

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING
NOVEMBER 14, 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) Review of Board Minutes from October 17, 2019 Panel Meeting
 - b) Approval of Board Minutes from October 24, 2019 Regular Meeting
4. OPEN FORUM
5. APPEALS*
 - a) T19-0011, Aguirre v. Diamond Properties
 - b) T19-0097, Torres de Janon v. Melter
6. ACTION ITEMS
 - a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)
7. INFORMATION AND ANNOUNCEMENTS
 - a) Rent Adjustment Program Updates (C. Franklin Minor)
 - b) Legislative Updates (Office of the City Attorney)
8. COMMITTEE REPORTS AND SCHEDULING
 - a) Report from Ad Hoc Committee – Deferred Maintenance v. Capital Improvement of Dry Rot
 - b) Appeal Recommendation Discussion
9. ADJOURNMENT

* Staff recommendation memos for the appeals will be available at the Rent Program and the Clerk's office at least 72 hours prior to the meeting pursuant to O.M.C. 2.20.080.C and 2.20.090.

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 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, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a 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 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.

Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting:

- Information about the Building Code and intersection with the Regulations; (e.g. window bars-there is a code that applies to this.)
- Should dry rot be treated differently from other deferred maintenance items?
- Clarification of deferred maintenance v. items that benefit tenants?
- Ambiguous terms in the regulations and in the Ordinance;
- How is the value of the Decreased Housing Services determined?
- What constitutes a burden of proof regarding expenses for capital improvements?
- Effects of AB 1482 on Rent Adjustment Program Ordinance
- Denial of subtenant/roommate constitutes a decreased housing service?



MEMORANDUM

Date:

To: Members of the Housing, Residential Rent & Relocation Board
(HRRRB)

From: Staff

Re: Recommendation for Appeal in T17-0371
[case name]

Appeal Hearing Date:

Property Address:

Appellant/Tenant:

Respondent/Owner:

1. **BACKGROUND**

2. **ISSUE**

3. **ANALYSIS**

Prepared By: Barbara Kong-Brown
Senior Hearing Officer



MEMORANDUM

Date:

To: Members of the Housing, Residential Rent & Relocation Board
(HRRRB)

From: Staff

Re: Recommendation for Appeal in T17-0371
[case name]

Appeal Hearing Date:

Property Address:

Appellant/Tenant:

Respondent/Owner:

1. **BACKGROUND**

2. **ISSUE**

3. **ANALYSIS**

4. **RECOMMENDATION**

Prepared By: Barbara Kong-Brown
Senior Hearing Officer



MEMORANDUM

Date: October 16, 2019
To: Members of the Housing, Residential Rent & Relocation Board (HRRRB)
From: STAFF
Re: **Appeal Summary: [input case number]: T17-0371 [case name]**

Appeal Hearing Date: October 24, 2019

Property Address:

Appellant/Tenant:

Respondent/Owner:

1. **PROCEDURAL BACKGROUND**

2. **RULING ON THE CASE**

3. **ISSUES**

4. **APPLICABLE LAW AND PAST BOARD DECISIONS**

Prepared By: Barbara Kong-Brown
Senior Hearing Officer

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**PANEL MEETING
October 17, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:05 p.m. by Panel Chair, Julia Ma Powers

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Julia Ma Powers	Homeowner	X		
Benjamin Scott	Landlord Alt.	X		
Hannah Flanery	Tenant Alt.	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney, Office of the City Attorney
Barbara Kong-Brown	Senior Hearing Officer, Rent Adjustment Program
Kelly Rush	Program Analyst 1

3. OPEN FORUM

No Speakers

4. NEW BUSINESS

- i. Appeal Hearing in cases:
 - a. T18-0387, Villalobos v. Tran
 - b. T18-0218, Durrett et al. v. Guiton

a. T18-0387, Villalobos v. Tran

Appearances	Xiao Ping Lu	Owner Appellant
	Xavier Johnson	Tenant Appellee Representative

000007

The owner appealed from a hearing decision which granted restitution for decreased housing services for a floor tile and kitchen light

Grounds for Appeal

The owner appealed the hearing decision on the ground that there are math/clerical errors that require the Hearing Decision to be updated.

Specifically, the owner contended that the restitution periods are incorrect, that (1) the period of restitution for the floor tile is from July 2017, not February 2015, and (2) the period of restitution for the kitchen light is from October 2017, not February 2015.

The tenant representative stated that they had no objection to correcting the restitution period for the floor tile and kitchen light.

Appeal Decision

After questions to the owner and Board discussion, H. Flanery moved to affirm the hearing decision based on substantial evidence, with instructions to staff to adjust the restitution period for the floor tile, from July 2017, to February 28, 2019, and for the kitchen light, from October 2017, to February 28, 2019. B. Scott seconded.

The Board panel voted as follows:

Aye: H. Flanery, J. Ma Powers, B. Scott
Nay:
Abstain: 0

The motion was approved by consensus.

b. T18-0218, Durrett et al. v. Guiton

Appearances	Jessie Guiton	Owner Appellant
	No appearance by Tenant	

The owner appealed from a hearing decision granting restitution for decreased housing services.

Grounds for Appeal

The owner appealed the hearing decision on the following grounds:

1. The hearing decision is not supported by substantial evidence;
2. She was denied a sufficient opportunity to present her claim;

3. The petitioner was not a tenant when she filed her petition.

Appeal Decision

After questions to the owner and Board discussion, J. Ma Powers moved to not remand the hearing decision based on a finding that there was no good cause for the owner's failure to appear at the underlying hearing. H. Flanery seconded.

The Board panel voted as follows:

Aye: H. Flanery, J. Ma Powers, B. Scott
Nay:
Abstain: 0

H. Flanery moved to remand the decision to the hearing officer to make a factual determination as to whether any of the petitioners had standing as tenants at the time they filed their petition. The hearing officer may make this finding on the record or may hold a hearing to hear new evidence if she believes it is necessary. The Board affirms the restitution for decreased housing services contingent on a finding that the petitioners were tenants when they filed the petition.

The motion was approved by consensus.

5. ADJOURNMENT

The meeting was adjourned at 8:00 pm.

**mvisayaHOUSING, RESIDENTIAL RENT AND RELOCATION
BOARD REGULAR MEETING
October 24, 2019
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

MINUTES

1. CALL TO ORDER

The HRRRB meeting was called to order at 7:05 p.m. by Chair, J. Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. HALL	Tenant			X
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			X
C. TODD	Tenant Alt.			X
R. STONE	Homeowner	X		
J. WARNER	Homeowner	X		
A. GRAHAM	Homeowner	X		
E. LAI	Homeowner Alt.			X
J. MA POWERS	Homeowner Alt.			X
K. FRIEDMAN	Landlord			X
T. WILLIAMS	Landlord	X		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.			X

Staff Present

Ubaldo Fernandez	Deputy City Attorney
Oliver Luby	Deputy City Attorney
Kelly Rush	Program Analyst

3. CONSENT ITEMS

- a) Approval of Board Minutes from September 26, 2019 Regular Meeting
- b) Approval of Board Minutes from October 3, 2019 Panel Meeting
- c) Approval of Board Minutes from October 10, 2019 Regular Meeting

J. Warner indicates that item B is for review only.

R. Stone motions to approve Board minutes from September 26th and October 10th. R. Auguste seconds motion.

The Board voted as follows:

Aye: R. Auguste, R. Stone, J. Warner, T. Williams

Nay:

Abstain:

(A. Graham not present for this vote)

The motion passed by consensus.

4. OPEN FORUM

Speaker: James Vann

5. APPEALS

a) T18-0226, Baragano v. Discovery Investments

Appearances:	Guillermo Baragano	Tenant Appellant
	Matthew Quiring	Attorney for the Appellee

The tenant appealed the hearing decision which denied a tenant petition contesting a rent increase. The tenant contended that the notice was invalid because the notice stated a "percentage" rather than an "amount" for the increase and that the owner was not entitled to banking. The tenant also provided that the owner stated at the underlying hearing that they did not know the exact rent amount that he was paying in 2007 and that the hearing officer should not estimate the rent paid at that time. The appellant also stated that the recommendation provided by staff violates his due process, contained inaccuracies and he was unable to respond to claims made within the recommendation. The tenant also contended that there was bias by the Hearing Officer because evidence was allowed at the hearing, the Hearing Officer was instructing the owner how to answer questions and the Hearing Officers had ex parte communications with the owner.

The owner representative appeared and responded to the claims presented by the tenant appellant. The owner representative pointed to a chart in the file that was submitted into evidence which did provide the rent amount in 2007 and that was not contested by the tenant in the underlying hearing. The representative contended that the amount could be expressed as a percentage or dollar amount and these are only relative measure versus a qualified

After arguments made by both parties, Board questions to the parties and Board discussion, J. Warner moved to affirm the Hearing Decision based on findings that the owner did not meet the burden for substantial rehabilitation due to lack of providing the square footage used to calculate the substantial rehabilitation and not meeting the requirement of invoices and proof of payment to substantiate costs to be considered.

R. Stone seconded with a friendly amendment based on payment records from Home Depot that are silent as to what was purchased and what is was used for. The owner failed to meet the burden to show construction contract, value of the work, where work was done, nature of the work and that materials were paid for as required by the Ordinance. R. Stone would also like to point out that his motion disregards the appeal recommendation and is based solely on the file and Hearing Decision.

J. Warner accepted the friendly amendment.

The Board voted as follows:

Aye: R. Auguste, A. Graham, J. Warner, R. Stone, T. Williams

Nay:

Abstain:

The motion passed by consensus.

c) T17-0371, Arnold v. Farley Levine Properties

Appearances:	David Arnold	Tenant Appellant
	Barbara Farley	Owner Appellee

The tenant appealed the Hearing Decision which denied the tenant's claim for decreased services by denial to sublease his rental unit. The tenant appeared and contended that this issue was never heard or adjudicated and res judicata should not apply. The appellant indicated that the stipulation excluded rent petitions and did not have the intent to allow the owners to commit the same action over and over. The tenant appellant seeks to distinguish this case from the decision in Nanos v. Jerez in a hearing and allow the Hearing Officer to decide if this still applies to his situation. Mr. Arnold also argues that he always has housemates (as identified in the declaration by the prior owner of the property) and that he can't settle something that hasn't happened yet.

The owner appellee contended that the tenant brought forth three separate litigations and these claims were settled in the stipulation agreement. The owner also provides that res judicata should apply to this situation

After arguments made by both parties, Board questions to the parties and Board discussion, R. Stone motioned to dismiss the petition because Superior Court retains continuing jurisdiction over the settlement agreement and the remedies should be sought there.

J. Warner seconds the motion and requests to add a friendly amendment that the underlying issue is a contractual agreement that they want to litigate the terms of.

R. Stone accepts the friendly amendment and restates his motion to dismiss the petition based on the fact that the dispute centers on the settlement agreement between the landlord and the tenant and that any continuing dispute should be heard in Superior Court.

The Board voted as follows:

Aye: R. Auguste, A. Graham, J. Warner, R. Stone, T. Williams

Nay:

Abstain:

The motion passed by consensus.

6. ACTION ITEMS

- a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)

J. Warner requests to add issue from Arnold v. Farley to list of possible issues for ad hoc committees. This issue would examine whether denial of subtenant/roommate should be considered a decreased housing service.

R. Stone requests to introduce an ad hoc committee to address the burden of proof regarding expenses for capital improvement.

R. Stone removes this request and will wait until a later meeting where more members are present at the meeting.

7. INFORMATION AND ANNOUNCEMENTS

- a) Updates on the Efficiency Ordinance (City Attorney's Office)

City Attorney U. Fernandez states there is no update since the draft last came before the Board

J. Warner requests that this item be added to the next full board meeting to provide any updates to the Ordinance.

- b) Discussion of changes to HUD Requirements and Fair Housing Act (J. Warner)

J. Warner states that this was not requested to be discussed but was provided simply to appreciate the City Attorney's office for their comments submitted regarding these changes.

8. COMMITTEE REPORTS AND SCHEDULING

- a) Report from Ad Hoc Committee – Deferred Maintenance v. Capital Improvement of Dry Rot

T. Williams provided that there is no update. The next meeting that is scheduled will be next Wednesday and there should be something to report at the next regular full Board meeting in November.

Other Requests for Reports/Scheduling

J. Warner requested to add a regular agenda item for staff to report about general updates (i.e., workshops, items going to Council or other items for the Board's attention.)

R. Auguste requests an item be added to the next full Board agenda to discuss the appeal recommendation process and proposed changes from the Board.

9. ADJOURNMENT

The HRRRB meeting was adjourned at 9:25 p.m. by Chair, J. Warner.

CHRONOLOGICAL CASE REPORT

Case No.: T19-0097

Case Name: Torres de Janon v. Melter

Property Address: 3206 West Street, Oakland, CA

Parties: Xavier Torres de Janon (Tenant)
Karen Melter (Owner)
Paul Bisailon (Property Manager)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 4, 2018
Owner Response filed	June 7, 2019
Administrative Decision mailed	May 31, 2019
Tenant Appeal filed	June 10, 2019

T19-0097 KM/MA

RECEIVED
DEC -4 2018
RENT ADJUSTMENT PROGRAM
OFFICE

City of Oakland Rent Adjustment Program
Tenant Petition

Case **Petition: 10204**
Property Address **3206 WEST ST**

Party	Name	Address	Mailing Address
Tenant	Xavier Torres de Janon	3206 West Street Oakland, CA 94608	431 Capistrano Ave San Francisco, CA 94112
Manager	Eric Crumpton	3208 West Street Oakland, CA 94608	3208 West Street Oakland, 94608
Owner	Karen Melter	3208 West Street Oakland, CA 94608	3208 West Street Oakland, 94608

Rental Property Information

Number of Units	1
Type of unit you rent	Apartment, Room or Live-work
Are you current on your rent?	Yes

Rental History

When did you move into the unit?	8/1/2018
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?	No
Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?	No
Have you ever filed a petition for your rental unit?	No
Rent increases that you want to challenge.	
Did you receive a RAP Notice with the notice of rent increase?	No
Date RAP notice served	
Date increase goes into effect	
Monthly Rent Increase From	
Monthly Rent Increase To	
Are you contesting this increase in this petition?	No

City of Oakland Rent Adjustment Program

Tenant Petition

Case **Petition: 10204**

Property Address **3206 WEST ST**

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? No

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

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

Mediation

Mediation Requested No

County of Alameda
René C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

November 29, 2018

RE: Landlord Negligence - Security Deposit and Public Health & Safety Damages

Dear County of Alameda:

We have resided at 3206 West Street, Oakland, CA 94608 since August 1, 2018. The Property Owner and the Property Manager both live at 3208 West Street, Oakland, CA 94608. The Property Owner of this property is called Karen Melter. We signed a questionable month-to-month lease with the Property Manager, who is called Eric Crumpton.

The Property Manager instructed us to relay all communication through the Current Tenant, who is called Ellery Graves. We signed the lease agreement (attached) together with the Current Tenant. Per the lease agreement, each handed in cash a security deposit of \$698.75 (total \$2795.00) to the Property Manager.

Since our move-in on August 2018, we began communicating issues we began identifying through the Current Tenant to the Property Manager. By September 15, 2018, we had informed our Property Manager directly of the following issues in our apartment:

- Kitchen:
 - Dripping refrigerator, resulting in moldy food
 - Broken right window, resulting in smoke and cold
- Front door:
 - No insulation under front door, resulting in cold
- Living Room:
 - Gas smell from broken heater, resulting in breathing problems
 - Hole in floor, resulting in possible rodents
 - Broken seal in fireplace, resulting in mice
- Bathroom:
 - Leaking toilet, resulting in higher water usage
 - Leaking bathtub, resulting in higher water usage and lower pressure
- Front bedroom
 - Large hole in the wall, resulting in possible rodents and potential electrical hazard
 - Unfinished electrical socket, resulting in potential electrical hazard
 - Missing floorboard, resulting in possible rodents
- Middle Bedroom:
 - Hole in closet floor, resulting in possible rodents
 - Broken heater set in the wall, resulting in possible rodents and cold
- Back bedroom:

- Mold in walls during rain, resulting in potential health hazard
- General:
 - No smoke detectors in the house, resulting in fire hazard
 - No windows are insulated, resulting in cold

On October 20, 2018, the Current Tenant reminded our Property Manager of the aforementioned issues. The morning smell of gas in the living room became a daily issue.

On the week of November 12, 2018, we directly contacted our Property Manager to remind him of the aforementioned issues and potential mice. With the toxic air in Oakland and colder and colder temperatures, we knew that all issues in the apartment would worsen if not addressed.

On November 16, 2018, we spotted two mice in the house. We immediately notified the Current Tenant to relay this to the Property Manager.

On November 18, 2018, we directly called our Property Manager to request immediate fixes of the aforementioned issues. He stated that he'd come over later in the night, around 6:00 PM. After attempting to call him again at 7:00 PM with no answer, he came to the apartment to inspect it around 8:00 PM. We handed him a handwritten note with the aforementioned issues. He confirmed that he'd have a crew come to address all aforementioned issues on November 19, 2018. Two of us made arrangements to work from home to wait for the crew.

On November 19, 2018, we called our Property Manager at 8:00 AM and then again at 9:00 AM, both times unsuccessfully. Our Property Manager came to the apartment around 11:00 AM and re-inspected the issues. He stated that he'd send a crew on November 20, 2018, between 8:00 AM and 12:00 PM. One of us made arrangements to work from home once again.

On November 20, 2018, one of us stayed in the apartment to wait for the crew. Given the cold climate and smoke, both worsened by the aforementioned issues, they left a note on the door with their contact information for the crew to call them once they arrived. Around 11:00 AM, our Property Manager came to the apartment and once again re-inspected the aforementioned issues. Around 11:30 AM, pest control arrived. They laid down traps and stated that the apartment would need "major work," and that rodents would continue to get in in the meantime. They handed us a report of the issues (attached), ~~which stated that the water heater had to be turned off until a vent was installed.~~ We were not given any indication of next steps for resolutions of the aforementioned issues by the Property Manager. XAT

On November 21, 2018, the hot water stopped running in the apartment. We immediately notified the Current Tenant, who communicated this to the Property Manager. He claimed that this would be fixed immediately. Given the Thanksgiving holiday, most of us left the apartment. When we returned on November 23, 2018, there was still no hot water. We reminded him directly, and he stated that it'd be fixed by the following day. On November 24, 2018, a plumber

came to the house, but the hot water was not fixed. The Property Manager restated it'd be fixed the next day.

On November 25, 2018, another plumber came and left, but the hot water was not repaired. We directly persisted with the landlord, and he replied that it'd take another day. Around 6:00PM that night, we noticed that our garden hose and sprayer were missing. The hose sprayer was removed and abandoned on the floor. One of us saw the hose running water onto the right neighbor's yard. We followed the hose and saw that it was hooked to a big water pump in the basement, which was running water to the right neighbor's yard. We immediately removed the hose, took it back and informed the right property's neighbor (Julianna) of the incident through text. Around 8:00PM that night, the Current Tenant informed our Property Manager we'd be vacating the property given the uninhabitable conditions and that we'd need our security deposit back as soon as possible to move out. He responded with a vague confirmation and no clarity as to when we should expect the check. Per the Current Tenant, he agreed that we could move out by December 15, 2018 without paying December 2018 rent.

On November 26, 2018, our Property Manager informed us through the Current Tenant that his electrician would not be working that day, so the hot water would have to wait another day. Around 6:00PM, the electrical power started going on and off throughout the apartment. Around 7:00PM, the power went off and did not return. We directly called the Property Manager, but he did not pick up. We decided to knock on his door. He came out and stated that he had called PG&E and that they'd send someone over. We decided to call PG&E ourselves. They stated that electricity was running and provided us instructions to switch the power breaker on. To our surprise, the power breaker was located on the left side of the house, only accessible through the left neighbor's private property. Following PG&E instructions, we decided to walk into the property to turn the breakers back on. The electricity went on, and the issue was resolved.

Around 8:30PM, the Property Owner called us. This was the first time we spoke with her. She asked if the power was on in our apartment, and we confirmed. We asked by when we should expect our security deposit back, as we are trying to move out as soon as possible and the associated costs are unaffordable. She stated that she was not aware of our decision, as the Property ~~Owner~~^{Manager} had not informed her of it. She asked by when we were told to expect the security deposit. We told her as soon as possible.

Around 9:30PM, the Property Owner called us again. She offered two of us a night in a hotel for up to \$150.00, but we responded that this would not be a fix to our situation and insisted on the security deposit. She stated that these funds are being held by the Current Tenant. We confirmed if we should ask the money from the Current Tenant. After a short pause, she restated that the funds are with the Current Tenant, that these funds were never handled by the Property Manager or the Property Owner. We immediately brought this to the attention of the Current Tenant, who said that this was false. She confirmed that the Property Manager had explicitly told her he'd return the security deposit.

On November 27, 2018, we woke up to a much stronger smell of gas. We called PG&E around 8:00AM to report it, and an inspector promptly came to the house. He provided us with a report (attached), which we provided to the Property Manager by leaving it in his mailbox and texting a copy to him. The Current Tenant spoke directly with PG&E regarding inspecting and turning the hot water heater on. PG&E instructed the Current Tenant that based on the gas leak inspection earlier that day, a part was needed to be purchased and installed before PG&E could turn on the hot water heater. The Current Tenant called the Property Manager and Property Owner to relay this information.

During the call, the Current Tenant informed the Property Owner that we would begin a legal process if they did not provide us with the security deposit as soon as possible. The Property Owner asked the Current Tenant to text her the exact amount of the security deposit. The Current Tenant did so immediately. Shortly thereafter, the Current Tenant called the Property Manager to confirm they received the text. The Property Manager abruptly informed the Current Tenant that he would not be pushed to return the security deposit to us. He stated that we should go ahead and sue him if we wanted to.

On November 28, 2018, the Property Manager called the Current Tenant around 1:00PM to ask if someone was home to let a plumber in to finish repairing the hot water. All of us were at work, so the plumber could not come in. We stated that one of us would again stay at home the next day to wait for the plumber. No one had been in the apartment since 10:00AM.

Around 6:00PM, one of us returned to the apartment. He immediately smelled a pungent smell of gas, which caused him a headache. He opened all windows and doors and immediately called PG&E. Around 6:30PM, an inspector came to the apartment. He agreed about the gas smell and checked the entire apartment. After doing so and checking the meter, he stated that there was a gas leak and that he would have to shut off the gas for our safety. He stated that we'd have to communicate with our landlord to get it fixed for PG&E to reactivate the gas.

The Current Tenant immediately called the Property Manager to inform him that there is a gas leak and what happened with PG&E. He abruptly and sarcastically replied that we were building a strong case and that the hot water was fixed. She replied that she was not at home, and he claimed that PG&E was lying, and that we were as well.

Around 7:00PM, we noticed that the hot water had in fact returned. We went to the basement to check the water heater and noticed that it had been reconnected, directly contradicting what the first PG&E report indicated, which was given to the Property Manager. We called PG&E again, and an inspector arrived around 7:30PM.

The inspector confirmed that the water heater had been hastily rigged. He stated that what we had smelled earlier that day was carbon monoxide, which was quite dangerous and inflammable. He repeatedly knocked on the apartment of the Property Owner and Property Manager to check that they were okay and inform the issues at hand. No one answered, so we

called the Property Manager directly. He picked up, and the PG&E inspector began speaking with him to explain the situation. The Property Manager interrupted him and hung up the phone. The PG&E inspector informed us that he wouldn't be able to leave us a report, since he didn't do anything in the house, but that he'd keep an internal record of what took place.

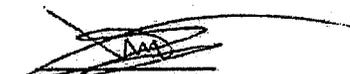
On the night of November 28, 2018, all of us began moving our personal belongings and made plans to sleep elsewhere. As of today November 29, 2018, there is still no hot water in the apartment, the mice persist, the gas leak continues, and we have yet to receive our security deposit.

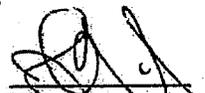
Our Property Manager was resolute about timely rent payments, all of which we have provided immediately. We have not received the same level of attention and our health, property and selves have been adversely affected as a result.

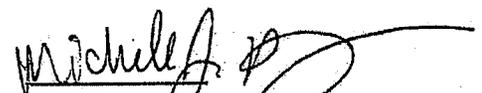
We humbly request the County of Alameda to intercede in this terrible situation so that we may recover our security deposit as soon as possible and receive proper compensation for the injuries suffered as found appropriate by the County. We request the following:

- \$2795.00 security deposit paid in August 2018 (\$698.75 per each of us)
- \$704.00 for damages related to 8 days without hot water (\$25.00 per day for each of us)
- \$1600.00 for damages related to 40 days with morning gas smell across the apartment (\$10.00 per day for each of us)
- \$780.00 for damages related to 13 days with mice (\$15.00 per day for each of us)
- \$1800 for damages related to 3 days of alternate sleeping arrangements (\$150.00 per day for each of us)
- \$75.00 for refund of document preparation and filing fees
 - Total: \$7754.00

Sincerely,
Residents of 3206 West Street, Oakland CA 94608


Xavier Torres de Janon
Resident


Joseph Quisol
Resident


Michele Brooks
Resident

ATTACHED:

- Copy of Original Month-to-Month Lease
- Pest Control Report
- PG&E Report #1
- PG&E Report #2

SC-100**Plaintiff's Claim and ORDER to Go to Small Claims Court**

Clerk stamps date here when form is filed.

Notice to the person being sued:

- You are the defendant if your name is listed in ② on page 2 of this form. The person suing you is the plaintiff, listed in ① on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Fill in court name and street address:

Superior Court of California, County of Alameda
 Rene C. Davidson Alameda County Courthouse
 1225 Fallon Street
 Oakland, CA 94612

Clerk fills in case number and case name:

Case Number:

RS18930505

Case Name:

Torres de Janon VS Crumpton

Order to Go to Court

The people in ① and ② must go to court on: (Clerk fills out section below)

Trial Date	Date	Time	Department	Name and address of court if different from above
1.	03/11/2019	09:00 AM	511	24405 Amador Street, Hayward
2.				
3.				

Date: 11/30/2018 Clerk by, Margaret P. Ours, Deputy

Instructions for the person suing:

- You are the plaintiff. The person you are suing is the defendant.
- Before you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.



Plaintiff (list names): Xavier Torres de Janon; Michele Brooks; Joseph Quisol

Case Number:
RS18930505

① The plaintiff (the person, business, or public entity that is suing) is:

Name: Xavier Torres de Janon Phone: _____
Street address: 431 Capistrano Ave San Francisco CA 94112
Street City State Zip
Mailing address (if different): _____
Street City State Zip

If more than one plaintiff, list next plaintiff here:

Name: Michele Brooks Phone: _____
Street address: 3206 West St Oakland CA 94608
Street City State Zip
Mailing address (if different): _____
Street City State Zip

- Check here if more than two plaintiffs and attach Form SC-100A.
 Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.
 Check here if any Plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.

② The defendant (the person, business, or public entity that is being sued) is:

Name: Eric Crumpton Phone: _____
Street address: 3208 West St Oakland CA 94608
Street City State Zip
Mailing address (if different): _____
Street City State Zip

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here:

Name: _____ Job title, if known: _____
Address: _____
Street City State Zip

- Check here if your case is against more than one defendant, and attach form SC-100A.
 Check here if any defendant is on active military duty, and write his or her name here: _____

③ The plaintiff claims the defendant owes \$ 7,754.00. (Explain below):

a. Why does the Defendant owe the plaintiff money?

Landlord negligence, security deposit return and health/time damages resulting from negligence.

b. When did this happen? (Date): _____

If no specific date, give the time period: Date started: 09/15/2018 Through: 11/30/2018

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) **Lease agreement (security deposit) and damage estimates based on days.**

- Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.

Plaintiff (list names): Xavier Torres de Janon; Michele Brooks; Joseph Quisol

Case Number: RS18930505

4 You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property.

Have you done this? [X] Yes [] No

If no explain why not:

5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. [X] (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
(2) Where the plaintiff's property was damaged.
(3) Where the plaintiff was injured.
b. [] Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans.
c. [] Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card).
d. [] Where the buyer signed the contract, lives now, or lived, when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale.
e. [] Other (specify):

6 List the zip code of the place checked in 5 above (if you know): 94608

7 Is your claim about an attorney-client fee dispute? [] Yes [X] No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form and check here: []

8 Are you suing a public entity? [] Yes [X] No

If yes, you must file a written claim with the entity first. [] A claim was filed on (date):

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 Have you filed more than 12 other small claims within the last 12 months in California?

[] Yes [X] No If yes, the filing fee for this case will be higher.

10 Is your claim for more than \$2500? [X] Yes [] No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2500 in California during this calendar year.

11 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 11/30/2018

Xavier Torres de Janon

Signature on File

Plaintiff types or prints name here

Plaintiff signs here

Date: 11/30/2018

Michele Brooks

Signature on File

Second plaintiff types or prints name here

Second plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for Form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)



"Small claims court" is a special court where claims for \$10,000 or less are decided. Individuals, including "natural persons" and sole proprietors, may claim up to \$10,000. Corporations, partnerships, public entities, and other businesses are limited to claims of \$5,000. (See below for exceptions.*) The process is quick and cheap. The rules are simple and informal. You are the defendant—the person being sued. The person who issuing you is the plaintiff.

Do I need a lawyer? You may talk to a lawyer before or after the case. But you may not have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court? You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, Request for Accommodations. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well? Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at www.courts.ca.gov/smallclaims/forms.

What happens at the trial? The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if lose the case? If you lose, you may appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, Notice of Appeal. You must file within 30 days after the clerk hands or mails you the judge's decision (judgment) on form SC-200 or form SC-130, Notice of Entry of Judgment.
- If you were not at the trial, fill out and file form SC-135, Notice of Motion to Vacate Judgment and Declaration, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see www.courts.ca.gov/smallclaims/appeals.

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the plaintiff agree on how to settle the case, the plaintiff must file form CIV-110, Request for Dismissal, with the clerk. Ask the Small Claims Advisor for help.

- **Prove this is the wrong court.** Send a letter to the court before your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)*
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (Small Claims Subpoena) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the plaintiff, and the claim is appropriate for small claims court as described on this form, you may file Defendant's Claim (form SC-120) and bring the claim in this action. If your claim is for more than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court and relates to the same contract, transaction, matter, or event that is the subject of the plaintiff's claim, you may file your claim in the appropriate court and file a motion to transfer the plaintiff's claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled "Small Claims Court."

- **Agree with the plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.

- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the plaintiff what he or she is asking for plus court costs. If this happens, the plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-150 (or write a letter) and mail it to the court and to all other people listed on your papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county's Small Claims Advisor can help for free.

Call (510) 272-1393

Or go to www.courts.ca.gov/smallclaims/advisor

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

La "Corte de reclamos menores" es una corte especial donde se deciden casos por \$10,000 o menos. Los individuos, o sea las "personas físicas" y los propietarios por cuenta propia, pueden reclamar hasta \$10,000. Las corporaciones, asociaciones, entidades públicas y otras empresas solo pueden reclamar hasta \$5,000. (Vea abajo para las excepciones.)* El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado? Puede hablar con un abogado antes o después del caso. Pero no puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte? No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en www.courts.ca.gov/reclamosmenores/preparesse.

¿Qué hago si necesito una adaptación? Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, Request for Accommodations. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés? Pregúntele al secretario de la corte lo más pronto posible si en el juzgado habrá un intérprete disponible y cómo solicitarlo. No siempre están disponibles los intérpretes de la corte. Otra opción es llevar a un adulto que pueda interpretar para usted siempre que esa persona no sea un testigo ni un abogado. O puede pedir a la corte una lista de intérpretes particulares disponibles para contratar.

¿Dónde puedo obtener los formularios de la corte que necesito? Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio? El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso? Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, Aviso de apelación (Notice of Appeal). Tiene que presentarlo dentro de 30 días después de que el secretario le entregue o envíe la decisión (fallo) del juez en el formulario SC-200 o SC-130, *Aviso de publicación del fallo* (Notice of Entry of Judgment).
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140. Para obtener más información sobre las apelaciones, vea www.courts.ca.gov/reclamosmenores/apelaciones.

¿Tengo otras opciones? Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en cómo resolver el caso, el Demandante tiene que presentar el formulario CIV-110, Solicitud de desestimación (Request for Dismissal) ante el secretario de la corte. Pídale al Asesor de Reclamos Menores que lo ayude.

* Excepciones: Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).)

- **Probar que es la corte equivocada.** Envíe una carta a la corte *antes* del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Si desea que la corte emita una orden de comparecencia para que los testigos vayan al juicio, llene el formulario SC-107, *Citatorio de reclamos menores* (Small Claims Subpoena) y entrégueselo legalmente al testigo.
- **Demandar a la persona que lo demandó.** Si tiene un reclamo contra el Demandante, y el reclamo se puede presentar en la corte de reclamos menores, tal como se describe en este formulario, puede presentar el formulario SC-120, *Reclamo del demandado* (Defendant's Claim) y presentarlo en este mismo caso. Si su reclamo excede el límite permitido en la corte de reclamos menores, puede igualmente presentarlo en la corte de reclamos menores si está dispuesto a limitar su reclamo al máximo permitido, o puede presentar un reclamo por el monto total en la corte apropiada. Si su reclamo excede el límite permitido en la corte de reclamos menores y está relacionado con el mismo contrato, transacción, asunto o acontecimiento que el reclamo del Demandante, puede presentar su reclamo en la corte apropiada y presentar una moción para transferir el reclamo del Demandante a dicha corte, para poder resolver los dos reclamos juntos. Puede ver una descripción de los montos permitidos en el párrafo anterior titulado "Corte de reclamos menores".
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo? Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (6 20 días si vive fuera del condado), o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

Call (510) 272-1393

- visit www.courts.ca.gov/reclamosmenores/asesores



This form is attached to Form SC-100, Item 1 or 2.

① If more than two plaintiffs (person, business, or entity suing), list their information below:

Other plaintiff's name: Joseph Quisol
Street address: 431 Capistrano Ave Phone: _____
City: San Francisco State: CA Zip: 94112
Mailing address (if different): _____
City: _____ State: _____ Zip: _____
Is this Plaintiff doing business under a fictitious name? Yes No If yes, attach Form SC-103.

Other plaintiff's name: _____
Street address: _____ Phone: _____
City: _____ State: _____ Zip: _____
Mailing address (if different): _____
City: _____ State: _____ Zip: _____
Is this Plaintiff doing business under a fictitious name? Yes No If yes, attach Form SC-103.

Check here if more than 4 plaintiffs and fill out and attach another Form SC-100A.

② If more than one defendants (person, business, or entity being sued), list their information below:

Other defendant's name: _____
Street address: _____ Phone: _____
City: _____ State: _____ Zip: _____
Mailing address (if different): _____
City: _____ State: _____ Zip: _____

If this defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process:

Name: _____ Job Title, if Known: _____
Address: _____
City: _____ State: _____ Zip: _____

Check here if more than two Defendants and fill out and attach another Form SC-100A.

③ Is your claim for more than \$2500? Yes No
If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2500 in California during this calendar year.

④ I understand that by filing a claim in small claims court, I have no right to appeal this claim. I declare under penalty of perjury under California state law that the information above and on any attachments to this form is true and correct.

Date: 11/30/2018 Joseph Quisol _____
Type or print your name Sign your name

Date: _____ _____
Type or print your name Sign your name

SHORT TITLE: Torres de Janon VS Crumpton	CASE NUMBER: RS18930505
---	----------------------------

ADDITIONAL ADDRESSEES

Xavier Torres de Janon
431 Capistrano Ave
San Francisco, CA 94112_____

Eric Crumpton
3208 West St
Oakland, CA 94608_____

Michele Brooks
3206 West St
Oakland, CA 94608_____

Joseph Quisol
431 Capistrano Ave
San Francisco, CA 94112_____

Name and Address of Court:

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA 94612
(510) 891-6003

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

SMALL CLAIMS CASE NO. RS18930505
2019 MAY 13 PM 1:01

NOTICE TO ALL PLAINTIFFS AND DEFENDANTS:
Your Small Claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the attached page for further important information about your rights.

AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS:
Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte. Lea el reverso de este formulario para obtener información de importancia acerca de sus derechos.

PLAINTIFF/DEMANDANTE (Name, address, and telephone of each):

Xavier Torres de Janon
431 Capistrano Ave
San Francisco, CA 94112

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):

Eric Crumpton
3208 West St
Oakland, CA 94608

Telephone No.:

J

Telephone No.:

J

Michele Brooks
3206 West St
Oakland, CA 94608

J

J

Telephone No.:

J

Telephone No.:

J

X See attached sheet for additional plaintiffs and defendants

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered as checked below on (date): 03/11/2019 Commissioner Tamiza Hockenhill

- 1. Defendant Eric Crumpton shall pay plaintiff Xavier Torres de Janon; Michele Brooks; Joseph Quisol \$ 7,754.00 principal and \$ 75.00 costs on plaintiffs claim.
2. Defendant does not owe plaintiff any money on plaintiff's claim.
3. Plaintiff shall pay defendant \$ principal and \$ costs on defendant's claim.
4. Plaintiff does not owe defendant any money on defendant's claim.
5. Possession of the following property is awarded to plaintiff (describe property):
6. Payments are to be made at the rate of \$ per (specify period): , beginning on (date): and on the (specify day): day of each thereafter until paid in full. If any payment is missed, the entire balance may become due immediately.
7. Dismissed in Court with prejudice. without prejudice.
8. Attorney-Client Fee Dispute (Attachment to Notice of Entry of Judgment) (form SC-132) is attached.
9. Other (specify):

Judgement is as to defendant jointly and severly. Defendant(tenants) established inhabitality due to mice, gas leak, no heat, no hot water, and other unsafe living conditions. (Security Deposit \$1283.25 plus 3mos rent \$2096.25 plus move out costs, pain and suffering)

- 10. This judgment results from a motor vehicle accident on a California highway and was caused by the judgment debtor's operation of a motor vehicle. If the judgment is not paid, the judgment creditor may apply to have the judgment debtor's driver's license suspended.
11. Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.
12. This notice was personally delivered to (insert name and date):

- The county provides small claims advisor services free of charge. Read the information sheet on the next page.-

Your small claims case has been decided. The **judgment** or decision of the court appears on the front of this sheet. The Court may have ordered one party to pay money to the other party. The person (or business) who won the case and who can collect the money is called the **judgment creditor**. The person (or business) who lost the case and who owes the money is called the **judgment debtor**. Enforcement of the judgment is postponed until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally, both parties may be represented by lawyers after judgment.

IF YOU LOST THE CASE . . .

1. If you lost the case on your own claim and the court did not award you any money, the court's decision on your claim is **FINAL**. You may not appeal your own claim.
2. If you lost the case and the court ordered you to pay money, your money and property may be taken to pay the claim unless you do one of the following things:

a) PAY THE JUDGMENT

The law requires you to pay the amount of the judgment. You may pay the judgment creditor directly, or pay the judgment to the court for an additional fee. You may also ask the court to order monthly payments you can afford. Ask the clerk for information about these procedures.

b) APPEAL

If you disagree with the court's decision, you may appeal the decision *on the other party's claim*. You may not appeal the decision on your own claim. However, if any party appeals, there will be a new trial on *all* the claims. If you appeared at the trial, you *must* begin your appeal by filing a form called a *Notice of Appeal* (form SC-140) and pay the required fees *within 30 days* after the date this *Notice of Entry of Judgment* was mailed or handed to you. Your appeal will be in the superior court. You will have a *new trial* and you must present your evidence again. You may be represented by a lawyer.

c) VACATE OR CANCEL THE JUDGMENT

If you did not go to the trial, you may ask the court to vacate or cancel the judgment. To make this request, you must file a *Motion to Vacate the Judgment* (form SC-135) and pay the required fee *within 30 days* after the date this *Notice of Entry of Judgment* was mailed. If your request is denied, you then have *10 days* from the date the notice of denial was mailed to file an appeal. The period to file the *Motion to Vacate the Judgment* is *180 days* if you were *not properly served* with the claim. The 180-day period begins on the date you found out or should have found out about the judgment against you.

b) VOLUNTARY PAYMENT

Ask the judgment debtor to pay the money. If your claim was for possession of property, ask the judgment debtor to return the property to you. **THE COURT WILL NOT COLLECT THE MONEY OR ENFORCE THE JUDGMENT FOR YOU.**

c) STATEMENT OF ASSETS

If the judgment debtor does not pay the money, the law requires the debtor to fill out a form called the *Judgment Debtor's Statement of Assets* (form SC-133). This form will tell you what property the judgment debtor has that may be available to pay your claim. If the judgment debtor willfully fails to send you the completed form, you may file an *Application and Order to Produce Statement of Assets and to Appear for Examination* (form SC-134) and ask the court to give you your attorney's fees and expenses, and other appropriate relief, after proper notice, under Code of Civil Procedure section 708.170.

d) ORDER OF EXAMINATION

You may also make the debtor come to court to answer questions about income and property. To do this, ask the clerk for an *Application and Order for Appearance and Examination (Enforcement of Judgment)* (form EJ-125) and pay the required fee. There is a fee if a law officer serves the order on the judgment debtor. You may also obtain the judgment debtor's financial records. Ask the clerk for the *Small Claims Subpoena and Declaration* (form SC-107) or *Civil Subpoena Duces Tecum* (form SUBP-002).

e) WRIT OF EXECUTION

After you find out about the judgment debtor's property, you may ask the court for a *Writ of Execution* (form EJ-130) and pay the required fee. A writ of execution is a court paper that tells a law officer to take property of the judgment debtor to pay your claim. Here are some examples of the kinds of property the officer may be able to take: **wages, bank account, automobile, business property, or rental income.** For some kinds of property, you may need to file other forms. See the law officer for information.

f) ABSTRACT OF JUDGMENT

The judgment debtor may own land or a house or other buildings. You may want to put a lien on the property so that you will be paid if the property is sold. You can get a lien by filing an *Abstract of Judgment* (form EJ-001) with the county recorder in the county where the property is located. The recorder will charge a fee for the *Abstract of Judgment*.

IF YOU WON THE CASE . . .

1. If you were sued by the other party and you won the case, then the other party may not appeal the court's decision.
2. If you won the case and the court awarded you money, here are some steps you may take to collect your money or get possession of your property:

a) COLLECTING FEES AND INTEREST

Sometimes fees are charged for filing court papers or for serving the judgment debtor. These extra costs can become part of your original judgment. To claim these fees, ask the clerk for a *Memorandum of Costs*.

NOTICE TO THE PARTY WHO WON: As soon as you have been paid in full, you *must* fill out the form below and mail it to the court *immediately* or you may be fined. If an *Abstract of Judgment* has been recorded, you must use another form; see the clerk for the proper form.

CASE TITLE AND SMALL CLAIMS CASE NO. MUST BE FILLED OUT.

CASE TITLE Torres de Janon vs. Crumpton SMALL CLAIMS CASE NO.: RS18930505

ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT
(Do not use this form if an Abstract of Judgment has been recorded)

To the Clerk of the Court

I am the judgment creditor assignee of record.

I agree that the judgment in this action has been paid in full or otherwise satisfied.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE)

SHORT TITLE:

Torres de Janon VS Crumpton

CASE NUMBER:

RS18930505

ADDITIONAL ADDRESSEES

Joseph Quisol
431 Capistrano Ave
San Francisco, CA 94112____
94112 1000

Superior Court of California, County of Alameda
Hayward Hall of Justice

Case Number: RS18930505
Judgment after Court Trial of 03/11/2019

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, California.

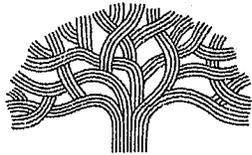
Executed on 03/13/2019.

Chad Finke Executive Officer / Clerk of the Superior Court

By 

Deputy Clerk

000034



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

CITY RECEIVED
RENT ADJUSTMENT PROGRAM
2014 JUN 12 7:02 AM
PH 1:39

For date stamp.

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 - T19,0097 KM/MA

Your Name <u>H Eric Crompton</u>	Complete Address (with zip code) <u>PO Box 99857 Emeryville, CA 94622</u>	Telephone: <u>570-228-9807</u>
Your Representative's Name (if any)	Complete Address (with zip code)	Email:
Tenant(s) Name(s) <u>Xavier Torres de la Cruz Michele Brooks Joseph Quisol</u>	Complete Address (with zip code) <u>unknown</u>	Telephone:
Property Address (If the property has more than one address, list all addresses) <u>3206 West Street</u>	Total number of units on property <u>2</u>	Email:

Have you paid for your Oakland Business License? Yes No Lic. Number: _____
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: _____
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: 10/1/2004

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>
<u>N/A</u>	<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"/>	<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 8-1-18

The tenant's initial rent including all services provided was; \$ 2795.00 month. rent was not increased during tenants stay,

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 X

If yes, on what date was the Notice first given? _____

Is the tenant current on the rent? Yes ___ No ___ moved out in Nov 2018

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>	
<u>N/A</u>		\$	\$	<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

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. *effective 9-1-18*
owner occupied

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

6/4/19

Date

Property manager

For more information phone (510)-238-3721.

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.

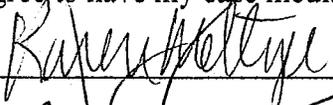
Mediation Program

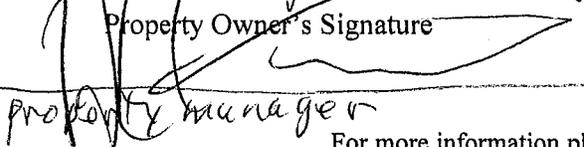
Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. 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.

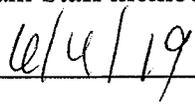
If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign below.

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



Property Owner's Signature


Property Manager



Date

For more information phone (510)-238-3721.



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: T19-0097 Torres de Janon v. Melter
PROPERTY ADDRESS: 3206 West Street, Oakland, CA
PARTIES: Xavier Torres de Janon, Tenant
Karen Melter, Owner
Eric Crumpton, Property Manager

INTRODUCTION

The tenant filed a petition on December 4, 2018, claiming decreased housing services. Prior to filing the petition, the tenant also filed a claim in small claims court (Case Number RS18930505) on November 30, 2018, for the same habitability issues described in the Tenant Petition.

On March 11, 2019, the Superior Court of California County of Alameda issued a Notice of Entry of Judgment in Case Number RS18930505. The judgment states that the tenant "established inhabitability due to mice, gas leak, no heat, no hot water, and other unsafe living conditions", and awarded the tenant \$7,754.00 in principal and \$75.00 in costs. Since the Alameda County Superior Court assumed jurisdiction over this matter, and issued a Notice of Entry of Judgment, the matter has been resolved and the Rent Adjustment Program no longer has jurisdiction over the tenant's decreased housing services claims. Therefore, this petition is dismissed.

If there is a continuing dispute between the parties over payment of the judgment in Case Number RS18930505, the parties must seek redress in small claims court.

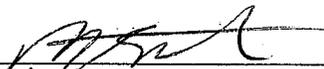
ORDER

1. Tenant Petition T19-0097 is dismissed.
2. The Hearing scheduled for July 17, 2019, is cancelled.

000039

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: May 23, 2019



Maimoona Sahi Ahmad
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T19-0097

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 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

Manager

Eric Crumpton
3208 West Street
Oakland, CA 94608

Owner

Karen Meltzer
3208 West St
Oakland, CA 94608

Tenant

Xavier Torres de Janon
1027 41st Ave Ste 4
Oakland, CA 94601

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 **May 31, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program

000041

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

Km/MA

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	2019 JUN 10 11:34 For date stamp
	APPEAL	

Appellant's Name Xavier Torres de Janon		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3206 West Street, Oakland, CA 94608			
Appellant's Mailing Address (For receipt of notices) 1027 41st Ave Ste 4, Oakland, CA 94601		Case Number T19-0097	Date of Decision appealed May 23, 2019
Name of Representative (if any) N/A	Representative's Mailing Address (For notices) N/A		

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 June 10, 2019, 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:

Name	Karen Meltzer
Address	3208 West Street
City, State Zip	Oakland, CA 94608
Name	Eric Crumpton
Address	3208 West Street
City, State Zip	Oakland, CA 94608

	06/10/2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

250 Frank Ogawa Plaza, Suite 5313, Oakland, CA 94612-2034
Housing and Community Development Department
Rent Adjustment Program
City of Oakland

2019 JUN 10 AM 11:34

ADMINISTRATIVE DECISION APPEAL

CASE NUMBER: T19-0097 Torres de Janon v. Meltzer
PROPERTY ADDRESS: 3206 West Street, Oakland, CA 94601
PARTIES: Xavier Torres de Janon, Tenant
Karen Meltzer, Owner
Eric Crumpton, Property Manager

INTRODUCTION

On May 23, 2019, an administrative decision was signed ordering that Tenant Petition T19-0097 be dismissed and that the related Hearing scheduled for July 17, 2019 be cancelled. This was ordered on the grounds that the "matter has been resolved" since the "Alameda County Superior Court assumed jurisdiction over this matter, and issued a Notice of Entry of Judgment [on March 11, 2019]." Under this assumption, "the Rent Adjustment Program no longer has jurisdiction over the tenant's decreased housing services claims."

The referenced Alameda County Superior Court is for Case Number RS18930505, Torres de Janon vs Crumpton, involving Plaintiff Xavier Torres de Janon, Michele Brooks & Joseph Quisol against Defendant Eric Crumpton. The Plaintiffs were requested to be added as co-tenants to the Rent Adjustment Program Case Number T19-0097 through a letter filed on May 13, 2019.

The Tenant would like to appeal this dismissal so that the matter be fully considered and a hearing be fairly rescheduled. **As explained below, the Rent Adjustment Program continues to have specific jurisdiction over this matter, which is distinct and separate in parties and substance from the case adjudicated by the small claims court.** The former is seeking redress against Owner Karen Meltzer for no-fault eviction relocation payments, whereas the latter provided damages against Defendant Eric Crumpton for costs incurred solely during the residence of the uninhabitable unit.

GROUNDS FOR APPEAL

1. **The Defendant of Alameda County Superior Court Case Number RS18930505 is different and separate as a party than the Owner of Tenant Petition T19-0097, making them two separate matters.**
 - a. The responding party of Alameda County Superior Court Case Number RS18930505 is Defendant Eric Crumpton: Torres de Janon vs Crumpton.
 - b. The responding party of Rent Adjustment Program Case Number T19-0097 is Owner Karen Meltzer: Torres de Janon vs Meltzer.
 - i. The Owner's last name was misspelled due to a clerical error ("Melter"). This was corrected by a Rent Adjustment Program staff member in her computer per the Tenant's request when he visited the offices in person on May 13, 2019 (although on June 4, 2019 the Tenant was informed in person by another Rent Adjustment Program staff member that this supposed correction might not have happened despite the former staff member's assurances).
 - c. Notwithstanding the fact that the small claims case Defendant is mentioned as Property Manager in the Tenant Petition, the main respondent for the Rent Adjustment Program matter remains Owner Karen Meltzer.
 - d. Furthermore, the Tenant/Plaintiff actually attempted to add Karen Meltzer as another Defendant to the small claims court case on May 9, 2019 through SC-105 Request for Court Order and Answer, but this request was promptly denied by the court since a separate claim should be opened against Karen Meltzer.
 - e. The Tenant/Plaintiff did not open a separate small claims court case against Karen Meltzer since an open matter existed through Rent Adjustment Program Case Number T19-0097, Torres de Janon vs Meltzer.
 - f. Thus, the Rent Adjustment Program retains jurisdiction over this specific matter and the case should be reopened for fair due process.

2. **The Notice of Entry of Judgment for RS18930505 did not address Relocation Payments covered by OMC 8.22.450 and 8.22.820, which is under the jurisdiction of the Rent Adjustment Program and were to be requested by the Tenant through the hearing.**
 - a. Notice of Entry of Judgment for Alameda County Superior Court Case Number RS18930505 ordered \$7,754.00 in principal in favor of the Plaintiff for "Security Deposit \$1283.25 plus 3mos rent \$2096.25 plus move out costs, pain and suffering."
 - i. The additional \$75.00 in costs covered the initial filing fee for SC-100 Plaintiff's Claim and Order to Go to Small Claims Court.
 - b. The amount awarded to the Plaintiff does not mention or infer relocation costs, which are jurisdictionally covered by the City of Oakland Rent Adjustment Program, as stated in OMC 8.22.450 and elaborated in OMC 8.22.820.

- c. Given jurisdictional differences, the Plaintiff did not request relocation payments in the initial SC-100 Plaintiff's Claim and Order to Go to Small Claims Court, which solely asked for damages incurred during residence on page 5 of the document "Landlord Negligence - Security Deposit and Public Health & Safety Damages":
- \$2795.00 security deposit paid in August 2018 (\$698.75 per each of us)
 - \$704.00 for damages related to 8 days without hot water (\$25.00 per day for each of us)
 - \$1600.00 for damages related to 40 days with morning gas smell across the apartment (\$10.00 per day for each of us)
 - \$780.00 for damages related to 13 days with mice (\$15.00 per day for each of us)
 - \$1800 for damages related to 3 days of alternate sleeping arrangements (\$150.00 per day for each of us)
 - \$75.00 for refund of document preparation and filing fees".
- d. During the small claims case hearing itself, no party mentioned relocation costs or payments, which are under the jurisdiction of the City of Oakland Rent Adjustment Program. These have not been considered at any point of the small claims case process in the separate matter of Torres de Janon vs Crumpton.
- e. Since the Rent Adjustment Program hearing was cancelled, the Tenant was denied sufficient opportunity to present a request for OMC 8.22.450 Relocation Payments, which do not fall under the jurisdiction of Alameda County Superior Court through Case Number RS18930505.
- f. Furthermore, OMC 8.22.820 states that the Tenant should be awarded in Amount of Relocation Payments "nine thousand eight hundred seventy-five dollars (\$9,875.00) per unit for units with three or more bedrooms," which is the size of the unit at 3206 West Street, Oakland, CA 94608. This was not at all covered by the Notice of Entry of Judgment amount of \$182.00 for "move out costs, pain and suffering" (the difference left from \$1283.25 for "Security Deposit" and \$6,288.25 for "3mos rent \$2096.25" out of the total \$7,754.00).
- g. Thus, the Rent Adjustment Program retains jurisdiction over this specific matter and the hearing should be rescheduled for the Tenant to have sufficient opportunity to present his claim.

Sincerely,


Xavier Torres de Janon
Tenant

CHRONOLOGICAL CASE REPORT

Case No.: T19-0011

Case Name: Aguirre v. Diamond Properties

Property Address: 1200 Lakeshore Ave., Apt., #17G, Oakland, CA

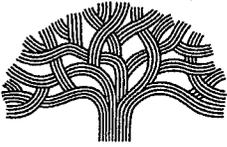
Parties: Luis Aguirre (Tenant)
Jennifer Maniar (Owner Representative)
Paul Bisailon (Owner Representative)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 10, 2018
Owner Response filed	February 19, 2019
Hearing Decision mailed	June 28, 2019
Tenant Appeal filed	July 10, 2019

000047

T19.0011 RC/EL

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp RECEIVED OCT 10 2010 RENT ADJUSTMENT PROGRAM 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 <i>Luis Aguirre</i>	Rental Address (with zip code) <i>1200 Lakeshore Ave. Apt 17G</i>	Telephone: E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) <i>Diamond Properties Inc. Agent: Geoffrey McCreary</i>	Mailing Address (with zip code) <i>1200 Lakeshore Ave. Oakland CA 94606</i>	Telephone: <i>510-834-1200</i> Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 173

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 type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input 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.

(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.)
(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).
(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
(g) The increase I am contesting is the second increase in my rent in a 12-month period.
(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)
✓ (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)
(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
(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).
(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)
(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
(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)

Date you moved into the Unit: July, 2002 Initial Rent: \$ 1600 /month

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: July, 2002. If never provided, enter "Never."

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

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.

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		
9-25-18	11-01-18	\$ 2207.12	\$ 2282.16	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<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
		\$	\$	<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

* 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:

04-03-2016

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.

- 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

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:

See Attached Letter

- 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.

Luis Aguirre
Tenant's Signature

10-01-18
Date

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

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, 6th 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): _____

Luis Aguirre
1200 Lakeshore Ave. #17G
Oakland, CA 94606

October 01, 2016

City of Oakland
Rent Adjustment Program
P.O. Box 70243
Oakland, California 94612-0243

To whom it may concern:

This letter is an addendum to Section III of my Tenants Petition to contest a rent increase, based on the grounds that rental housing services being provided have decreased.

Background:

1200 Lakeshore Apartments has a 4th floor patio area that is provided to tenants for relaxation, entertaining and general use.

Im my case this area was used very often by my family including two small children as a play area and to receive and entertain my guests and their children.

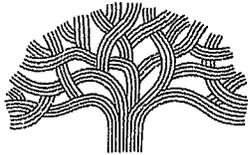
Approximately, 3 months ago a project was commenced to repair the planters in this area so that they would not leak into the garage below. This in effect has made the patio area unusable for the past 3 months and for the unforeseeable future.

I contend that loss of the patio area has been a loss in building services to me and my family. I believe that my rent should be reduced by \$75, and certainly that my rent should not be increased by \$75.04.

Sincerely,

Luis Aguirre

000052



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

RECEIVED

FEB 19 2019

RENT ADJUSTMENT PROGRAM

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 T19-0011

Your Name 1200 LAKESHORE APTS	Complete Address (with zip code) 1200 LAKESHORE AVE OAKLAND, CA 94606	Telephone: 510-834-1200
		Email: -
Your Representative's Name (if any) JENNIFER MANIAR GEOFFREY MCCREARY	Complete Address (with zip code) 1200 LAKESHORE AVE OAKLAND CA 94606	Telephone: 510-834-1200
		Email: -
Tenant(s) Name(s) LUIS AGUIRRE	Complete Address (with zip code) 1200 LAKESHORE AVE UNIT #176 OAKLAND, CA 94606	
Property Address (If the property has more than one address, list all addresses)		Total number of units on property 172

Have you paid for your Oakland Business License? Yes No Lic. Number: **00017450**
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: **20-129-23-2**
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: **04/15/1997**

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>
11-1-18	<input type="checkbox"/> CPF INCREASE ONLY	<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"/>
	<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 06/29/2002.

The tenant's initial rent including all services provided was: \$ 1600.⁰⁰ / 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? 6/29/2002

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>	
9/25/2018	11/01/2018	\$ 2,207.12	\$ 2,282.16	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3/23/2017	5/01/2017	\$ 2,163.84	\$ 2,207.12	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3/15/2016	5/01/2016	\$ 2,127.67	\$ 2,163.84	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3/26/2015	5/01/2015	\$ 2,088.00	\$ 2,127.67	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3/31/2014	5/01/2014	\$ 2,046.00	\$ 2,088.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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>
_____	<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"/>	<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 06/29/2002.

The tenant's initial rent including all services provided was: \$ 1,600.⁰⁰ / 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? 6/29/2002

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>	
<u>3/22/2013</u>	<u>5/1/2013</u>	<u>\$1,987.⁰⁰</u>	<u>\$2,046.⁰⁰</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>3/31/2012</u>	<u>5/1/2012</u>	<u>\$1,948.⁴⁷</u>	<u>\$1,987.⁰⁰</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>3/25/2011</u>	<u>5/1/2011</u>	<u>\$1,826.⁰⁰</u>	<u>\$1,948.⁴⁷</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>9/1/2009</u>	<u>11/1/2009</u>	<u>\$1,789.⁰⁰</u>	<u>\$1,826.⁰⁰</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<u>9/17/2008</u>	<u>11/1/2008</u>	<u>\$1,734.⁰⁰</u>	<u>\$1,789.⁰⁰</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

37

For more information phone (510)-238-3721.

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>
	<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"/>	<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 06/29/2002.

The tenant's initial rent including all services provided was: \$ 1,600.⁰⁰ / 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? 6/29/2002

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>	
<u>9/1/2007</u>	<u>11/1/2007</u>	<u>\$ 1,679.⁰⁰</u>	<u>\$ 1,734.⁰⁰</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>9/27/2006</u>	<u>11/1/2006</u>	<u>\$ 1,600.⁰⁰</u>	<u>\$ 1,679.⁰⁰</u>	<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

4/2

For more information phone (510)-238-3721.

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

2-16-2019
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.

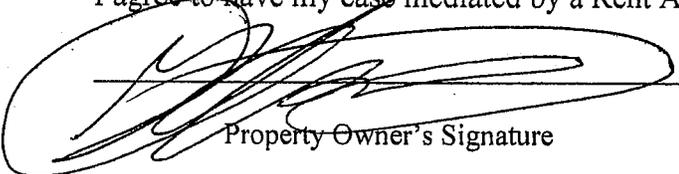
Mediation Program

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

2/16/2019
Date

6 A

2019 FEB 19 AM 10:29



File Name: Aguirre v. Diamond Investment Properties, INC
Property Address: 1200 Lakeshore Avenue #17G Oakland, CA 94606
Case Number: T19-0011

Answer to Section IV. Decreased Housing Services

On or about July 2018, 1200 Lakeshore Apartments embarked on a improvement and sealing project for the 4th floor patio. Which at times for safety reasons has made the patio closed to residents. The 4th floor patio is the top of 1200 Lakeshore Apartments parking garage. This project included the removal of all dirt, tree and plants from the planter boxes. Removal of the existing and failing sealing membrane, irrigation lines, and fencing, etc. This was needed to reseal the planter beds, install new drains, irrigation and electrical. This was required to stop water leaking into the garage of 1200 Lakeshore, and preserve the buildings structure.

The project is in the final phases, with the planter boxes getting top soil installed the week of February 20th, 2019 and sealing of the concrete in early March 2019. Installation of the fence is scheduled for mid to late March 2019. The final phase will be landscaping which will be in late March to early April weather permitting.

As this is an improvement project that will have no capital improvement cost passed through to the residents. It will allow the residents many decades of use of the patio area and a leak free garage. This is not a decrease in housing as Mr. Aguirre alleges into the "unforeseeable future". But a much improved, usable, exterior garden patio space, for relaxation, entraining and general use. We ask that you deny Mr. Aguirre request for a reduction of rent due to a decrease in housing services.

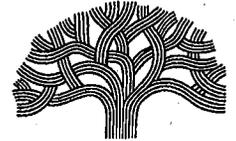
It should be noted the date on Mr. Aguirre's letter seems inconsistent with timing of his complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey McCreary", is written over a circular scribble.

Geoffrey McCreary

000059



Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

HEARING DECISION

CASE NUMBER: T19-0011, Aguirre v. Diamond Properties
PROPERTY ADDRESS: 1200 Lakeshore, Unit 17G, Oakland, CA
DATE OF HEARING: April 30, 2019
DATE OF DECISION: June 27, 2019
APPEARANCES: Luis Aguirre, Tenant
Jennifer Maniar, Owner Representative
Paul Bisailon, Owner Representative

SUMMARY OF DECISION

The Tenant's petition is denied.

INTRODUCTION

The tenant filed the petition on October 10, 2018, which alleges that the owner is providing him with fewer housing services than they received previously.

The owner filed an untimely response on February 19, 2019.

ISSUE(S) PRESENTED

1. Is there good cause for the Owner's failure to timely respond to the petition?

2. What is the allowable rent?
3. Has the tenant suffered decreased housing services?
4. If so, what, if any, restitution is owed to the tenant, and how does that impact the rent?

EVIDENCE

Owner's Failure to Respond.

The owner representative testified that she could not respond the tenant's petition. She testified that before November 6, 2018, she had not managed a property with rent control. The previous manager was brought back to work on this specific case because she was unable to manage completing the answer. The previous manager, Jeff, worked on putting together their response over five days.

The owner representative testified that she did not understand that to respond to the tenant's petition, she only needed to complete the owner response form.

To prepare the response, they went through old resident files, gathered previous years complaints, the business license, the rent ledger, all the previous notices rent increases, and the lease agreement.

The owner representative also testified that they thought the response was due in 35 business days. She also testified that she was told that the day it was filed the last day to file their response timely.

Rental History

The tenant initially moved into the unit in July 2002. At the inception of his tenancy, the rent was \$1600.00 monthly. The tenant provided a copy of the RAP Notice that he signed on September 25, 2018. The tenant was served a notice of rent increase indicating that effective November 1, 2018, his rent was increased to \$2,282.16.

The tenant filed a prior petition, T16-0178, Aguirre v. Diamond Investment Properties. The Hearing Decision was issued on September 7, 2016, and was not appealed. The Hearing Decision is now final.

Decreased Housing Services

The tenant testified that the subject property had an outdoor patio area on the fourth floor when he moved into the property. The tenant submitted a letter dated October 1, 2016, saying that the tenant was unable to use the patio at the subject property.¹ The tenant testified that he did not communicate directly to the landlord about his claim of decreased housing services.

The owner representative testified that the work on the patio started in July of 2018. Additionally, the owner representative testified that the October 2016 letter was received in their office attached to the tenant's petition and served by the Rent Adjustment Program.

The owner's representative testified that work on the patio began on or about July 18, 2018, and that the patio was not closed to residents until August 2018.

The subject property was completed sometime in the late 60s and the terrace is approximately 50 years old. Initially, the terrace was planted with a large number of Magnolia trees which were replaced with Maple trees. The planters on the terrace were supporting very large trees past their maturity date. There have been ongoing issues with issues related to water. Water has gotten under the waterproofing membranes; roots have grown under the walls and grown into the planters and the drains and was in drastic need of a complete renovation which included removing the soil from every single planter. Each planter needed drain replacement, and an extensive membrane and waterproofing system installed.

The size of the surface is about 20,000 square feet and of that approximately 10,000 square feet is the planters with well over 1000 cubic yards of soil. Despite their best efforts, the process required a lot of physical, manual labor.

The entire system had the irrigation replaced, the electric repaired, and the conduit was run. The repairs were started in the fall to avoid impacting the residents; however, the continuous rain this winter created substantial unforeseeable delays.

They have replaced all the vegetation with plants and trees that require significantly less water. The process is complicated by the terrace being two stories

¹ Exhibit 1. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection.

above ground. They anticipate this total project cost to be over 700 thousand dollars.

The owner's representative indicated that they were unable to state with certainty when the project would be done, and when the patio would reopen.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Is there good cause for the Owner's failure to respond to the petition?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RA) that a tenant petition was filed.² "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."³

The owner's representative's testimony about not knowing how to file the response and that she thought it was filed on time is credited. While mistake of law is not a defense, the Hearing Officer was persuaded by the depth and breadth of the response filed that it would have been difficult to complete without prior experience. Therefore, it is found that there is good cause for the owner's failure to file a timely response to the petition. Therefore, the owner's participation at the Hearing was not limited to cross-examination and summation.⁴

When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy⁵ and together with any notice of rent increase or change in the terms of a tenancy.⁶

The tenant's testimony that he signed the RAP Notice in September 2018 when he received the Notice of rent increase is undisputed. Accordingly, the tenant was given notice of the RAP Program at the time of the last rent increase.

² O.M.C. § 8.22.090(B)

³ O.M.C. §8.22.070(C)(2)

⁴ Board Decision in Santiago v. Vega, HRRBT02-0404

⁵ O.M.C. § 8.22.060(A)

⁶ O.M.C. § 8.22.070(H)(1)(A)

What is the allowable rent?

The tenant filed a prior petition, T16-0178, Aguirre v. Diamond Investment Properties. The Hearing Decision was issued on September 7, 2016, and was not appealed. The Hearing Decision is now final. The Hearing Decision issued in the prior petition set the tenant's rent at \$2,316.39, effective May 1, 2016. Accordingly, the September 25, 2018, notice of rent increase is invalid.

Has the tenant suffered decreased housing services?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁷ and may be corrected by a rent adjustment.⁸ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. If the decreased service is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within 90 days after of whichever is later: (1) the date the tenant is noticed or first becomes aware of the decreased housing service; or (2) the date the tenant first receives the RAP Notice.

If the decreased housing service is for an ongoing condition (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.⁹ Since the evidence established that the tenant did receive the RAP notice at the inception of her tenancy, the tenant is limited to restitution for 90 days before her petition was filed.

For a tenant's claim for decreased housing services to be granted, an owner must have notice of a problem and a reasonable opportunity to make needed repairs.

Decreased Housing Service #1

The California Court of Appeal considered the question of whether repair and replacement of tenant's decks-which resulted in the temporary loss of use of the

⁷ O.M.C. § 8.22.070(F)

⁸ O.M.C. § 8.22.110(E)

⁹ O.M.C. § 8.22.090(A)(3)

decks and ventilation from the doorways to the decks-was a decrease in housing services under the San Francisco rent control ordinance. The Court stated:

[A].landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence, does not effectuate a decrease in housing services within the meaning of the San Francisco rent control ordinance.¹⁰

While this case interprets the San Francisco rent control ordinance, this principle applies to the present situation. The tenant is complaining about his access to the pool and deck area during the period when the owner had to keep tenants out so that repairs could be made.

The Oakland Housing Residential Rent and Relocation Board has adopted the finding in the above case. See Maxwell v. Krawiec, T12-0295, wherein the Board approved the finding of the Hearing Officer that a temporary loss of use of a parking space because of construction did not amount to a decrease in housing services. See also Sardelich v. Vernon Apartments, T03-0045, wherein the Board found that a temporary loss of electric services because of maintenance in the building was not a decrease in housing services.

It was undisputed that the owner's representative testified that the closure of the outdoor patio on the 4th floor is temporary and once completed will be once again accessible to tenants of the subject unit. Accordingly, the loss of use of the common area patio on the 4th floor is a temporary loss and therefore not a decrease in housing services. Thus, the tenant's claim is denied.

ORDER

1. Petition T19-0011 is denied.
2. The current base rent for the subject unit remains \$2,316.39, effective May 1, 2016.

¹⁰ Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board, (1999) 73 Cal. App. 4th, 1204, 1206.

3. Nothing in this order prevents the owner from increasing the rent according to the laws of the Rent Adjustment Ordinance and the State of California at any time, at least 12 months from the last rent increase.

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: June 27, 2019



Elan Consuella Lambert
Hearing Officer
Rent Adjustment Program

000066

PROOF OF SERVICE
Case Number T19-0011

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 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
Geoffrey McCreary, Diamond Properties
1200 Lakeshore Avenue
Oakland, CA 94606

Tenant
Luis Aguirre
1200 Lakeshore Avenue #17G
Oakland, CA 94606

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.

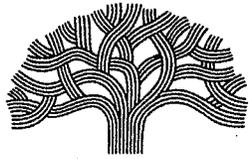
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 28, 2019** in Oakland, CA.



Brittini Lothlen

Oakland Rent Adjustment Program

000067



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

RECEIVED

JUL 10 2019

RENT ADJUSTMENT PROGRAM
OAKLAND APPEAL

Appellant's Name Luis Aguirre		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1200 Lakeshore Ave Apt 17G			
Appellant's Mailing Address (For receipt of notices) 1200 Lakeshore Ave Apt 17G		Case Number T19-0011 Aguirre v. Diamond Invst Prop	
		Date of Decision appealed 7-27-2019	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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: 4.

• 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 7-8-, 2019, 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:

Name	Jennifer Maniar - Owner Representative
Address	1200 Lakeshore Ave
City, State Zip	Oakland, CA 94606
Name	Paul Bisailon - Owner Representative
Address	1200 Lakeshore Ave
City, State Zip	Oakland, CA 94606

<i>Luis Aguirre</i>	<u>7-8-2019</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

1 Luis Aguirre
2 1200 Lakeshore Ave. Apt. 17G
3 Oakland, CA 94606

4 July 7, 2019

5
6
7 **Appeal To Hearing Decision**

8
9 IN THE MATTER OF THE PETITION OF)
10 LUIS AGUIRRE)
11 TO REDUCTION IN HOUSING)
12 SERVICES AT 1200 LAKESHORE AVE.)
13 (APPELLANT))

14 v.)

15 DIAMOND INVESTMENT PROPERTIES)
16 JENNIFER MANIAR - OWNER REP.)
17 PAUL BISAILLON - OWNER REP.)
18 (RESPONDENTS))

Case No.: T19-0011

Appeal to Hearing Decision

Petition Filed: October 10, 2018

19
20 Luis Aguirre (Tenant/Appellant) appeals the decision of the Oakland Rent Adjustment Board for
21 the following reasons.

- 22
23 I. Respondents failed to respond to appellants petition within 35 days after service of a
24 notice by the Oakland Rent Adjustment Program. Respondents mistake of law is not a
25 defense as Hearing Officer stated. The respondents in fact stated that they hired
someone who is familiar with the rent board guidelines and still did not respond in time.

1 Respondents failed to provide good cause to file a timely response to the petition. In fact
2 the no experience excuse for being late was probed out of respondents by hearing officer
3 as they had no excuse of their own.
4

5
6 II. Respondents evidence to Decreased Housing Services as outlined by hearing officer in
7 the decision letter on page 3 has nothing to do with the fact that housing services were in
8 fact decreased or not. The evidence does not prove that housing services were not
9 decreased, the evidence only provided a list of what work that is being performed. In
10 fact it proves the opposite, that the patio has been unusable for almost a year to date.
11

12
13 III. Hearing offices statements commencing on page 4 of hearing decision letter entitled
14 'Decreased Housing Services #1'. Hearing officer references a court decision made
15 based on the San Francisco rent control ordinance based on a temporary interference
16 with or preventing the tenant's full use of housing services.

17 Appellant contends that this referenced case by the hearing officer is not similar to
18 Appellant's case because it deals with a loss of housing services of a much shorter
19 duration. In addition Appellant believes his case should be based on the City of Oakland
20 Rent Control ordinance and not the City of San Francisco ordinance, and the decision
21 should be based on its own merits.

22 The hearing officer referenced the fact the Oakland Housing Residential Rent and
23 Relocation Board has adopted the finding in the San Francisco case. The hearing officer
24
25 also referenced city of Oakland Rent Adjustment Program case Maxwell v. Krawiec,
T12-0295 and case Sardelich v. Vernon Apartments, T03-0045 in which hearing officer

1 states deal with a temporary loss of service by tenant, but the hearing officer does not
2 state the length of the loss of service.

3
4 Oakland municipal code does not state whether the loss of housing service is temporary
5 or permanent, in fact allows for a restoration of rent when rent has been decreased and
6 subsequently the housing services restored as referenced below.

7 **O.M.C. 8.22.070(F)**

8 Decreased housing services. A decrease in housing services is considered an increase in
9 rent. A tenant may petition for an adjustment in rent based on a decrease in housing
10 services under standards in the regulations. The tenant's petition must specify the housing
11 services decreased. *Where a rent or a rent increase has been reduced for decreased
12 housing services, the rent or rent increase may be restored in accordance with procedures
13 set out in the regulations when the housing services are reinstated.*

14 Hearing offices claim that a housing service must be temporary, this contention is not
15 supported by Oakland Municipal Code. Even if the Oakland Rent Board wants to
16 interpret the code as a temporary loss of service, Appellant claims that a loss of housing
17 service for almost a year is not a similar loss, as referenced in the cases that the hearing
18 officer cited, but much longer. A day or two days or maybe a week or two weeks may be
19 temporary, but when the rent is due the following month and the housing service is not
20 restored then that is not temporary, and certainly a year in a loss of a housing service is
21 not temporary. In the hearing dated April 30, 2019, Respondents stated that they had no
22 date of when construction would be finished and the when the housing service would be
23 restored.

24 The Respondents were aware of the problem, and in fact they posted signage in the
25 elevators that the patio would be closed for tenant use at the beginning of July 2018.

Hearing officers claim that the loss of use of the common area patio on the 4th floor is
temporary and therefore not a decrease in housing services, is an invalid interpretation
and is not supported by law. It does not go unnoticed that the hearing officer provided
absolutely not statement or facts the Appellant made at the hearing about how the patio is
used on a regular basis by Appellant's family with 2 young children. The hearing officer
does not pay the monthly rent and does not use the housing services so she would have
absolutely no idea as to whether a housing service is reduced or removed.

1 Respondents never contended nor provided any facts or evidence that Appellents housing
2 services were not reduced, but merely provided statements as to the work that was being
3 performed.

4 IV. Breach of Contract

5 Appellant contends that Respondents, Diamond Investment Properties and Owner
6 Representative Jennifer Maniar and Paul Bisailon breached tenant and landlord contract
7 dated July 2002 by removing housing services.

8 Appellant has a constitutional right to enter into a legal contract and the Oakland Rent
9 Board has no legal right to subjugate the rights of a citizen to enter into a legal contract
10 nor to remove or change the services provided in the contract.

11 V. Conclusion

12 The decision of the Hearing Officer and the Oakland Rent Board to deny petition
13 T19-0011 is erroneous and not based on legal facts specific to this case which will be
14 affirmed when this case goes to trial.

15
16
17
18
19 Date:

7-7-2019

Luis Aguirre

Luis Aguirre / Appellant