

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
 FULL BOARD MEETING
 May 11, 2023
 7:00 P.M.
 CITY HALL
 1 FRANK H. OGAWA PLAZA, HEARING ROOM #1
 OAKLAND, CA 94612**

MINUTES

1. CALL TO ORDER

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 7:05 p.m.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant	X		
D. WILLIAMS	Tenant	X		
J. DEBOER	Tenant Alt.			X
M. GOOLSBY	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
Vacant	Undesignated			
M. ESCOBAR	Undesignated Alt.	X		
Vacant	Undesignated Alt.			
D. TAYLOR	Landlord	X*		
Vacant	Landlord			
Vacant	Landlord Alt.			
K. SIMS	Landlord Alt.	X		

*Member Taylor joined the meeting at 7:11 pm

Staff Present

Braz Shabrell	Deputy City Attorney
Linda Moroz	Hearing Officer (RAP)
Briana Lawrence-McGowan	Administrative Analyst II (RAP)

3. PUBLIC COMMENT

- a. No members of the public spoke during public comment.

4. CONSENT ITEMS

- a. Approval of Board Minutes, 4/13/2023 and Panel Minutes, 4/20/2023: Member R. Nickens moved to approve the Board Minutes from 4/13/2023 and the Panel Minutes from 4/20/2023. Member K. Sims seconded the motion.

The Board voted as follows:

- Aye:** D. Ingram, C. Oshinuga, M. Escobar, K. Sims, D. Williams, R. Nickens
- Nay:** None
- Abstain:** None

The minutes were approved.

5. APPEALS*

- a. T19-0186/T19-0235, Didrickson v. Dang/Commonwealth Company

Appearances: Ted Dang Owner
Carlos & Glenda Didrickson Tenants

This case involved an owner appeal of a remand decision that partially granted the tenants’ petition for decreased housing services. The tenants filed 2 petitions in 2019 that were eventually consolidated. At the first hearing, the list of decreased housing services alleged by the tenants was condensed and limited to three issues based on the fact that other issues had been addressed and decided in prior hearings. The three issues that were addressed in the first hearing were the gas heater, smoke and carbon monoxide detectors, and the electric breaker. At the first hearing in 2019, all three claims were denied, based primarily on the owner’s testimony that the issues had all been repaired. The tenants appealed and the case came before the Board in 2020. The Board voted to remand the case to the Hearing Officer to address the issues that were listed in the 2019 Notice of Violation and to determine if they constituted decreased housing services. The parties were permitted to submit additional evidence prior to the remand hearing, which both parties did.

The remand hearing took place in October 2021. The Hearing Officer granted decreased housing service awards for the three items that are listed in the Notice of Violation. This included a leak from the heater, broken patio door handle, and

the electric breaker. The Hearing Officer's finding was based on the Notice of Violation and subsequent re-inspection notices that indicated that the issues had not been abated. The owner now appeals the remand decision regarding the door handle and the leak. The owner appeal does not contest the third item regarding the electric breaker. The following issue was presented to the Board:

- 1.) Were the Hearing Officer's findings and the remand decision regarding the leak and the door handle supported by substantial evidence?

The owner contended that there are three issues involved in this appeal and that the first one involves the patio door lock. The owner argued that the reason that the lock is broken is because Mr. Didrickson has been using the door although he's not supposed to. The owner contended that the tenant has filed 14 tenant petitions, and that seven Hearing Officers have issued decisions, but the decisions have not been followed. The owner argued that the patio door leads to the roof, and that nobody is allowed to be on the roof—as it's a new roof that replaced an older one because it was leaking into the unit. The owner contended that the deck that Mr. Didrickson was using before had to be removed because it was an illegal deck, the owner was required to remove it, and this area is now the roof. The owner argued that they wanted to seal the patio door so nobody could go onto the roof, which was previously the deck—however, Mr. Didrickson has resisted the owners' efforts to do that and continues to use the roof as the deck. The owner contended that they have pictures that show plants, furniture, and cameras—and that each month, Mr. Didrickson deducts \$298.33 because he doesn't have a deck anymore, even though he's still using the roof as the deck.

The owner contended that the second issue is the leak from the heater vent. The owner argued that they have had three contractors check the vent: a heater contractor, handyman, and a sheet metal person—and they could find no leaks. The owner contended that Mr. Didrickson claims to have a video of the leak when it rains, but the owner has not seen the video. The owner argued that part of the problem is that they do not communicate and every time the owner asks Mr. Didrickson for something, a response is never received. The owner argued that the tenants don't tell the owners what maintenance is required and that the tenants' claims are not habitability issues—they're minor maintenance issues.

The owner contended that the third issue is that they don't know what to do. The owner argued that hearing decisions have required the tenants to pay a certain amount—however, they don't pay that amount, they pay what they want, and now they owe over \$12,000 in rent. The owner argued that the tenants have claimed several times that every time they use their microwave, and the oven is on, the electric circuit blows and they have no power—however, this was checked on by an electrician and they determined that since the building is an older building and was built in 1950s, if you overload the circuit, the circuit will

pop. The owner contended that in one of the cases that the tenants previously filed, a Hearing Officer came out and turned on several appliances and kept them on for a while and they did not pop—therefore, the tenants were recommended to use a different plug to install the microwave oven. The owner argued that since then, the tenants have not complained and if the electrical problem has continued, the tenants haven't informed him; and that the tenants continue to disregard the prior issued hearing decisions, and that it's not fair.

The tenants contended that in the previous appeal hearing, the Board asked Mr. Dang if he had cured the violations and Mr. Dang was silent about it. The tenants argued that the patio door was broken before they took the deck away and that in previous hearings, Mr. Dang said that the tenants have a right to use the roof as their patio. The tenants contended that one of Mr. Dang's colleagues said if they're on the roof and using it as a patio, since they know it's no longer a patio, it will be their fault if they fall. The tenants argued that the reason the owner removed the deck is because he put up a chimney and didn't have a permit for it, so they called the City building inspector, which resulted in a red tag being placed on the building.

The tenants argued that when the City building inspector came to check the electrical, everything turned off in the apartment except the stove, and that to access the main breaker, they were required to go downstairs into the basement. The tenants contended that a licensed electrician has never come to check on the issue and that during the last hearing, they tried to show a video of the vent leaking but the Hearing Officer at the time didn't allow them to show the video. The tenants argued that the City building inspector supported the tenants' claims and that the owner has no standing in this appeal because he didn't show up to the hearing, nor did he provide a written reason as to why he didn't show. The tenants argued that an appeal requirement is that if you didn't attend the hearing, you should give a written statement in your appeal as to why you didn't, and the owner did not do that.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to affirm the Hearing Officer's decision. Member R. Nickens seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, M. Escobar, K. Sims, D. Taylor,
D. Williams, R. Nickens
Nay: None
Abstain: None

The motion was approved.

b. T22-0202, Joseph v. Jones

Appearances:	Kim Roehn	Owner Representative
	Michael Joseph	Tenant

This case involved an administrative decision that granted a tenant's petition contesting a single rent increase. Administrative decisions are decisions that are issued without a hearing, usually because the issues can be decided on the papers alone, there's no material facts and dispute, and/or there's a fundamental flaw with the filings. In this case, the tenant petition was contesting a single rent increase and the owner responded by alleging that the unit is exempt from the Rent Adjustment Program as a condo. The administrative decision was issued on the grounds that the owner was allegedly missing documentation with their response—therefore, the owner's response was disregarded. The following issues were presented to the Board:

- 1.) Was this properly decided as an administrative decision? If the unit is in fact exempt from the Rent Adjustment Program (RAP) as the owner alleges, RAP has no jurisdiction, and the rent increase would not have been unlawful, and the unit would not be subject to the rent increase moratorium.
- 2.) Was the owner's response insufficient and was the Hearing Officer justified in disregarding the owner's response?

The owner representative contended that the administrative decision is invalid under state and local law, and it is inconsistent with prior RAP decisions. The owner representative argued that the owner is requesting that the administrative decision be reversed in full, and that the tenant's petition be dismissed. The owner representative contended that RAP personnel have a duty to exercise basic due diligence to confirm they are acting within the bounds of their authority under the code and that this consideration is fundamental to party's due process rights. The owner representative argued that under Oakland Municipal Code, rent control rules only apply to covered units, they do not apply to exempt units. The owner representative contended that condominiums are a common and well-known exemption under the code and under California's law, known as Costa Hawkins and that the property at issue here is a condominium. The owner representative argued that the condo has its own assessor's parcel number, was purchased as a single unit by the owner in 1979, and it is alienable and separate from the title to any other dwelling unit under Costa Hawkins—therefore, it's exempt from Oakland's RAP ordinance.

The owner representative argued that the administrative decision is void by law because RAP has no jurisdiction over the unit—and that the owner did in fact submit a properly filed and timely response both by mail and via the online RAP

portal. The owner representative contended that the filing was confirmed as being received by RAP, and that it stated that this is an exempt property both on the response form and in the supporting documentation—which included the business tax certificate, tax documentation, and history showing the unit as a condo—including the grant deed, property tax bills, and proof of service on the tenant. The owner representative argued that despite this, a deficiency notice was issued to the owner stating that none of the above documentation had been filed—which was incorrect.

The owner representative argued that when a unit is exempt, Hearing Officers are required to dismiss the petition—regardless of the submission of those supposedly missing documents, and that RAP does not have authority to take any other action. The owner representative contended that the owner re-filed the executed proof of service for the second time—however, the Hearing Officer then issued an administrative decision, which is a decision without a hearing. The owner representative argued that the decision was in favor of the tenant, striking down the rent increase and citing the City’s rent increase moratorium—however, the owner is respectfully requesting for the decision be reversed and for the rent increase be reinstated effective of the date of the original notice. The owner representative contended that the 3% CPI rent increase limit does not apply to exempt units, that the unit was exempt, and that the owner is also requesting that if the Board remands this case for any further action, that a new Hearing Officer be assigned—which is a party's automatic right under California law.

The tenant contended that although the property is a condo, they do not have the expertise and the information required to make a determination about whether the condo is exempt from RAP. The tenant argued that their understanding is that it is currently covered by RAP, that it's not exempt, and that they have no material evidence which proves otherwise. The tenant contended that they were an excellent tenant, paid rent on time, and treated the apartment like it was their home up until they received the rent increase notice. The tenant argued that the rental was set up to maximize the income of the owner—who lives halfway across the country in Texas and has the ability to hire a lawyer.

The tenant contended that the Rent Adjustment Program limits rent increases to the annual CPI, which was 3% in 2022—however, the property manager raised the rent by about 9%, which is three times the CPI. The tenant argued that the rent increase was illegal for that reason, assuming that the condo falls under the Rent Adjustment Program. The tenant contended that this situation forced them to move out and that the prices of rentals in the surrounding area are much lower than what the rent was raised to. The tenant argued that they could get a two-bedroom for the price that the rent was raised to, and that due to the high cost, they were forced to find another place to live.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to vacate the Hearing Officer's Administrative Decision and to remand the case back to the Hearing Officer for a full hearing and to consider the property owner's full response. Member R. Nickens seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, M. Escobar, K. Sims, D. Taylor,
D. Williams, R. Nickens
Nay: None
Abstain: None

The motion was approved.

6. INFORMATION AND ANNOUNCEMENTS

- a. Briana Lawrence-McGowan announced to the Board that beginning on 5/25/2023, the Board will be having special meetings on the 2nd and 4th Thursdays of the month, which will begin at 5:30pm.
- b. Chair Ingram announced to the Board that he's still working with the Office of the City Attorneys on the proposed regulations and that they will be brought back to the Board very soon.

7. OPEN FORUM

- a. No members of the public spoke during open forum.

8. ADJOURMENT

- a. The meeting was adjourned at 8:18 p.m.