety (90) days after the date the owner serves the rent increase notice or the date the tenant

000024

first receives written notice of the RAP Notice, whichever is later.<sup>1</sup> The tenants stated on their petition that they first received the RAP Notice in 2006. To be considered timely, the portion of the tenants' petition contesting rent increases from 2008 through 2017 should have been filed within ninety (90) days of the rent increase. The tenants did not file their petition until 2018. Therefore, the challenge to the prior rent increases is denied as untimely.

There are no other outstanding issues to be decided. Therefore, tenant petition T18-0326 is dismissed.

#### T18-0327 McMahon et al v. Rockridge Real Estate, LLC

Tenants Mari Oda and Todd McMahon filed a petition on June 21, 2018, contesting a rent increase notice dated May 17, 2018, which proposed to raise their rent from \$995.38 to \$1,094.92, effective July 1, 2018. In their petition, the tenants are also contesting a rent increase dated August 4, 2017, which proposed to raise their rent from \$995.38 to \$2,039.38, effective October 4, 2017.

#### July 1, 2018 Rent Increase

The owner served a notice to the tenants rescinding the July 1, 2018, rent increase on September 13, 2018, and reimbursed the tenants in the amount of \$298.62 for three months of rent overpayments in July, August, and September. The owner notified the Rent Adjustment Program of the rescission on October 2, 2018. It is undisputed that the July 1, 2018, rent increase was rescinded and all rent overpayments were returned to the tenants. Therefore, this claim is dismissed.

#### 2017 Rent Increase

For a petition contesting a rent increase, the petition must be filed within ninety (90) days after the date the owner serves the rent increase notice or the date the tenant first receives written notice of the RAP Notice, whichever is later.<sup>2</sup> The tenants stated on their petition that they first received the RAP Notice in 2012. To be considered timely, the tenants' petition contesting the 2017 rent increase should have been filed within ninety (90) days of the rent increase. The tenants did not file their petition until 2018. Therefore, the challenge to the 2017 rent increase is denied as untimely.

There are no other outstanding issues to be decided. Therefore, tenant petition T18-0327 is dismissed.

#### T18-0328 Amberg v. Rockridge Real Estate, LLC

Tenant Julie Amberg filed a petition on June 21, 2018, contesting a rent increase notice dated May 17, 2018, which proposed to raise her rent from \$1,215.99 to

<sup>1</sup> O.M.C. §8.22.090A(2)

<sup>2</sup> O.M.C. §8.22.090A(2)

\$1,337.59, effective July 1, 2018. In her petition, the tenant is also contesting a rent increase dated August 4, 2017, which proposed to raise her rent from \$1,215.99 to \$1,850.83, effective October 4, 2017. Finally, the tenant is alleging decreased housing services based on the lack of an onsite resident manager since June 30, 2017.

#### July 1, 2018, Rent Increase

The owner served a notice to the tenant rescinding the July 1, 2018, rent increase on September 13, 2018, and reimbursed the tenant in the amount of \$364.80 for three months of rent overpayments in July, August, and September. The owner notified the Rent Adjustment Program of the rescission on October 2, 2018. It is undisputed that the July 1, 2018, rent increase was rescinded and all rent overpayments were returned to the tenant. Therefore, this claim is dismissed.

#### 2017 Rent Increase

For a petition contesting a rent increase, the petition must be filed within ninety (90) days after the date the owner serves the rent increase notice or the date the tenant first receives written notice of the RAP Notice, whichever is later.<sup>3</sup> Official Notice is taken of the Hearing Decision in Case Number T12-0151, which references a RAP Notice issued to the tenant on March 23, 2012. It is found that the tenant received the RAP Notice as early as March 23, 2012, if not earlier. To be considered timely, the tenant's petition contesting the 2017 rent increase should have been filed within ninety (90) days of the rent increase. The tenant did not file her petition until 2018. Therefore, the challenge to the 2017 rent increase is denied as untimely.

#### Decreased Housing Service – Lack of Onsite Resident Manager

The Oakland Rent Ordinance provides that for a petition claiming decreased housing services:

- a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within ninety days of whichever of the following is later:
  - i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
  - ii. The date the tenant first receives the RAP Notice.<sup>4</sup>

The tenant stated on her petition that she has not had an onsite resident manager since June 30, 2017. The lack of an onsite resident manager is a discrete change in services provided to the tenant. To be considered timely, this claim should have been filed within ninety days of June 30, 2017. The tenant's petition was filed on June 21, 2018, almost a year later. Therefore, this claim is denied as untimely.

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<sup>3</sup> O.M.C. §8.22.090A(2)

<sup>4</sup> O.M.C. Section 8.22.090(A)(3)

There are no other outstanding issues to be decided. Therefore, tenant petition T18-0328 is dismissed.

### REASON FOR ADMINISTRATIVE DECISION

An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing and there are no material facts in dispute. Therefore, an Administrative Decision is being issued.

### REQUEST TO CHANGE DATE OF PROCEEDING

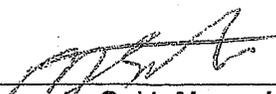
The tenants filed a request to change date of proceeding on November 21, 2018. Since Tenant Petitions T18-0326, T18-0327, and T18-0328 have been dismissed, and the hearing scheduled for December 3, 2018, is cancelled, a continuance in this proceeding is denied.

### ORDER

1. Tenant Petitions T18-0326, T18-0327, and T18-0328 are dismissed.
2. The hearing scheduled for December 3, 2018, is cancelled.

Right to Appeal: **This decision is the final decision of the Rent Adjustment Program.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: November 27, 2018

  
\_\_\_\_\_  
**Maimoona Sahi Ahmad**  
Hearing Officer  
Rent Adjustment Program

000027

PROOF OF SERVICE

Case Numbers T18-0326, T18-0327, & T18-0328

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Administrative Decision

Owners

Nathaniel Reinke  
Rockridge Real Estate, LLC  
1373 Clay Street  
San Francisco, CA 94109

Ray McFadden  
Mandana Properties  
4200 Park Blvd #130  
Oakland, CA 94602

Tenants

Julie E Amberg  
3921 Harrison Street #302  
Oakland, CA 94611

Kate & Fernando Garcia  
3921 Harrison Street #202  
Oakland, CA 94611

Mari Oda  
3921 Harrison Street #304  
Oakland, CA 94611

Todd McMahon  
3921 Harrison Street #304  
Oakland, CA 94611

Tenant Representative

Stanley Amberg  
11 Carolyn Lane  
Chappaqua, NY 10514

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

000028

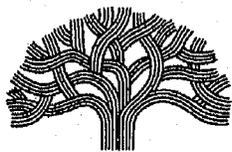
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on November 28, 2018 in Oakland, CA.



---

Maxine Visaya  
Oakland Rent Adjustment Program

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**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

For date stamp  
2018 DEC 13 AM 11:58

**APPEAL**

Appellant's Name Julie E. Amberg		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3921 Harrison Street, Oakland, CA 94611 Unit #302			
Appellant's Mailing Address (For receipt of notices) 3921 Harrison Street, #302 Oakland, CA 94611		Case Number T18-0328	
		Date of Decision appealed November 27, 2018	
Name of Representative (if any) Stanley L. Amberg		Representative's Mailing Address (For notices) 11 Carolyn Lane Chappaqua, NY 10514	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

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- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must not exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 6

**• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •**

I declare under penalty of perjury under the laws of the State of California that on December 12, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Nathaniel Reinke & Rockridge Real Estate, LLC
<b>Address</b>	1373 Clay Street
<b>City, State Zip</b>	San Francisco, CA 94109
<b>Name</b>	Ray McFadden & Mandana Properties
<b>Address</b>	4200 Park Blvd #130
<b>City, State Zip</b>	Oakland, CA 94602

<i>Stanley L. Amberg</i> Stanley L. Amberg	December 12, 2018
---	-------------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

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**IMPORTANT INFORMATION:**

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

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## Explanation Of Grounds For Appeal In Case T18-0328

### Introduction

Tenant Julie Amberg appeals the November 27, 2018 Administrative Decision in Case No. T18-0328. This appeal is from the part of the Administrative Decision that denied Tenant Amberg's claim for reduced housing services.

### The Administrative Decision

The entirety of the Administrative Decision's ruling on Tenant Amberg's claim of reduced housing services is as follows:

"The Oakland Rent Ordinance provides that for a petition claiming decreased housing services:

a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within ninety days of whichever is later:

- i. The date the tenant is noticed or first becomes aware of the decreased housing service, or
- ii. The date the tenant first receives the RAP notice.

The tenant stated in her petition that she has not had an onsite resident manager since June 30, 2017. The lack of an onsite resident manager is a discrete change in services provided to the tenant. To be considered timely, this claim should have been filed within ninety days of June 30, 2017. The tenant's petition was filed on June 21, 2018, almost a year later. Therefore, this claim is denied as untimely." (Administrative Decision, at page 3.)

The Administrative Decision relied on and paraphrased OMC 8.22.090 A.3.a.

The Administrative Decision did *not* cite or discuss OMC 8.22.090 A.3.b., which states:

"b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing services."

### Statement Of Uncontested Facts

The Administrative Decision stated "in this case, there are sufficient uncontested facts to issue a decision without a hearing and there are no material facts in dispute." (Administrative Decision, at page 4.)

The uncontested facts on the issue of reduced housing services are as follows.

1. Tenant Amberg has continuously resided in apartment #302, 3921 Harrison Street, Oakland, CA since July 1996. She is a month-to-month tenant under the Oakland Rent Adjustment Program.

2. The building at 3921 Harrison Street (“the Property”) is an apartment house in which there are sixteen apartments.

3. California law, 25 California Code of Regulations section 42, requires that a Caretaker “manager, janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments” if the owner of the apartment house does not reside in the apartment house.<sup>1</sup> (“Caretaker resident manager”).

4. Tenant Amberg is not a lawyer and has not had legal training. She first learned of 25 California Code of Regulations section 42 (“California Caretaker law”) in June 2018. Tenant Amberg’s Petition herein was filed that same month, on June 21, 2018.

5. At least one resident manager has lived at the Property from the beginning of Tenant Amberg’s tenancy in July 1996 through June 2017.

6. The Property was purchased by Rockridge Real Estate (“Rockridge”) on June 23, 2017.

7. Starting on or about July 1, 2017 and continuing on an ongoing basis to at least the June 21, 2018 filing date of Tenant Amberg’s Petition herein, no owner of the apartment house at 3921 Harrison Street, Oakland, CA resided at the Property.

8. Starting on or about July 1, 2017 and continuing on an ongoing basis to at least the June 21, 2018 filing date of Tenant Amberg’s Petition herein, no Caretaker resident manager or other responsible person resided at the Property.

<sup>1</sup> The full text of 25 CCR section 42 is: “42. Caretaker. A manager, janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments, and of every hotel in which there are 12 or more guest rooms, in the event that the owner of an apartment house or hotel does not reside upon said premises. Only one caretaker would be required for all structures under one ownership and on one contiguous parcel of land. If the owner does not reside upon the premises of any apartment house in which there are more than four but less than 16 apartments, a notice stating the owner's name and address, or the name and address of the owner's agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.” (Emphasis added)

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9. Starting on or about July 1, 2017 and continuing to at least the June 21, 2018 filing date of Tenant Amberg's Petition herein, Rockridge concealed from Tenant Amberg and other tenants at the Property that no Caretaker manager resided at the Property. Rockridge refused to identify any person who was the resident manager at the Property. This was admitted by Rockridge in its Response to Tenant Amberg's Petition herein. Rockridge's Response stated: "There is no requirement that I notify the tenant of who my resident manager is."

10. During at least the 90 days prior to filing her Petition herein, Tenant Amberg was denied the services and responsibilities of a Caretaker resident manager at the Property, including without limitation:

- Keeping watch for, and reporting, fires and floods at the Property;
- Keeping watch for, and reporting, breakdown of heat and elevator services at the Property;
- Keeping watch for, and reporting and fixing, breakdown of other equipment at the Property such as building and apartment door locks;
- Keeping watch for, and reporting and fixing, the garage door at the Property;
- Keeping watch for, and reporting, vandalism at the Property, including tampering with the mail boxes at the Property;
- Disposing of trash and garbage at the Property; and
- Keeping clean the hallways and stairs at the Property.

11. The Property Owner's Response to Tenant Amberg's Petition was filed on October 2, 2018. The Response did *not* deny the owner's failure to have a Caretaker resident manager at the Property *during the 90 days prior to the June 21, 2018 filing of Tenant Amberg's Petition*. Rather, the October 2, 2018 Response spoke in the present tense, saying, "There is a resident manager who lives onsite."

12. The Property Owner's Response to Tenant Amberg's Petition did *not* assert that the decreased housing services claimed by Tenant Amberg were a discrete change of services.

13. The Property Owner's Response to Tenant Amberg's Petition did *not* assert that the Petition was untimely filed.

14. The Property Owner's Response to Tenant Amberg's Petition did *not* assert that an owner resided at the Property.

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## Grounds For Appealing The Administrative Decision

Tenant Amberg asserts the following grounds for appealing the Administrative Decision.<sup>2</sup>

(a) The Administrative Decision is inconsistent with OMC 8.22.090 A.3.b.

The Decision erroneously relied on OMC 8.22.090 A.3.a. (“discrete change” of housing services). Under the undisputed facts herein, the decreased housing issue should have been adjudicated pursuant to OMC 8.22.090 A.3.b. (“ongoing” decreased housing services). The Administrative Decision is therefore inconsistent with OMC 8.22.090 A.3.b.

The decreased housing suffered by Tenant Amberg was *not a one-time event*, such as removal of a parking space.

Rather, the decreased housing suffered by Tenant Amberg was a *continuous* deprivation of the services of an onsite resident manager of the Property.

A principal cause of the decreased housing services was the Property owner’s continuing and ongoing violation of the California Caretaker law, 25 California Code of Regulations section 42. That law **requires** that a Caretaker “manager, janitor, housekeeper, or other responsible person **shall reside** upon the premises and **shall have charge of** every apartment house in which there are 16 or more apartments”.

It is undisputed that the Property is an apartment house in which there are 16 apartments. So it is undisputed that the California Caretaker law applies to the Property.

It is undisputed that *every day*, from about July 1, 2017 to at least the June 21, 2018 filing date of Tenant Amberg’s Petition, **no** such manager, janitor, housekeeper, of other responsible person resided at the Property.

It is undisputed that *every day*, from about July 1, 2017 to at least the June 21, 2018 filing date of Tenant Amberg’s Petition, she was deprived of the housing services of an onsite Caretaker resident manager.

<sup>2</sup> The parenthetical letters at the beginning of the following paragraphs correspond to the like letters in section 2 of the RAP Appeal form, to which these pages are attached.

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The decreased housing suffered by Tenant Amberg was like the continuous deprivation of a dry apartment that she would suffer from a continuously leaking roof or water pipe above unit #302.

Rockridge's continuous violation of the California Caretaker law from July 1, 2017 to at least June 21, 2018 was an "ongoing" decrease of housing services within the meaning of OMC 8.22.090 A.3.b., just like a roof or water pipe continuously leaking from July 1, 2017 to at least June 21, 2018 is an "ongoing" decrease of housing services under OMC 8.22.090 A.3.b.

(a), (c), (d) and (h) The Administrative Decision is inconsistent with OMC 8.22.090 A.1.e. The Decision raises a new policy issue that has not been decided by the Board. The Decision is inconsistent with the law of the State of California.

OMC 8.22.090 A.1.e. broadly states that a tenant "may file a petition regarding ... [t]he owner decreased housing services to the tenant."

OMC 8.22.090 A.1.e. is *not* restrictive. It broadly allows a tenant to claim restitution for any legally-cognizable decrease of housing services. As a matter of sound policy, the Rent Adjustment Program should accept that a property owner's failure to comply with the State of California Caretaker law, 25 California Code of Regulations section 42, is *per se* a legally-cognizable decrease of housing services because it is a violation of a law of the State of California. The California Caretaker law is mandatory. It states: "A manager, janitor, housekeeper, or other responsible person **shall** reside upon the premises and **shall** have charge of every apartment house in which there are 16 or more apartments." Those "shall" mandates impose *continuous ongoing* obligations on the Property owner.

The obligations imposed on the Property owner by the California Caretaker law are so important to the safety and well-being of tenants that they supersede and preempt any contrary or restricting provision in OMC Chapter 8.22.

The obligations imposed on the Property owner by the California Caretaker law are so important to the safety and well-being of tenants that the State of California makes it a crime to violate the California Caretaker law. 25 CCR section 72 (Penalties); California Health and Safety Code (HSC) section 17995 (Violations).

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The Administrative Decision relied on the “discrete” change in services provision of OMC 8.22.090 A.3.a. That was clearly erroneous. It is not supported by substantial evidence. It conflicts with the California Caretaker law. The Administrative Decision never discussed the California Caretaker law, even though it was cited and discussed in Part III of Tenant Amberg’s Petition.

(e) The Administrative Decision is not supported by substantial evidence.

The Decision says, “The lack of an onsite resident manager is a discrete change in services provided to the tenant.” However, no legal authority is cited to support that statement. No substantial evidence supports the Administrative Decision. As explained above, there is nothing “discrete” about the Property owner’s ongoing and continuing failure to comply with the California Caretaker law. There is nothing “discrete” about the Property owner’s ongoing and continuing failure to provide the onsite manager’s housing services, including without limitation, the services described above in uncontested fact No. 10. Denial of a parking space is a discrete event, affecting only one tenant, whereas denial of the services of a Caretaker resident manager affects *all* tenants.

(f) The Administrative Decision denied Tenant Amberg a hearing and therefore denied her a due process opportunity to present all of her evidence of reduced housing services at the Property, including leaks in the roof at the Property.

(h) Because the California Caretaker law is a law of the State of California, the four-year statute of limitations applicable to that law supersedes and preempts the 90-day limit on restitution in OMC 8.22.090 A.3.b.

(h) Rockridge’s concealment of the absence of a Caretaker resident manager from Tenant Amberg tolls the 90-day limit on restitution in OMC 8.22.090 A.3.b.

**Conclusion**

For the reasons and grounds stated above, Tenant Amberg respectfully requests that the Administrative Decision’s ruling on Tenant Amberg’s claim of reduced housing services be reversed, and that Case T18-0328 be remanded for a hearing to determine the amount of restitution to be awarded.

## CHRONOLOGICAL CASE REPORT

Case No.: T18-0089  
Case Name: Billingsley v. Marr  
Property Address: 687 Apgar Street, Oakland, CA  
Parties: Joseph Billingsley (Tenant)  
Rosemary Marr (Owner)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	January 4, 2018
Owner Response filed	April 22, 2018
Hearing Decision mailed	November 6, 2018
Owner Appeal filed	November 26, 2018
Tenant filed Response to Owner Appeal	December 24, 2018
Owner filed supplemental photos and docs	April 3, 2019 & February 5, 2019

T18-0089 MS/SK

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Rent Adjustment Program

Tenant Petition 8901

RENT ADJUSTMENT PROGRAM  
OAKLAND

Housing and  
Community  
Development

Case Number Not Assigned

Case Management

Applicant Information

Print/Oracle BI

Tenant Applicant  
joseph billingsley  
687 Apgar Street  
Oakland, CA 94609  
Phone: (510) 377-1924  
Email: jab@cvcorps.org

Resources

Filer  
joseph billingsley  
687 Apgar Street  
Oakland, CA 94609  
Phone: (510) 377-1924  
Email: jab@cvcorps.org

Public Dashboard

Rental Property Information

Type of unit you rent \*

Number of Units

Approximate range of units in the building

Are you current on your rent? Yes  No

Griffin, Debora... ▾

# Rent Adjustment Program

If you are not current on your rent, please explain.

(If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

Housing and Community Development

Case Management

Print/Oracle BI

Resources

Public Dashboard

## Rental History

When did you move into the unit?

Initial monthly rent

When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?

Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?

Yes  No

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?

Yes  No

Have you ever filed a petition for your rental unit?

Yes  No

Description of Decreased or Inadequate Housing Services:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

Mediation Requested

Yes  No

Save

Cancel

# Grounds for Petition

Add · Remove

Exemption Based on Fraud or Mistake

1 record

# Rent Increase

Add · Remove

<input type="checkbox"/>	NOTICE GIVEN	NOTICE DATE	EFFECTIVE	INCREASED FROM	INCREASED TO	CONTE
--------------------------	-----------------	----------------	-----------	-------------------	-----------------	-------

No tenant rental increment infoes to show...

0 records

# Loss of Services

Add · Remove

<input type="checkbox"/>	REDUCED SERVICE DESCRIPTION	ESTIMATED LOSS	NOTICE DATE	LOSS BEGAN ON DATE	DATE STAMP
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No tenant lost service infoes to show...

0 records

**For more information regarding the Rent Adjustment Program, Please contact: City of Oakland, Rent Adjustment Program, Dalziel Building 250 Frank H. Ogawa Plaza Suite -**

The following statement is submitted as an attachment to the Tenant Petition of Joseph A. Billingsley:

I. Grounds for Petition

1. 8.22.090 specifies that a tenant may file a petition regarding any of the following:

- d. The owner failed to give the tenant a notice in compliance with Section 8.22.060 and State law;
- e. The owner decreased housing services to the tenant;
- i. The petition is permitted by the Just Cause for Eviction Ordinance O.M.C. 8.22.300 or its regulations;
- k. Tenant contests an exemption from O.M.C. 8.22, Article I or Article II.

2. Joseph Billingsley (hereinafter "tenant") has resided at 687 Apgar, Oakland, CA 94609 over 20 years, since April 1996. Tenant is 66 years old.

3. I am informed and believe that among the purposes of the Rent Adjustment Ordinance are providing relief to residential tenants in Oakland by limiting rent increases for existing tenants; and reducing the financial incentives to rental property owners who terminate tenancies under California Civil Code Section 1946.

II. Rent Increase

1. Owner, Rosemary Marr (hereinafter "landlord") purchased the property in October 2017. On or about November 5, 2017 landlord presented a new rental agreement and informed tenant there will be an additional charge for garbage services. For the past 20 years garbage services had been provided without charge to tenant. Landlord subsequently withdrew the new rental agreement and served an eviction notice.

2. I am informed and believe that water damage and potential mold affects the health and safety of a dwelling and affects the rental unit's habitability. I am informed and believe said condition may constitute a decrease in housing services.

3. I am informed and believe that window-bars that cannot open are prohibited by the California Building Code and not consistent with the implied warranty of habitability. I am informed and believe that said condition may constitute a decrease in housing services.

4. I am informed and believe that Section 8.22.070 (F) provides that "A decrease in housing services is considered an increase in rent. I am informed and believe a tenant may petition for an adjustment in rent based on a decrease in housing services.

III. Improper Notice

1. I am informed and believe that Notice is required to increase rent or change other terms of a tenancy; and Notice of the existence of Oakland Municipal Code, Chapter 8.2. must be provided pursuant to Section 8.22.070 (H).

2. I am informed and believe landlord is required to obtain a certificate of exemption as determined by the Rent Adjustment Program pursuant to 8.22.030 (B).

3. I am informed and believe that landlord did not comply with 8.22.050 (A) that requires Notice at the Commencement of a Tenancy of the existence and scope of this chapter.

4. I am informed and believe all notices of eviction must include a statement describing the reason for the eviction and a statement saying that advice regarding the eviction notice is available from the Rent Board.

IV. Unlawful eviction

1. In November 2017 landlord informed me that she is taking over my unit so that she can collect a higher rent. This conversation took place almost immediately after I requested landlord to inspect potential mold and water damage in the 2<sup>nd</sup> bedroom.

2. I am informed and believe that all eviction notices must include grounds for eviction, and a statement that advice regarding eviction is available from the Rent Adjustment Program.
3. I am informed and believe that a copy of every eviction notice must be filed with the Rent Adjustment Program within 10 days after it is served on tenant.
4. I am informed and believe that landlords cannot evict tenants in retaliation for exercising a legal right such as raising concerns about the condition of the rental unit to the landlord, or to an appropriate public agency after giving the landlord notice. I am informed and believe that requests for landlord to attend to health and safety concerns such as suspected mold, leaks or water damage and the presence of window bars that are not equipped with state and local requirements for a safety release mechanism are an exercise of tenant's legal rights.
5. I am informed and believe that landlord's initial statement on or about November 10, 2017 that she intends to take over tenant's unit and collect a higher rent on the other unit is not a reflection of good faith, without ulterior reasons and with honest intent as required by 8.22.360 (A)9.
4. I am informed and believe that pursuant to 8.22.360 (A) 9 e. landlord may not recover possession of a unit from tenant under said section if landlord has or receives notice, at any time before recovery of possession, that tenant has been residing in the unit for five (5) years or more and is sixty (60) years of age or older. Tenant has resided at 687 Apgar, Oakland, CA 94609 over 20 years, and tenant is 66 years old.

V. Exemption

1. In a letter dated 12/2/17 landlord declared that "...my property's exemption from the (Just Cause for Eviction Ordinance) is in fact automatic via statute, and I believe does not require any further determination from Oakland's Rent Adjustment Program. This exemption became effective immediately upon my purchase of the property on October 11, 2017 since I was already utilizing a unit in the property as my primary residence prior to becoming owner of record."
2. I am informed and believe that landlord is not automatically exempt from complying with the Rent Adjustment Program, O.M.C. Chapter 8.22, Article I nor Just Cause for Eviction Ordinance, O.M.C. Chapter 8.22, Article II. Pursuant to 8.22.010 (F) an owner-occupied exemption should not take effect for one year after the landlord begins owner-occupancy. Landlord has only occupied the dwelling less than two months before moving to evict tenant.
3. I am informed and believe that for purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, the burden of proving and producing evidence for the exemption is on the owner as required by 8.22.030 (B) 1.c.
4. Landlord has occupied her unit as an owner since October 2017, only one month prior to giving an eviction notice to tenant. I am informed and believe landlord is not entitled to an automatic exemption from the Just Cause for Eviction Ordinance merely because one of the units is occupied by landlord as her principal residence. I believe that owner-occupied properties divided into three or fewer units are not exempt unless the qualifying owner of record continuously occupies one of the units as her principal residence for at least two years pursuant to 8.22.030 (D) 1.

I declare under penalty of perjury pursuant to the laws of the State of California that everything stated in this petition is true except as to those matters stated upon information and belief, as to those matters I believe them to be true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

owner response

City of Oakland  
Rent Adjustment Program

VMS

Case T18-0089

Property Address

Owner Rosemary Marr  
689 APGAR AVE  
Oakland, CA 94609  
(510) 978-1706

Tenant Joseph Billingsley  
687 Apgar Street  
Oakland, CA 94609  
(510) 377-1924  
jab@cvcorps.org

RECEIVED

APR 22 2018

RENT ADJUSTMENT PROGRAM  
OAKLAND

Date of which you aquired the building 11-11-2017

Total Number of Units 2

Is there more than one street address on the parcel? Yes

Type of Unit Apartment,  
Room or Live-work

Is the contested increase a capital improvements increase? No

City of Oakland  
Rent Adjustment Program

Case T18-0089

Property Address

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**Rent History**

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The tenant moved into the rental unit on

Initial monthly rent 1125

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to all of the petitioning tenants? Yes

On what date was the notice first given? 11-5-2017

Is the tenant current on the rent? Yes

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**Rent Increase**

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City of Oakland  
Rent Adjustment Program

Case T18-0089

Property Address

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**Exemption**

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The unit is a single family residence or condominium exempted by the Costa Hawkins Rental Housing Act (California Civil Code 1954.50, et seq.). If claiming exemption under Costa-Hawkins, please answer the following questions: No

The rent for the unit is controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance. No

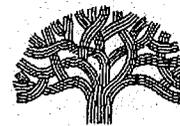
The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983. No

On the day the petition was filed, the tenant petitioner was a resident of a motel, hotel, or boarding house for less than 30 days. No

The subject unit is in a building that was rehabilitated at a cost of 50% or more of the average basic cost of new construction. No

The unit is an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory owned and operated by an educational institution. No

The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year. Yes



250 FRANK OGAWA PLAZA, SUITE 5313  
OAKLAND, CA 94612

CITY OF OAKLAND

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
TDD (510) 238-3254

### HEARING DECISION

**CASE NUMBER:** T18-0089, Billingsley v. Marr

**PROPERTY ADDRESS:** 687 Apgar Ave, Oakland, CA

**DATE OF HEARING:** July 10, 2018

**DATE OF DECISION:** September 12, 2018

**APPEARANCES:** Joseph Billingsley, Tenant  
Rosemary Marr, Owner

### SUMMARY OF DECISION

The tenant petition is granted in part.

### INTRODUCTION

The tenant filed a petition on January 4, 2018, which alleges that he suffered a decrease in housing services when the owner sought to have him pay for garbage fees; that there was water damage to the building causing mold; and that there were window bars on his window that could not be opened.

The owner filed a response to the petition and claimed that the unit is exempt from the Ordinance because it is located in a building with three or fewer units and the owner has occupied one of the units as her principal residence and has done so continuously for at least one year.

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## THE ISSUES

1. Is the unit exempt from the Rent Adjustment Ordinance because it is a property that consists of three or fewer units and the owner has continuously resided in one of the units for at least two years?
2. When, if ever, was the form *Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice)* first served on the tenant?
3. Does the RAP program provide a remedy for damages arising from being forced to leave his unit?
4. Can the tenant raise a claim that was not stated on his petition or accompanying documents?
5. Have the tenant's housing services decreased, and if yes, in what amount?
6. Under the circumstances of this case, what remedy is available to the tenant?

## EVIDENCE

Rental History: The owner testified that she has owned the subject building since October 11, 2017. The building is a duplex. She moved into one of the units of the building in July or August of 2016, when her former husband, Jonathan Hunt, Sr, owned the property. Mr. Hunt had purchased the property many years earlier.

After the Hearing, she produced a *Deed of Trust* showing that she purchased the building on October 6, 2017.<sup>1</sup> She also produced an *Alameda County Property Tax Statement* showing that she owns the property and takes a homeowner's exemption.<sup>2</sup>

The tenant testified that he lived in a rental unit at 687 Apgar beginning in 1996 through February 2018. The owner resides in the unit at 689 Apgar, the upstairs unit on the premises. He agreed with the owner's testimony as the approximate date she moved into the building.

The parties agree that the tenant was served with the *RAP Notice* from the current owner on November 6, 2017. The tenant testified that he never received the *RAP Notice* from the prior owner.

In December of 2017, the owner served a *60 Day Notice* on the tenant requiring him to move out of the unit. She told him that she was evicted him because she could charge more rent to another tenant.

Until he moved out, he was paying \$1,125 a month. The tenant moved out on February 15, 2018. The parties agree that the tenant paid all rent owed through his move out date.

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<sup>1</sup> Exhibit 2

<sup>2</sup> Exhibit 2

Decreased Services:

Garbage charges: The tenant testified that after Ms. Marr became the owner of the building, in November of 2017, she provided him a new lease to sign which would have required him to pay for garbage charges. He had never paid for garbage with the prior owner. Despite her request, he never paid the current owner for garbage charges.

Water damage and mold: The tenant testified that the second bedroom window had an ongoing leak over the years that caused mold in the window area of that room and on the wall below the window. The leak was from the top of the window. The water would pool on the window sill when it was raining. He complained to the prior owner at least two years prior to Ms. Marr purchasing the property. He does not know if the prior owner took any action, but there was no change in the condition in the unit. The tenant did not bring any photographs showing the extent of the damage.

The tenant further testified that he showed the water damage and mold to Ms. Marr in November of 2017, and she took action to clean up the mold within a few weeks of him showing it to her. The bedroom at issue is not the bedroom in which the tenant sleeps. He uses it for his son when his son visits and as a guest room. The mold had existed for a period of many years, and the tenant would clean it episodically but the mold would return.

At the Hearing, the owner produced a photograph on her telephone of the mold condition in the bedroom. The tenant testified that the photograph did not adequately represent the mold because it left out the damage on the right side of the window. Both parties were given an opportunity to produce photographs after the Hearing showing the condition. The owner produced the photograph that she had shown at the Hearing.<sup>3</sup>

The owner testified that she had never seen the downstairs unit prior to her purchase of the building. She saw the unit for the first time on November 10, 2017, and was shown the mold in the bedroom. She cleaned the mold condition right away once she was notified about the problem. Since she knew the tenant was moving out, she waited to investigate the leak once he left the unit.

Window bars: The tenant testified that the prior owner installed window security bars in the 1990s that cannot be opened from the inside after the tenant had a break in. The tenant did not complain about this condition until after Ms. Marr purchased the property because the tenant did not realize that he could not open the bars. The bars were still present when he moved out of the unit. He complained to Ms. Marr about this condition in November of 2017.

The owner testified that the tenant did not bring the security bars to her attention until December of 2017. In response, she wrote to the tenant and told him that she would remove the bars, but did not intend to replace them with any other security bars.

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<sup>3</sup> Exhibit 1

She asked him to respond in writing if he wanted the security bars removed. He did not respond.

Unpermitted water heater: The tenant sought to bring forth a claim about an unpermitted water heater. He had not raised this issue in his petition.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Is the Unit Exempt from the RAP as an Owner Occupied Duplex or Triplex?**

The Oakland Rent Adjustment Ordinance<sup>4</sup> states:

“A. . . The following dwelling units are not Covered Units<sup>5</sup> for the purposes of this Chapter....

8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an Owner of Record as his or her principal residence. For purposes of this section, the term Owner of Record shall not include any person who claims a homeowner’s property tax exemption on any other real property in the State of California.”

Additionally, Section 8.22.030 (D) states that “units in owner-occupied properties divided into three or fewer units will be exempt .... under the following conditions:

1. . . A qualifying Owner of Record must first occupy one of the units continuously as his/her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016. . .
2. . . The owner-occupancy exemption continues until a qualifying Owner of Record no longer continuously occupies the property. . .

For those owners who have resided in their units before August 1, 2016, the old Ordinance applies. That Ordinance only required the owner to live in the unit for one year before the unit is exempt from the Ordinance.

The evidence established that Ms. Marr did not become the owner of the property until October of 2017. Her residency, for purposes of the exemption, begins on that date, since you can only have an exemption once you become an owner of the property. Therefore, for the purposes of the Rent Adjustment Ordinance, the unit is not exempt from the program until October of 2019.

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<sup>4</sup> O.M.C. Section 8.22.030

<sup>5</sup> A “Covered Unit” is a rental unit that is not exempt from the Rent Ordinance (O.M.C. Section 8.22.020).

**When, if ever, was the form *Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice)* first served on the tenant?**

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy<sup>6</sup> and together with any notice of rent increase or change in the terms of a tenancy.<sup>7</sup> An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.<sup>8</sup> The owner has the burden of proving that the *RAP Notice* was served.<sup>9</sup>

The tenant credibly testified that he did not receive the *RAP Notice* until November of 2017, when he was given one by Ms. Marr. The owner did not cross-examine the tenant on this issue. It is determined that the tenant was first served the *RAP Notice* in November of 2017.

**Does the RAP program provide a remedy for damages arising from being forced to leave his unit?**

The Rent Adjustment Ordinance provides a system for tenants to object to rent increases and to claim decreased housing services. It also provides a procedure for owner's to receive prior approval of allowable rent increases. However, it does not provide a remedy for being forced to leave a unit based on an allegedly wrongful *60 Day Notice* requiring him to leave the unit.

Therefore, the tenant's petition, to the degree it was seeking to make a claim for being required to move out of the unit, is denied.

**Can the tenant raise a claim that was not present on his petition?**

At the Hearing, the tenant sought to raise a claim about a water heater that had been installed without a permit. There was no reference to the water heater on the tenant's petition or accompanying documents. Due process requires that for any claim being made, notice must be given to the owner. Since there was no notice about this claim, it cannot be raised.

**Have the tenant's housing services decreased, and if yes, in what amount?**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>10</sup> and may be corrected by a rent adjustment.<sup>11</sup> However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

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<sup>6</sup> O.M.C. § 8.22.060 (A)

<sup>7</sup> O.M.C. § 8.22.070(H)(1)(A)

<sup>8</sup> O.M.C. § 8.22.060 (C)

<sup>9</sup> Housing, Residential, Rent and Relocation Board Decision in *Thompson et al v. Peper*, T05-0317

<sup>10</sup> O.M.C. § 8.22.070(F)

<sup>11</sup> O.M.C. § 8.22.110(E)

In a decreased housing services case a tenant must establish that he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to relief, unless the owner has actual knowledge of the problem. Additionally, there is a time limit for claiming decreased housing services. Once the tenant is served with a *RAP Notice*, a tenant petition must be filed within 90 days after the decrease in service begins, unless it is for an ongoing condition.<sup>12</sup>

However, where no *RAP Notice* has been served within 90 days of the day the tenant files his petition, the tenant is entitled to restitution for problems in his unit for up to three years. While it was originally a prior owner who failed to take the appropriate action to serve this tenant with a *RAP Notice*, the failure of the old owner is attributable to the new owner and the new owner stands in the shoes of the prior owner.<sup>13</sup>

Water damage and mold: The tenant established that there was an ongoing leak in his second bedroom causing damage to the window and a mold condition and that he complained about this problem to the prior owner, who did not take adequate action. However, the use of this room was limited to the times the tenant's son would come visit to stay overnight. Therefore, the tenant is entitled to restitution of overpaid rent for this condition, beginning three years prior to the date he filed his petition until it was repaired by the current owner in November of 2017. Because of the irregular use of the room, the tenant is entitled to restitution of 2% of the rent. See chart below.

Window bars: Security bars that do not release are a fire hazard. The prior owner installed these bars, and therefore, was on actual notice about the condition. The tenant is entitled to a 3% restitution for this condition, beginning three years prior to the date he filed his petition, until he moved out of the unit. See chart below.

### **Under the circumstances of this case, what remedy is available to the tenant?**

The chart below shows that the tenant has overpaid rent of \$2,070 based on conditions. The jurisdiction of the RAP limits the authority of the Hearing Officers to set forth the legal rent for the unit; no orders of direct restitution may be made other than reducing the rent in the future.

There is no rent being paid from which to deduct the restitution owed to the tenant. If the tenant wishes to pursue this matter further, he may file a claim in a court of competent jurisdiction.

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<sup>12</sup> O.M.C. § 8.22.090A(3)

<sup>13</sup> Section 8.22.020 of the Rent Adjustment Ordinance defines "Owner" as the "Owner . . . of a Covered Unit that is leased or rented to another, and the representative, agent or successor of such owner . . ." (emphasis added).

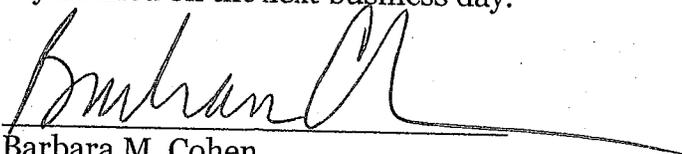
Regulation 2.3 defines "Landlord" as "synonymous with owner or lessor of real property . . . or successor of such owner or lessor." (emphasis added).

Service Lost	VALUE OF LOST SERVICES				Decrease /month	No. Months	Overpaid
	From	To	Rent	% Rent Decrease			
Leak and Mold	4-Jan-15	15-Nov-17	\$1,125	2%	\$ 22.50	35	\$ 787.50
Window Bars	4-Jan-15	15-Feb-18	\$1,125	3%	\$ 33.75	38	\$ 1,282.50
<b>TOTAL LOST SERVICES</b>							<b>\$ 2,070.00</b>

**ORDER**

1. The tenant's petition is granted in part.
2. The tenant has overpaid rent totaling \$2,070 based on the owner's failure to repair the property as required.
3. Since the tenant has vacated the unit and is no longer paying rent, there is no way for the RAP to provide a remedy in this matter. If the tenant wishes to pursue this further, he can file a claim in a court of competent jurisdiction.
4. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: September 12, 2018

  
 Barbara M. Cohen  
 Hearing Officer  
 Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T18-0089**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

**Documents Included**  
Hearing Decision

**Owner**  
Rosemary Marr  
689 Apgar Street  
Oakland, CA 94609

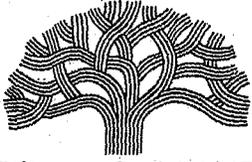
**Tenant**  
Joseph Billingsley  
201 13th Street, #1931  
Oakland, CA 94612

Joseph Billingsley  
687 Apgar Street  
Oakland, CA 94609

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 06, 2018 in Oakland, CA.

  
\_\_\_\_\_  
Maxine Visaya  
Oakland Rent Adjustment Program



CITY OF OAKLAND

**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

RECEIVED  
NOV 26 2018  
RENT ADJUSTMENT PROGRAM  
**OAKLAND APPEAL**

Appellant's Name <b>ROSEMARY MARR</b>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <b>687 APGAR ST, OAKLAND, CA 94609</b>			
Appellant's Mailing Address (For receipt of notices) <b>689 APGAR ST. OAKLAND, CA 94609</b>		Case Number <b>T18-0089</b>	Date of Decision appealed <b>SEPTEMBER 12, 2018</b>
Name of Representative (if any) <b>N/A</b>		Representative's Mailing Address (For notices) <b>N/A</b>	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):

- a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
- b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
- c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
- d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
- e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must not exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: \_\_\_\_\_.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on NOVEMBER 21, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	JOSEPH BILLINGSLEY
<u>Address</u>	201 13TH ST., #1931
<u>City, State Zip</u>	OAKLAND, CA 94612
<u>Name</u>	RENT ADJUSTMENT PROGRAM
<u>Address</u>	250 FRANK OGAWA PLAZA, STE. 5313
<u>City, State Zip</u>	OAKLAND, CA 94612

<u>Rosemary Mann</u>	<u>11/21/18</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

## **I Introduction**

I, Rosemary Marr, the landlord in this matter, am providing this statement of Appeal.

Specifically, I am appealing the decisions pertaining to the following:

- 1. Timely Service of the RAP Notice in Relationship to Tenant Petition Filing**
- 2. Allegations of an Ongoing Mold Condition not Abated by Prior Owner**
- 3. Allegations of an Illegally installed Window Bar by Prior Owner**

This Appeal will not address the issue of any findings of RAP exemptions of landlord because I do not recall making a claim of exemption in this regard. My only claim to exemption and expressed to the tenant was my exemption from the Just Cause Ordinance because of my status as a landlord living in a duplex attached to the rental unit in question.

## **II Timely Service of the RAP Notice in Relationship to Tenant Petition Filing**

### **1. Hearing Decision Findings**

*"However, where no RAP Notice has been served within 90 days of the day the tenant files his petition, the tenant is entitled to restitution for the problems in his unit for up to three years."*

### **2. Challenges to Findings**

- The RAP Notice was served upon tenant on November 5, 2017. The tenant filed his petition on January 4, 2018. This means that the RAP Notice was served on the tenant at about the 60 day point prior to the tenant filing his petition - and certainly within the 90 day required period.
- The service of the RAP Notice is Stipulated in the Decision:
  - (1) *"The parties agree that the tenant was served with the RAP Notice from the current owner on November 6, 2017."*

(2) *"The tenant credibly testified that he did not receive the RAP Notice until November of 2017, when he was given one by Ms. Marr . . . It was determined that the tenant was first served the RAP Notice in November of 2017."*

- Regardless of the date in November 2017, a RAP Notice was in fact served on tenant within 90 days of the day he filed his petition on January 4, 2018. And, tenant filed his petition within 90 days of receipt of the RAP Notice from me.
- The time prescribed to serve a RAP Notice is not like a statute of limitations, where a claim might not survive absent certain procedure. Rather, the RAP Notice requirement applies to the Petition, not the underlying allegations.
- If my position is correct, I should not be held responsible for making restitution to the tenant for the alleged problems in his unit for up to three years.

#### **4. Grounds for Appeal**

The decision is not supported by the evidence or law. Moreover, it contradicts two key dates stipulated in the Decision: November 5, 2017 - the date the tenant was served with the RAP Notice and January 4, 2018 - the date the tenant filed his petition.

### **III Allegations of an Ongoing Mold Condition Not Abated by Prior Owner**

#### **1. Hearing Decision Findings**

*"The tenant established that there was an ongoing leak in his second bedroom causing damage to the window and a mold condition and that he complained about this problem to the prior owner, who did not take adequate action. However, the use of this room was limited to the times the tenant's son would come visit to stay overnight. Therefore, the tenant is entitled to restitution of overpaid rent for this condition beginning three years prior to the date he filed his petition until it*

*was repaired by the current owner in November of 2017. Because of the irregular use of the room, the tenant is entitled to restitution of 2% of the rent."*

## **2. Challenges to Findings**

I disagree that the tenant "established" the above-referenced conditions and would be curious about the basis of making the claim that he did. I also do not believe that the tenant made numerous complaints to the prior owner concerning same as he alleged, for the following reasons:

- a. The only proof tenant provided of these allegations at the hearing was his vague, oral testimony. The following are examples of his oral testimony as documented in the Decision:

- *"The tenant testified that the second bedroom window had an ongoing leak over the years that caused mold in the window area of that room and on the wall below the window."*
- *"The mold had existed for a period of many years, and the tenant would clean it episodically but the mold would return."*
- *"He complained to the prior owner at least two years prior to Ms. Marr purchasing the property. He does not know if the prior owner took any action, but there was no change in the condition of the unit."*

In the last statement made above, the tenant seems to acknowledge that the last complaint made to the prior owner concerning the alleged mold condition was made two years prior to my purchasing the property. His statement that he did not know if the prior owner took any action also means that the prior owner may have taken action. And if there was no change in the condition of the unit and the tenant failed to provide notice of the subsequent problem, the tenant then becomes responsible for the problem.

- b. The tenant did not establish the basis for any actual damages or losses as a result of the alleged mold condition, that existed for many years. He did not address any damages (amounts) arising from this alleged condition or establish how he suffered any losses of the use of his unit, in his Petition or in his testimony during the hearing.

There were no allegations of medical complications for him or his son, nor was there any discussion around loss of furniture and personal items. I was under the impression that in this type case, actual damages or proof of loss must be established in order to award restitution. Therefore, I am at a loss as to why any restitution is being made in this matter.

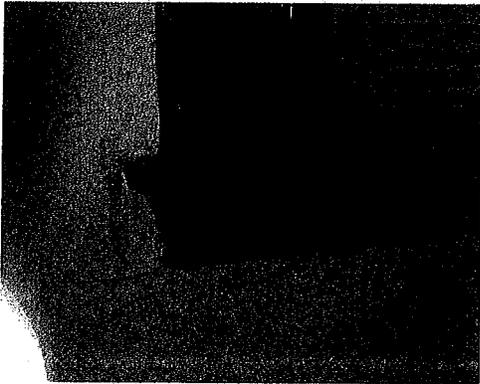
The finding that the bedroom in question had "irregular use" suggests that it was not an essential service and therefore, no services were reduced. The son, who is approximately 30 years old, has his own residence away from the tenant's unit. He rarely visited the property while I was living there and virtually never spent the night there based on my observations and knowledge.

- c. The tenant has never provided any of the following documentation, of which, any combination thereof could be considered substantial evidence in supporting his claims of an ongoing mold and leaky window condition:

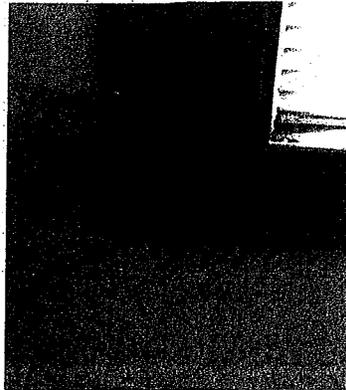
- **Photographs:** The Decision erroneously states that the tenant did not provide any photographs showing the extent of the mold damage: *"The tenant did not bring any photographs showing the extent of the damage."* However, the Decision correctly states

that I shared a photograph of same on my cell phone at the hearing. The following are photographs from both parties that were submitted to the Hearing Officer via email, after the hearing and upon her request.

Note: Larger photographs of same are attached. (Exhibit #1)



**Landlord Photo Submitted on 7/10/18**



**Tenant Photo Submitted on 7/15/18**

Although both photographs are virtually identical, the tenant denied that the photograph on my cell phone which I showed at the hearing (the same one here) accurately showed the extent of the mold damage as stated in the Decision: *"At the Hearing, the owner produced a photograph on her telephone of the mold condition in the bedroom. The tenant testified that the photograph did not adequately represent the mold because it left out the damage on the right side of the window. Both parties were given an opportunity to produce photographs after the Hearing showing the condition."*

During the hearing, the tenant testified that the wall to the left of the window was covered in mold, but failed to later produce a photograph to show same. Tenant had the opportunity to submit photographs showing the current mold damage to his rental unit beyond what I submitted and

was not able to produce any photographs to support the claim of mold damage beyond the small area underneath the window, documented in both photographs.

Moreover, tenant failed to provide, or offer to provide, photographs documenting any other mold conditions that he allegedly complained about over "many years" to the prior owner and that the prior owner failed to remedy.

In my opinion, the relatively small amount of what might be mold - again identical in both photographs - does not support the claim of a serious mold condition that has been ongoing for "many years." And certainly the amount of mold depicted in these two photographs would not motivate a reasonable landlord to retaliate against a tenant for bringing it to their attention - as alleged by the tenant in his petition.

- Tenant failed to provide any written correspondence between himself and the prior owner to document any written complaints to the prior owner concerning a mold condition or leaky window, over a period of "many" years.
- Tenant failed to provide any recordings between himself and the prior owner concerning a mold condition or leaky window, over a period of "many" years.
- Tenant failed to get any written documentation from the prior owner to substantiate an ongoing mold condition or leaky window, over a period of "many" years.
- Tenant failed to provide copies of any complaints made against the prior owner concerning a mold condition, i.e., City of Oakland Code Enforcement, health department, RAP petition against prior owner, etc., over a period of "many" years.
- Tenant failed to provide any official inspection reports and/or findings documenting the presence of mold or an ongoing mold condition, over a period of "many" years.

- Tenant failed to provide any medical reports for himself or his son who occasionally visited him, documenting any medical complications, as a result of the alleged ongoing mold condition, over a period of "many" years.
- Tenant failed to provide any recordkeeping of dates mold condition and/or leaky window complaints were made and the specific nature of such complaints to prior owner, including a date the problem began, subsequent dates the same problem was reported to the prior owner, and a record of how the prior owner responded each time, over a period of "many" years. (This information was also omitted from his Petition form.)
- Tenant failed to provide any receipts and/or paid invoices for supplies and materials he may have purchased to clean the mold "episodically" when the prior owner failed to do so, over a period of "many" years.
- Tenant did not provide any written lease between him and the prior owner to document how repair issues in the unit would be addressed, i.e., manner of reporting, time considerations, other terms, etc.
- Tenant made absolutely no reference to any ongoing mold condition or leaky window problems he suffered over a period of "many years" and was never remedied by the prior owner, in his initial RAP petition or any written correspondence to me.
- Tenant has not claimed any actual damages or proven losses throughout this procedure, to date.

There is also the skeptical manner in which the tenant presented his claims of an ongoing mold problem, in both his initial reference of mold in the second bedroom to me, as well as how he presented it in his initial RAP petition. Note his characterization of the mold:

- *"I would like to make sure the spots & discoloration by the window is not mold."*  
(Tenant letter to current landlord, dated 11/6/17 - Exhibit #2)
- *"I am informed and believe that water damage and POTENTIAL mold affects the health and safety of a dwelling and affects the rental unit's habitability."*  
(Tenant petition - Section II - 2, dated 1/4/18)
- *"This conversation took place almost immediately after I requested landlord to inspect POTENTIAL mold damage in the 2nd bedroom."*  
(Tenant petition - Section IV - 1, dated 1/4/18)
- *"I am informed and believe that requests for landlord to attend to health and safety concerns such as SUSPECTED mold . . ."*  
(Tenant petition - Section IV - 4, dated 1/4/18)

It makes no sense for someone to claim that they have been subjected to an ongoing mold condition for many years and without relief, but would now characterize the mold as "potential", "suspected", or makes a request of a new landlord to "make sure the spots & discoloration by the window is not mold." And nowhere in his petition or in any correspondence to me does the tenant make a single reference to an ongoing mold condition that he had to endure for many years under the prior owner.

These skeptical characterizations of the substance illustrates 1) that the tenant is not sure if the substance is mold and 2) tenant never sought to confirm if the substance was mold which could have been determined at no expense to the tenant via an inspection by the appropriate government agency. His failure to do so, at any point over the "many" years he alleged he suffered through this condition, suggests that his concerns of health and safety as stated in his petition, are disingenuous.

Furthermore, if the tenant had in fact been dealing with a bona fide mold condition for "many" years and to the extent he claims - he would "definitively know" and not "merely suspect" that the substance was mold. For all we know, the few spots depicted in the previous photographs could be mildew since the tenant never had the substance investigated by an appropriate government agency and out of concern for his personal safety and health.

I contacted the prior owner and requested that he provide a written statement about the allegations of ongoing mold, leaky window, and illegal window bars. (Exhibit #3) The prior owner is my ex-husband but also a close friend of the tenant, for over 20 years. In said statement, the prior owner denies that there was any ongoing mold or leaky window issues in tenant's second bedroom that was brought to his attention by the tenant. Further, he denies that he failed to promptly and effectively remedy any and all problems brought to his attention by the tenant during his tenancy.

### **3. Grounds for Appeal**

This decision is not supported by evidence or law, on three specific points:

- (1) Tenant Petition filed within 90 days of receipt of the RAP Notice
- (2) No harm to or notice from tenant, makes the 2% for the restitution of rent arbitrary.

Basic legal principle is that, for restitution to be given, there must be actual damages or losses.

- (3) Lack of substantiating evidence.

## **IV Allegations of an Illegal Window Bar Installed by Prior Owner**

### **1. Hearing Decision Findings**

*"Security bars that do not release are a fire hazard. The prior owner installed these bars, and therefore, was on actual notice about the condition. The tenant is entitled to a 3% restitution for this condition, beginning three years prior to the date he filed his petition, until he moved out of the unit."*

### **2. Challenges to Findings**

The matter of dispute is not if security bars that do not release are a fire hazard. The question is if the prior owner installed a window bar that does not have a release was deemed illegal at the point of installation.

- SB1405 (Health and Safety Code 13114.2): *"Prohibits the installation of unopenable bars, under any condition, where prohibited by the California Building Code after July 1, 1998."*
- Therefore, if the prior owner installed unopenable window bars prior to July 1, 1998, the window bar was installed legally. If the window bars were installed legally, i.e. prior to SB1405, the prior owner was not required to give any notice to tenant.
- The tenant had the burden of proof to establish if the window bar was installed before or after July 1, 1998. Per the Decision, the tenant moved into the unit some time in 1996.
- Tenant testified that he requested to the prior owner that a window bar be placed on a specific window after his unit was broken into. The tenant did not provide the requested "loss began on date" in his Petition to document the date the window bar was installed. Therefore, it cannot be determined if the window bars were installed legally or illegally.
- The Decision states: *"The tenant testified that the prior owner installed window security bars in the 1990s that cannot be opened from the inside after the tenant had a break in."*

- Stating that the window bar was installed in the 1990s is not sufficient evidence to determine if the window bar was installed legally or illegally.
- The tenant could have provided a police report of the break in to determine an estimated year and month the window bar was installed. Without such documentation and given the fact that this break in happened approximately 20 years or more ago, the tenant is unable to prove if the window bar was installed illegally.
- The Decision states: *"The tenant did not complain about this condition (unopenable window bar) until after Ms. Marr purchased the property because the tenant did not realize that he could not open the bars."* (I believe that the tenant's testimony at the hearing was quite different. I am in the process of obtaining a copy of the hearing transcript to review.)
- Pursuant to the statement provided by the previous owner, he paid a contractor to go to the unit to install a window bar on one window. He further states that he was not present for the installation but that the tenant was at the unit to supervise and approve the installation. Therefore, the prior owner was not necessary *"on notice about the condition"* as stated in the findings. That determination was pure speculation.
- The Decision states: *"He (tenant) complained to Ms. Marr about this condition (uopenable window bar) in November of 2017."*
- Factually, the tenant first raised this issue with the new owner in an email to her dated 12/11/17. (Exhibit #4) In the email the tenant states: *"I also have other health and safety concerns. 1) The bars on the back bedroom window do not open. Please replace the illegal bars with approved quick release bars. 2) The water heater sounds funny. I don't believe the proper permits were obtained before doing the work."*

- Again, the window bar in question cannot be deemed illegal unless the tenant provides definitive proof that it was installed after July 1, 1998.
- The only discussion the tenant had with me about the window bar is the previous two sentence statement contained in his 12/11/17 email. The only remedy the tenant requested was to replace the current bars with approved quick release bars.
- In a letter to tenant, dated 12/12/17, the current owner advised the tenant that she would remove the unopenable window bar but only if the tenant authorized her to do so in writing. He did not and the window bar was not removed.
- If the current window bar was installed prior to July 1, 1998, a landlord is not required to replace it with quick release bars. The removal of the current bar would be considered reasonable remedy because it removes the fire hazard. Also, it is my understanding that landlords have no statutory duty to provide any windows bars, but are required to provide an operable lock on the window - which the window has.
- Had the tenant expressed a concern about protecting his unit from potential break ins, I would have entertained a discussion around alternative security measures - but he never did. In the 1990s, North Oakland (Ghost Town) was experiencing much higher crime as a result of crack cocaine, gang activity, etc., and window bars were common. I would have offered tenant some alternative, more contemporary form of home security after the removal of the window bar, had he raised that concern.

### **3. Grounds for Appeal**

The tenant failed to provide any substantial evidence to show that the window bar was installed illegally. Because the tenant failed to provide a definitive date of the window bar installation, it cannot be determined if the window bar is legal or illegal. Therefore, the current owner should not have to pay three years restitution to the tenant based on the window bar.

And because the current landlord offered to remedy the "fire hazard" by removing the unopenable window bar, the tenant should not be entitled to any financial relief in this circumstance.

## **V Other Grounds for Appeal**

In addition to the grounds for appeal previously stated herein, there are other legitimate grounds for appeal that should be considered in this matter:

### **1. Tenant Petition is Substantially Incomplete and Should Have Been Dismissed**

Pursuant to RAP Regulations, Section 8.22.080 B (1b), *A tenant petition "is not considered filed until, among other things, "A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath."*

According to the RAP Petition completed and submitted online, the tenant submitted information contrary to his testimony in his petition statement and at the Hearing. The following are some questions asked in the petition form prescribed by RAP, and his responses:

- *Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program? (Yes)*
- *Have you ever filed a petition for your rental unit? (No)*
- *Have you lost services originally provided by the owner or have the conditions changed? (No)*
- *Are you claiming any serious problem(s) with the condition of your rental unit?  
(No)*

Pursuant to RAP Regulations, Section 8.22.080 B (1c), *"For Decreased Housing Services claims, organized documentation clearly showing the Housing Services decreases claimed and*

*the claimed value of the services, and detailing the calculations to which documentation pertains."*

The petition submitted by tenant failed to meet this standard:

**(1) Tenant submitted no documentation supporting the Housing Services decreases claimed.**

In his two page, disorganized and single-spaced petition statement, tenant rambled about a myriad of issues, but primarily addressed Just Cause Eviction issues. However, the only discussion about decreased housing services pertaining to the mold and window bar, are limited to the following two statements, listed in Section II, under Rent Increase:

- *"I am informed and believe that water damage and POTENTIAL mold affects the health and safety of a dwelling and affects the rental unit's habitability. I am informed and believe said condition may constitute a decrease in housing services."*
- *"I am informed and believe that window-bars that cannot be opened are prohibited by the California Building Code and not consistent with the implied warranty of habitability. I am informed and believe said condition may constitute a decrease in housing services."*

**(2) Tenant's Petition Omitted Critical Information Needed to Substantiate and Evaluate His Claim**

Tenant failed to provide any information regarding the *claimed value of the services* in the Loss of Services section (on the petition form prescribed by RAP) that sought specific information such as *"reduced service description," "estimated loss," "notice date,"* and *"loss began on date."* These areas were left blank. And because tenant provided no documentation to support his claims, he also did not provide any information *detailed the calculations to which documents pertain.*

Pursuant to the Rent Adjustment Ordinance, Section 8.22.110, F (1a), *"Notwithstanding the acceptance of a petition or response by the Rent Adjustment Program, if any of the following exist, a hearing may not be scheduled and a Hearing Officer may issue a decision without a hearing: The petition or response forms have not been properly completed or submitted."*

It is materially significant to note that the tenant is a former practicing attorney in California. He graduated from the University of San Francisco School of Law and was admitted to the State Bar of California on May 31, 1979. He practiced law for approximately 16 years, until July 31, 1995, when he was suspended for Child and Family Support Non-Compliance and Failure to Pay Bar Member Fees. On October 15, 1999, he resigned from the Bar with charges pending.

Because of tenant's significant legal background, he clearly had the capacity to thoroughly and accurately complete the petition form prescribed by the RAP Adjustment Program. He also held the capacity to better organize and discuss his claims in his petition statement, submit the supporting documentation necessary to prove his claims, and to determine and state the value of his claims (damages and losses). And certainly, his formal experience as a former attorney would have suggested to him the importance of submitting a completed and organized petition, along with supporting documentation.

I reiterate that the tenant's petition grossly failed to meet RAP standards and should not have ever reached the point of adjudication.

### **(3) Bad Faith and Disingenuity on Behalf of Tenant**

Tenant was presented with a month-to-month lease from new owner on November 5, 2017 which was never signed by tenant. However, tenant responded in writing the following day, November 6, 2017. The only reference to any issues with the unit at that point was a reference to mold: *"As I mentioned the window in the back bedroom leaks from time to time. I would like to make sure the spots & discoloration by the window is not mold."* (Exhibit #2)

I also believe that the virtually identical photographs submitted by tenant and landlord, previously included herein, speaks volumes. These photographs are not indicative of an unabated mold problem spanning many years. And it is incredulous to believe that a tenant had been living with an unopenable window bar on a bedroom window for approximately 20 years but only discovered it did not have a quick release mechanism, a month after he received a 60 Day Notice to Vacate from new owner.

Whereas tenant's formal legal training did not serve him well in preparing his Petition and supporting documentation, it was certainly helpful in researching health and safety, compliance, and building codes to fabricate claims of the unit being uninhabitable.

Over a month after the service of the 60 Day Notice to Vacate and the likelihood that he would be required to legally vacate, tenant submitted an email dated December 11, 2017 expressing concerns about the window bar and a water heater that he believed was installed without a permit. (Exhibit #4) I believe that the tenant only raised those additional concerns to fabricate a case of the unit being uninhabitable and perhaps with the hope of being allowed to remain in the unit.

#### **(4) Inappropriate Ex-Parte Communication with Hearing Officer**

I have some concern about tenant's inappropriate ex-parte communication with the Hearing Officer, when he was asked to remain behind for some reason I do not recall, after the hearing was concluded and I was dismissed. I am not necessarily suggesting any impropriety; however, I obviously have no knowledge of what subsequent discussions concerning this matter may have occurred.

#### **VI Conclusion**

Frankly and respectfully, the decision made in this case is simply a bad decision, and one that if allowed to stand would be a travesty of justice, based the entirety of this Appeal, and including the following::

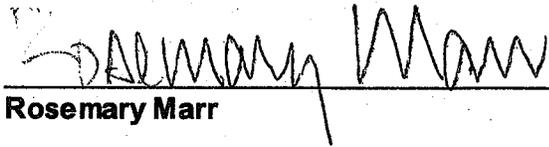
1. Tenant, a former California attorney and presumably armed with superior knowledge of the law and experience in completing legal forms, submitted an incomplete, inferior petition. Under RAP Regulations, his petition should have been dismissed prior to a hearing.
2. Tenant clearly failed to provide the necessary information to determine the value of his claims or even to describe or substantiate the claims he made. Absent of this information, the Hearing Officer determined his claims and the value of those claims, on his behalf during the hearing. In any tribunal, it is the duty of the petitioner to identify and establish the basis for his claims, his actual damages and losses, and the baseline value of those damages - not the tribunal.
3. The incomplete and vague manner in which the tenant prepared his petition along with the lack of any supporting documentation, put me at a disadvantage during the hearing

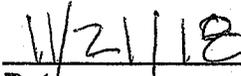
because issues discussed at the hearing were raised by the Hearing Officer and not discussed in the petition.

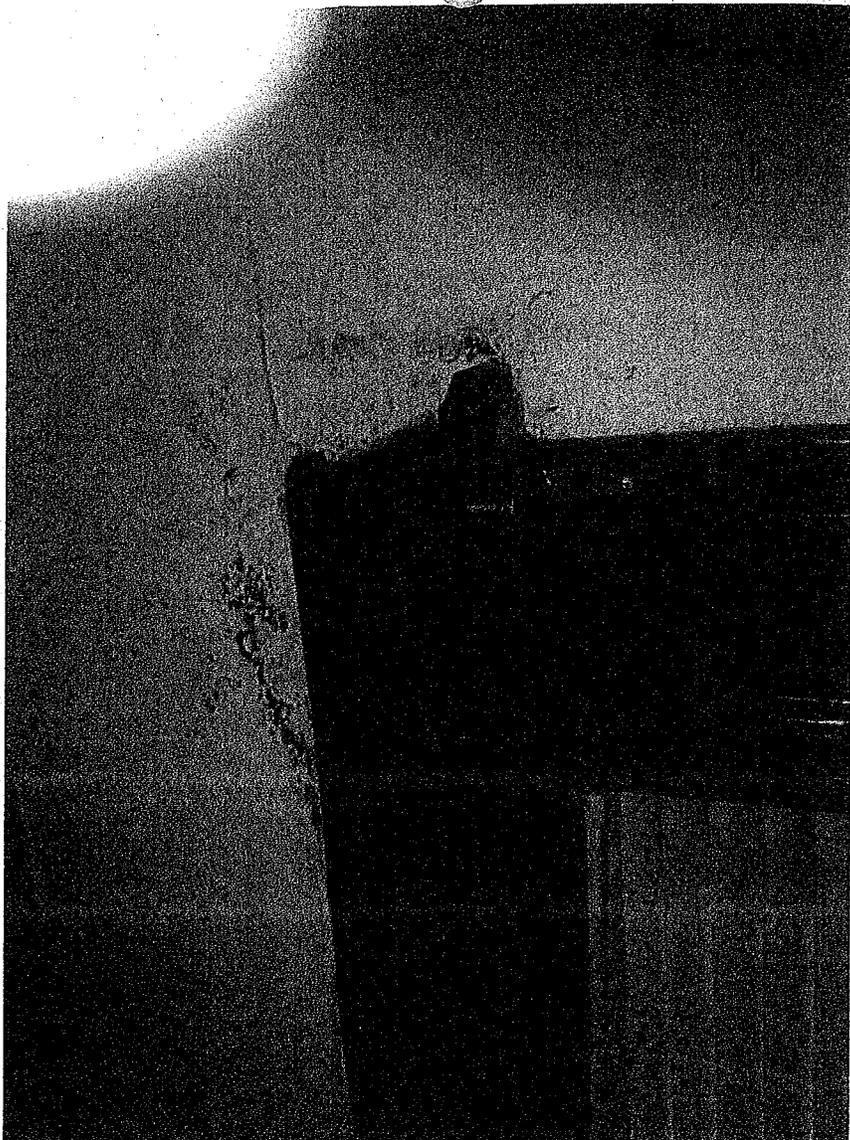
4. I believe that I timely and successfully met the RAP Notice requirement in relationship to the day the tenant filed his petition, and therefore, should not have been assessed with three years of restitution to the tenant and the resulting \$2070 judgement against me.
5. Tenant did not prove his claims of loss of service concerning the two alleged decreased services discussed herein, nor did he provide any calculations and/or proof of actual damages for same. I am still unclear how any services were decreased and how these circumstances created any loss of his use of the unit and what, if any, actual damages he incurred as a result of these circumstances. Because the tenant provided no damage calculations, damages were arbitrarily determined by the Hearing Officer.
6. Tenant may have benefited from his ex-parte communication with the Hearing Officer after the conclusion of the hearing and after landlord left.
7. I am an Oakland public high school teacher who recently purchased a duplex where I live, but also became a landlord via the purchase. I am hardworking, decent, honest, and have proceeded with integrity in every step of this process. I in fact had exemption status with the Just Cause Ordinance at the time I served my tenant with the 60 Day Notice to Vacate. Although the tenant was understandably disgruntled in having to vacate the unit, it was my legal right to have him do so and without cause. I did absolutely nothing wrong during my brief tenancy with this tenant, and therefore, should not bear the undue financial hardship, based on my perception of a bad decision rendered herein.

In conclusion, I believe that I have provided sufficient information that would warrant the successful appeal of the matters discussed herein, and in the interest of Justice, ask the appeal board to vacate the entire decision and award made in this matter.

Respectfully Submitted,

  
\_\_\_\_\_  
**Rosemary Marr**

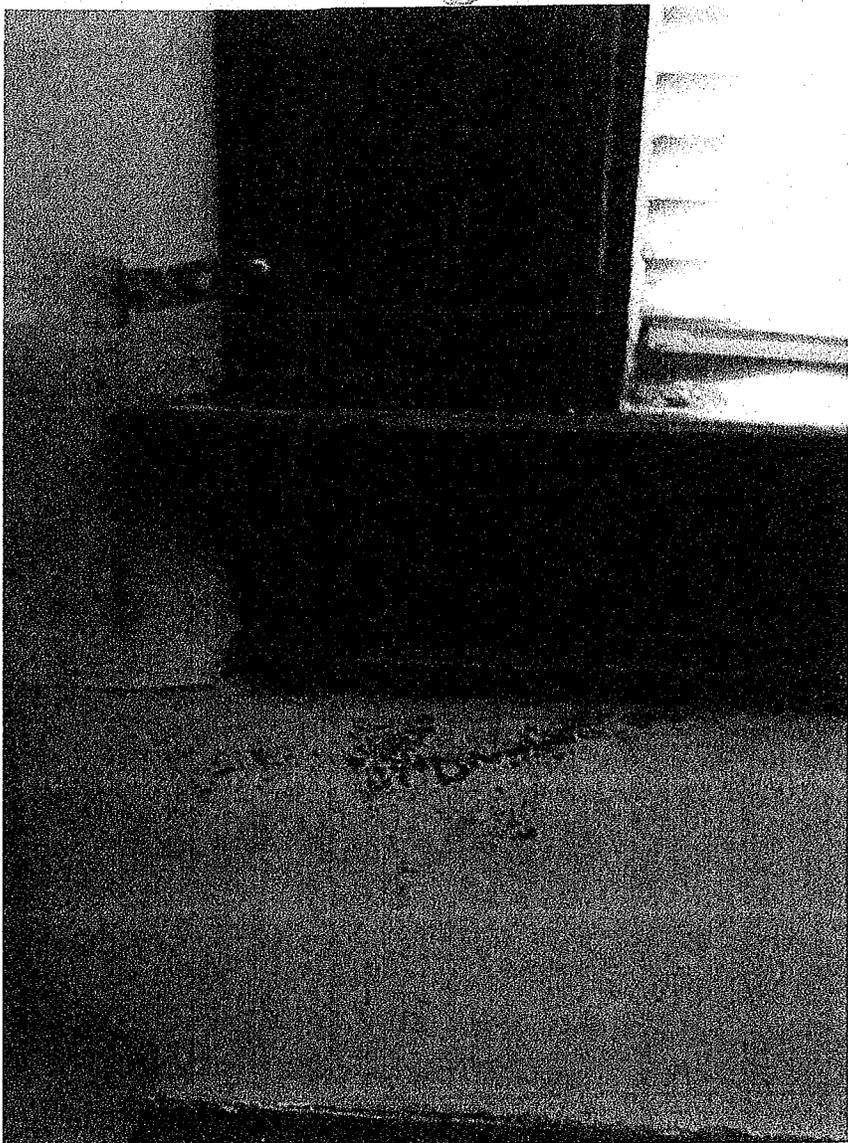
  
\_\_\_\_\_  
**Date**



Owner Photo

Exhibit #1

000078/2



Tenant Photo

Exhibit #1  
0000797/2

November 6, 2017

Rosemary:

I received your note dated 11/5/17 and the new rental agreement and have a few things that need clarification.

1. I would like the rental agreement to begin on 12/1/17 since I already paid rent on 11/1/17 based on the current lease agreement.
2. Paragraph #2: I understood that my deposit of seven hundred and twenty-five dollars (\$725.00) paid in 1993 at the beginning of the tenancy would carry-over to the new rental agreement. I want to make sure that is reflected.
3. Paragraph #5 & #30: Please let me know the approximate cost of the garbage bill so that I may decide whether having a separate bill makes sense.
4. Paragraph #6: My son Paul Billingsley has been living with me at 687 Apgar since 1993 except when he was away at college, etc. I would like that acknowledgement so as not to have an issue related to "guests staying more than 14 days in a year will require additional rent".
5. Paragraph #14: A carbon monoxide detector has not been provided.
6. Paragraph #28 (Lead Warning Statement): There has not been an inspection related to lead-based paint. There are a few places where paint is deteriorating and/or peeling. I have not received a copy of "Protect Your Family from Lead in Your Home".
7. Paragraph #29: (Mold): As I mentioned the window in the back bedroom leaks from time to time. I would like to make sure the spots & discoloration by the window is not mold.

Thanks Rosemary I look forward to talking on Tuesday.

Respectfully,

JAB

Joseph A. Billingsley

Exhibit #2  
000080

To Whom it May Concern:

My name is Jonathan Hunt, Sr. and I am a resident of Palmdale, California in the County of Los Angeles. I offer the following statement concerning a property located at 687 Apgar Street in Oakland, California:

1. I purchased the property (a duplex) in June 1989. I purchased the property as a rental investment and have never lived on the property. I owned the property until I sold it to the current owner, Rosemary Marr, in October 2017.
2. Joseph A. Billingsley (JAB) was my tenant in the 687 unit at the time the property was sold. I also considered him a friend over the years.
3. I have no recollection of JAB making any complaints (verbal, written, or otherwise) concerning a mold condition and/or water damage in the back bedroom at any time during his tenancy with me. Although this may have occurred once and I am just unable to recall it.
4. However, there was absolutely never a circumstance where numerous complaints were made about these conditions over a period of years and I failed or neglected to remedy them. I have owned and managed five rental units in the bay area for several years. I have always been a responsive and responsible landlord to accommodate my tenants' well-being but to also ensure that my properties are well-maintained and to protect my investments. I actually encouraged tenants to report problems so they were remedied early to avoid potentially more damage and higher repair costs later.
5. My recollection of the window bar on one of the two windows in the back bedroom is that it was installed over twenty years ago upon the request of JAB after a break-in occurred in his unit. I promptly contacted a contractor and made arrangements for the purchase and installation of a window bar. JAB met with the contractor to supervise and approve the installation of the window bar. He expressed no concerns to me about the window bar after the installation.
6. In summary, I have always prided myself with the diligent up-keep of my rental properties and have never experienced any ongoing, unresolved issues with my properties once I became aware of them.

The foregoing statement is true to the best of my knowledge, information, and beliefs, and are subjected to the laws of penalty of perjury in the State of California.

Jonathan Hunt, SR,

~~901-356-0774~~  
Jonathan Hunt, Sr.

Nov 18, 2018

Date

Exhibit #3  
0000812



Rosemary Marr <rastateach@gmail.com>

687 Apgar Statement

2 messages

Rosemary Marr <rastateach@gmail.com>  
To: jonathan hunt <jonathanhuntsr@msn.com>

Sun, Nov 18, 2018 at 11:19 AM

Hey,

A statement is attached concerning JABs unit repair complaints. If anything is incorrect let me know and I can correct it.

If it's okay - then you can print, sign, scan, and email back to me if it's no too much trouble. I want to be respectful of your health and well-being.

Anyhoo - keep me posted.

Rosemary

687 Apgar Statement.pdf  
26K

Jonathan hunt <jonathanhuntsr@msn.com>  
To: Rosemary Marr <rastateach@gmail.com>

Sun, Nov 18, 2018 at 1:15 PM

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[Quoted text hidden]  
<687 Apgar Statement.pdf>

Jonathan Hunt  
jonathanhuntsr@msn.com

687 Apgar Info rosemary.pdf  
68K

Exhibit 000082 2/2



Rosemary Marr <rstateach@gmail.com>

Your 12/21/17 Letter

2 messages

Joseph Billingsley <jlab@cwcorps.org>  
To: Rosemary Marr <rstateach@gmail.com>

Mon, Dec 11, 2017 at 3:04 PM

Rosemary:

Thank you for your response dated 12/2/17. I too am thankful for our mutual respect for each other's decisions. I understand your decision is a difficult one and I'm sure you can understand that it's difficult for me and my family as well. There is no question in my mind that we can indeed respectfully and kindly co-exist as we work through things.

8000083 # 12/11/17

As it relates to your response at paragraph 7 - I must correct your reference to the rental agreement that you presented to me in November 2017. I did not decline to sign it. I noted that certain language and terms needed correcting. We agreed that the rental agreement would begin 12/1/17. You were going to make corrections, add Paul's name to the occupants section, provide the lead based paint information and provide a carbon monoxide detector.

It was not until after I raised concerns about potential water damage and suspected mold around the back window that you stated you were taking over my unit.

I will look into the petition process for the Rent Board. I also have other health and safety concerns:

- 1) The bars on the back bedroom window do not open. Please replace the illegal bars with approved quick release bars.
- 2) The water heater sounds funny. I don't believe the proper permits were obtained before doing the work.

Respectfully,

Joseph A. Billingsley

RECEIVED

March 30, 2019

APR - 3 2018

RENT ADJUSTMENT PROGRAM  
OAKLAND

RE: Case No. T18-0089  
Appeal Hearing  
Supplement Documentation

Dear Sir or Madam:

The enclosed email copies are being submitted concerning the above-referenced matter.

Specifically, the emails will illustrate that I attempted to have this matter dismissed prior to the initial hearing date because I believed the tenant's petition was so incomplete that it did not warrant a hearing. Moreover, it put me at a huge disadvantage to prepare a defense to his petition. This is one of the key grounds of my appeal: Per RAP regulations the tenant's petition should have been dismissed prior to the hearing because it was substantially incomplete.

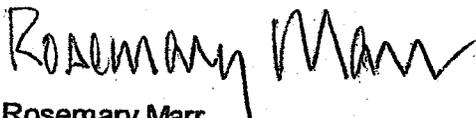
There were two opportunities to dismiss the petition prior to the hearing. One was when the petition was initially received and reviewed by the RAP office. And two, when it was received and reviewed by the hearing officer. A dismissal never occurred, in spite of my documented email requests to have the petition (and hearing) dismissed.

Per the final email (dated 7/3/18) in the packet I submitted, Margaret Sullivan, Rent Adjustment Program Analyst III, made the following statement regarding my request to have the hearing dismissed because the petition forms were not properly completed:

*"In response to your question about dismissing the Rent Adjustment tenant petition case T18-0089, only the petitioner can request a dismissal of her/his petition. As of now, the hearing in this case is still scheduled for July 10, at 10:00 a.m."*

As stated in my Appeal, the decision to hold a hearing based on a petition that is "substantially incomplete" or "the petition has not been properly completed" was contradictory to RAP Regulations, Section 8.22.080 B (1b) and Rent Adjustment Ordinance, Section 8.22.110, F (1a), respectively.

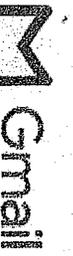
Thank you,



Rosemary Marr  
Landlord/Appellant

cc: Joseph Billingham (Tenant/Petitioner)

000084



Rosemary Marr <rastateach@gmail.com>

Case No. T18-0089

Rosemary Marr <rastateach@gmail.com>  
To: "Sullivan, Margaret" <MSullivan@oaklandnet.com>

Wed, Apr 4, 2018 at 4:05 PM

Hi Ms Sullivan

Thanks for your response.

I just reviewed the petition you sent and there is no information contained in it that alleges a rent increase and again, I never attempted to increase his rent.

On page 4 under Grounds for Petition there is a note for "1 record". Is it possible to get a copy of that record?

There are "0" records listed under Rent Increase and Loss of Service.

My apologies for contacting you again but I'm still trying to determine the basis of this petition. There are also key pieces of information - mostly dates - left blank.

In my opinion it is an incomplete petition and does not specify any rent increases.

Pardon my ignorance but if he is not specifically alleging a rent increase (other than partially filling out a RAP online form) why am I required to provide a response? This guy was once a practicing attorney and would be quite capable of providing a thorough, detailed petition.

Thanks for your time and assistance.

Sent from my iPhone  
[Quoted text hidden]

- <Copy of Tenant Petition 8901, Case T18-0089 - 1-4-18.pdf>
- <Attachment to Tenant Petition 8901 - 010418.docx.pdf>
- <Property Owner Response 3.28.17 oak0633334.pdf>

000085



Rosemary Marr <rasstateach@gmail.com>

Case No. T18-0089

000089

Sullivan, Margaret <MSullivan@oaklandnet.com>  
To: Rosemary Marr <rasstateach@gmail.com>

Wed Apr 4, 2018 at 4:15 PM

Dear Ms. Marr,

Just respond to the terms that his documents are actually claiming against you. The claims regarding eviction are not Grounds for Petition in a Rent Adjustme nt case.

Thank you.

Margaret Sullivan

[Quoted text hidden]



Rosemary Marr <rastateach@gmail.com>

Case No. T18-0089

Wed, Apr 4, 2018 at 4:29 PM

Rosemary Marr <rastateach@gmail.com>  
To: "Sullivan, Margaret" <MSullivan@oaklandnet.com>

My problem is that he is making no claims so I have nothing to respond to.

I'm currently on my laptop doing some research on the RAP program.

Looks like I can look into an Administrative Decision to have his petition dismissed before the hearing date because his petition is incomplete. Also on the grounds that the unit is exempt from RAP because it is an owner occupied duplex.

I'm currently in the process of filing an online RAP exemption.

Thanks

Sent from my iPhone

[Quoted text hidden]

000087



Rosemary Marr <rastateach@gmail.com>

Case No. T18-0089

000088

Wed, Apr 4, 2018 at 4:49 PM

Rosemary Marr <rastateach@gmail.com>  
To: "Sullivan, Margaret" <MSullivan@oaklandnet.com>

Ms Sullivan

I've reviewed your RAP website and this is what I've come up with:

The analyst will notify petitioner of missing information. If not enough information is provided to hold a hearing the analyst will request an administrative decision.

Do you believe that the petitioner has provided enough information (at this point) to hold a hearing?

Thanks.

Sent from my iPhone

[Quoted text hidden]



Rosemary Marr <rasstateach@gmail.com>

Case No. T18-0089

Sullivan, Margaret <MSullivan@oaklandnet.com>  
To: Rosemary Marr <rasstateach@gmail.com>

Wed, Apr 4, 2018 at 5:16 PM

Hi Rosemary,

Yes, certainly! Please email me your mailing address and I will mail the documents out tomorrow (Thursday, 4/5/18). I will send you hard copies of the online tenant petition and the attachment, in which numerous topics are listed.

There seems to be some confusion over the laws regarding exemption from Rent Adjustment and the laws regarding exemption from Just Cause for Eviction. As I noted before, any claims regarding eviction do not fall under the jurisdiction of a Rent Adjustment hearing.

I will bring the file to the attention of the hearing officer to determine if there are grounds to issue an Administrative Decision. Please be aware that any claim regarding exempt status from *Rent Adjustment* cannot be decided administratively, but must go through a hearing.

In the meantime, it is best for you to submit a completed Property Owner Response form in a timely fashion.

Best,

[Quoted text hidden]

000089



Rosemary Marr <rastateach@gmail.com>

Case No. T18-0089

Rosemary Marr <rastateach@gmail.com>  
To: "Sullivan, Margaret" <MSullivan@oaklandnet.com>

Thu, Jun 14, 2018 at 4:36 PM

Hi Ms. Sullivan,

I submitted my response to my former tenant's RAP complaint online, several weeks ago. I wanted to know if based on any findings, this case can be dismissed before the hearing date of July 10, 2018. If not, could you confirm that I still need to attend the hearing?

I am a teacher and am now on summer break. I would like to make some travel plans for July and it would be helpful to know my availability.

Thanks for your time and anticipated response.

Rosemary Marr  
[Quoted text hidden]

000090





Rosemary Marr <rastateach@gmail.com>

Case No. T18-0089

Sullivan, Margaret <MSullivan@oaklandca.gov>  
To: Rosemary Marr <rastateach@gmail.com>

Tue, Jul 3, 2018 at 6:57 PM

Dear Ms. Marr,

In response to your question about dismissing the Rent Adjustment tenant petition case T18-0089, only the petitioner can request a dismissal of her/his petition.

As of now, the hearing in the case is still scheduled for July 10, at 10:00 a.m.

Best regards,

Margaret Sullivan

City of Oakland Housing & Community Development Department

Rent Adjustment Program Analyst III

Mailing Address: Rent Adjustment Program / P.O. Box 70243 / Oakland, CA 94612

TEL. 510-238-7387 – Direct

TEL. 510-238-3721 – Main Number

FAX. 510-238-6181

Email: msullivan@oaklandnet.com

160000

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

Joseph A. Billingsley, Tenant submits this Response to Owner's Appeal.

2018 DEC 24 AM 11:40

Statement of the Case

Tenant is 67 years old and had lived at 687 Apgar since 1996. Owner lived at 689 Apgar Street as a tenant beginning August 2016 prior to purchasing said property. Owner purchased said property a duplex located at 687 -689 Apgar Street, Oakland, CA on 10/6/17 and the property has been owner-occupied since that time. Owner presented a new lease to tenant requiring tenant to pay for garbage service. Tenant had not previously been required to pay for garbage service for the entirety of his tenancy. (Tenant Exhibit 1 attached). Tenant wrote owner on 11/6/18 requesting a revision in the language of the lease related to my son staying at the property and raised concerns about leaks and mold around of the window in the back bedroom. (Tenant Exhibit 2 attached). Tenant and owner exchanged correspondence about habitability issues. On 11/20/17 Owner served a 60 day notice terminating the tenancy on 1/31/18 approximately 1 month after purchasing the property.

Tenant filed a petition at the Rent Adjustment Program (RAP) on 1/4/18 claiming unlawful eviction and decrease in housing services. The Hearing Officer found that for purposes of the Rent Adjustment Ordinance, the unit is not exempt until October 2019. Tenant's petition was granted in part.

The Issues

Owner appeals on the grounds that:

- 1) The decision violates federal, state, or local law;
- 2) The decision is not supported by substantial evidence; and
- 3) Other (unspecified)

Tenant submits that:

- 1) Owner's appeal does not establish any violation of federal, state, or local law;

- 2) The decision is supported by substantial evidence ; and
- 3) Owner's appeal has not established sufficient grounds to grant the appeal on any on other grounds.

The hearing officer found that the RAP notice was provided on 11/6/17 and that the previous owner did not provide an RAP notice. Owner sought to circumvent the RAP regulations by increasing rent through charging for garbage which had not been charged in the original tenancy. (See letter from Rosemary Marr dated 11/5/17.) This was not allowed until 6 months after giving the RAP notice.

### Arguments on Appeal

#### I. Water damage and mold

The prior owner and current owner had notice of the water damage and mold. See Owner Exhibit 3- declaration of Jonathan Hunt, paragraph 3: After stating he has no recollection of any complaints concerning a mold condition and/or water damage in the back bedroom at any time during his tenancy with me, the next sentence reads "Although this may have occurred once and I am just unable to recall it." Tenant submits this statement acknowledges notice was given to previous owner. The inconsistency of "no recollection" and "may" in prior owner's declaration does not support current owner's claim that the Hearing Officer's decision is not supported by the evidence.

Current owner argues on appeal that tenant is required to make numerous complaints and must keep records of numerous complaints, otherwise tenant is not entitled to the relief stated by the Hearing Officer. Owner stated she planned to investigate the leak once tenant left the unit (see Hearing Decision page 3, paragraph 5. In fact, when Tenant showed the water damage to Owner, she made statements to the effect that the wall must be cut out next to the window to investigate.

- II. Tenant objects to and challenges the statement/declaration of Jonathan Hunt, Sr., (Owner's Exhibit #3) to wit: Paragraph 5. "JAB met with the contractor to supervise and approve the

installation of the window bar. He expressed no concerns to me about the window bar after the installation."

This portion of Mr. Hunt's statement is false. I did not meet or supervise the contractor, nor approve the installation of the window bars. Shortly after a break-in of my unit I informed Mr. Hunt of the break-in and of the security concerns. Mr. Hunt informed me he would have bars installed. I was not present at the time the bars were installed. He informed me that the bars were installed after the fact.

Owner inconsistently alleges the window bars are not illegal and that tenant has the burden of proof of establishing the date of installation. The hearing officer correctly found that security bars that do not release are a fire hazard. Current owner is aware of the health & safety violation but has done nothing to correct the safety hazard.

III. Tenant objects to and challenges owner's mischaracterization of the facts.

1. Owner alleges bad faith and "disingenuity" of tenant (page 16) and alleges tenant refused to sign the new lease. That allegation is false. Tenant requested a change in the lease terms related to my son staying at the unit. Owner stated she would present a lease with the changed language but did not. (Tenant Exhibit 3 attached)
2. Owner alleges "virtually identical photographs submitted by tent and landlord. . ." (page 16). On 7/15/18 tenant submitted 4 photographs via email to the hearing officer and owner (Tenant Exhibit 4 attached) that provide a different perspective.

IV. Tenant objects to and challenges owner's allegation of an inappropriate ex-parte communication with hearing officer.

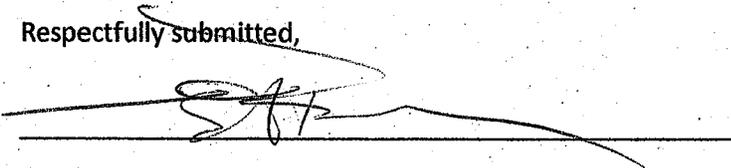
At the conclusion of the hearing the hearing officer asked tenant to provide his current address. Owner was present at the time and was not dismissed but chose to leave the room. There were no further discussions between the hearing officer and tenant.

Conclusion

Owner's appeal contains unfounded and unsubstantiated allegations, misstatements of law and facts, as well as irrelevant proclamations. Tenant respectfully submits that:

1. Owner's appeal lacks merit;
2. The grounds for the appeal are not sufficiently stated; and
3. The hearing officer's decision must be upheld and affirmed.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph A. Billingsley

Dated: 12/23/18

November 5, 2017

Hi JAB,

I have enclosed a copy of a lease to formalize our landlord/tenant arrangement. It is materially the same as your tenancy with Mr. Hunt, the previous landlord/owner. The only exception is that I will not be able to pay for garbage expenses on your unit as the previous landlord did.

Effective October 11, 2017, I became responsible for the Waste Management account for the property. I will receive the bill and will provide you with a copy to reflect due dates and the amount (50%) that you will be responsible for. As noted in the lease, your share began on November 1, 2017 and your first bill will be prorated to reflect that.

The alternative is that I can make arrangements for you to put a bill in your name for the services at your unit. Let me know which option works best for you.

Review the lease and we can discuss any questions or concerns when I am there to clean the mildew spot. Otherwise, you can sign and date. I can make a copy for you from my home.

Thanks and see you Tuesday.

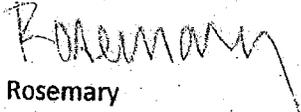
  
Rosemary

Exhibit 1

November 6, 2017

Rosemary:

I received your note dated 11/5/17 and the new rental agreement and have a few things that need clarification.

1. I would like the rental agreement to begin on 12/1/17 since I already paid rent on 11/1/17 based on the current lease agreement.
2. Paragraph #2: I understood that my deposit of seven hundred and twenty-five dollars (\$725.00) paid in 1993 at the beginning of the tenancy would carry-over to the new rental agreement. I want to make sure that is reflected.
3. Paragraph #5 & #30: Please let me know the approximate cost of the garbage bill so that I may decide whether having a separate bill makes sense.
4. Paragraph #6: My son Paul Billingsley has been living with me at 687 Appar since 1993 except when he was away at college, etc. I would like that acknowledgement so as not to have an issue related to "guests staying more than 14 days in a year will require additional rent".
5. Paragraph #14: A carbon monoxide detector has not been provided.
6. Paragraph #28 (Lead Warning Statement): There has not been an inspection related to lead-based paint. There are a few places where paint is deteriorating and/or peeling. I have not received a copy of "Protect Your Family from Lead in Your Home".
7. Paragraph #29: (Mold): As I mentioned the window in the back bedroom leaks from time to time. I would like to make sure the spots & discoloration by the window is not mold.

Thanks Rosemary I look forward to talking on Tuesday.

Respectfully,

JAB

Joseph A. Billingsley

Exhibit 2

**From:** Joseph Billingsley  
**Sent:** Tuesday, November 7, 2017 12:41 PM  
**To:** Rosemary Marr  
**Subject:** RE: 687 Apgar

Thanks Rosemary, yes this is very helpful.

I appreciate the 12/1/17 start date.

I received the electronic version of "Protect Your Family from Lead in Your Home". No need to print one out.

Thanks for noting you received the deposit.

Thanks for inquiring about the Waste Management Bill.

Thanks for adding Paul Billingsley to paragraph #6. I don't think you need to add him as a lessee.

Thanks for getting a carbon monoxide detector. I have a smoke detector.

See you later,

JAB

**From:** Rosemary Marr [mailto:rastateach@gmail.com]  
**Sent:** Tuesday, November 07, 2017 12:22 PM  
**To:** Joseph Billingsley  
**Subject:** Re: 687 Apgar

Hi JAB,

The following are my responses to your request for clarification:

1. Not a problem beginning the rental agreement on 12/1/17. I will correct all info and give you a new copy for your review. We can execute it on 12/1/17 at the time you pay 12/17 rent.
2. The deposit currently reflected on the lease in question is noted as being "From Escrow." Mr. Hunt has already transferred your \$725 deposit to me.
3. I have asked Mr. Hunt for a copy of his last full Waste Management bill. Will forward you a copy upon receipt.
4. I see Paul on occasion but had no idea he had extended stays. Not a problem to list him in that regard on the rental agreement.
5. I will provide a carbon monoxide detector this Friday 11/10/17. My assumption was that you would have already had one but I can pick one up.
6. I did not print a copy of "Protect Your Family from Lead in Your Home" booklet because it was several pages and I was low on ink at home. However, I am now attaching an electronic copy for your records. (If you still require a printed copy, let me know.)

Exhibit 3.1

000098

7

7. I will be cleaning the spot of suspected mold that you previously pointed out today. If it should return, I will have it checked further. I also intend to have the window checked for leaks in the near future - once I find the appropriate person to do the work.

Hope this helps to clarify matters.

See you later today.

Rosemary

On Mon, Nov 6, 2017 at 9:11 PM, Joseph Billingsley <[jab@cvcorgs.org](mailto:jab@cvcorgs.org)> wrote:

Hi Rosemary:

See attached.

See you tomorrow.

JAB

**Joseph A. Billingsley**

Exhibit 3.2

**From:** Joseph Billingsley  
**Sent:** Monday, December 11, 2017 3:04 PM  
**To:** Rosemary Marr  
**Subject:** Your 12/2/17 Letter

Rosemary:

Thank you for your response dated 12/2/17. I too am thankful for our mutual respect for each other's decisions. I understand your decision is a difficult one and I'm sure you can understand that it's difficult for me and my family as well. There is no question in my mind that we can indeed respectfully and kindly co-exist as we work through things.

As it relates to your response at paragraph 7 - I must correct your reference to the rental agreement that you presented to me in November 2017. I did not decline to sign it. I noted that certain language and terms needed correcting. We agreed that the rental agreement would begin 12/1/17. You were going to make corrections, add Paul's name to the occupants section, provide the lead based paint information and provide a carbon monoxide detector.

It was not until after I raised concerns about potential water damage and suspected mold around the back window that you stated you were taking over my unit.

I will look into the petition process for the Rent Board. I also have other health and safety concerns:

- 1) The bars on the back bedroom window do not open. Please replace the illegal bars with approved quick release bars.
- 2) The water heater sounds funny. I don't believe the proper permits were obtained before doing the work.

Respectfully,

Joseph A. Billingsley

**From:** Rosemary Marr [<mailto:rastateach@gmail.com>]  
**Sent:** Saturday, December 02, 2017 4:59 PM  
**To:** Joseph Billingsley  
**Subject:** Reply to Your 12/1/17 Letter

Hi JAB,

I took time to try and respond to your concerns as thoroughly as I could. Please see the attached letter. Let me know if you have any additional concerns that I may be able to address.

Thanks!

Exhibit 4

000100

9

**Joseph Billingsley**

---

**From:** Joseph Billingsley  
**Sent:** Sunday, July 15, 2018 7:47 AM  
**To:** bcohen@oaklandnet.com  
**Cc:** Rosemary  
**Subject:** Fwd: T180089  
**Attachments:** Apgar bedroom window.JPG; Apgar bedroom window 2.JPG; Apgar bedroom 3.JPG; Apgar bedroom window 4.JPG; Apgar bedroom window 5.JPG; Apgar bedroom window.JPG; Apgar bedroom window 2.JPG; Apgar bedroom 3.JPG; Apgar bedroom window 4.JPG; Apgar bedroom window 5.JPG

I believe the first email was not properly addressed.

Joseph Billingsley

Sent from my iPhone

Begin forwarded message:

**From:** Joseph Billingsley <jab@cvcorps.org>  
**Date:** July 15, 2018 at 7:43:53 AM PDT  
**To:** "bcohen@oakland.com" <bcohen@oakland.com>  
**Cc:** Rosemary <rastateach@gmail.com>  
**Subject:** T180089

Ms. Cohen:

Attached are photographs of the water damage and suspected mold at the back bedroom window.

Joseph Billingsley

Sent from my iPhone

Begin forwarded

**Subject: Apgar window**

Sent from Mail for Windows 10

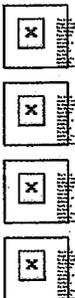


Exhibit 5



Exhibit 5.1



Exhibit 5.2

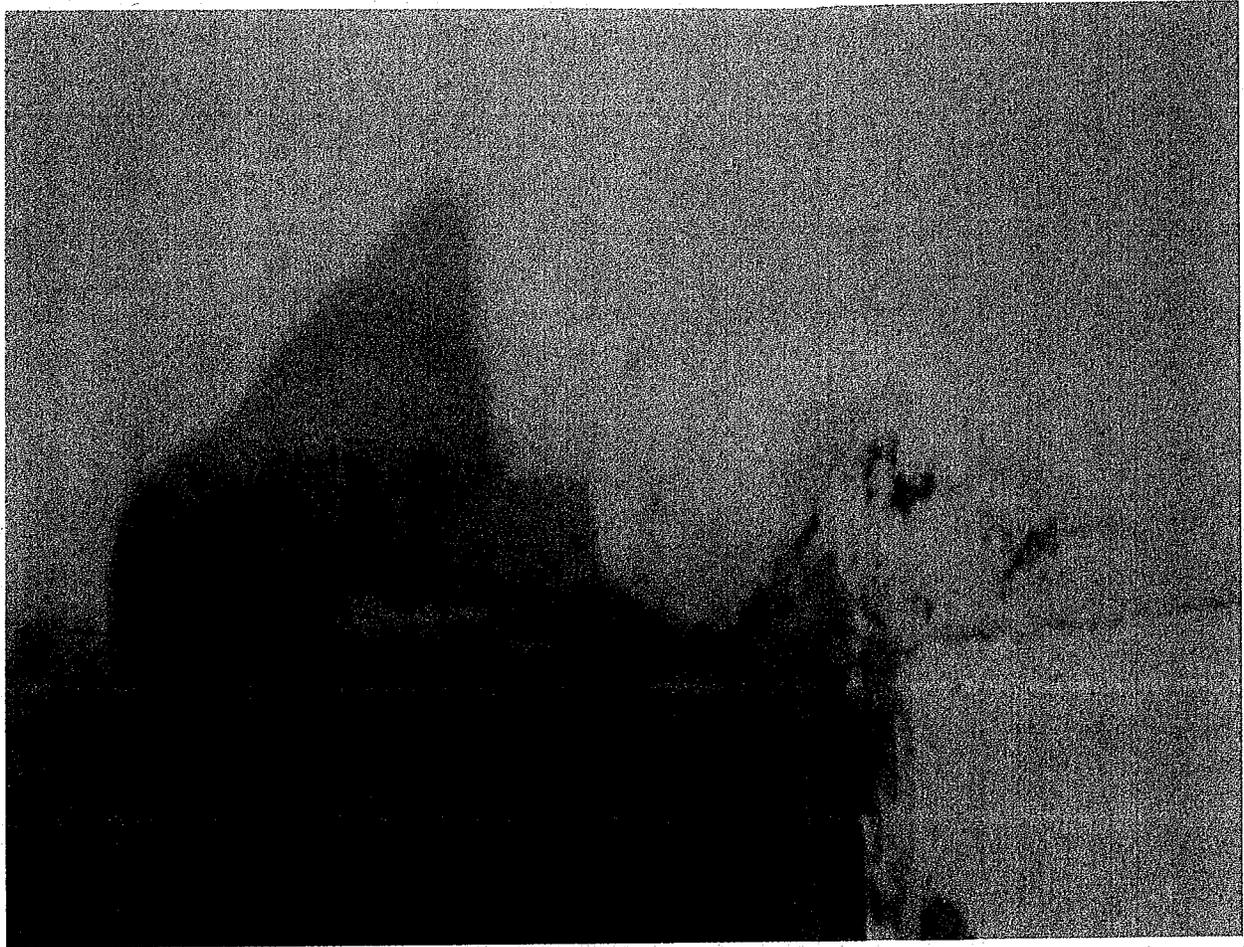


Exhibit 5.3



Exhibit 5.4

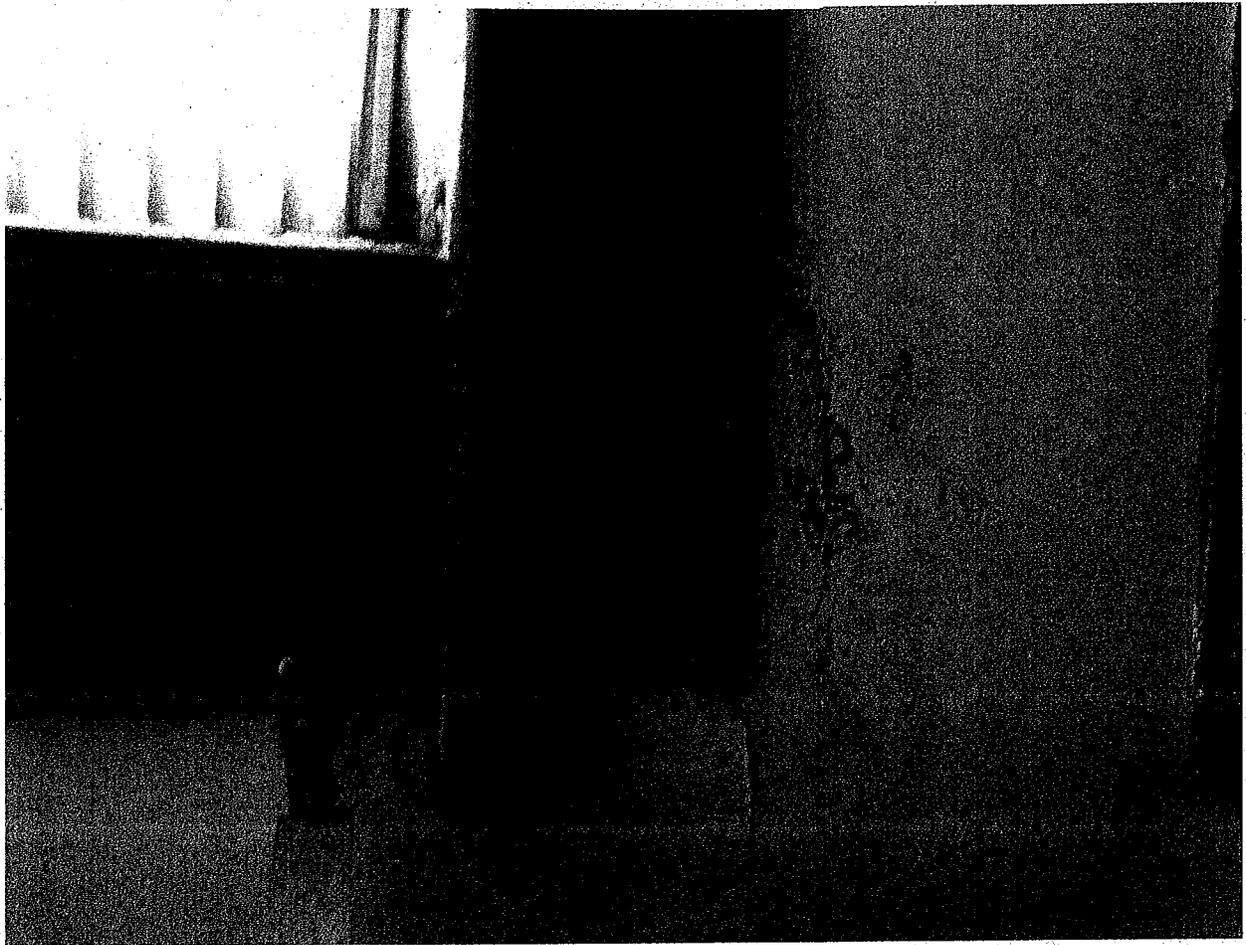


Exhibit 5.5

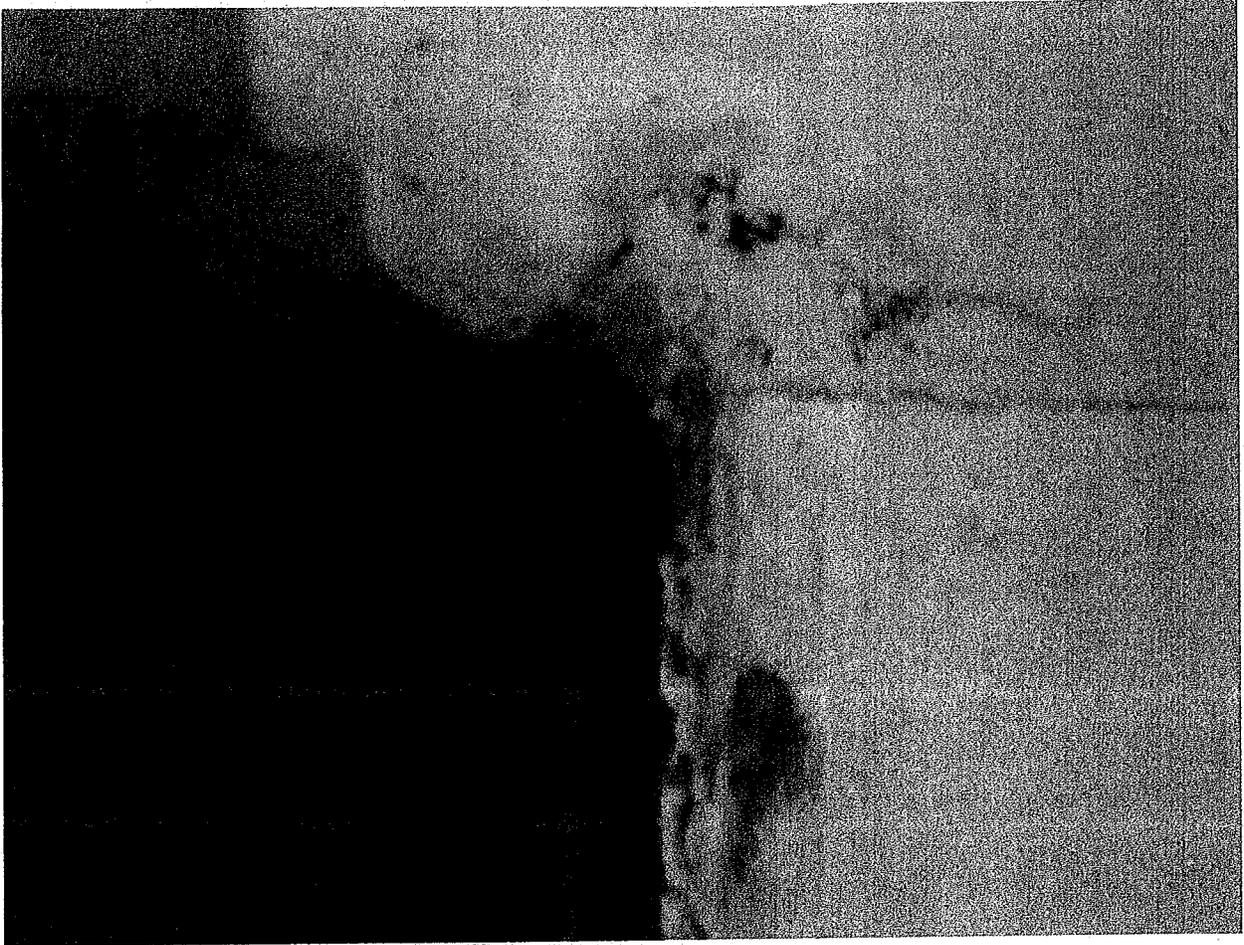


Exhibit 5.6

February 2, 2019

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FEB -5 2019

NEW ADJUSTMENT PROGRAM  
OAKLAND

Re: RAP Appeal  
687 Aggan St.  
Case #: T18-0089

Dear Sir or Madam:

I request that the two photographs enclosed be added as exhibits to my Appeal filed on November 21, 2018, in the above-referenced matter.

These photographs are crucial to issues raised in my Appeal.

Thank you,

Rosemary Mann  
(Appellant)

cc: Joseph Billingsley  
(Petitioner)

000108



Hy Nibit #5 (Appeal)

Case # T18-00891

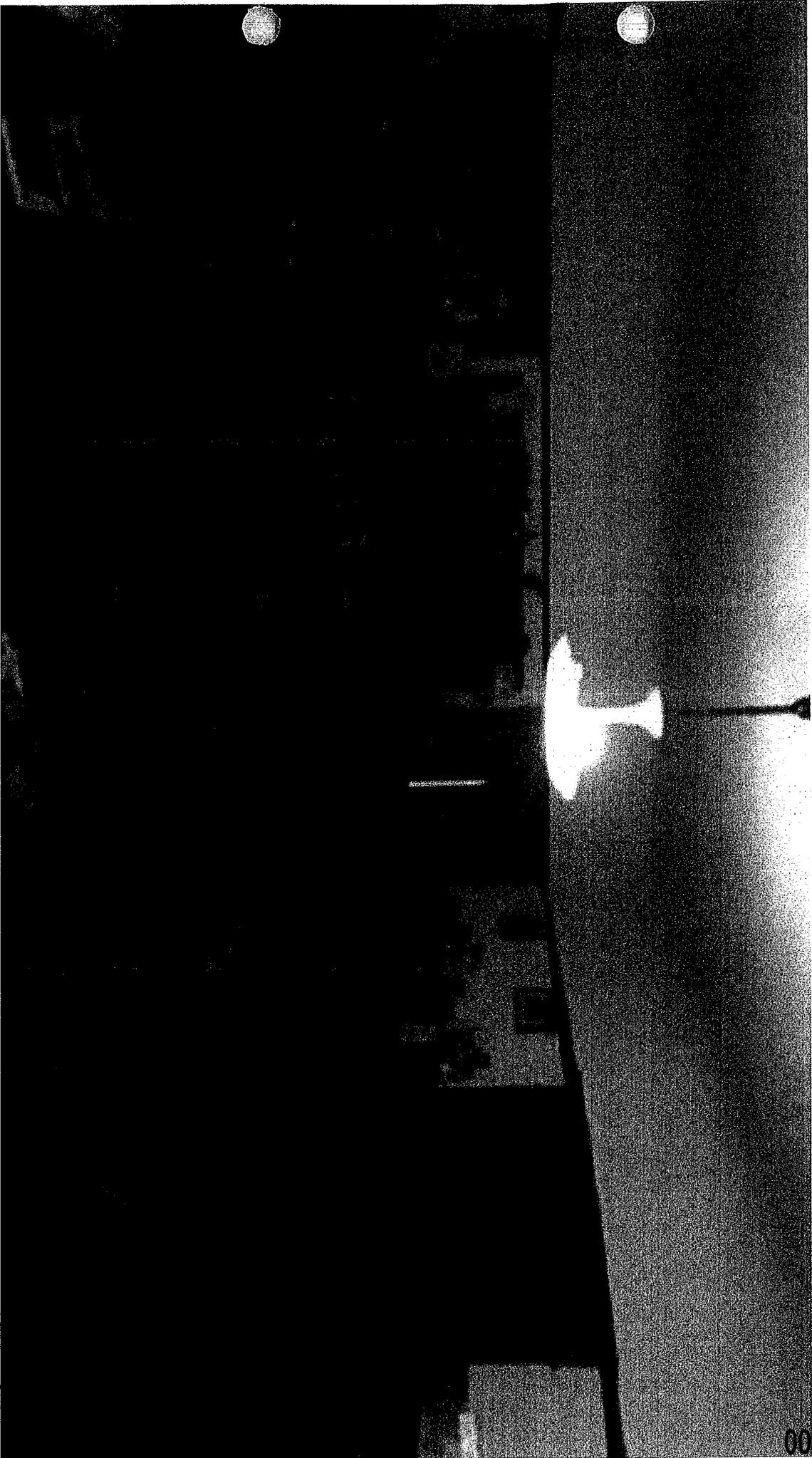


Exhibit #6 (Appeal)  
Case # T18-0089

## CONSOLIDATED CHRONOLOGICAL CASE REPORT

Case Nos. & Names      L17-0233, Udinsky v. Tenant  
   L17-0236, Udinsky v. Tenant

Property Address:      1848-1860 E. 25<sup>th</sup> Street, Oakland, CA

Parties:                      Bing Udinsky                      (Owner)  
   George Shafazand                      (Owner)  
   Francisco Salinar                      (Tenant)  
   Nury Maradiaga                      (Tenant)  
   Hector Gallegos                      (Tenant)  
   Dagoberto Sarmiento                      (Tenant)  
   Orlin Maradiogoa                      (Tenant)  
   Alberto Villa                      (Tenant)  
   Nely Barahona                      (Tenant)  
   Pa Eh                      (Tenant)  
   Jackie Zaneri                      (Attorney for Tenants)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed (CASE L17-0233)	October 25, 2017
Owner Petition filed (CASE L17-0236)	November 1, 2017
Tenant Responses filed (for both cases)	January 19, 2018 & January 22, 2018
Hearing Decision mailed (for both cases)	September 26, 2018
Owner Appeal filed (for both cases)	October 9, 2018



City of  
Oakland  
Rent Adjustment  
Program



**RECEIVED**

OCT 25 2017

RENT ADJUSTMENT PROGRAM  
OAKLAND

**Staff Dashboard**

L17-0233 RC/BC

Home → L17-1028 → Submitted Petition Form

**Dagoberto Sarmiento**

1848 East 25th unit C, Oakland, CA 94606

**Applicant and property information**

**Applicant information**

Bing Udinsky

2941 Telegraph Ave

Oakland California 94705

Tel: 5106499000

Email :

Berkeley not  
OAKLAND

**Representative**

George Shafazand

2941 Telegraph Ave

Oakland California 94705

Tel: 5102049922

Email : bingudinsky@gmail.com

Have you paid your business license

Yes

Business license number 00199130

Proof of payment 0911\_001.pdf

Have you paid the Rent Adjustment  
Program service fee (\$ per unit)? Yes

Date of which you aquired the building 2/16/2016

Total number of units 24

Is there more than one street address on  
the parcel Yes

## Justification for rent increase

I (we) petition for approval of one or  
more rent increases on the grounds that  
the increase(es) is/are justified by: Capital Improvements

## Justification documentation

File name

⊕ 0915\_001.pdf

## Rental property

Type of unit Apartment, Room or Live-work

Tenant's names Dagoberto Sarmiento

Rental property

1848 East 25th unit C  
Oakland, California, 94606

---

**Rent history**

---

The tenant moved into the rental unit on 2/23/2016

---

The tenant's initial monthly rent including all services provided was \$1000

---

Have you (or a previous Owner) given the City of Oakland's form entitled NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice") to all of the petitioning tenants? Yes

---

On what date was the Notice first given? 11/30/2015

---

Upload signed copy of notice 0916\_001.pdf

---

Is the tenant current on the rent? Yes

---

Did you provide rent program notice with the notice of rent increase? No

---

**Additional documentation**

File name

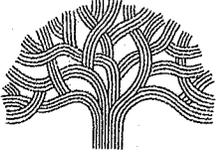
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⊕ 0917\_001.pdf

RECEIVED

L17-0236 Re/BC

NOV 01 2017

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp.
		<b>RENT ADJUSTMENT PROGRAM</b> <b>OAKLAND</b> <b>PROPERTY OWNER</b> <b>PETITION FOR</b> <b>APPROVAL OF RENT</b> <b>INCREASE</b>

**Please Fill Out This Form Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed. Attach copies of the documents that support your petition. Before completing this petition, please read the Rent Adjustment Ordinance (Oakland Municipal Code 8.22), sections 8.22.010 through 8.22.190, and the Rent Adjustment Program Regulations.

Your Name Bing Udinsky	Complete Address (with zip code) 2941 Telegraph Ave Berkeley, CA 94705	Daytime Telephone: 510-204-9922 E-mail: BingUdinsky@gmail.com
Your Representative's Name (if any) George Shafazand	Complete Address (with zip code) 2941 Telegraph Ave Berkeley, CA 94705	Daytime Telephone: 510-204-9922 E-mail:
Property Address (If the property has more than one address, list all addresses) 1848, 1852, 1856, 1860 East 25th Street, Oakland, CA 94606		

Total number of units on property: 24

Date on which you acquired the building: 2/16/2016

Type of units (circle one)                      House                      Condominium                      Apartment Room, or Live-Work

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
On what date was the RAP Notice first given?	11/30/2015	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Oakland Business License number.	00199130	

<p>Have you paid the Rent Adjustment Program Service Fee (\$68 per unit)? The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.) Note: If RAP fee is paid on time, the property owner may charge the tenant one-half of the \$68 per-unit RAP Service fee (\$34).</p>	<p>Yes</p>	<p>No</p>
<p>Use the table on the next page to list each tenant who is affected by this petition.</p>		

**REASON(S) FOR PETITION.**

**Note: Justifications for Rent Increases other than the annual allowable rate are discussed in the Rent Adjustment Program Regulations – Appendix A, Sec. 10.**

**You must attach organized documentation clearly showing the rent increase justification(s) and detailing the calculations to which the documentation pertains. All documents submitted to the Rent Adjustment Program become permanent additions to the file. (Regs. 8.22.090.C)**

**I (We) petition for approval of one or more rent increases on the grounds that the increase(es) is/are justified by (check all that apply):**

- Banking (Reg. App. 10.5)
- Capital Improvements (Reg. App. 10.2)
- Fair return (Reg. App. 10.6)
- Increased Housing Service Costs (Reg. App. 10.1)
- Uninsured Repair Costs (Reg. App. 10.3)

Have you ever filed a petition for this property?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this property and all other relevant Petitions:

**L17-1028 (online)**

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1848 East 25th Street	C	Dagoberto Sarmiento			\$1000
1848 East 25th Street	D	Lisa Giles			\$1409
1848 East 25th Street	E	Nuri Maradiaga			\$798
1848 East 25th Street	F	Abdullah Sherzay			\$2000
1852 East 25th Street	B	Brian Alonzo			\$2395
1852 East 25th Street	C	Alejandro Pablo Carrillo			\$2050
1852 East 25th Street	E	Pa Eh			\$1975
1852 East 25th Street	F	So Sanchez Martinez			\$1975

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1856 East 25th Street	B	Brittany McGovern			\$2000
1856 East 25th Street	E	Nelly Barahona			\$1029
1856 East 25th Street	F	Hector Gallego			\$1032
1860 East 25th Street	B	Francisco Salinas			\$1029
1860 East 25th Street	C	Bolaji Fatai Qudus			\$2050
1860 East 25th Street	E	Billa Domingo			\$1032

**Uninsured Repair Costs:** Uninsured repair costs are casualty losses that are not reimbursed to the property owner. See Regulations for details. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

**Increased Housing Service Costs:** Housing Service Costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit and also known as "operating expenses". The most recent two years of operating expenses are compared to determine if a rent increase greater than the CPI is justified. The calculation in both years must provide a reasonable comparison of all expenses. Evidence is required to prove each of the claimed expenses.

**Fair Return:** A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year (2014), subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

**Banking:** "Banking" refers to deferred allowed annual rent increases. These annual rent increases are known as CPI increases. CPI rent increases that were not given, or were not given in full, can be carried forward to future years. Subject to certain limitations, property owners may defer giving CPI increases up to ten years. CPI increases that were not imposed within ten years expire. No banked increase can exceed three times the then current CPI allowable increase. If your petition includes a request for a banked increase, **attach a rent history for the current tenant(s) in each affected unit.**

You do not need to petition the Rent Adjustment Program for approval to increase rent based on banking. Rents can be increased for banked CPI rent increases by giving the Tenant a rent increase notice. (Note that the Tenant can file a petition contesting the increase if the Tenant believes the banking is incorrect or unjustified.) If you do choose to petition for approval of a banked rent increase, provide the documentation and calculations as required by this petition.

**Capital Improvements:** Capital improvements increases may be taken to reimburse the property owner for property improvements. Reimbursement is limited to 70% of the cost of the improvement spread out over an amortization period as set forth in the Amortization Schedule below. The property owner must show the costs incurred were to improve the property and benefit the tenants. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February 1, 2017, improvements will be amortized over five years unless the increase causes a rent increase over 10 percent in one year or 30 percent in five years, in which case the amortization period will be extended until the rent increase is smaller than 10 percent in one year or 30 percent in five years.

<b>Building-Wide Capital Improvements</b> CATEGORY (attach separate sheet if needed)	<b>TOTAL COSTS</b>	<b>DATE COMPLETED</b>	<b>DATE PAID FOR</b>
ROOF	\$40,109.62	12/19/2016	12/20/2016
SEWER LATERIAL	\$23,000	11/16/2016	11/16/2016
EXTERIOR PAINTING	\$12,969	11/21/2016	11/21/2016
SOLAR PANELS	\$22,023	10/18/2016	10/18/2016
STRUCTUAL	\$305,467	11/17/2016	11/17/2016
<b>SUBTOTAL:</b>	\$403,569		

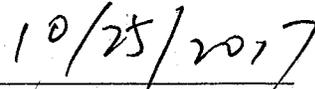
<b>Unit-Specific Capital Improvements</b> CATEGORY (attach separate sheet if needed)	<b>TOTAL COSTS</b>	<b>DATE COMPLETED</b>	<b>DATE PAID FOR</b>	<b>AFFECTED UNITS</b>
<b>SUBTOTAL:</b>				

**Verification (Each petitioner must sign this section):**

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition and attaches pages is true and that all of the documents attached to the petition are originals or are true and correct copies of the originals.



Owner's Signature



Date

Owner's Signature

Date

**File Review**

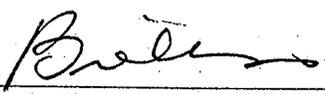
Your tenant(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. **You will be sent a copy of the Tenant's Response. Copies of attachments submitted with the Response form are not sent, out, but can be reviewed in person at the Rent Adjustment Program office by calling (510) 238-3721 to schedule a file review.** When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files.

**Mediation Program**

If you are interested in submitting your dispute to mediation, please read the following information carefully. To request mediation, all petitioners must sign the form that follows. Voluntary mediation of rent disputes is available to all parties involved in Rent Adjustment proceedings. Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. Mediation will be scheduled only if both you and your tenant(s) agree and after both a petition and a response have been filed with the Rent Adjustment Program. You may elect to use a Rent Adjustment Program staff Hearing Officer acting as mediator or an outside mediator. Staff Hearing Officers are available to conduct mediation free of charge. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services. If you are unable to resolve your dispute after a good faith attempt at mediation, you will be given a priority hearing presided by a Hearing Officer other than your mediator.

**IF YOU WANT TO SUBMIT YOUR CASE TO MEDIATION, PLEASE CHECK THE APPROPRIATE BOX AND SIGN.**

- I agree to have my case mediated by a Rent Adjustment Program staff Hearing Officer (no charge).
- I agree to have my case mediated by an outside mediator (fees to be paid by the parties).

  
\_\_\_\_\_  
Owner's Signature (for mediation request)

10/25/2017  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature (for mediation request)

\_\_\_\_\_  
Date

# Summary Rent Roll

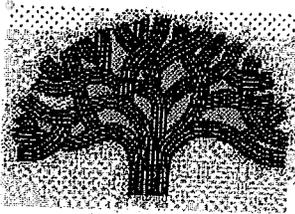
Properties: 1848 East 25th Street, 1852 East 25th Street, 1856 East 25th Street, 1860 East 25th Street

Current tenants in the period 09/01/17 - 09/30/17

Security Deposit based on date: 9/30/2017

Tenant Name	Unit	Sq Ft	Security Deposit	100% Rented	Vacancy Loss	Loss to Lease	Rent Charges	Misc Charges	Credits	Prior Balance	Total Charged	Total Paid	Credit Balances	Debit Balances
<b>1848 East 25th Street</b>														
Stuart, Jacqueline	A - <i>Seat 8</i>	690	0	0	0	0	0	1,000	-1,000	0	0	0	0	0
Vasquez, Edwin	B - <i>Seat 8</i>	690	1,250	0	0	-1,650	1,650	0	-1,032	89	618	752	-45	0
Sarmiento, Dagoberto	C	690	750	0	0	-1,000	1,000	0	0	51	1,000	1,000	0	50
Giles, Lisa	D	690	1,350	0	0	-1,409	1,409	0	0	113	1,409	1,520	0	2
Maradiaga, Nuri	E	690	625	0	0	-798	798	0	0	-385	798	800	-387	0
Sherzay, Abdullah	F	690	4,050	0	0	-2,000	2,000	0	0	-2,000	2,000	2,000	-2,000	0
		4,140	8,025	0	0	-6,857	6,857	1,000	-2,032	-2,133	5,825	6,072	-2,432	52
<b>Totals for 1848 East 25th Street</b>			<b>Total Units: 6</b>	<b>Vacant Units: 0</b>	<b>Vacant Rent: 0</b>	<b>Credit Balances: 3</b>	<b>Overall Balance: -2,380</b>							
<b>1852 East 25th Street</b>														
VACANT	A	700	0	0	0	0	0	0	0	0	0	0	0	0
Alonzo, Brian	B	700	2,495	0	0	-2,395	2,395	2,495	0	0	4,890	4,890	0	0
Pablo Carrillo, Alejand	C	690	2,050	0	0	-2,050	2,050	0	0	0	2,050	2,050	0	0
Richard, Kanica	D - <i>Seat 8</i>	690	1,250	0	0	-1,650	1,650	35	-1,277	1,615	408	1,138	0	885
Eh, Pa	E	690	2,125	0	0	-1,975	1,975	50	0	0	2,025	2,025	0	0
Sanchez Mart nez, So F	F	690	2,075	0	0	-1,975	1,975	50	0	0	2,025	2,025	0	0
		4,160	9,995	0	0	-10,045	10,045	2,630	-1,277	1,615	11,398	12,128	0	885
<b>Totals for 1852 East 25th Street</b>			<b>Total Units: 6</b>	<b>Vacant Units: 1</b>	<b>Vacant Rent: 0</b>	<b>Credit Balances: 0</b>	<b>Overall Balance: 885</b>							
<b>1856 East 25th Street</b>														
VACANT	A	700	0	0	0	0	0	0	0	0	0	0	0	0
McGovern, Brittany	B	690	4,050	0	0	-2,000	2,000	50	0	0	2,050	2,050	0	0
Johnson, Melinda	C - <i>Seat 8</i>	690	1,250	0	0	-1,650	1,650	0	-1,301	0	349	353	-4	0
<del>Smith, Tiffany</del>	D - <i>Vacant</i>	690	2,050	0	0	-1,275	1,275	0	-1,275	0	0	0	0	0
Barahona, Nelly	E	690	838	0	0	-1,029	1,029	0	0	-132	1,029	1,029	-132	0
Gallego, Hector	F	690	700	0	0	-1,032	1,032	0	0	-5	1,032	1,032	-5	0
		4,150	8,888	0	0	-6,986	6,986	50	-2,576	-138	4,460	4,464	-142	0
<b>Totals for 1856 East 25th Street</b>			<b>Total Units: 6</b>	<b>Vacant Units: 1</b>	<b>Vacant Rent: 0</b>	<b>Credit Balances: 3</b>	<b>Overall Balance: -142</b>							
<b>1860 East 25th Street</b>														
Simon, Sadio	A - <i>Seat 8</i>	690	1,250	0	0	-1,250	1,250	35	0	0	1,285	1,300	-15	0
Salinas, Francisco	B	690	700	0	0	-1,029	1,029	0	0	-1	1,029	1,029	-1	0
Fatai Qudus, Bolaji	C	690	2,150	0	0	-2,050	2,050	50	0	0	2,100	2,100	0	1,406
Hughes, Helen	D	690	0	0	0	-1,377	1,377	0	-900	929	477	0	0	0
Domingo, Villa	E	690	1,039	0	0	-1,032	1,032	0	0	-1	1,032	1,032	-1	0
Aarif-Jones, Zakkiyyaf F - <i>Seat 8</i>	F	690	1,300	0	0	-1,650	1,650	0	-882	445	768	1,497	-284	0
		4,140	6,439	0	0	-8,388	8,388	85	-1,782	1,372	6,691	6,958	-301	1,406
<b>Totals for 1860 East 25th Street</b>			<b>Total Units: 6</b>	<b>Vacant Units: 0</b>	<b>Vacant Rent: 0</b>	<b>Credit Balances: 4</b>	<b>Overall Balance: 1,105</b>							

000123



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

for Date Stamp Only

**CASE NUMBER L17-0236**

**Tenant Response Contesting Rent Increase**

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name Dagoberto Sarmiento	Complete Address (with Zip Code) 1848 E 25th St APT #C Oakland CA 94606	Telephone Day 510 325-3423 Evening
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day Evening

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: 10/01/2006

Date you moved into this unit: 10/01/2006

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?

Initial Rent: \$ 900 Yes  No

Initial rent included (please check all that apply) ( ) Ga  
 ( ) Electricity  Water  Garbage  Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes  No

Please list the date you first received the Notice to Tenants approx 06/2016

2016 JUN 19 PM 1:11

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
6/28/2016	9/1/2016	\$ 958	\$ 977.16	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/26/2016	9/1/2017	\$ 977.16	\$ 999.63	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>		<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>2</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**Verification**

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



Tenant's Signature

01/16/2018

Date

\_\_\_\_\_

Tenant's Signature

\_\_\_\_\_

Date

2018 JAN 19 PM 1:17

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

**The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.**

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

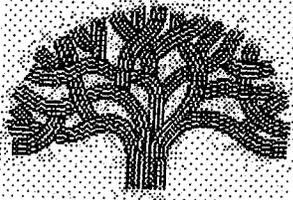
\_\_\_\_\_  
**Tenant's Signature (for Mediation Request**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Tenant's Signature (for Mediation Request**

\_\_\_\_\_  
**Date**

RECEIVED  
2018 JAN 19 PM 1:11



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

for Date Stamp Only  
RENT ADJUSTMENT PROGRAM  
2010 JAN 22 PM 4:15

CASE NUMBER L17-0233  
on-line case #  
L17-1028

**Tenant Response Contesting Rent Increase**

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name Hector Gallegos Morales	Complete Address (with Zip Code) 1856 E 25 <sup>TH</sup> ST APT "F" OAKLAND CA	Telephone Day <u>510 259 80 96</u> Evening _____
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: 08/08/2005

Date you moved into this unit: 09/08/2005

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?  
Yes  No

Initial Rent: \$ 790 Initial rent included (please check all that apply)  Gas  
 Electricity  Water  Garbage  Parking  Storage  Cable TV  Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?  
Yes  No

Please list the date you first received the Notice to Tenants approx. 06/2010

2010 JAN 22 PM 4:15  
 RENT ADJUSTMENT PROGRAM

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
6/28/2016	9/1/2016	\$ 989.00	\$ 1008.78	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/26/2017	9/1/2017	\$ 1008.78	\$ 1031.98	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>		<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**Verification**

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

  
 \_\_\_\_\_  
 Tenant's Signature

01/19/18  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Tenant's Signature

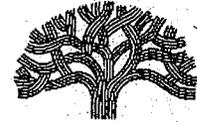
\_\_\_\_\_  
 Date

Addendum A

I believe that the capital improvement increase is not valid because of deferred maintenance, requested repairs, code enforcement required repairs, the repairs did not benefit the tenants and were not completed in the time necessary.

# CITY OF OAKLAND

250 FRANK OGAWA PLAZA, SUITE 5313  
OAKLAND, CA 94612



Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
TDD (510) 238-3254

## HEARING DECISION

**CASE NUMBERS:** L17-0233, Udinsky v. Tenants  
L17-0236, Udinsky v. Tenants

**PROPERTY ADDRESSES:** 1848-1860 E. 25<sup>th</sup> Street, Oakland, CA

**DATES OF HEARING:** April 23, 2018; June 13, 2018; Sept. 5, 2018

**DATE OF DECISION:** September 21, 2018

**APPEARANCES:** Bing Udinsky, Owner (all dates)  
George Shafazand, Owner Representative (4/23 only)  
Michael Blake, Witness for Owner (4/23 only)  
Edwin Perez, Witness for Owner (4/23 only)  
Franciso Salinar, Tenant Unit 1860 B (4/23 only)  
Nury Maradiaga, Tenant Unit 1848 E (4/23 and 6/13)  
Hector Gallegos, Tenant Unit 1856 F (4/23 and 6/13)  
Dagoberto Sarmiento, Tenant Unit 1848 C (4/23 and 6/13)  
Orlin Maradiogoa, Tenant Unit 1848 C (4/23 and 6/13)  
Alberto Villa, Tenant Unit 1848 C (4/23 and 6/13)  
Nely Barahona, Tenant Unit 1856 E (6/13 only)  
Pa Eh, Tenant Unit 1852 E (6/13 only)  
Jackie Zaneri, Attorney for Tenants (all dates)

Vanessa Cardenas, Spanish Interpreter (4/23 only)  
Marci Valdivieso, Spanish Interpreter (6/13 only)

## SUMMARY OF DECISION

The owner's petitions are granted in part. The allowable rent increase is detailed in the Order below and the attached Decision Summary.

000130

## CONTENTIONS OF THE PARTIES

On October 25, 2017, the owner filed a petition in case L17-0233 (online case number L17-1028) for approval of a rent increase based on capital improvement expenditures for work done on the property at 1848 East 25<sup>th</sup> Street, Unit C, Oakland, CA. On November 1, 2017, the owner filed a petition in case L17-0236, for approval of rent increases based on capital improvement expenditures at 1848, 1852, 1856, and 1860 East 25<sup>th</sup> Street in Oakland. At the Hearing, the owner testified that these petitions were duplicative, and were based on the same work done on the buildings, and supported by the same costs expended. The first petition was filled out online, but she was unable to provide all the required information, so she filed a second petition in writing.

Tenants Hector Gallegos Morales and Dagoberto Sarmiento filed timely responses to the Owner Petitions.

## THE ISSUES

1. When, if ever, did the owner provide the *Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice)* to the tenants?
2. Are permits required for a capital improvement expenditure to be granted?
3. Which documents that were produced by the owner can be considered?
4. Can tenants who do not file responses to the *Owner Petition* testify at the Hearing?
5. Can the owner increase the rents based on capital improvements and if yes, in what amount?

## EVIDENCE

History: Bing Udinsky testified that she has owned the 24 unit, 4 building property since February of 2016. At the time she purchased it the condition was "fair". There was dry rot present on some parts of the decks and in the units themselves. The work for which she is seeking a pass-through was for the exterior work done on the buildings.

On her *Property Owner Petition for Approval of Rent Increase* the owner stated under penalty of perjury that she gave the *RAP Notice* to each tenant in November of 2015.

Each of the two tenants who contested the petition acknowledged in their responses that they had received the *RAP Notice* in June of 2016.

### Rents:

1848 E. 25<sup>th</sup>: The owner representative sought to increase the rent to the tenants at 1848 East 25<sup>th</sup> street, in units C-F. The tenants in Unit A & B are currently on Section 8.

The tenants whose rents are at issue pay rent as follows:

Tenant	Unit Number	Current Rent
Dagoberto Sarmiento	C	\$1,000 <sup>1</sup>
Lisa Giles	D	\$1,409
Nuri Maradiaga	E	\$798
Abdullah Sherzay	F	\$2,000

1852 E. 25<sup>th</sup>: The owner representative sought to increase the rent to the tenants at 1852 East 25<sup>th</sup> street, in units B-C and E-F. Unit A was vacant at the time the owner petition was filed and the tenant in Unit D is on Section 8.

The tenants whose rents are at issue pay rent as follows:

Tenant	Unit Number	Current Rent
Brian Alonzo	B	\$2,395
Alejandro Pablo Carrillo	C	\$2,050
Pa Eh	E	\$1,975
Martinez Sanchez	F	\$1,975

1856 E. 25<sup>th</sup>: The owner representative sought to increase the rent to the tenants at 1856 East 25<sup>th</sup> street, in units B and E-F. Unit A was vacant at the time the owner petition was filed and the tenant in Unit C is on Section 8. It is unknown as to why the tenant in unit D is not on the list of tenants from whom the owner is seeking an increase.

The tenants whose rents are at issue pay rent as follows:

Tenant	Unit Number	Current Rent
Brittany McGovern	B	\$2,000
Nelly Barahona	E	\$1,029
Hector Gallego	F	\$1,032

1860 E. 25<sup>th</sup>: The owner representative sought to increase the rent to the tenants at 1860 East 25<sup>th</sup> street, in units B, C and E. The tenants in Units A and F are on Section 8. It is not known why the owner is not seeking an increase for the tenants in unit D.

The tenants whose rents are at issue pay rent as follows:

///

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<sup>1</sup> Note that the tenant testified his rent is \$999.63 a month.

Tenant	Unit Number	Current Rent
Francisco Salinas	B	\$1,029
Bolaji Fatai Qudus	C	\$2,050
Villa Domingo	E	\$1,032

Documents: Prior to the initial Hearing , the Owner produced most of the pages of those documents marked as Exhibits 1-14 and Exhibits 27 and 28. These documents including a permit record that the owner obtained from the City of Oakland online database<sup>2</sup>; payments for the roof<sup>3</sup>; sewer lateral compliance certificates<sup>4</sup>; checks for plumbing work, painting and solar installation<sup>5</sup>; permit records<sup>6</sup>; checks for the general contractor, for hauling services and for the structural engineer<sup>7</sup>; photographs of the buildings; checks to *Zero Inspection Services*<sup>8</sup>; a work authorization contract and invoices from *Zero Inspection Services*<sup>9</sup>; an estoppel certificate from tenant Dagoberto Sarmiento<sup>10</sup>; a guide to the checks written<sup>11</sup>; and a rent roll for the tenants.<sup>12</sup>

As to Exhibit 2, 6 and 12, certain pages of those documents were not produced until the Hearing, as the owner had not been able to get them from the bank.

On the first day of Hearing it was evident that the owner had not submitted many necessary documents like the contracts for the work done and many of the invoices. The owner was asked why the invoices were not produced and she said because there were "too many of them" and that some of them were produced to her electronically. Additionally, she believed that the permit records produced combined with the proof of payments was sufficient to establish that the costs had been incurred.

Udinsky testified on cross-examination that she did not provide bids and contracts before the first Hearing, because she had not understood that invoices and contracts were required.<sup>13</sup>

<sup>2</sup> Exhibit 1. This exhibit was admitted into evidence without objection.

<sup>3</sup> Exhibit 2. Pages 1-3 of this exhibit was admitted into evidence without objection. The tenants objected to the admission of page 4, as it was not provided until the Hearing.

<sup>4</sup> Exhibit 3. This exhibit was admitted into evidence without objection.

<sup>5</sup> Exhibits 4-6. Exhibits 4 (all pages), 5 (all pages) and 6 (pages 1-3) were admitted into evidence without objection. The tenants objected to admission of page 4 of Exhibit 6, as it was not provided until the Hearing.

<sup>6</sup> Exhibit 7. This exhibit was admitted into evidence without objection.

<sup>7</sup> Exhibit 8-10. These exhibits were admitted into evidence without objection.

<sup>8</sup> Exhibit 12. The tenants objected to this exhibit in its entirety as none of the documents were admitted until the Hearing on April 23, 2018.

<sup>9</sup> Exhibit 13. This Exhibit was not produced until the Hearing on April 23, 2018. The tenants objected to the admission of this document as being late filed.

<sup>10</sup> Exhibit 14. This exhibit was admitted into evidence without objection.

<sup>11</sup> Exhibit 27. This document was not admitted into evidence.

<sup>12</sup> Exhibit 28. This document was admitted into evidence without objection.

<sup>13</sup> The owner was asked to review the *Owner Petition* and read aloud the section on page 5 which says "Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation."

Over the tenants objection, a supplemental Hearing was set in order for the owner to produce additional documentation. A *Notice of Supplemental Hearing* was sent to the parties, setting a new Hearing. The *Notice* specified that the owner was asked to produce additional information, and that the tenants objected to the admissibility of the additional documentation.

Prior to the second day of Hearing, the owner produced exhibits 15-26.<sup>14</sup>

The tenants objected to the late filed documents because there was no good cause for the late filing.

During cross-examination of Udinsky, she testified that she did not have access to all of the documents that were produced after the first Hearing. She had to gather some of these documents from the contractors and from the *City of Oakland*.

After the first two days of Hearing, it became evident that the full permit records from the *City of Oakland* were necessary to determine whether appropriate permits were taken out for the work done. A *Second Notice of Supplemental Hearing* was sent to all parties, setting a supplemental hearing for September 5, 2018. In that *Notice*, the owner was ordered to produce the complete permit records from the *City of Oakland* for the work done on the buildings and the owner was asked to produce information regarding which expenses applied to which buildings. The owner produced exhibit 31, which consisted of a summary of the permit records for each building, and a spreadsheet in which the owner laid out which expenses applied to which buildings.<sup>15</sup>

#### Capital Improvements:

Roofs: The owner representative testified that new roofs were installed on the subject buildings with permits. Neither the *Reroofing Certifications*, the contracts nor the invoices from the roofers were produced in the initial document production. George Shafazand testified that after the buildings were purchased by the owner, he inspected the roofs (as general manager for Happy Homes) and discovered that all four buildings needed new roofs.

The owner testified that the roofing work was done to the building at 1848 E. 25<sup>th</sup> by *Lovett and Lovett* in May of 2016 and the other three buildings by *California Roof Technicians* in November of 2016. The owner produced a payment to *Lovett and Lovett*

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<sup>14</sup> The tenants objected to these exhibits (15-26) because they were filed after the Hearing began and, as to some of them, because the owner did not produce the same witnesses at the second Hearing that had been produced at the first Hearing. These objections were overruled. Note that Exhibits 27 and 28 were produced with the initial owner's filing.

<sup>15</sup> At the Hearing, the owner testified that it was inaccurate to place the cost of the *Lovett and Lovett* roof, in the column for 1860 25<sup>th</sup> street, but that since the original *Lovett* invoice had the wrong address, she relied on the invoice in making the chart. The owner later provided a corrected invoice from *Lovett* showing that the work was done on 1848 25<sup>th</sup>.

for \$22,109.62<sup>16</sup> and payments to *California Roof Technicians* totaling \$18,000.<sup>17</sup> The owner representative testified that the old roofs were not under warranty at the time the roofs were replaced.

The owner produced a *Reroofing Certificate* for each building showing that the owner had filed the necessary paperwork with the *City of Oakland* for each roof.<sup>18</sup> These *Certificates* each say that the work was done by *California Roofing Technicians*. The *Certificates* for both 1848 and 1852 E. 25<sup>th</sup> state that the completion date was December 19, 2016, and the job cost was \$4,600 each. The *Certificate* for 1856 states that the completion date was December 19, 2016, and the job cost was \$4,200. The *Certificate* for 1860 states that the completion date was May of 2016, and the job cost was \$22,000. Udinsky testified that *California Roofing Technicians* filled out the paperwork for all four roofs, even though it only performed the roofing work on three of the roofs. Udinsky testified that the *Reroofing Certificate* can be filled out by any licensed contractor and that in this case *California Roofing* was certifying that the building had been reroofed.

The permit records (Exhibit 31) show that the *Reroofing Certificates* were issued on May 16, 2018, after the *Owner Petition* in this case was filed.

The owner also produced an invoice from *Lovett and Lovett*. This invoice, dated May 10, 2016, states it is for the reroofing of 1860 E. 25<sup>th</sup> Street for \$22,109.62.<sup>19</sup> This invoice differed from the owner's testimony, as she had testified that *Lovett* replaced the roof at 1848 E. 25<sup>th</sup>. To clear up the confusion as to which building was roofed by *Lovett and Lovett* a third Hearing was scheduled. At that Hearing the owner testified that based on her conversations, she believed that *Lovett and Lovett* did work at 1848 E. 25<sup>th</sup> Street and may have also done roofing work at 1860 E. 25<sup>th</sup> based on a conversation she had with Mr. Lovett. The owner was asked to provide the appropriate documentation. After the Hearing, a new invoice from *Lovett and Lovett* was provided, showing that the work was performed at 1848 E. 25<sup>th</sup> Street, for \$22,109.62.<sup>20</sup>

The owner also produced three contracts for reroofing (dated November 28, 2016) from *California Roof Technicians* for 1852, 1856 and 1860 E. 25<sup>th</sup> for \$4,600 each, plus an

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<sup>16</sup> The owner produced the check to *Lovett and Lovett* (Exhibit 2, page 4) on the day of the Hearing. She testified that because the check was more than a year in the past, that her bank did not have ready access to the check and that it took them a long time to retrieve the document for her. She had requested the information from the bank two months prior to the Hearing but it was not provided to her until the week before the Hearing. The tenants objected to the admission of the fourth page of the Exhibit. The objection was overruled and the document was admitted into evidence.

<sup>17</sup> Exhibit 2. Page 1 is a \$6,000 check to *California Roof Technicians* dated 11/26/16; page 2 is a \$4,200 check to *California Roof Technicians* dated December 13, 2016; and page 3 is \$7,800 check to *California Roof Technicians* dated 12/19/16. Each check states is for 1856 1860 1852 E. 25<sup>th</sup>.

<sup>18</sup> Exhibit 15. The tenants objected to this exhibit because it was filed after the Hearing began. This objection was overruled.

<sup>19</sup> Exhibit 17. The tenants objected to this exhibit because it was filed after the Hearing began and claimed prejudice because the owner did not produce the same witnesses at the second Hearing that had been produced at the first Hearing. This objection was overruled.

<sup>20</sup> Exhibit 32

additional work order for 1856 (dated December 8, 2016) showing an additional price of \$4,200 for cutting out and removing 3 areas down to the roof deck and replacing the decking along with other work.<sup>21</sup> The final invoice refers to this additional charge of \$4,200 as "dry rot" repair.<sup>22</sup> The total charges from *California Roof Technicians* was \$18,000.

Udinsky testified with respect to 1856 E. 25<sup>th</sup>, that the dry rot referred to on the December 8, 2016, invoice was not visible until the roof work began at 1856 E. 25<sup>th</sup>.

On cross-examination Udinsky testified that the roofing work involved all new roofing materials, and that she was not aware of any leaks prior to the work being done.

Solar: The owner representative testified that she had solar panels installed on the roof. The owner pays for electric for the common areas, and these panels were installed to decrease the owner's electric bills. The work began in August of 2016 and finished in October 2016 at a cost of \$22,023.<sup>23</sup>

On cross-examination, Udinsky testified that the solar panels do not decrease the PG&E costs incurred by the tenants.

The owner produced a document from the *City of Oakland's Online Access* portal showing that a permit for the installation of solar electric panels at 1848 E. 25<sup>th</sup> Street had been finalized.<sup>24</sup> Additionally, she produced a contract from *Simply Solar* for the work on the project at the subject property at a cost of \$22,023. The contract states:

"Project includes 13 panels ..... between 1856/1860/1852/1848 East 25<sup>th</sup> Street, Oakland, CA. Array will be built at 1856. E. 25<sup>th</sup> Street. 6 panels ....to be added to existing system at 1626 Dwight Way, Berkeley, CA 94703. All panels will be built on ballast racks with no roof penetrations."<sup>25</sup>

Sewer Lateral: The owner representative testified that the sewer laterals to all four buildings were replaced. She produced four *Compliance Certificates for Private Sewer Lateral* for each building dated November 14, 2016.<sup>26</sup> The work was done by *Mr. Fix It Right Plumbing* at a cost of \$23,000 and was completed started and finished in

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<sup>21</sup> Exhibit 18. The tenants objected to this exhibit because it was filed after the Hearing began and because the owner did not produce the same witnesses at the second Hearing that had been produced at the first Hearing. This objection was overruled.

<sup>22</sup> Exhibit 18, p. 1.

<sup>23</sup> The owner produced the last check to *Simply Solar* (Exhibit 6, page 4) on the day of the Hearing and testified that this check was delayed by the bank for the same reason as the check produced in Exhibit 2. The tenants objected to the admission of the fourth page of the Exhibit. The objection was overruled and the document was admitted into evidence.

<sup>24</sup> Exhibit 16, page 3. The tenants objected to this exhibit because it was filed after the Hearing began. This objection was overruled.

<sup>25</sup> Exhibit 22. The tenants objected to this exhibit because it was filed after the Hearing began. This objection was overruled.

<sup>26</sup> Exhibit 3

November of 2016.<sup>27</sup> The owner also produced a work order/invoice from *Mr. Fix It* for the work done on this project.<sup>28</sup>

On cross-examination, Udinsky testified that the work was done because she was required to comply with the rules regarding sewer laterals for new owners. Additionally, the work included an increase in the diameter of the sewer pipe, and was not routine maintenance.

Exterior Painting: The owner representative testified that she hired *Rafael Corona* to do exterior painting on all four buildings. He was only asked to paint those areas that were newly exposed after the work was done by *Perez and Perez* (see Structural Improvements Section, below). The job was for painting only, and did not include stucco or dry rot repair. The owner representative produced proof of payment to *Rafael Corona* for \$12,969.<sup>29</sup> The checks were paid in November of 2016. The owner also produced an invoice from *Rafael Corona* for exterior painting on the buildings at 1848-1860 E. 25<sup>th</sup> Street for \$12,969.<sup>30</sup>

Structural Improvements: Ms. Udinsky testified that she hired various contractors to do work on this project including *Verdant Structural Engineers* (for drawings and structural design as to 1848 25<sup>th</sup> Street only), *Nancy Hauling* (for debris removal), *Zero Inspection Services* (for inspections and work done on 1852 25<sup>th</sup>), and *Perez and Perez* (the general contractor on the job.)

George Shafazand testified that he is the general manager for *Happy Home Partners* with a degree in industrial engineering and is a master inspector and an OSHA trained trainer of inspectors. In his role as general manager of *Happy Homes* he was involved in this project. At his first inspection of this property in August of 2016, which was after it had been purchased, he noticed cracks in the beams. He recommended that several decks be replaced, and that 3 beams be replaced. He also inspected vacant units, where he noticed leakage around the inner windows and found water intrusion from the exterior. He also noticed visible cracks due to building movement. He recommended opening up 16" around each window, replacing the rotten framing, and replacing the windows with new nail on windows, restuccoing, and painting with elastomeric paint. He also recommended that a structural engineer be hired to do further analysis and that *Perez and Perez* be hired to do the work on the premises.

Edwin Perez, the contractor for the project, testified that all the work he did on the project related to the decks and beams (which held up the decks) and problems associated with dry rot caused by lack of adequate drainage. At 1848 E. 25<sup>th</sup>, all the decks were replaced, at 1852 two decks were replaced, and at 1856 and 1860 one deck was replaced at each address. He further testified that the prior deck construction was

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<sup>27</sup> Exhibit 4

<sup>28</sup> Exhibit 19. The tenants objected to this exhibit because it was filed after the Hearing began. This objection was overruled.

<sup>29</sup> Exhibit 5

<sup>30</sup> Exhibit 21. The tenants objected to this exhibit because it was filed after the Hearing began. This objection was overruled.

old, had dry rot, and had not been constructed in a way to allow water to drain from the decks. He did a bid for the job, based on the plans that had been drawn by the engineer.

Perez further testified that the beams that he replaced were dry rotted. The first check made payable to Perez was written in October of 2016 and the last check was written in September of 2017.

Perez further testified that he was the one who pulled the permits on the job. When he gets permits, he tells the City of Oakland permitting department the reasons that the work is being done and he is honest with the City about the work that he is doing. Dry rot is referenced on each of the permits he received. Dry rot comes from moisture intrusion over a long period of time. On this job Perez worked on repairing the decks, replacing the windows and repairing the stucco.

On questioning by Ms. Udinsky, Perez further testified that some of the structural work was necessary because of soil movement. The beams needed to be replaced because the footings were moving. The deck replacement was not just for the dry rot but was because they had to install new plywood to make the structure stronger and safer. The work that was done was not just repairing "like for like" but also made the building better.

On cross-examination, Udinsky testified on cross-examination that the building was purchased in February of 2016. Prior to the purchase, she had one of the buildings (1852) inspected by *Zero Inspection Services* for termites. None of the repairs that were made were paid for by insurance.

Udinsky further testified on cross-examination that there was extensive fungus (dry rot) damage to the buildings based on the *Zero Inspection Services* report.

On cross-examination, Mr. Perez testified that he has worked with *Happy Homes* and Bing Udinsky for approximately three years and has done work on a variety of different buildings for them. At the time he was working on this project, he was not also doing other projects for *Happy Homes* at the same time.

Perez further testified on cross-examination that he could not say what work was done for each individual check he received just by looking at the checks.

Michael Blake, who works for *Perez and Perez*, testified that *Perez and Perez* had an original scope of work with *Happy Homes* for structural repair of the buildings. As the work was being done, the scope of work increased because of the dry rot findings that were exposed. None of the permits refer to window replacements.

1848 E. 25<sup>th</sup> Street:

The following relevant permits were taken out for this building for the structural improvements:

1. Permit Number B1606197 at 1848 E. 25<sup>th</sup> Street to “replace dry rotted beams on first floor north side with new steel beams. Replace shear wall.”<sup>31</sup> This permit was finalized on December 27, 2016.
2. Permit Number B1605084 at 1848 E. 25<sup>th</sup> Street to “repair dry rot & termite damaged balconies for Units B, C & E at right side of 6-unit apartment building per termite report #90527 in areas identified as #A, 3B, 3C, 3D & 3I.”<sup>32</sup> This permit was finalized on October 20, 2016.

Udinsky testified that the work for both these permits were performed by *Perez and Perez*, the general contractor on the job. The work done by *Perez*, was based on the drawings done by *Verdant Structural Engineers*, who was hired as the structural engineer on the project. Additionally, *Nancy Hauling* did the debris removal on the job for the entire 4 buildings.

The owner produced a contract from *Verdant Structural Engineers* which specifies a down payment of \$1,000 is due (to be applied to the finale invoices) and invoices from *Verdant* totaling \$4,807<sup>33</sup>; and the construction contracts and proposals and invoices from *Perez and Perez*.<sup>34</sup>

The *Verdant* contract specifies that it relates to work done at 1848 25<sup>th</sup> Street and states in relevant part the following:

- “Structural design required to replace the existing decking....”
- “Structural design required to repair the beam supporting the lower floor stair stringer ...”
- “Structural design of a new beam .... To replace the existing dry rotted beam. This beam will still be connected to the slanted column which shows signs of foundations sliding, although it will be designed to fully cantilever from the edge of the building. Therefore it will not relay on the existing column and foundation which appear to not be performing well.”
- “Structural design of a new beam located at the northwest side of the northwest lower floor stair to replace the existing dry rotted beam.”

There are four contracts, proposals, change orders and/or invoices from *Perez and Perez*, for this building. The first contract, dated October 19, 2016, specifies it was to “repair decks and structure and beams.”<sup>35</sup> The corresponding proposal, dated October 7, 2016, specifies that *Perez* was hired to do deck replacement (replace first, second and third floor decking at prescribed sections, including a number of beams and posts.)

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<sup>31</sup> Exhibit 7, p. 5 and Exhibit 31, page 1

<sup>32</sup> Exhibit 31, page 1.

<sup>33</sup> Exhibits 23 and 24. The tenants objected to these exhibits because they were filed after the Hearing began and because the owner did not produce the same witnesses at the second Hearing that had been produced at the first Hearing. This objection was overruled.

<sup>34</sup> Exhibit 26. The tenants objected to these exhibits because they were filed after the Hearing began and because the owner did not produce the same witnesses at the second Hearing that had been produced at the first Hearing. These objections were overruled.

<sup>35</sup> Exhibit 26, page 1.

Specified work included remove decking 1, 2 and 3<sup>rd</sup> floor on the right side of building; install additional support beams; install a plywood base; install a roofing membrane to protect lower levels and prevent runoff; install 1"x 6" trek; install new handrails cap and panels; install a shear wall; install new privacy walls; install a support beam; install flashing amongst other things. The charge for this proposal was \$44,388.<sup>36</sup>

The owner testified that this proposal was not paid for in its entirety; that they negotiated a lower price. The owner produced proof of payments to *Perez* on this building for \$4,438, (October 21, 2016); \$4,800 (November 16, 2016); \$15,000 (January 26, 2017, with a notation of "dry rot"); and \$10,000 (January 11, 2017, with a notation of "dry rot").<sup>37</sup> At one point she testified that these four payments were to cover the cost of permit number B1606197; later she testified that these payments were to cover the cost of permit number B1605084.

The second document from *Perez and Perez* for 1848 25<sup>th</sup> Street, is an invoice dated 11/16/16, to install a retainer wall and speed stops at the property. The invoice was for \$4,800.<sup>38</sup>

The third document from *Perez and Perez* for 1848 25<sup>th</sup> Street, is a *Proposal and Change Order* dated December 25, 2016, for additional work for a structural upgrade according to *Verdant's* revised plan. An additional charge of \$25,000 was added to the cost of the project.<sup>39</sup>

A fourth *Proposal* dated December 29, 2016, for 1848 25<sup>th</sup> Street was provided for additional work to the tenant improvement/structural upgrade for the building. The additional cost of the project was listed as \$39,600 and specified that it included installation of fiber glass insulation in the repair area and relocation of electrical cables. This *Proposal* referenced an original proposal charge of \$44,588 and specified that the total cost would be \$84,188.

The owner testified that the third and fourth *Proposals* were actually all one project, and produced proof of payment of the total amount.<sup>40</sup> She further testified that the total payment of \$84,188 was to cover the costs of the permit #B1606197. She further testified that *Perez and Perez* was sloppy with their invoicing, and that proposals and invoices were not always dated correctly. However, *Perez and Perez* did do work on the project, and were paid.

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<sup>36</sup> Exhibit 26, pages 4-5

<sup>37</sup> See Exhibit 8, pages 1, 4 and 6.

<sup>38</sup> Exhibit 26, page 11; Exhibit 8, page 3. Udinsky testified that this check was to pay the first proposal charge of \$44,388, but since the charge exactly lines up with the invoice, it seems more likely that this payment is for the invoice of the same amount.

<sup>39</sup> Exhibit 26, p 15

<sup>40</sup> Exhibit 8, page 5

1852 E. 25<sup>th</sup>:

The following relevant permit was taken out for this building for the structural improvements:

1. Permit Number B1702829 at 1852 E. 25<sup>th</sup> Street to “replace approx. 9 deck boards due to dry-rot at front ground level deck for apartment building.”<sup>41</sup> This permit was finalized on June 27, 2017.

Udinsky testified that she hired *Zero Inspection Services* to inspect the building at 1852 E. 25<sup>th</sup> Street prior to the purchase. She hired them only to inspect one of the buildings, believing that the buildings were in substantially similar conditions and that a report for one building would provide adequate information about the condition of them all. The report she produced was labelled as report number 90528. She asked *Zero* to inspect the worst of the four buildings and that it recommended Section 1 repairs (which are structural repairs) of \$28,575 to this building. Section 2 repairs (which are non-structural repairs) were estimated at \$1,675. She also hired *Zero* to do some of the repair work of some of the conditions discovered in the report. The *Zero* inspection found both termites and dry rot throughout the building.

Udinsky testified that the railing replacements were not necessitated by dry rot, but was done to make the building more attractive to prospective and current tenants.

The *Zero* inspection report found the following:<sup>42</sup>

1. Termite damage in two locations;
2. Dry rot damage in the first, second and third floor balconies; dry rot damage in and or near the deck and stair ledgers; dry rot damage in and or near the first, second and third floor support beams landings and balconies; dry rot damage to the landings/balconies and patios surrounding the handrail caps and posts; dry rot damage in and/or near retainer wall; and fungus infection and damage to the floor joists; and,
3. Water damage and plumbing leaks in particular units.

The owner produced the *Zero Inspection Services* inspection report and completion invoice.<sup>43</sup> The invoice was for \$20,700. The owner also produced payments to *Zero* totaling \$10,900 (check 3527, dated April 7, 2016) and \$4,260 (check 3633, dated May 6, 2016).<sup>44</sup>

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<sup>41</sup> Exhibit 7, p. 1. See also Exhibit 31, page 2.

<sup>42</sup> Exhibit 25

<sup>43</sup> Exhibit 25. The tenants objected to these exhibits because they were filed after the Hearing began and because the owner did not produce the same witnesses at the second Hearing that had been produced at the first Hearing. This objection was overruled.

<sup>44</sup> Exhibit 12, pages 1-2

The owner also produced two *Perez and Perez* invoices for 1852 25<sup>th</sup> Street. The first, dated November 9, 2016, was to install a retaining wall, drainage and parking blocks.<sup>45</sup> The charge for this work was \$4,800. Udinsky testified that this was not paid for, as the work proposal changed. The second invoice, dated February 19, 2017, was to excavate a trench for this building to intercept surface water and to install drainage.<sup>46</sup> This invoice also included the installation of 4 catch basins, and work on the patio, walkway and area under the deck. The charge was \$12,000, and the owner produced proof of payment.<sup>47</sup>

1856 E. 25<sup>th</sup>:

The following relevant permit was taken out for this building for the structural improvements:

1. Permit Number B17000781 at 1856 E. 25<sup>th</sup> Street to “repair dry rot and stucco on rear wall (all work like for like on 3 story 6 unit building.”<sup>48</sup> This permit was finalized on February 23, 2017.

There are four proposals/invoices for this building. The first, dated January 29, 2017, was to replace exterior stucco walls of the building, which included removing the old stucco, replacing windows and vents as necessary, and reapplying new stucco coats to the building as well as replacing the beams and wood at first landing.<sup>49</sup> The total charge listed on the first invoice was \$77,540.

Udinsky testified that this work was done because there were cracks along the exterior walls of this building.

The second proposal, dated February 6, 2017, for 1856 25<sup>th</sup> Street, is to replace the exterior landings of the building and specifies that the contractor will demo and remove existing 3 x 6 boards and 4 x 10 beams of the building. The cost for this work was listed as \$4,578.<sup>50</sup>

The third proposal, dated March 16, 2017, was to replace a second floor beam, decking, handrail barrier and exterior walls at 1856 E. 25<sup>th</sup> Street.<sup>51</sup> The cost of the project was \$59,328. Udinsky testified that there was dry rot and damage to the building before they purchased the project, that this work was done to correct. But instead of just repairing the dry rot, more extensive work was done to make the building better.

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<sup>45</sup> Exhibit 26, p 12

<sup>46</sup> Exhibit 26, p 32

<sup>47</sup> Exhibit 8, page 14.

<sup>48</sup> Exhibit 7, p. 2. See also Exhibit 31, page 3.

<sup>49</sup> Exhibit 26, pp 23-24. The costs are broken down as follows: erect scaffolding (\$7,000); demo existing stucco and build up sheathing walls to provide additional support and bring building up to current code (\$7,800); repair all wood (\$5,000); install new membrane and wire mesh (\$3,600); install three new windows (\$2,600); install new coats of stucco (\$28,000); replace beams and wood at first landing (\$5,000). Additional charges were added to repair structural integrity of building where joist and framing members to support building; replace windows on south side; and remove contaminated waste for a total charge of \$18,540. The total charge for the project was \$77,540.

<sup>50</sup> Exhibit 26, p 19

<sup>51</sup> Exhibit 26, pp 29-30

The fourth invoice, dated March 30, 2017, was for the installation of a 6 x 6 roof cap to better protect the building and new repairs from water intrusion.<sup>52</sup> The charge was for \$2,700.

Proof of payment to *Perez* for these invoices is shown by checks dated February 16, 2017, for \$4,578 (for "dry rot")<sup>53</sup>; February 20, 2017, for \$15,000 (for "dry rot")<sup>54</sup>; March 6, 2017, for \$10,000 (for "dry rot")<sup>55</sup>; April 5, 2017, for \$55,240<sup>56</sup>; April 20, 2017, for \$10,000<sup>57</sup>; and May 2, 2017, for \$10,000<sup>58</sup>; and May 15, 2017, for \$39,326 (for "dry rot repairs").<sup>59</sup>

1860 E. 25<sup>th</sup>:

The following relevant permit was taken out for this building for the structural improvements:

1. Permit Number B1703756 at 1860 E. 25<sup>th</sup> Street to "repair/replace dry-rotted deck boards on existing walkway deck for unit E on 3<sup>rd</sup> level..."<sup>60</sup> This permit was finalized on February 23, 2017.

There are two proposals from *Perez and Perez* for this building. The first proposal, dated October 7, 2016, specifies that the project is to "replace support beams...", install new handrails cap and panels, replace the handrails, install flashing on beam ends, amongst other things. The charge for this proposal was \$4,388.<sup>61</sup> An *Invoice* for the total cost was provided, along with proof of payment dated November 16, 2016.<sup>62</sup>

The second proposal for this building is dated June 11, 2017, and is for deck replacement.<sup>63</sup> The charge for this proposal was \$14,000. The owner testified that the deck was replaced because of the presence of the dry rot but that the work was an upgrade because it included the addition of pressure treated lumber, which had not been present in the prior deck. Proof of payment for this invoice was provided with checks dated August 31, 2017, for \$4,000 (for "dry rot")<sup>64</sup>; and a check dated September 7, 2017, for \$10,000.<sup>65</sup>

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<sup>52</sup> Exhibit 26, p. 25

<sup>53</sup> Exhibit 8, p 7

<sup>54</sup> Exhibit 8, p. 8

<sup>55</sup> Exhibit 8, p. 9

<sup>56</sup> Exhibit 8, p. 10

<sup>57</sup> Exhibit 8, p. 11

<sup>58</sup> Exhibit 8, p. 12

<sup>59</sup> Exhibit 8, p. 13

<sup>60</sup> Exhibit 31, page 4.

<sup>61</sup> Exhibit 26, page 9

<sup>62</sup> Exhibit 26, pp 7-8; Exhibit 8, page 2

<sup>63</sup> Exhibit 26, pp 36-37

<sup>64</sup> Exhibit 8, p. 15

<sup>65</sup> Exhibit 8, page 16

### All Buildings:

The owner produced two invoices from *Nancy's Hauling* for \$2,800 and \$2,100 for hauling material from the job site along with proof of payment.<sup>66</sup> She testified this work was done after the entire property was completely repaired and that the cost should be divided equally to each building.

### Tenant Testimony

Tenant Sarmiento: Tenant Sarmiento filed a timely response to the owner petition in case L17-0236. He lives at 1848 E. 25<sup>th</sup> Street, Apartment C. He has lived there more than 12 years. He is generally aware of the condition of his building over the years he has lived there as well as the condition of the other three buildings. Before any construction was done on the exterior decks, the decks were in very poor condition. The decks were rotten and there were holes throughout.

Over the years, he would communicate with the prior ownership about the problems with the decks, and from time to time, the prior ownership would make a small patch repair but never fixed the underlying problem. There were holes in the wooden decks. Sarmiento further testified that he took the photographs marked as Exhibit 30. These photos were taken in January of 2018. The photographs were taken at 1848 E. 25<sup>th</sup> Street, and shows the rot in the wood underneath the roof line over the decks. The conditions of the decks prior to repair was far worse than the wood depicted in these photographs.<sup>67</sup>

The tenant was shown Exhibit 14, a *Confirmation of Lease, Tenant Estoppel Certificate* that had been produced by the owner. Sarmiento testified that he filled out this form. It is dated in November of 2015. Question 7 of the form, and the answer, state as follows:

“Tenant represents that all requests that Tenant has made to the current owner for repairs in the Leased Premises and the Property have been completed to Tenant’s satisfaction and that there are no necessary repairs to be done in the Leased Premises or the Property except as follows: The deck, the heater.”

The tenant testified that he wanted the new owner to know that there were problems with the deck. Prior to the purchase and the work being done to fix the decks, the decks could not be used because there were holes and there were rotten patches of wood throughout. He had concerns about his children using the decks because of these ongoing problems.

Sarmiento further testified that he is a house painter. He did not see any exterior paint job at his building (1848), but did see that the building 1856 E. 25<sup>th</sup> Street, was painted.

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<sup>66</sup> Exhibit 20. The tenants objected to this exhibit because it was filed after the Hearing began. This objection was overruled. See also Exhibit 9 (the proof of payment.)

<sup>67</sup> The owner objected to the admission of Exhibit 30 on the grounds that they were undated and that it was not clear where the photographs were taken. These objections were overruled and the Exhibit was admitted.

With respect to the sewer, Sarmiento testified that prior to the sewer laterals being replaced, sewage would come out of the pipes to the street in front of the building at 1860 E. 25<sup>th</sup> Street.

On cross-examination, Sarmiento testified that he complained to the current owner about this sewage problem. Sarmiento further testified that in order to get to his rental unit, he had to cross the area of the hallways and decks that were damaged. He has been to three or four other units in the complex of buildings—at 1856 E. 25<sup>th</sup> Street, Unit E, and to units at 1860 E. 25<sup>th</sup> Street. He agrees that substantial work was done by the new owners. His only complaint is that the painters have not painted his building.

Tenant Gallegos: Tenant Gallegos (Morales) filed a timely response to the owner petition in case L17-0233. He has lived at 1856 E. 25<sup>th</sup> Street, Apt. F for 13 years. He is generally aware of the conditions of both the building he lives in and the other buildings in the complex. Prior to the purchase of the property the current owner, there was a lot of rot throughout the buildings. The stairs and the decks were in very bad condition and very dangerous. There were leaks in the back part of the building that caused the walls and the decks to rot. The prior owner had not done any maintenance on the building for many years, and neither the decks nor the building had been painted.

With respect to the roofs, the tenant testified that he has been doing roofing work for 25 years. He had seen the roofs of this property and it was visible that the roofs needed repairs. On the edges, when it rained, the roofs had inadequate drainage and the water would fall onto the deck.

On cross-examination of Gallegos, he testified that he does not have a roofing license. He has been on the roof of his building some years back because his satellite dish needed repair. He complained to the prior manager about the conditions of the building but no action was taken. He has not complained to the current owner.

Tenant Maradiago: Tenant Maradiago did not file a response to the owner petition. She testified as a witness in this case to the conditions of the buildings. She testified that she lives at 1848 E. 25<sup>th</sup> Street, Apt. E. She has lived there for 20 years. Her unit is on the top floor in the back of the building.

The tenant testified that there were leaks in her unit from the ceiling as far back as 2015 and she notified the prior owners about the problem. She produced some photographs that were recently taken showing where the leaks were occurring.<sup>68</sup> She further testified that the decks on the exterior of the building were dangerous, with huge holes on the deck area large enough for a child to fall through. These decks are the walkways that must be walked on to get to one's unit. Additionally, the wooden staircases were broken and the handrails were broken. She reported these problems to the prior owner (through the manager and to the owner directly) and to the City of Oakland.

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<sup>68</sup> Exhibit 29. The owner objected to these photographs coming into evidence because the date was not on the photograph. The tenant testified to an approximate time that the photographs were taken. The objection was overruled.

Tenant Barahona: Tenant Barahona did not file a response to the owner petition. She testified as a witness in this case to the conditions of the buildings. She testified that she lives at 1856 E. 25<sup>th</sup> Street, Apt. E and she moved in 16 years ago. Her unit is on the top floor. Over the years, prior to the current owner, there were leaks in her ceiling and in some of the windows when it rained. Even now, the bathroom still leaks when it rains. She complained to the prior owner about the problems, but no action was taken.

Barahona additionally testified that the decks, walkways and staircases of her building were in disrepair prior to the new owner purchasing the property. On one occasion, because of the disrepair, she fell down the stairs.

With respect to the sewage leak, Barahona testified that there was a sewage leak by the parking area that came from the laundry room. This occurred a little before the current owner purchased the property. It was an obvious condition.

On cross-examination Barahona testified that she had taken photographs of these conditions but they were on an old telephone and she no longer has access to these photographs.

Tenant Villa: Tenant Villa did not file a response to the owner petition. He testified as a witness in this case to the conditions of the buildings. He testified that he lives at 1860 E. 25<sup>th</sup> Street, Apt. E and moved in approximately 18 years ago. Prior to the time the current owner purchased the property the walkways and decks were in bad condition and falling apart. The prior owner hardly performed any repair of anything, inside or outside of the units. When he walked on the walkways, it felt like it would fall apart, because he could feel them move.

With respect to the sewage leak, Villa testified that he was aware of the leak shortly before the new owner purchased the property. This was in the parking lot in front of the buildings at 1856 and 1860. There was black water with an obvious sewage smell in front of the building where he lives.

Villa further testified that there he lives on the top floor and that prior to the new owner buying the property, there were leaks in his unit from the ceiling.

On cross-examination, Villa testified that he does not have photographs of his conditions in his unit. Additionally, he never withheld rent, even though the conditions were bad.

#### Owner's Contentions:

The owner argued that it was obvious that the prior owner did not do a good job of maintaining the property. As soon as she took over they made every effort to improve the buildings. Contractors were hired to stop the dry rot damage to the decks and walkways. While she does not deny that there was damage to the building when she purchased it, the work that was done was "way beyond" what was required.

Udinsky suggested that a conservative way to estimate the expenses to all four buildings for just the dry rot repairs would be to multiply the *Zero Inspection Services* estimate for repairs for the one building (\$28,575) by four, (for each building) for a total cost of \$114,300. All expenses over and above the \$114,300 would then reasonably be considered the improvements made by the owner over and above the dry rot repair.

Tenants' Contentions:

The tenants argued that the prior management was not responsive to their complaints and that they had been complaining to the owner for many years about problems with dry rot and the decks, and that all work for the decks and dry rot repair was either work done on a Priority 1 or Priority 2 condition or deferred maintenance. Since the painting and hauling was related to the dry rot repairs, these expenses should also not be passed through to the tenants.

Additionally, with respect to the solar panels, the tenants' contend that since there was no benefit to the tenants, the cost cannot be passed on.

With respect to the sewer laterals, the tenants contend that since there was an open and obvious sewage leak prior to the purchase, this was a priority 1 condition, and cannot be passed on to the tenants.

Finally, with respect to the roofs, the tenants contend that since there was evidence of roof leaks over time for many years, the costs were deferred maintenance and cannot be passed on to the tenants.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**When, if ever, were the tenants first served with the *RAP Notice*?**

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy<sup>69</sup> and together with any notice of rent increase or change in the terms of a tenancy.<sup>70</sup> When an owner petitions for a rent increase for capital improvements he or she must establish that the *RAP Notice* was served.<sup>71</sup>

Each of the two tenants stated who contested the *Owner Petition* indicated that they received the *RAP Notice* in June of 2016. Additionally, the owner stated on her petition, which was sworn under penalty of perjury, that the *RAP Notice* was served in November of 2015. The owner has established that the *RAP Notices* have been served.

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<sup>69</sup> O.M.C. § 8.22.060(A)

<sup>70</sup> O.M.C. § 8.22.070(H)(1)(A)

<sup>71</sup> O.M.C. § 8.22.090(B)(1)(c)

## **Are permits required for a capital improvement expenditure to be granted?**

In order to be considered a capital improvement, the improvement has to be "completed." Regulations Appendix § 10.2.1. The Oakland Building Code provides that "all construction or work for which a permit is required shall be subject to inspection by the Building Official in accordance with and in the manner provided by this Code and the Oakland Building Construction Code...." O.M.C. § 15.08.140. Without a permit, the work cannot be said to be "completed." This is particularly true because the City can demand that the work be redone and inspected, where the proper permits were not completed.

The *Housing, Residential, Rent and Relocation Board (HRRRB)* has held that if a particular project required a permit, then a capital improvement rent increase cannot be granted for the costs expended on that project unless the owner produced evidence that permits were taken out and finalized. See *Falcom v. Bostrom, T13-0279* and *Ludwig v. Tenants, L16-0038*.

Therefore, before a capital improvement pass-through can be granted, where required, an owner must establish that a permit was received and finalized. In each requested category below, a discussion of permit status is included.

## **Which documents that were produced by the owner can be considered?**

The *Notice of Hearing* sets forth that all documentary evidence must be filed with the RAP 7 days prior to Hearing. The purpose of this rule is to allow the parties the ability to review the other parties documentary evidence prior to Hearing, as there is no requirement that any exhibits be provided to the opposing side.

Prior to the initial Hearing, the Owner produced most of the pages of those documents marked as Exhibits 1-14 and 27-28. As to Exhibit 2, 6 and 12, certain pages of those documents were not produced until the Hearing, as the owner had not been able to get them from the bank. Prior to the second day of Hearing, the owner produced exhibits 15-26, which consisted of the *Reroofing Certificates*, and the invoices for the project.

The tenants' objected to the supplemental Hearing held and to allowing the owner to produce additional documentation as well as to allowing the owner to produce the additional documents produced in Exhibit 2, 6 and 12. Prior to the second Hearing, the tenants were given the opportunity to review the new documentation produced by the owner.

The Owner Petition informs property owners that they must establish that expenses were paid by producing documentary evidence. The Petition states: "Examples include: copies of receipts, invoices, bid contracts **or** other documentation." The petition does not specify that the owner must produce receipts, invoices, proof of payment **and** proof of permits. The owner testified that she did not understand that all these documents were required. Since it is a recent change to the Rent Ordinance that owners are required to petition prior to passing on a capital improvement rent increased, it makes

sense that there will be a learning curve as to what documents are required to be produced.

Additionally, the owner was credible in her testimony that some of the documentation was not in her custody and control when she first submitted the documentation to the RAP. She produced three checks at the Hearing, that had not been in her original document production. There was good cause for the failure of the owner to produce these three checks.

For all these reasons, the owner was allowed to produce additional documentation at the initial Hearing and before the supplemental Hearings.

### **Can tenants who do not file responses to the *Owner Petition* testify at the Hearing?**

The Rent Adjustment Ordinance requires that before a capital improvement rent increase is granted, an owner must first file a petition with the RAP and get approval for the rent increase. O.M.C. § 8.22.065(A). A tenant is given notice of the owner petition, and an opportunity to respond to the petition. O.M.C. § 8.22.090(A)(5). In this case, only tenant Sarmiento and Morales filed responses to the tenant petition.

At the Hearing, several tenants testified. Testimony was provided by the two tenants who responded, as well as by other tenants who live in the building. The testimony of the tenants that did not respond was submitted as witness testimony to the conditions in the building. This is allowable testimony and is considered in the Decision.

### **Is a rent increase justified by Capital Improvements and, if so, in what amount?**

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.<sup>72</sup> Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.<sup>73</sup> In order for a capital improvement to be allowed, the improvement must primarily benefit the tenant rather than the owner.<sup>74</sup>

In 2016, the Oakland City Council passed an Ordinance amending the Rent Adjustment Ordinance and changing the way capital improvement costs were passed on to tenants. The prior Ordinance required that as long as the capital improvement pass-through does not exceed 10% of the rent, the costs are to be amortized over a period of five years, divided equally among the units which benefit from the improvement.<sup>75</sup> Where a 5 year

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<sup>72</sup> O.M.C. § 8.22.070(C)

<sup>73</sup> Regulations Appendix, § 10.2.2(4)(e)

<sup>74</sup> Regulations Appendix § 10.2.2(1)

<sup>75</sup> Oakland City Council Ordinance # 13391, Section 4.

amortization period would result in a rent increase greater than 10%, the owner is entitled to a longer amortization period.<sup>76</sup> The Ordinance change in 2016, stated that:

“The revised amortization period for Capital improvements as set forth in amended section 8.22.020 shall be effective for all Capital improvements for which permits are first issued on or after February 1, 2017.”

See Oakland City Council Ordinance Number 13391.

Additionally, for work which was started after September 20, 2016, the owner is also entitled to imputed financing for the cost of the capital improvements.<sup>77</sup> In this case, the work spanned the time period of these Ordinance changes. Therefore, in each section below, a discussion of when the work was done, whether the old rules apply and whether or not imputed financing can be added, will be considered.

For all work done for which permits were taken out (or, if no permits are needed, substantial work was performed) before February 1, 2017, as long as the capital improvement pass-through does not exceed 10% of the rent, the costs are to be amortized over a period of five years, divided equally among the units which benefit from the improvement.<sup>78</sup> Where a 5 year amortization period would result in a rent increase greater than 10%, the owner is entitled to a longer amortization period.<sup>79</sup>

For those jobs for which permits were taken out after February 1, 2017, the capital improvement work will be amortized over the useful life of the improvement.

Additionally, for all expenses, the owner is entitled to seek 70% of the costs expended.<sup>80</sup> The reimbursement of capital expense must be discontinued at the end of the amortization period.

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Additionally, the improvements must have been completed and paid for within 24 months prior to the date the owner files a petition.<sup>81</sup> An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

The RAP Regulations limit those costs which can be passed on to tenants in two relevant ways. First, “repairs for code violations may not be considered capital improvements...” in certain circumstances. Regulations, Appendix A, 10.2.2 (4). These circumstances include that the repair was to correct a Priority 1 or Priority 2 condition that was not created by the tenant; that the owner knew of the condition; and that the owner failed to repair within a reasonable time.

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<sup>76</sup> Regulations Appendix § 10.2.3 (2)

<sup>77</sup> Regulations § 8.22.020

<sup>78</sup> Oakland City Council Ordinance # 13391, Section 4.

<sup>79</sup> Regulations Appendix § 10.2.3 (2)

<sup>80</sup> Regulations Appendix § 10.2.3(3)(a)

<sup>81</sup> Regulations Appendix, § 10.2.1

Second, owners cannot pass on those costs that are considered "deferred maintenance."  
The regulations state:

"4. The following may not be considered as capital improvements: . . .

b. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in

making timely repairs after the landlord knew or should have known of the problem.<sup>82</sup>

Costs Allowed and Disallowed: The attached spreadsheets separate the work by building, as each building had separate charges, separate costs and separate needs.

An owner has the burden of proving that a rent increase is justified. The applicable rules of evidence in an administrative hearing are stated in Government Code Section 11513:<sup>83</sup> "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . . ." To prove a capital improvement cost, both an invoice and proof of payment are necessary. Therefore, the following costs are allowed and disallowed:

Roofs: Roof replacement is a capital improvement cost providing that no additional work was necessary because of deferred maintenance. While the tenants have established that there were ongoing leaks in these buildings and that the roofs needed replacement for some years, other than the conditions in the building at 1856 E. 25<sup>th</sup> Street, there is no evidence that any portion of the roof replacement costs were increased because the prior owner did not act when the roofs began to leak.

However, tenant Barahona testified that she lives on the top floor of 1856 E. 25<sup>th</sup> Street, and she had ongoing ceiling leaks in her unit for many years prior to the work being done. For that roofing job, an additional \$4,200 was charged for work that included dry rot repair. This extra cost was, more likely than not, caused by the deferred maintenance of not fixing the roof as soon as it was necessary. While the dry rot was not visible to the eye prior to the roofing work beginning, once the prior owner was on notice that the roof was leaking, it was safe to assume that failure to respond quickly would lead to dry rot, and thus, additional work.

With respect to the fact that the owner did not receive the *Reroofing Certifications* until after the Hearing in this case began, this fact does not prevent the owner from receiving a capital improvement increase. *Reroofing Certifications* are not the same as permits. For all work for which permits are required, the City of Oakland sends an inspector to review the work and confirm that the work was done as required by law. If the work is not done accurately, the City has the right to demand that the property owner fix the problem and then have an additional inspection. For this reason, a permit is required before a capital improvement pass-through can be granted, because the work cannot be considered complete until the permit is actually finalized.

On the other hand, a *Reroofing Certification* is received simply by filing paperwork with the City. No inspections occur. The contractor simply asserts that the work was done as required. The City does not function to approve the work in any way. Therefore, the fact that the owner in this case did not receive the *Reroofing Certifications* until after the

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<sup>82</sup> Regulations Appendix, Section 10.2.2(4)

<sup>83</sup> Regulations, Section 8.22.110(E)(4)

Owner Petition was filed, and after the first Hearing was held, does not prevent the owner from receiving a capital improvement pass-through.

Therefore, the owner can pass on the following costs for each building.

1848 E. 25<sup>th</sup> Street: The evidence establishes that the roofing work done on this building was done by *Lovett and Lovett* at a cost of \$22,109.62. Since this work was done prior to September of 2016, the owner is not entitled to imputed interest for this expense. The initial amortization period is 5 years.

1852 E. 25<sup>th</sup> Street: \$4,600 (with imputed interest). Since this work began prior to February of 2017, the initial amortization period is 5 years.

1856 E. 25<sup>th</sup> Street: \$4,600 (with imputed interest). Since this work began prior to February of 2017, the initial amortization period is 5 years. The owner is not granted the additional cost of \$4,200 as noted above, for the dry rot repair to this roof since that work was as a result of deferred maintenance.

1860 E. 25<sup>th</sup> Street: \$4,600 (with imputed interest). Since this work began prior to February of 2017, the initial amortization period is 5 years.

Solar: This work cannot be passed through to any of the tenants as it solely benefits the owner. The owner testified that the benefit of the solar installation belongs only to the owner's electric bills. Additionally, 6 of the panels installed were used to benefit an existing system at 1626 Dwight Way in Berkeley. None of these costs can be passed on to the tenants.

Sewer Lateral: The tenants argued that since there was a sewer leak on the premises, that the sewer lateral work was deferred maintenance and/or a Priority 1/Priority 2 Condition.

As to deferred maintenance, there is no evidence that the cost of the sewer laterals is in any way greater than it would have been had it not been for the delay in doing the work. Therefore, this is an allowable expense.

As to the Priority 1/Priority 2 condition, while it is true that "sewage overflow on surface" is a Priority 1 condition, and "open sewers or waste lines" are a Priority 2 condition, the evidence provided by the tenants was not clear as to when the sewage leak occurred, or whether or not it was related to the sewer lateral work done by the owner. New owners are required to update the sewer laterals when property changes hands. This is an allowable expense.

As to each building, the owner is entitled to a pass-through of ¼ of the cost of \$23,000; for a total of \$5,750 as to each building. Since this work was done after September 20, 2016, but before February 1, 2017, the owner is entitled to imputed interest and an initial 5 year amortization period.

Exterior Painting: The owner established that the cost to paint all four buildings was \$12,969. However, this work was done because the owner was required to do the substantial dry rot repair related to the structural improvements (see below.) Because of the findings of deferred maintenance and that a substantial amount of the work done was to correct Priority 1 and Priority 2 conditions, this is not an allowable cost and is denied.

Structural Improvements to the Building Exterior: Substantial evidence was presented by both the owner, her contractor, the owner's documents and the tenants that each of the four buildings on the property was in substantial disrepair prior to the purchase and that the prior owner regularly deferred maintenance on the buildings. The decks and walkways were falling apart, with wood rot throughout and there was dry rot of the structural support beams. Generally speaking, a well maintained deck will last for many years. There is no evidence that these decks and walkways were well maintained; instead the opposite is true.

While it may be true that the owner provided better decks and walkway systems for the buildings than what was present before the work was done, there is no way to determine what the difference is between the cost of the necessary work for the dry rot repair and the cost of the extra work done. The owner argued that a reasonable estimate of the cost for each dry rot repair would have been four times the cost of the *Zero Inspection Services* estimate for the work at 1852 E. 25<sup>th</sup> Street, which was \$28,575, for a total cost estimate of \$114,300. However, this is speculative, as there is no substantial evidence that any work would have been done, or be necessary, but for the deferred maintenance.

A second reason to deny many of these expenditures is that many of them were to repair problems that would have amounted to a Priority 1 or Priority 2 condition had they been inspected by the City of Oakland. The Appendix lists "collapsing structural members" as a Priority 1 condition and "uneven walks, floors, tripping hazards" and "loose or insufficient supporting structural members" as Priority 2. All of these conditions existed on the decks and walkways, the tenants had complained, and the prior owner did not repair in a reasonable time.

As to each building, the following determinations are made:

1848 E. 25<sup>th</sup> Street:

The work done on Permit numbers B1606197 and B1605084, are not allowed. This work was to replace the dry rotted beams with new steel beams and to repair dry rotted and termite damaged balconies. This work is both a response to a Priority 1/Priority 2 condition that was not responded to appropriately by the prior owner, who was on notice of the problems, and deferred maintenance and is not allowed. This includes the expenses paid to *Verdant Structural Engineers*, to *Perez and Perez* (specific to these jobs) and to *Nancy's Hauling*.

This finding is based on the testimony of the owner's witnesses, the report from *Verdant*, the fact that the beams were dry rotted, the fact that the permits specify dry

rot, the fact that the most of the check payments specify dry rot and the testimony of the tenants, particularly Sarmiento and Maradiogo, who both live in this building and testified with clarity as to the holes in the decks and the walkways and the dangerous condition of the premises.

It appears from the documents provided that the *Perez and Perez* expenses related to this work are all checks paid to *Perez* on this building other than the \$4,800 check for the retaining wall and speed stops. (See below.)

However, the owner did produce an invoice from *Perez and Perez* to install a retainer wall and speed stops at the property. The cost, of \$4,800, was established with both an invoice and proof of payment. No permit is required for this kind of work. Therefore, this is an allowable expenditure and is added to Exhibit A.

1852 E. 25<sup>th</sup>:

For this building, the predominant work was that done by *Zero Inspection Services* and consisted predominantly of dry rot repair. This work is both a response to a Priority 1/Priority 2 condition that was not responded to appropriately by the prior owner, who was on notice of the problems, and deferred maintenance and is not allowed.

Additionally, it does not appear that the owner had a permit for the work done by *Zero*.<sup>84</sup> The only relevant permit for this building was finalized in June of 2017, while the *Zero Inspection Services* payments were in April and May of 2016. Since work done without a permit cannot be passed through to the tenants, this is an additional reason why none of the costs paid to *Zero Inspection Services* can be passed through.

The owner may have been entitled to some of the expenses paid to *Perez and Perez* for work done in February to June of 2017 at a cost of \$12,000 that including work for the installation of a retaining wall and drainage. However, the evidence established that a large portion of the work done on that invoice was to do dry rot repair of the patio and walkway area and the permit received for this building was for the repair of the dry rot on the ground floor deck. Without clear testimony as to what the cost of the retaining wall and drainage would have been without the dry rot deck repair, it is impossible to determine any allowable cost. There is no way to apportion the charges without testimony as to what those charges would be. Therefore, the owner has not sustained the burden of proof and none of these costs are allowed.

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<sup>84</sup> Note that the permit received for 1848 E. 25<sup>th</sup> Street in October of 2016, does refer to a termite report number (#90527). The termite report for 1852 E. 25<sup>th</sup> Street, is report number 90528. Either Udinsky was wrong when she testified that *Zero* only inspected one of the buildings, or an error was made when the permit was issued. In either case, since these expenditures are not allowable pass throughs because of the extensive nature of the damage to the building, it is not necessary to determine with certainty for which building the costs were incurred.

1856 E. 25<sup>th</sup>:

The work done on Permit number B17000781 is not allowed. This work was to repair dry rot and stucco and was not an improvement but was "like for like." This work is both a response to a Priority 1/Priority 2 condition that was not responded to appropriately by the prior owner, who was on notice of the problems, and deferred maintenance and cannot be passed on to the tenants.

All of the *Perez and Perez* invoices for this property relate to the dry rot to this building and therefore none of the costs can be passed on to the tenants.

1860 E. 25<sup>th</sup>:

The work done on permit Number B1703756 is not allowed. This work was to repair and replace dry rotted deck boards. This work is both a response to a Priority 1/Priority 2 condition that was not responded to appropriately by the prior owner, who was on notice of the problems, and deferred maintenance and cannot be passed on to the tenants.

Both *Perez and Perez* invoices and proposals for this building are for work done relating to dry rot repairs. As noted above, none of the work can be passed on. The fact that the owner claimed that the work was an improvement does not allow for a pass through to these tenants as there is no way to determine what costs were required for the dry rot repair and what costs relate to an improvement. Additionally, there is no evidence that any expenditures would have been made but for the necessity to repair the dry rot that was riddled through the decks.

*Nancy's Hauling*: The owner sought to have the expenses paid to *Nancy's Hauling* be divided to all four buildings, as the company cleaned up the entire property after the work was done. While some of the allowable work may have left debris that needed cleaning, there is no way to determine what portion of the *Nancy's Hauling* expenses would have been necessitated by the limited allowable expenditures. Therefore, this cost cannot be passed on to the tenants.

Spreadsheets: Attached to this Hearing Decision as Exhibits A-D are capital improvement spreadsheets documenting the allowable pass-throughs. The amortization periods and the imputed interest amounts are calculated using a weighted average.

The Exhibits show that the owner is entitled to:

1. For each of those tenants who were living in the building at 1848 E. 25<sup>th</sup>, prior to the work being performed, a \$65.09 monthly capital improvement pass-through;
2. For each of those tenants who were living in the building at 1852 E. 25<sup>th</sup>, prior to the work being performed, a \$21.71 monthly capital improvement pass-through;

3. For each of those tenants who were living in the building at 1856 E. 25<sup>th</sup>, prior to the work being performed, a \$21.71 monthly capital improvement pass-through; and,
4. For each of those tenants who were living in the building at 1860 E. 25<sup>th</sup>, prior to the work being performed, a \$21.71 monthly capital improvement pass-through

The rent increases go into effect 30 days after the owner serves a rent increase notice on the tenants (35 days if the rent increase notice is served by mail) See Civil Code § 827 and Code of Civil Procedure § 1013. Additionally, the owner must concurrently serve the *RAP Notice* and the *Decision Summary* which accompanies this decision.

The capital improvement increase for each tenant ends 60 months after it goes into effect.

### ORDER

1. Petition L17-0233 and Petition L17-0236 are granted in part.
2. 1848 E. 25<sup>th</sup> Street: As to tenant Sarmiento (Unit C), tenant Giles (Unit D), tenant Mardiaga (Unit E), and tenant Sherzay (Unit F), the owner is entitled to a \$65.09 monthly rent increase based on capital improvements, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*.
3. 1852 E. 25<sup>th</sup> Street: As to tenant Alonzo (Unit B), tenant Carrilo (Unit C), tenant Eh (Unit E), and tenant Sanchez (Unit F), the owner is entitled to a \$21.71 monthly rent increase based on capital improvements, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*.
4. 1856 E. 25<sup>th</sup> Street: As to tenant McGovern (Unit B), tenant Barahona (Unit E), and tenant Gallego (Unit F), the owner is entitled to a \$21.71 monthly rent increase based on capital improvements, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*.
5. 1860 E. 25<sup>th</sup> Street: As to tenant Salinas (Unit B), tenant Qudus (Unit C), and tenant Domingo (Unit E), the owner is entitled to a \$21.71 monthly rent increase based on capital improvements, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*.
6. The owner is also entitled to a C.P.I. rent increase (calculated on the base rent), concurrent with the capital improvement increase.
7. The capital improvement rent increase expires 60 months after it goes into effect.









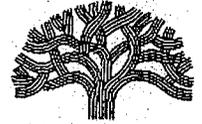








# CITY OF OAKLAND



250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612-2043

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
TDD (510) 238-3254

## DECISION SUMMARY

**CASE NUMBER:** L17-0233, Udinsky v. Tenants  
L17-0236, Udinsky v. Tenants

**PROPERTY ADDRESS:** 1848-1860 E. 25<sup>th</sup> Street, Oakland, CA

**DATE OF HEARING:** April 23, 2018, June 13, 2018; Sept. 5, 2018

**DATE OF DECISION:** September 21, 2018

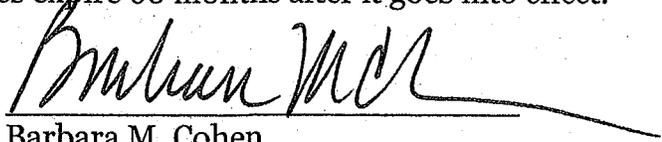
1. Petition L17-0233 and L17-0236 are granted in part.
2. As to the tenants in 1848 E. 25<sup>th</sup> Street, the owner is entitled to a \$65.09 monthly rent increase based on capital improvements, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and this *Decision Summary*. However, the rent increase may not have an effective date earlier than 1 year after each tenant's prior rent increase.
3. As to the tenants in 1852, 1856 and 1860 E. 25<sup>th</sup> Street, the owner is entitled to a \$21.71 monthly rent increase based on capital improvements, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and this *Decision Summary*. However, the rent increase may not have an effective date earlier than 1 year after each tenant's prior rent increase.
4. The owner is also entitled to a C.P.I. rent increase (calculated on the base rent), which can be added to the capital improvement increase, providing that no tenant's rent increase exceeds 10%.

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5. The capital improvement rent increases expire 60 months after it goes into effect.

Dated: September 21, 2018



Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Numbers**  
**L17-0233 & L17-0236**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

**Documents Included**  
Hearing Decision & Decision Summary

**Owner**

Bing Udinsky  
2941 Telegraph Ave  
Berkeley, CA 94705

**Owner Representative**

George Shafazand  
2941 Telegraph Ave  
Berkeley, CA 94705

**Tenants**

Abdullah Sherzay  
1848 East 25th St #F  
Oakland, CA 94606

Alejand Carrillo  
1852 East 25th St #C  
Oakland, CA 94606

Billa Domingo  
1860 East 25th St #E  
Oakland, CA 94606

Bolaji Qudus  
1860 East 25th St #C  
Oakland, CA 94606

Brian Alonzo  
1852 East 25th St #B  
Oakland, CA 94606

Brittany McGovern  
1856 East 25th St #B  
Oakland, CA 94606

Dagoberto Sarmiento  
1848 East 25th St #C  
Oakland, CA 94606

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Francisco Salinas  
1860 East 25th St #B  
Oakland, CA 94606

Hector Gallego  
1856 East 25th St #F  
Oakland, CA 94606

Lisa Giles  
1848 East 25th St #D  
Oakland, CA 94606

Nelly Barahona  
1856 East 25th St #E  
Oakland, CA 94606

Nuri Maradiaga  
1848 East 25th St #E  
Oakland, CA 94606

Pa Eh  
1852 East 25th St #E  
Oakland, CA 94606

So Martinez  
1852 East 25th St #F  
Oakland, CA 94606

Tenant Representative

Jackie Zaneri  
Centro Legal de la Raza  
3022 International Blvd.  
Oakland, CA 94610

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on September 26, 2018 in Oakland, CA.



Maxine Visaya  
Oakland Rent Adjustment Program

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp 2018 OCT -9 AM 8:14
	<b><u>APPEAL</u></b>	

Appellant's Name BING UDINSKY		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1848 - 1860 E. 25th Street. Oakland. CA 94606			
Appellant's Mailing Address (For receipt of notices) 2941 Telegraph Ave. Berkeley. CA 94705		Case Number L17-0233 L17-0236	Date of Decision appealed 10/15/2018
Name of Representative (if any) George Shafazand		Representative's Mailing Address (For notices) 2941 Telegraph Ave Berkeley. CA 94705	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

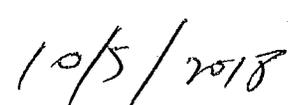
For more information phone (510) 238-3721.

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 3.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on \_\_\_\_\_, 20\_\_\_\_, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	See attached
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

October 8, 2018

Dear Rent Board Officer,

We received your decision on the capital improvement passthrough request for 1848-1860 E. 25<sup>th</sup> Street in Oakland, CA 94606. Thank you for the detailed report.

We must respectfully disagree with your decision and analysis. And we would like to file an appeal of your decision for building 1848 and 1856 E. 25<sup>th</sup> Street in Oakland. The justification for the appeal is: "The decision is not supported by substantial evidence."

One important reason that we disagree with the decision is that you denied ALL of the work of Perez Construction for these two buildings, except one retaining wall. We spent over \$330,000 on 1848 E. 25<sup>th</sup> Street and over \$140,000 on 1856 E. 25<sup>th</sup> Street. The termite report only quoted for \$28,000 for dry rot repair. However, we were denied for the entire capital improvement pass-through just because the permit has "dry rot" in the title, or part of the work related to dry rot repair.

During the hearing, I repeatedly emphasized that we did much more than just repairing the dry rot. We replaced beams, decks, and stucco to make the building more safe and secure. The tenants will benefit from these upgrades for many years in the future. The tenants will be more safe because we improved the structural integrity of the building, walkways and decks.

When the rent board denies claims such as ours, this discourages owners from making important repairs that benefit tenants but which do not receive approval from the rent board. The rent board will be in the business of determining which repairs should and should not occur, and which improvements should be made for the benefit of the tenants. Such decisions would be difficult for an arms length hearing officer to make.

The tenants who petitioned did not produce any photos. And yet, they portrayed the building as being in disrepair. No third party inspections were produced to support the concept of disrepair. It was merely the tenants own testimony that this decision is relying on without proof.

It is beneficial for the City of Oakland to encourage landlords to make various repairs which benefit tenants. Thus, we respectfully request a reversal of the current decision, or an appeal of the current decision regarding 1848-1860 E. 25<sup>th</sup> Street.

Sincerely,



Bing Udinsky

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CAPITAL IMPROVEMENT	1848	1852	1856	1860	
ROOF (BY CAL ROOF TECH)		\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 18,000.00
ROOF (BY LOVETT&LOVETT)				\$ 22,109.62	\$ 22,109.62
PEREZ CONSTRUCTOR	\$ 4,438.00	\$ 12,000.00	\$ 4,578.00	\$ 4,388.00	
	\$ 4,800.00		\$ 15,000.00	\$ 4,000.00	
	\$ 10,000.00		\$ 10,000.00	\$ 10,000.00	
	\$ 15,000.00		\$ 52,240.00		
	\$ 84,188.00		\$ 10,000.00		
			\$ 10,000.00		
			\$ 39,328.00		
SEWER LATERAL COMPLIANCE	\$ 5,750.00	\$ 5,750.00	\$ 5,750.00	\$ 5,750.00	\$ 23,000.00
NANCY HAULING:	\$ 1,225.00	\$ 1,225.00	\$ 1,225.00	\$ 1,225.00	\$ 4,900.00
EXTERIOR PAINTING	\$ 3,242.25	\$ 3,242.25	\$ 3,242.25	\$ 3,242.25	\$ 12,969.00
SOLAR PANEL	\$ 5,505.75	\$ 5,505.75	\$ 5,505.75	\$ 5,505.75	\$ 22,023.00
STRUCTURAL ENGINEERING	\$ 5,807.38				\$ 5,807.38
TERMITE INSPECTION & REPAIR		\$ 20,700.00			\$ 20,700.00
<b>TOTAL AMOUNT</b>	<b>\$ 139,956.38</b>	<b>\$ 54,423.00</b>	<b>\$ 162,869.00</b>	<b>\$ 62,220.62</b>	<b>\$ 419,469.00</b>

MAILING LIST:

DAGOBERTO SARMIENTO

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LISA GILES

1848 E. 25<sup>TH</sup> ST, OAKLAND, CA 94606

NURI MARADIAGA

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