Appeal Digest

Table of Contents

1. ADMINISTRATIVE APPEAL DECISIONS 4

A. Appeals Dismissed by Request Are Dismissed Administratively 4
B. Grounds for Appeal Must be Stated or Appeal Will be Dismissed 5
C. Deficient Appeals Dismissed as a Matter of Law 5
D. Untimely Appeals Will Be Dismissed 6

2. ADMINISTRATIVE DECISIONS 8

A. Administrative Decisions – Generally 8
B. Failure to File Response Can Be Reason for an Administrative Decision 9
C. Where There is Uncontested Evidence on a Jurisdictional Issue an Administrative Decision Can Be Affirmed, Remanded or Reversed Based on Circumstances 10
D. Administrative Decisions Can Rely on Prior Hearing Decisions 10
E. Administrative Decisions Remanded for Hearing When There is a Question of Law or Fact 11
F. Untimely Petitions Can Be Dismissed by Administrative Decision and Upheld by Board 12
G. The Allegation of Lack of Proper Notice of a Filed Petition Can Result in an Administrative Decision Being Remanded 12

3. APPEAL PROCEDURE 14

A. Appeal Procedure – Generally 14
B. Appeal Dismissed for Failure to Appear at Appeal Hearing 14
C. Prior Court Settlement Agreement Can Result in Appeal Dismissal 16
D. New Evidence Not Generally Permitted at Appeal Hearing 17
E. Where Jurisdiction is Raised, Evidence Can Be Taken at Appeal Hearing 17
F. Board Can Affirm Administrative Decision Based on Different Reasoning 17
G. Board Can Remand Decision for Further Analysis When Record is Unclear 18
H. Continuances 18

4. CAPITAL IMPROVEMENTS 19

A. Capital improvements - Generally 19
B. In Order to Pass Through a Capital Improvements Expense, Permits Must be Provided Where Required 20
C. Capital improvement petitions must be filed within 24 months after improvements are completed and paid for 21
D. Roof replacement and re-roofing certification 21
E. Owners Cannot Pass Through Those Costs Increased by Deferred Maintenance 22
F. Repairs for Code Violations Or Priority 1 or 2 Conditions Cannot be Passed Through 23
G. Gold plating 23
H. Routine Repairs vs. Improvements 24
I. Board Remands Capital Improvement Cases Where Further Findings Are Necessary 25

5. CITATION HEARING-PROCEDURE 27

6. DECREASED HOUSING SERVICES 28

A. Decreased Housing Services-Generally 28
B. Decreased Housing Services - Procedural Issues 29

C. KINDS OF ALLEGATIONS GRANTED IN DECREASED HOUSING SERVICES CLAIMS....31
D. DENIAL OF DECREASED HOUSING SERVICES CLAIMS....36
E. LOSS OF PARKING AND STORAGE CAN BE A DECREASED SERVICE....39
F. TENANT'S REFUSAL TO ALLOW ACCESS IS NOT DISPOSITIVE BECAUSE OWNER HAS RIGHT TO ENTER TO MAKE REPAIRS UNDER STATE LAW....40
G. TIMING OF RAP NOTICE AFFECTS DECREASED HOUSING SERVICES CLAIMS....40
H. SPLITTING UTILITIES CAN BE A DECREASED HOUSING SERVICES CLAIM....40
I. STATUTE OF LIMITATIONS IN DECREASED HOUSING SERVICES CASES....41
J. RESTITUTION PERIOD....42
K. RESTITUTION AMOUNTS SHOULD BE CONSISTENT WITH OTHER DECISIONS WITH SIMILAR HOUSING PROBLEMS....42
L. UNREASONABLE REFUSAL OF ONE-FOR-ONE ROOMMATE REPLACEMENT....42

7. EXEMPTIONS....43

A. SINGLE FAMILY RESIDENCES AND CONDOMINIUM EXEMPTION [NOTE: RAP NO LONGER GRANTS PERMANENT EXEMPTIONS FOR SINGLE FAMILY RESIDENCES AND CONDOMINIUMS AFTER OWENS V. CITY OAKLAND, SEE L19-0169, ARCHER V. TENANTS)....43
B. NEW CONSTRUCTION EXEMPTIONS....45
C. STOCK COOPERATIVES CAN BE EXEMPT IF PROPER EVIDENCE IS PRESENTED....50
D. SUBSTANTIAL REHABILITATION EXEMPTIONS (BASED ON PRIOR LAW)....50
E. PRIOR RULING OF EXEMPTION CAN BY OVERTURNED IF FRAUD OR MISTAKE IS SHOWN....51

8. EXEMPTIONS-TEMPORARY....53

A. OWNER OCCUPIED DUPLEX/TRIPLEX (PRIOR LAW)....53
B. RENT REGULATED BY OTHER GOVERNMENTAL AGENCY....53

9. EXTENSION OF TIME FOR VACANCY....54

A. BOARD DENIES APPEAL OF EXTENSION OF TIME FOR TENANT VACANCY WHEN OWNER FAILED TO PRODUCE SUFFICIENT EVIDENCE 54

10. HEARING PROCEDURES....55

A. HEARING PROCEDURES – GENERALLY....55
B. HEARING PROCEDURES – EVIDENCE....55
C. FAILURE FOR RESPONDENT TO APPEAR AT HEARING CAN RESULT IN DECISION AGAINST RESPONDENT....56
D. GOOD CAUSE (OR LACK THEREOF) FOR FAILURE TO APPEAR AT HEARING EFFECTS BOARD DECISION....56
E. FAILURE TO SUBMIT RESPONSE AFFECTS OUTCOME IF THERE IS NO GOOD CAUSE....58
F. PRIOR LITIGATION BETWEEN THE PARTIES CAN IMPACT OUTCOME....59
G. REASONABLE RELIANCE CAN BE CONSIDERED IN ALLOWING PARTY TO PROCEED WITH CLAIMS....60

11. JURISDICTION....62

A. WORKSPACES CAN BE COVERED UNITS....62
B. THE RAP HAS NO JURISDICTION OVER RETALIATORY EVICTION, IMPROPER SERVICE OF EVICTION NOTICES, SECURITY DEPOSIT CLAIMS OR CIVIL RIGHTS VIOLATIONS....62
C. A PROPERTY OWNER MUST MAKE THE CLAIM THAT RAP DOES NOT HAVE JURISDICTION BECAUSE OF AN EXEMPTION IN A TIMELY FASHION OR A DECISION MAY BE MADE AGAINST THE OWNER....62
D. EVEN WHERE A PROPERTY OWNER DOES NOT PROPERLY RESPOND TO TENANT PETITION THE BOARD CAN OVERTURN A DECISION WHERE UNDISPUTED EVIDENCE EXISTS THAT THE UNIT IS EXEMPT....62

12. PETITION FILING REQUIREMENTS....63

A. A TENANT MUST BE CURRENT ON RENT IN ORDER TO FILE A PETITION....63
B. PETITIONS MUST BE TIMELY FILED....64

C. Tenancy Must Be Established Before Petition Can Be Granted 64
D. Owners must provide evidence of service of RAP notice before filing petition 64
E. Petition must include proof of service by personal service or first-class mail 65
F. Owner petition must include all affected tenants 65
G. Payment of RAP fee is required for petitions 66

13. RAP NOTICE REQUIREMENTS 67

A. RAP Notice generally 67
B. Language of served RAP Notice must be in language the tenant speaks 70
C. Burden of Proof of Serving RAP Notice on Property Owner 71

14. RENT INCREASES 72

A. Banking Rent Increases 72
B. Consumer Price Index (CPI) Rent Increases Are Allowed 73
C. Debt Service Costs (Prior law) 73
D. Increased Housing Service Costs 73
E. Fair Return 74
F. Justification for Rent Increase Required in a Property Owner Response 75
G. Rent Increase Notices Must Be Served According to Law 75
H. Rent Increase Notices Must Be Served Properly and Contain Proper Information 77
I. Rent Increase – Recalculation by Board 78
J. What Is the Proper Rent? 78
K. Rent Can Only Be Increased Once Per Calendar Year 79
L. Rent Increases Are Not Operative After a Petition Has Been Filed While the Unit Is Cited in an Inspection Report as Containing Serious Health, Safety, Fire, or Building Code Violations 79
M. Costa-Hawkins Rent Increase 79

15. RESTITUTION 80

A. Restitution is granted for up to three years prior to petition filing date. 80
B. For ongoing decreased housing services, restitution is granted for only 90 days prior to petition filing date (old law/new law effective 12/23). 80
C. Restitution Calculation Should Not Include Periods After the Hearing Date 80
D. Restitution Cannot Be Awarded as a Lump Sum; It Must Be Subtracted from the Rent 81
E. Restitution Can Be Charged Against a New Property Owner for Acts of Prior Owner 81

16. RESPONSE FILING REQUIREMENTS 82

A. Response Filing Requirements – Response Must State Justification for Rent Increase Over CPI 82
B. Response Must Be Timely Filed for Owner's Claims to be Considered 82

1. Administrative Appeal Decisions

a. <u>Appeals Dismissed by Request Are Dismissed Administratively</u>

T19-0096 ***Cabansagan v. Shamrock Real Estate Co.***
Appeal dismissed with prejudice because owner appellant filed request to dismiss appeal.

T18-0495 ***Gonzalez v. Zhang***
Appeal dismissed because tenant appellant filed request to dismiss appeal.

T18-0407 ***Sanchez v. Chiang***
Appeal dismissed with prejudice at request of tenant and owner, both of whom had appealed underlying Amended Administrative Decision.

T18-0128 ***Aguirre et al v. 2300 Fruitvale Avenue Property LLC***
T18-0241
Appeal dismissed without prejudice at request of tenant appellant.

T15-0378 ***Ptak v. Donovan***
Appeal dismissed with prejudice because tenant submitted a written request to dismiss the appeal.

T15-0261 ***Kojimoto v. Nateghian***
Appeal dismissed administratively because owner appellant filed request to dismiss.

T15-0253 ***Huth v. Marquardt Property Management***
Appeal dismissed administratively because owner appellant filed request to withdraw appeal.

T15-0234 ***Lawrence v. Magganas***
Appeal dismissed via Hearing Officer Order because owner appellant filed request to withdraw appeal.

T14-0404 ***Rosario v. First Class Lodi, LLC***
T14-0444 ***Michael v. First Class Lodi, LLC***
T14-0445 ***Sanjaayav v. First Class Lodi, LLC***
T14-0446 ***Moore v. First Class Lodi, LLC***
T14-0447 ***Wread v. First Class Lodi, LLC***
T14-0448 ***Akinade v. First Class Lodi, LLC***
T14-0449 ***Brooks v. First Class Lodi, LLC***
T14-0451 ***Schamus v. First Class Lodi, LLC***
T14-0452 ***Lewis v. First Class Lodi, LLC***
T14-0453 ***Shabazz v. First Class Lodi, LLC***
T14-0454 ***Scott v. First Class Lodi, LLC***
T14-0455 ***Burns v. First Class Lodi, LLC***
T14-0456 ***Oliver v. First Class Lodi, LLC***
T14-0457 ***Molla v. First Class Lodi, LLC***
T14-0458 ***Woldenmariam et al v. First Class Lodi, LLC***
T14-0460 ***Aguilar v. First Class Lodi, LLC***

T14-0464 ***Lofflin v. First Class Lodi, LLC***
T14-0465 ***Rodrick v. First Class Lodi, LLC***
T14-0466 ***Padmore v. First Class Lodi, LLC***
T14-0467 ***Cabrera v. First Class Lodi, LLC***
T14-0468 ***Mendoza v. First Class Lodi, LLC***
T14-0469 ***Chang v. First Class Lodi, LLC***
T14-0470 ***Robinson v. First Class Lodi, LLC***
Appeal dismissed administratively because owner appellant filed request to withdraw appeal.

T14-0411 ***Wilson et al v. AMP Property Management***
T14-0413 ***Williams v. AMP Property Management***
T14-0416 ***Ross v. AMP Properties, Inc.***
T14-0424 ***Mullen v. AMP Property Management***
T14-0433 ***McCall v. AMP Property Management***
Appeal dismissed administratively because owner appellant filed request to withdraw appeal.

L12-0058 ***King v. Parker***
Appeal dismissed administratively because tenant appellant filed request to withdraw appeal.

L12-0051 ***Wofsy v. Tenant***
Appeal dismissed administratively because owner appellant filed request to withdraw appeal.

T08-0297 ***Peacock v. Heinemann***
Appeal dismissed administratively because owner appellant withdrew his appeals.

T07-0264 ***Soong v. Magner***
T07-0275 ***Savage v. Magner***
Appeal dismissed administratively because owner appellant withdrew his appeals.

T02-0146 **Campbell v. Eagle Investments**
Appeal dismissed administratively because tenant appellant filed request to withdraw appeal.

b. <u>Grounds for Appeal Must be Stated or Appeal Will be Dismissed</u>

T19-0100 ***Alvarez et al. v. Castro***
Appeal dismissed administratively with prejudice due to owner appellant's failure to respond to deficiency letter requesting explanation of grounds for appeal.

T17-0182 ***Guzman v. Weil***
Appeal dismissed administratively with prejudice on grounds that the owner did not respond to multiple requests from RAP staff to provide a copy of the owner's appeal, which was missing from the file.

c. <u>Deficient Appeals Dismissed as a Matter of Law</u>

T18-0367 ***Alexander v. CRPM***
Appeal dismissed because tenant stated she was not appealing the decision but wanted to correct the record.

T18-0305 ***Didrickson v. Commonwealth Co*.**
Tenant appeal dismissed administratively where tenant raised issues that were decided in prior Hearing Decisions that were either final or were pending appeal.

T09-0055 ***Roberson v. J&R Associates***
Appeal dismissed because parties entered into a stipulation in Superior Court which disposed of all issues raised by tenant's petition.

T01-0577 ***Tatum v. Maisel Property Management***
Appeal dismissed administratively for failure to state grounds on which appeal may be based.

d. <u>Untimely Appeals Will Be Dismissed</u>

T19-0472 ***Hoffman v. Alma Apartments, LP***
T19-0473 **Van Putton v. Alma Apartments, LP**
T19-0474 ***Ward v. Alma Apartments, LP***
T19-0475 **Stempel v. Alma Apartments, LP**
T19-0476 ***Hyatt v. Alma Apartments, LP***
T19-0479 ***Vickrey v. Alma Apartments, LP***
T19-0480 ***Brennan v. Alma Apartments, LP***
T19-0482 ***Williams v. Alma Apartments, LP***
Appeal dismissed administratively on grounds that it was untimely filed**.**

L19-0075 ***R&R Intl. Co. LLC v. Tenants***
Appeal dismissed administratively on grounds that it was untimely filed**.**

L19-0056 ***1145 Bush Street LP, on Orange v. Tenants***
Appeal dismissed administratively with prejudice on grounds that it was untimely filed.

L18-0089 ***Marcella S. Hardy 1994 Revocable Trust***
Appeal dismissed administratively with prejudice on grounds that it was untimely filed.

T18-0242 ***Aquino v. Mangal***
Appeal dismissed administratively with prejudice on grounds that it was untimely filed.

T18-0179 ***Vann v. Hillsboro Properties***
Appeal dismissed administratively with prejudice on grounds that it was untimely filed.

L17-0056 ***Brewer v. Tenant***
Appeal dismissed administratively with prejudice on grounds that it was untimely filed.

T16-0734 ***Beard v. Stewart***
Appeal dismissed administratively with prejudice on grounds that it was untimely filed.

T14-0461 ***Williams v. First Class Lodi, LLC***
Appeal dismissed administratively with prejudice on grounds that it was untimely filed.

T10-0069 ***Settles v. International Faith Center***
Appeal dismissed administratively on grounds that it was untimely filed.

2. Administrative Decisions

a. Administrative Decisions – Generally

T20-0054, McQuillon v. JJCM Investments
T19-0313, McQuillon v. American Liberty
T19-0510, McQuillon v. American Liberty

Board upheld Administrative Decisions dismissing three tenant petitions because substantial evidence showed that the tenant had brought a lawsuit in Superior Court and all claims were resolved by a Mutual Settlement Agreement and Release.

T18-0328 ***Amberg v. Rockridge Real Estate***
Board remanded Administrative Decision dismissing case in order for Hearing Officer to hold hearing regarding issue of whether absence of onsite manager constitutes a continuing decreased housing service. Remand Decision never issued because case trailed while Superior Court decided prior case between the parties regarding whether the unit was exempt under the substantial rehabilitation grounds. See L14-0265, 525-655 Hyde Street CNML Properties, LLC, under Substantial Rehabilitation.

T16-0015 ***Rosenblum v. Cherry***
Board affirmed Administrative Hearing Decision denying tenant's petition challenging 2008, 2011, and 2013 rent increases as untimely, where the tenant marked "Yes" on the petition to indicate that she had received RAP Notices with each rent increase.

T14-0492 ***Didrickson v. Dang Trustee Commonwealth Inn***
Board affirmed an Administrative Decision denying a rent increase where the tenant claimed that no concurrent RAP Notice was provided and the owner failed to respond to the petition. Because there was no justification for the rent increase, the increase was denied.

T08-0129 ***Chang v. Lui***
Board affirmed Administrative Decision dismissing tenant petition for failure to use RAP petition form. At Appeal Hearing, tenant offered no reason for failure to use the form.

T04-0259 ***Hwang v. Brown Mgt.***
Underlying Administrative Decision dismissed tenant petition as untimely. Board found conflict in evidence regarding when notice of RAP was given to tenant and reversed Administrative Decision dismissing petition as untimely, remanding case for hearing to clarify facts regarding service of notice (including date) and further hearing if necessary.

T04-0098 ***England v. Lufrano***
Board remanded an Administrative Decision granting the tenant's petition challenging a rent increase based on the absence of a RAP Notice, where the owner did not respond to the petition but contended on appeal that he never received the RAP mailing. The Board directed the Hearing Officer to determine whether the owner's failure to respond was excusable and, if so, to set aside the Administrative Decision and conduct a full hearing. On remand, the Hearing Officer determined that the letter was delivered to the owner's home but accepted his testimony that

he sometimes did not receive his mail and had not seen it. The Hearing Officer found, however, that the owner did not establish that he had provided the RAP Notice to the tenant and invalidated the rent increase.

T03-0178 *Langari v. Rose Ventures III, Inc.*
T03-0179 *Kadoya v. Rose Ventures III, Inc.*
T03-0180 *Gerber v. Rose Ventures III, Inc.*
T03-0181 *Hays v. Rose Ventures III, Inc.*
T03-0185 *Knight v. Rose Ventures III, Inc.*
T03-0189 *Hanson v. Rose Ventures III, Inc.*
T03-0190 *Wender v. Rose Ventures III, Inc.*
T03-0192 *Loo v. Rose Ventures III, Inc.*
T03-0193 *Collins v. Rose Ventures III, Inc.*
T03-0195 Pemberton *v. Rose Ventures III, Inc.*
T03-0196 *Kawakami v. Rose Ventures III, Inc.*
T03-0203 *Howell v. Rose Ventures III, Inc.*

Board affirmed Administrative Decisions in several of the cases, corrected the *Knight* (0185) case to add additional rent of $50 a month for parking, and remanded the *Langari* ((0178), *Wender* (0190), and *Kawakami* cases for review of calculations and further proceedings as required.

T02-0162 ***Rax v. Marlingen Corp.***
Board upheld an Administrative Decision dismissing the tenant's petition where the tenant challenged three rent increases: the most recent was below the CPI; the preceding increase was addressed in a prior Hearing Decision; and the earliest increase was time-barred because the tenant admitted in the prior case that she had received a proper RAP Notice.

b. <u>Failure to File Response Can Be Reason for an Administrative Decision</u>

T03-0376 ***Toscano v. Busk***
Board affirmed an Administrative Decision granting the tenant's petition challenging a rent increase based on the tenant's sworn statement that no RAP Notice was provided and the owner's failure to respond.

T01-0376 ***Millar v. Black Oak Properties (in database as Millar v. Sycamore Investments)***
An Administrative Decision had been issued denying a rent increase for parking because the owner failed to file a timely response. The Board upheld the result on a different ground (because the owner claimed that she had been prevented from filing a response by RAP staff) because a prior rent increase on the subject unit had been given less than 12 months earlier. The Board held that parking is a part of the housing services provided and an increase in the parking charge is a rent increase.

T01-0099 ***Hill v. Brown***
The Board upheld an Administrative Decision denying a rent increase where the property owner's response was filed late, the RAP Notice was not served as required, and the rent

increase notice was not served in compliance with Civil Code section 827, despite the owner's claim that the unit was exempt under Costa-Hawkins.

T00-0313 ***Burrell v. Lane***
Board upheld an Administrative Decision that denied a rent increase where the property owner did not file a response.

c. <u>Where There is Uncontested Evidence on a Jurisdictional Issue an Administrative Decision Can Be Affirmed, Remanded or Reversed Based on Circumstances</u>

T02-0190 ***Hill v. Brown***
Board affirmed an Administrative Decision denying tenant petition where the unit was exempt as a separately alienable single family residence under Costa Hawkins.

T01-0178 ***Parfait v. Miller***
The Board overturned an Administrative Decision which granted the tenant's petition because the owner did not file a proper response, pay the filing fee or submit evidence of a business tax certificate, but the owner did send a letter claiming that the unit was exempt as new construction. At the appeal hearing the Board voted to take evidence on the issue of exemption and declared that the property was exempt as new construction.

T20-0037 ***Vega et al v. Wash***
Tenant petition indicated that the unit was subsidized, and was therefore dismissed via administrative decision based on lack of jurisdiction. Board remanded for a full hearing after tenant representative testified on appeal that she had filled out the tenant petition in error. Good cause, error in petition, administrative decisions.

T22-0202, **Joseph v. Jones**
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. 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.

d. <u>Administrative Decisions Can Rely on Prior Hearing Decisions</u>

T13-0309 ***Elowsky et al. v. Jackson***
Administrative Decision dismissing tenant petition upheld by Board when subject unit was determined to be exempt from the Rent Ordinance in a prior Hearing Decision.

T02-0162 ***Rax v. Marlingen Corp.***
Board upheld an Administrative Decision dismissing the tenant's petition where the tenant challenged three rent increases: the most recent was below the CPI; the preceding increase was addressed in a prior Hearing Decision; and the earliest increase was time-barred because the tenant admitted in the prior case that she had received a proper RAP Notice.

T23-0140 Didrickson v. Dang
Board remanded the case to the Hearing Officer to determine whether the tenants' decreased housing services claim was factually the same as the issues raised in the prior cases. If it was not the same issue or claim, the prior cases would not preclude the claim.

e. <u>Administrative Decisions Remanded for Hearing When There is a Question of Law or Fact</u>

T21-0019 *Yu v. Bruins*
Board remanded an Administrative Decision dismissing a tenant petition where the tenant contested a rent increase served pursuant to a settlement agreement in a prior case. The increase exceeded the CPI, and the City had issued a moratorium against rent increases greater than the CPI. The Board instructed the Hearing Officer to determine whether the settlement agreement was valid in light of the moratorium. On remand, the Hearing Officer determined that the owner could impose only a rent increase that did not exceed the CPI.

T18-0328 *Amberg v. Rockridge Real Estate*
Board remanded Administrative Decision dismissing case in order for Hearing Officer to hold hearing regarding issue of whether absence of onsite manager constitutes a continuing decreased housing service.

T17-0305 *Mountain v. CNML Crescent*
Board remanded Administrative Decision that dismissed a tenant petition contesting a rent increase on the grounds that a prior different case between the parties had awarded that increase as a capital improvement pass-through and that decision was not appealed. Board directed Hearing Officer to hold an evidentiary hearing and rule on the substance of tenant's petition (where she claimed she moved in after the improvements were completed). Remand hearing dismissed and administrative decision affirmed when tenant failed to appear for remand hearing.

T16-0184 *Waller v. Logos Property*
An Administrative Decision granted a tenant petition challenging a rent increase on the basis that both parties agreed the RAP Notice was initially given less than six months before the increase's effective date. The owner argued on appeal that an attachment to the initial response showed an earlier date for the RAP Notice. The Board remanded and directed the Hearing Officer to determine when the RAP Notice was first given. On remand, the Hearing Officer determined the date of the RAP Notice but found that the rent increase was invalid because the Owner Response did not state a justification for the increase above the CPI.

T15-0428 *Geiser v. Chandler Properties*
Board remanded Administrative Decision for Hearing Officer to correct base rent, which had been reduced by 2% for lack of access to a telephone-based entry system. On remand, base rent was reduced to the correct amount.

T22-0048, Prosterman v. Kinfu
This case involved a subtenant petition alleging that the primary or master tenant charged a disproportionate amount of rent for the subtenant's room. The Hearing Officer issued an Administrative Decision dismissing the petition on the basis that no tangible evidence was submitted at least seven days before the hearing. On appeal, the tenant argued that the Ordinance and Regulations allow a subtenant to introduce evidence at the hearing and that

dismissing the petition without a hearing at which evidence could be submitted was inconsistent with the Ordinance and Regulations. The Board remanded the case to the Hearing Officer for a hearing.

L24-0025 ***Sun v. Tenants***
The Board remanded an Administrative Decision for a hearing on the merits after the decision denied the owner's petition seeking a rent increase on the ground that the unit was no longer the tenant's principal residence. The denial was based on occupancy status reported in the Rental Registry, which was not part of the case record.

f. <u>Untimely Petitions Can Be Dismissed by Administrative Decision and Upheld by Board</u>

T18-0411 ***Lee v. Dixon***

Administrative decision dismissing tenant petition as untimely because the petition was not filed within 90 days of a rent increase notice (and RAP Notice had been served) was affirmed by Board. (Note: Appeal Decision incorrectly states that owner filed appeal.)

T16-0015 ***Rosenblum v. Cherry***
Board affirmed an Administrative Decision denying the tenant's petition challenging 2008, 2011, and 2013 rent increases as untimely, where the tenant marked "Yes" on the petition to indicate that she had received RAP Notices with each rent increase.

T08-0135 ***Phillips v. Landlord***

Board reversed an Administrative Decision dismissing a petition because the tenant raised complaints of retaliation and wrongful eviction. The Board remanded the case for a hearing because the tenant also contested a rent increase, claimed lack of service of a RAP Notice, and alleged decreased services, among other actionable complaints. On remand, the tenant petition was partially granted.

T02-0162 ***Rax v. Marlingen Corp.***
Board upheld an Administrative Decision dismissing the tenant's petition where the tenant challenged three rent increases: the most recent was below the CPI; the preceding increase was addressed in a prior Hearing Decision; and the earliest increase was time-barred because the tenant admitted in the prior case that she had received a proper RAP Notice.

g. <u>The Allegation of Lack of Proper Notice of a Filed Petition Can Result in an Administrative Decision Being Remanded</u>

T01-0006 ***Jefferson v. Leath***
Board remanded the case to the Hearing Officer to determine whether the petition had been mailed to the proper address because the owner alleged lack of notice of the original petition. The Hearing Officer was instructed that, if the mailing was in error, the owner must be allowed to respond to the petition and a hearing on the merits must be conducted. If the Hearing Officer determines that the property owner should have received the Rent Program's notice of hearing because it was properly addressed or sent to a proper agent of the owner, the Hearing Officer

may decide that the owner's failure to respond was not excused and that the Administrative Decision in favor of the tenant should stand.

3. Appeal Procedure

a. <u>Appeal Procedure – Generally</u>

T19-0236 ***Steimetz et al v. Protopappas***
Board affirmed Hearing Decision granting tenant restitution for decreased services where owner failed to file a response or appear at hearing and when owner filed appeal late. Owner's claim that he had faxed in a response and that he did not appear due to a mistake on his representative's office calendar did not change the result, even though owner claimed a new construction exemption.

T16-0104 ***Meyer v. Harris***
Board affirmed Hearing Decision granting restitution for tenant's claims of decreased housing services and found no good cause for owner's failure to file a response even though the owner's address was different from the address on the petition, where the owner testified at the Hearing that he had received the petition and at the Hearing he did not provide any reason for his failure to respond.

T15-0618 ***Ross v. Claridge Hotel***
T15-0635 ***Anderson v. Claridge Hotel***
T15-0636 ***Mason v. Claridge Hotel***
Board denied the tenant's appeal and affirmed the Hearing Decision dismissing T15-0618, where the owner filed a timely response claiming an exemption from the Rent Adjustment Ordinance and substantial evidence supported the determination that the unit was government subsidized. However, the Board denied the owner's appeal and affirmed the Hearing Decisions setting the rents in T15-0635 and T15-0636, where the owner did not appear at the appeal hearing and had not filed timely responses raising the exemption.

T15-0372 ***Gebrezadik v. Wong***
Tenant appealed Hearing Decision limiting rent increases he could challenge based on timeliness and checked box on appeal form that the decision was inconsistent with other Hearing decisions but did not list the inconsistent decisions or explain in what way it was inconsistent. After questioning both parties at Appeal Hearing, Board denied appeal for failure to state a basis for the appeal.

T15-0263 ***Panganiban v. Chang***
First appeal: The Board remanded a Hearing Decision that denied some of the tenant's decreased housing services claims on timeliness grounds. The Board held that the 60-day filing period did not begin until a reasonable period after an owner stated that repairs would be made but failed to make them. The Hearing Officer was therefore directed to review the record to determine whether the tenant reasonably relied on that statement. On remand, the Hearing Officer found no evidence of reasonable reliance. Second appeal: The Board dismissed the appeal of the remand decision because the tenant's representative left the appeal hearing after making an initial statement.

b. <u>Appeal Dismissed for Failure to Appear at Appeal Hearing</u>

L19-0092 ***Williams v. Tenant***
Board dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

L18-0081 ***Vu v. Tenants***
Board dismissed appeal of Administrative Decision due to failure of owner appellant to attend Appeal Hearing.

L17-0103 ***JDW v. Tenants***
Board dismissed the appeal contesting denial of substantial rehabilitation petition due to failure of the owner to appear subject to showing of good cause.

T19-0451 ***Kaiser v. Goldstone***
Board dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

T17-0518 ***McCulloch v. Cohen***
Board dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

T17-0439 ***Williams et al v. FABS, Inc.***
Board dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

T17-0368 ***Guidry v. MYND Management***
Board dismissed appeal based on the tenant appellant's non-appearance subject to a showing of good cause.

T17-0208 ***Brown v. Parmar***
Board panel dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

T17-0205 ***Ogden v. Chalan***
Board dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

L16-0089 ***Alexander v. Tenants***
L16-0090
L16-0091
Board dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

T15-0631 ***Orozco v. Ali***
Board panel dismissed appeal based on owner appellant's failure to appear subject to a showing of good cause.

T15-0618 ***Ross v. Claridge Hotel***
T15-0635 ***Anderson v. Claridge Hotel***

T15-0636 ***Mason v. Claridge Hotel***
Board dismissed the owner's appeal for failure to appear at the appeal hearing in T15-0635 and T15-0636, subject to a showing of good cause for the nonappearance. The prior cases declared the rent increases invalid based on the owner's failure to file timely responses. The Board upheld the Hearing Decision in T15-0618, where the owner provided a timely response and established that the Rent Board lacked jurisdiction over the unit.

T15-0221 ***Tabet v. Siu***
Board initially dismissed appeal based on owner appellant's failure to appear subject to a showing of good cause. Owner asserted he had not received notice of appeal hearing, so Board rescheduled matter to determine whether or not owner had good cause for failure to appear. Owner again failed to appear, therefore Board affirmed hearing decision based on owner appellant's failure to appear, subject to showing of good cause.

T14-0401 ***Nederhood v. Walker***
Board panel dismissed appeal based on the owner appellant's non-appearance subject to a showing of good cause.

T12-0047 ***Moore v. Lane***
Board dismissed appeal based on tenant appellant's non-appearance subject to a showing of good cause.

T11-0096 ***Cancel v. Hui***
Board dismissed appeal based on tenant appellant's non-appearance subject to a showing of good cause.

T10-0075 ***Adams & Baca v. RMD Services***
Board dismissed appeal based on owner appellant's non-appearance subject to a showing of good cause.

T08-0138 ***Bryant v. Williams***
Board dismissed appeal based on appellant's non-appearance subject to a showing of good cause.

T19-0403 Didrickson v. Commonwealth Company
T19-0403: Board found good cause for the tenants' failure to appear at their scheduled hearing based on the tenants' contention that they did not receive the notice of the hearing. Case remanded for a full hearing.

c. <u>Prior Court Settlement Agreement Can Result in Appeal Dismissal</u>

T17-0371 ***Arnold v. Farley***

Board dismissed tenant's appeal of dismissal of decreased services petition, based on prior court proceedings between the same parties on the same issues that were resolved via a settlement agreement over which the Superior Court retained continuing jurisdiction.

T13-0140 ***Lewis et al v. Advent Properties***

Appeal dismissed administratively with prejudice pursuant to settlement between parties in Superior Court.

d. <u>New Evidence Not Generally Permitted at Appeal Hearing</u>

T15-0368 ***Bivens v. Ali***

At the Appeal Hearing, Board affirmed Hearing Decision granting tenant rent decrease and restitution and declined to accept new evidence proffered by owner at appeal (which consisted of copies of prior RAP notices signed by the tenant) even though this evidence contradicted tenant's assertion in her petition that she never received the RAP notice, because owner failed to appear at original hearing.

T06-0059 ***Martinez & Newsom v. Wu***
T06-0060
Board affirmed Hearing Decision granting tenant petitions challenging rent increases served without RAP notice (as well as restitution for decreased services) when owner filed a response but failed to appear for 1st day of hearing and appeared for 2nd day of hearing, rejecting new evidence that both parties attempted to introduce at appeal hearing.

T05-0292 ***English v. Nero***
Board affirmed Hearing Decision granting tenant petition challenging rent increases on the basis that no RAP notice was served when owner did not respond to tenant petition nor appear at hearing and rejected new evidence owner attempted to introduce for the first time at appeal hearing.

T05-0245 ***Hobbs v. Bernstein***[1]
Board affirmed Hearing Decision which granted a decreased services claims despite owner's assertion that he had additional evidence to present. The Board held that it could not consider additional evidence and that appeal should be based upon the Hearing record.

e. <u>Where Jurisdiction is Raised, Evidence Can Be Taken at Appeal Hearing</u>

T01-0178 ***Parfait v. Miller***
The Board overturned an Administrative Decision which granted the tenant's petition because the owner did not file a proper response, pay the filing fee or submit evidence of a business tax certificate, but the owner did send a letter claiming that the unit was exempt as new construction. At the appeal hearing the Board voted to take evidence on the issue of exemption and declared that the property was exempt as new construction.

f. **<u>Board Can Affirm Administrative Decision Based on Different Reasoning</u>**

[1] The RAP Program does not currently have a signed copy of this Appeal Decision.

T01-0376 ***Millar v. Black Oak Properties (in database as Millar v. Sycamore Investments)***

An Administrative Decision had been issued denying a rent increase for parking because the owner failed to file a timely response. Since owner claimed she was denied right to file a response by the RAP, the Board upheld the result on a different ground because a prior rent increase on the subject unit had been given less than 12 months earlier. The Board held that parking is a part of the housing services provided and an increase in the parking charge is a rent increase.

g. <u>Board Can Remand Decision for Further Analysis When Record is Unclear</u>

T01-0562 ***Galvez v. Horizon Management***
T01-0561 ***Aguirre v. Horizon Management***
T01-0560 ***Martinez v. Horizon Management***
T01-0559 ***Gameros v. Horizon Management***
T01-0558 ***Maldonado v. Horizon Management***
T01-0550 ***Garcia v. Horizon Management***
T01-0549 ***Martinez v. Horizon Management***

In a case where the author of the Hearing Decision was not the Hearing Officer who heard the case, the Board upheld the Hearing Decision with respect to tenant's appeals, but remanded case due to clear discrepancies between findings of fact and documentary evidence in the record as to owner's appeal because of manifest discrepancies between the record and the Hearing Decision and as to the tenant in the Garcia case, a determination as to whether the tenant could contest rent increases given more than 3 years prior to petition filing. On Remand, the Hearing Officer held that tenant Garcia did not contest rent increases served more than 3 years prior and held that tenants who were monolingual Spanish speakers were required to be served the RAP Notice in Spanish.

h. <u>Continuances</u>

T19-0514 Green v. Mosser Companies Inc

Two different owner representatives appeared, one for the current owner and one for the former. Board granted request for continuance for the purpose of resolving who the appropriate representative should be. Good cause for continuance.

T18-0311 Cervantes v. Fong

Board found good cause to continue the appeal hearing to a later date on the basis that the tenant's representative was unable to appear due to an emergency.

4. Capital Improvements

a. <u>Capital improvements - Generally</u>

L18-0173 ***Merritt on 3rd KW Lake Merritt LLC v. Tenants***
Board Panel affirmed Hearing Decision that granted owner's capital improvement petition for new windows on the basis of substantial evidence, despite the tenants' argument that their representative should have been allowed to testify at the hearing regarding the tenants' proffered exhibit (a window replacement cost estimate) on the issue of "goldplating;" despite the fact that the new windows did not have some of the features of the old windows; and despite the fact that some of the tenants testified that the windows were causing problems with mold.

L17-0183 ***Westlake Partners LLC v. Tenants***
Board affirmed Hearing Decision that denied some of the owner's capital improvement items on the following basis: no proof of permits on some items, no proof of payments on some invoices, some work did not benefit tenants, some costs were outside the 24-month period, and some costs had been passed through previously.

T17-0345 ***Cucci v. Lantz***
Board panel affirmed Hearing Decision granting tenant petition challenging a rent increase as being in excess of CPI and denying owner's claim that it constituted an increase on the basis of a capital improvement where the Hearing Officer found that insufficient proof of payment was submitted by the owner.

T15-0615 ***Foucault v. Beacon Properties***
T15-0626 ***Lyngen v. Beacon Properties***
T15-0627 ***Ballinger v. Beacon Properties***
T15-0633 ***Langston v. Beacon Properties***
Board remanded Hearing Decision that granted the owner a 70% capital improvement pass-through for a seismic retrofit which took one year to complete and directed Hearing Officer to receive testimony and make a finding on whether the owner exercised due diligence to complete the project. Board affirmed denial of tenants' decreased housing services claims based on loss of parking (untimely) and problem with backstairs (no notice) but granted claim regarding dilapidated fence. On remand, the Hearing Officer found that the owner reasonably, diligently pursued completion of the work and upheld the capital improvement pass-through.

00-268 ***Frierson et al v. Grand Lake Terrace Apts. LLC***
00-271 ***Searles, Pasarica v. Grand Lake Terrace Apts. LLC***
00-314 ***Kinyua v. Grand Lake Terrace Apts. LLC***
00-329 ***Savage v. Grand Lake Terrace Apts. LLC***
00-365 ***Baker, Cardoza v. Grand Lake Terrace Apts. LLC***
00-391 ***Bell v. Grand Lake Terrace Apts. LLC***
00-404 ***Neequaye v. Grand Lake Terrace Apts. LLC***
00-449 ***Swanson v. Grand Lake Terrace Apts. LLC***
00-322 ***Lawson v. Grand Lake Terrace Apts. LLC***
00-392 ***Branch v. Grand Lake Terrace Apts. LLC***

00-403 ***Heine v. Grand Lake Terrace Apts. LLC***

Board upheld Hearing Decision where a capital improvement pass-through for removing dry rot and upgrading decks on specific units and not the whole building was still passed through to all the units because the work increased the structural integrity of the building.

L19-0159 378 Grand Avenue Associates, LP v. Tenants

Hearing decision authorized capital improvement pass-through for new entry system, paint, light fixtures, new boiler, insulation, roof coating, and new flooring. Board remanded decision to (1) find that tenants met their burden with respect to gold plating on entry system and to reexamine gold plating analysis for entry system; (2) determine whether permit was required to install boiler system; (3) remove tiling costs because they were not in the petition; (4) remove costs of roofing portion over commercial part of property; and (5) remove costs related to paint, lighting, and carpet due to lack of substantial evidence from the property owner.

L19-0253, 37 Moss LLC v. Tenants

Various improvements were made to a 12-unit building, including painting, window replacement, seismic retrofitting, carpeting, lighting, and mailbox replacement. Hearing officer granted the owner's petition, finding the work benefited the tenants and qualified as capital improvements. The board upheld the hearing decision.

L24-0072 Dynes v. Tenant

Board affirmed hearing decision that granted capital improvement petition in part and denied in part. The decision denied the cost of seismic retrofit and electrical upgrade projects because the owner did not submit finalized permits for these projects. The decision did not allow the structural engineering cost ($4,000.00) in the capital improvement pass-through calculation because the owner did not submit a proof of payment for this expense.

L25-0072 Watling et al. v. Tenant

The Board remanded an owner capital-improvement petition dismissed without a merits determination and directed the Hearing Officer to explain how the cited regulation applied to the claimed refrigerator and waterline costs.

b. <u>In Order to Pass Through a Capital Improvements Expense, Permits Must be Provided Where Required</u>

L19-0159 ***378 Grand Avenue Associates, LP v. Tenants***

Board remanded case to Hearing Officer on several grounds, including to determine whether the owner had received a permit for the installation of the boiler, and if not, to remove the costs of the boiler from the capital improvement pass-through allowed.

L17-0233 ***Udinsky v. Tenant***
L17-0236 ***Udinsky v. Tenants***

Board affirmed Hearing Decision that denied two of the owner's capital improvement items, exterior painting and structural improvements, on the basis of both deferred maintenance and

Priority 1 or 2 conditions and denied some costs on the basis of failure to obtain a permit for the work.

L17-0183 ***Westlake Partners LLC v. Tenants***
Board affirmed Hearing Decision that denied some of the owner's capital improvement items on the following basis: no proof of permits on some items, no proof of payments on some invoices, some work did not benefit tenants, some costs were outside the 24-month period, and some costs had been passed through previously.

L16-0038 ***Ludwig v. Tenants***
Board remanded a hearing decision which had granted a capital improvement pass-through of $207 a month for work done without permits, to determine which of the work performed required a permit, and to allow a pass through for only those costs that did not require permits. On Remand, the Hearing Officer held that if a particular project required a permit and it was not produced, then a capital improvement rent increase cannot be granted for the costs expended on that project. The Hearing Officer granted only the painting costs and gave a $26.67 monthly rent increase.

T17-0201 ***Shannon v. Bowman***
T17-0202 ***Johnson v. Bowman***
T17-0282 ***Warwick v. Bowman***
Appeal affirmed Hearing Decision denying capital improvement petition for window and toilet replacements because the owner did not provide a finaled permit for the work.

L19-0159 **378 Grand Avenue Associates, LP v. Tenants**

Hearing decision authorized capital improvement pass-through for new entry system, paint, light fixtures, new boiler, insulation, roof coating, and new flooring. Board remanded decision to (1) find that tenants met their burden with respect to gold plating on entry system and to reexamine gold plating analysis for entry system; (2) determine whether permit was required to install boiler system; (3) remove tiling costs because they were not in the petition; (4) remove costs of roofing portion over commercial part of property; and (5) remove costs related to paint, lighting, and carpet due to lack of substantial evidence from the property owner.

c. <u>Capital improvement petitions must be filed within 24 months after improvements are completed and paid for</u>

L19-0163 **Lake 1925 LP v. Tenants**
Hearing decision granted capital improvement petition but excluded three progress payments made more than 24 months from date of petition. The board remanded the case to the hearing officer for re-calculation of the pass-through to include the three progress payments that were close in time to the two year window.

d. <u>Roof replacement and re-roofing certification</u>

L18-0127 ***Pelly v. Tenants***

Board remanded Hearing Decision that determined roof replacement cost was not a capital improvement due to deferred maintenance, directing the Hearing Officer to consider whether there was substantial evidence to support the capital improvement pass-through. Remand decision determined that neither the previous nor current owner acted diligently for over three years to repair leaking roof and that the new roof was a repair and not a capital improvement and that the owner did not produce a permit for the new roof. On second appeal Board remanded case back to Hearing Officer stating that roof replacement was a capital improvement and ordered Hearing Officer to determine the correct amount for the pass-through.

L17-0233 ***Udinsky v. Tenant***
L17-0236 ***Udinsky v. Tenants***
Board affirmed Hearing Decision without comment that granted roof replacement costs where owner did not receive reroofing certifications until after Hearing commenced.

e. <u>Owners Cannot Pass Through Those Costs Increased by Deferred Maintenance</u>

L25-0067, Mariposa Evergreen SPE, LLC v. Tenants.
The Board unanimously granted both tenant appeals in part and remanded the capital-improvement award for a corrected decision on the existing record, with adjustments to common costs applied to all affected units. It directed the Hearing Officer to reconsider fire-code and safety costs under the Priority 1/2 requirements, and exterior carpentry, stucco, and painting costs under the deferred-maintenance burden-shifting rule, citing L17-0233/L17-0236, Udinsky v. Tenants. The Board also required allocation of sliding-door costs according to which units benefited and findings supporting completion of challenged exterior-stair and common-area painting work; it otherwise denied the appeals. Separately, the Board found good cause to accept Unit 111's late appeal under Regulation 8.22.120.H.1.

L18-0127 ***Pelly v. Tenants***
Board remanded Hearing Decision that determined roof replacement cost was not a capital improvement due to deferred maintenance, directing the Hearing Officer to consider whether there was substantial evidence to support the capital improvement pass-through. Remand decision determined that neither the previous nor current owner acted diligently for over three years to repair leaking roof and that the new roof was a repair and not a capital improvement and that the owner did not produce a permit for the new roof. On second appeal Board remanded case back to Hearing Officer stating that roof replacement was a capital improvement and ordered Hearing Officer to determine the correct amount for the pass-through.

L18-0035 ***Lew v. Tenants***
Board affirmed Hearing Decision that granted owner's capital improvement petition for replacement of shower fixture/valve, toilet and bathroom sink faucet despite tenants' contention that the work was necessitated by deferred maintenance. The Hearing Decision held that there was no evidence of deferred maintenance or code violations, and that the project complied with new building codes and made the unit more energy efficient.

L18-0034 ***Leapfrog Properties c/o Beacon Properties v. Tenant***
Board affirmed Hearing Decision based on substantial evidence that granted the owner's capital improvement petition for work on decks and balconies and installation of new mailboxes despite the tenants' contention that the work constituted basic maintenance/repair and was

unnecessarily expensive. The Hearing Decision held that tenants are not allowed to decide who performs the work, that making the balconies safer meets the benefits test and prolongs the useful life of the building, and that new mailboxes are not a routine repair/maintenance item.

L17-0233 ***Udinsky v. Tenant***
L17-0236 ***Udinsky v. Tenants***

Board affirmed Hearing Decision that denied two of the owner's capital improvement items, exterior painting and structural improvements, on the basis of both deferred maintenance and Priority 1 or 2 conditions and denied some costs on the basis of failure to obtain a permit for the work.

f. <u>Repairs for Code Violations Or Priority 1 or 2 Conditions Cannot be Passed Through</u>

L25-0067, Mariposa Evergreen SPE, LLC v. Tenants.
The Board unanimously granted both tenant appeals in part and remanded the capital-improvement award for a corrected decision on the existing record, with adjustments to common costs applied to all affected units. It directed the Hearing Officer to reconsider fire-code and safety costs under the Priority 1/2 requirements, and exterior carpentry, stucco, and painting costs under the deferred-maintenance burden-shifting rule, citing L17-0233/L17-0236, Udinsky v. Tenants. The Board also required allocation of sliding-door costs according to which units benefited and findings supporting completion of challenged exterior-stair and common-area painting work; it otherwise denied the appeals. Separately, the Board found good cause to accept Unit 111's late appeal under Regulation 8.22.120.H.1.

L17-0233 ***Udinsky v. Tenant***
L17-0236 ***Udinsky v. Tenants***
Board affirmed Hearing Decision that denied two of the owner's capital improvement items, exterior painting and structural improvements, on the basis of both deferred maintenance and Priority 1 or 2 conditions and denied some costs on the basis of failure to obtain a permit for the work.

g. <u>Gold plating</u>

L19-0159 ***378 Grand Avenue Associates, LP v. Tenants***
Board remanded case to Hearing Officer on several grounds, and held that the tenants had met their initial burden that the new entry system was gold plating and that the Hearing Officer was to determine if the owner had met its burder regarding the gold plating analysis.

L18-0173 ***Merritt on 3rd KW Lake Merritt LLC v. Tenants***
Board Panel affirmed Hearing Decision that granted owner's capital improvement petition for new windows despite the tenants' argument that their representative should have been allowed to testify at the hearing regarding the tenants' proferred exhibit (a window replacement cost estimate) on the issue of "goldplating;" despite the fact that the new windows did not have some of the features of the old windows; and despite the fact that some of the tenants testified that the windows were causing problems with mold.

L18-0086 ***Kingston Avenue Partners LLC v. Tenants***

Board affirmed Hearing Decision that granted owner's capital improvement petition for hallway remodel, new windows and patio doors, and exterior painting, despite the tenants' contention that some aspects of the hallway remodel constituted goldplating and/or were unnecessary, that the window replacement was unnecessary, and that the exterior painting constituted routine maintenance. The Hearing Decision held that the upgrades to the building improved its value and prolonged its useful life.

L19-0159 378 Grand Avenue Associates, LP v. Tenants

Hearing decision authorized capital improvement pass-through for new entry system, paint, light fixtures, new boiler, insulation, roof coating, and new flooring. Board remanded decision to (1) find that tenants met their burden with respect to gold plating on entry system and to reexamine gold plating analysis for entry system; (2) determine whether permit was required to install boiler system; (3) remove tiling costs because they were not in the petition; (4) remove costs of roofing portion over commercial part of property; and (5) remove costs related to paint, lighting, and carpet due to lack of substantial evidence from the property owner.

h. <u>Routine Repairs vs. Improvements</u>

L18-0035 *Lew v. Tenants*

Board affirmed Hearing Decision that granted owner's capital improvement petition for replacement of shower fixture/valve, toilet and bathroom sink faucet despite tenants' contention that the work was necessitated by deferred maintenance. The Hearing Decision held that there was no evidence of deferred maintenance or code violations, and that the project complied with new building codes and made the unit more energy efficient.

L18-0034 *Leapfrog Properties c/o Beacon Properties v. Tenants*

Board affirmed Hearing Decision that granted owner's capital improvement petition for work on decks and balconies and installation of new mailboxes despite the tenants' contention that the work constituted basic maintenance/repair and was unnecessarily expensive. The Hearing Decision held that tenants are not allowed to decide who performs the work, that making the balconies safer meets the benefits test and prolongs the useful life of the building, and that new mailboxes are not a routine repair/maintenance item.

T08-0389 *Marquardt v. Regency Towers*
T08-0387 *de la Pena v. Regency Towers*

The Board affirmed a Hearing Decision granting capital improvement increases for landscaping, swimming pool, foundation repair and replacement of windows holding that these were improvements that provided benefits to the tenants by extending the useful life of the building and specifically stating that adequate windows in good repair were a primary component in weatherproofing that are required by building and housing codes; that the landscaping and pool repairs provided enhanced services to the tenants; and that the repair of the concrete sub-structure was integral to the preservation of the foundation.

L24-0002 University Presidents Associates LP v. Tenants

The Board affirmed Hearing Decision granting capital improvement for exterior paint over tenant appeal that exterior paint did not add value to the property or primarily benefit the tenants.

i. <u>Board Remands Capital Improvement Cases Where Further Findings Are Necessary</u>

L19-0159 ***378 Grand Avenue Associates, LP v. Tenants***
Board remanded case to Hearing Officer on several grounds, including to determine whether the owner had received a permit for the installation of the boiler, and if not, to remove the costs of the boiler from the capital improvement pass-through allowed; regarding the new entry system to determine whether the owner had met its burden on gold plating (after determining that the tenant had met their burden that the entry system did amount to gold plating); to remove the costs of tiling because the tenants had not received notice of the tiling costs in the petition; to remove the roofing costs related to the commercial portion of the property; and to remove the costs of the paint, lighting and carpet due to lack of substantial evidence.

L18-0127 ***Pelly v. Tenants***
Board remanded Hearing Decision that determined roof replacement cost was not a capital improvement due to deferred maintenance, directing the Hearing Officer to consider whether there was substantial evidence to support the capital improvement pass-through. Remand decision determined that neither the previous nor current owner acted diligently for over three years to repair leaking roof and that the new roof was a repair and not a capital improvement. On second appeal Board remanded case back to Hearing Officer stating that roof replacement was a capital improvement and ordered Hearing Officer to determine the correct amount for the pass-through.

L16-0038 ***Ludwig v. Tenants***
Board remanded a hearing decision which had granted a capital improvement pass-through of $207 a month for work done without permits, to determine which of the work performed required a permit, and to allow only a pass through for only those costs that did not require permits. On Remand, the Hearing Officer held that if a particular project required a permit and it was not obtained, then a capital improvement rent increase cannot be granted for the costs expended on that project. The Hearing Officer granted a $26.67 monthly rent increase.

T15-0615 ***Foucault v. Beacon Properties***
T15-0626 ***Lyngen v. Beacon Properties***
T15-0627 ***Ballinger v. Beacon Properties***
T15-0633 ***Langston v. Beacon Properties***
Board remanded Hearing Decision that granted the owner a 70% capital improvement pass-through for a seismic retrofit which took one year to complete and directed Hearing Officer to receive testimony and make a finding on whether the owner exercised due diligence to complete the project. Board affirmed denial of tenants' decreased housing services claims based on loss of parking (untimely) and problem with back stairs (no notice) but granted claim regarding dilapidated fence. On remand, the Hearing Officer found that the owner reasonably,

diligently pursued completion of the work and upheld the capital improvement pass-through. (Decided under prior Ordinance.)

T15-0360 ***Harrison v. Solares***

Board remanded Hearing Decision appealed by both parties and directed Hearing Officer to consider whether $5,000 deducted from allowed capital improvement costs was the proper deduction for deferred maintenance, to review costs and exclude all costs incurred more than 24 months prior to date of noticed rent increase, and to consider a payment plan for the tenant. Board also directed Hearing Officer to determine how much of $15,000 owner paid contractor's attorney was attributable to work done on unit. On remand, the Hearing Officer determined that $5,000 was the correct amount, excluded an additional $12,698.67 for costs incurred more than 24 months prior to date of rent increase, and allowed $15,360.73 in costs paid to contractor's attorney. After a second appeal where the Board affirmed the remand decision with some corrections of calculation errors, the Hearing Officer issued a Corrected Hearing Decision After Appeal.

T14-0238 ***Geiser v. Chandler Properties***

Board remanded case where Hearing Decision granted owner's capital improvement petition for a variety of items (mailbox/entry system, new carpets, painting, electrical upgrade, landscaping) for the Hearing Officer to determine: whether owner provided a timely summary of justifications; review calculations regarding exhibits and checks; change base rent to reflect reduction from previous case; and determine whether a Priority 1 or 2 condition existed regarding electrical problems. On remand, the Hearing Officer found that the summary of justification was timely served, revised the capital improvement passthrough to $0.12 more per month, corrected the base rent, and found that a Priority 1 or 2 condition did not exist.

T10-0160 ***Dixon et al v. Sashar***

Board remanded case to Hearing Officer to hold a full evidentiary Hearing on whether or not the windows (for which the owner received a capital improvement rent increase in the underlying decision) amounted to a Priority 1 or Priority 2 condition; and to consider the Notice to Abate; whether the owner was on notice of the need to replace them; the length of time to replace the windows and any reason for the delay . The case was dismissed by the parties prior to the Remand Hearing because a settlement was reached.

T01-0237 ***Cutts v. Eagle Investments***

The Board remanded a Hearing Decision to the Hearing Officer to determine if a capital improvement cost for a roof repair to the tenant's penthouse unit was proper or not. The tenant did not appear at the Remand Hearing so the prior Hearing Decision apportioning roof repair to tenant was affirmed.

5. Citation Hearing-Procedure

6. Decreased Housing Services

a. Decreased Housing Services-Generally

T18-0089 ***Billingsley v. Marr***
Board affirmed Hearing Decision on substantial evidence that granted restitution for decreased services included in declaration filed with the tenant's petition, although the owner appellant alleged that the tenant did not check the box for decreased housing services on the petition. The owner's claims were not brought to the attention of the Hearing Officer.

T18-0079 ***Worekneh v. Lankford***
T18-0035
T17-0494
Board affirmed Hearing Decision invalidating a rent increase and awarding restitution for decreased services where the Owner did not file a response to any of the petitions and did not appear at the Hearing, where the Owner claimed she had not received notice of the original hearing but did not appear at the rescheduled hearing.

T17-0421 ***Nanos v. Jerez***
Board overturned Hearing Decision granting tenant petition for decreased services on the basis of the owner's not allowing his partner and child to move into the unit after his brother moved out. (Note: This case was decided under prior law.)

T17-0418 ***Jackson v. Barnaby***
Board panel remanded case to Hearing Officer on due process grounds to determine whether owner had submitted evidence to rebut tenant's claims of mold and other concerns. On remand, Hearing Officer held that no evidence had been submitted by owner prior to the Hearing that should change the original determination.

T17-0336 ***Xavier v. Advent Properties, Inc.***
Board remanded Hearing Decision that decreased rent restitution from 20% to 10% for floor joist issue due to the tenant's failure to vacate the unit to allow the owner to make full repairs and directed Hearing Officer to reconsider the decrease based on whether it was necessary to vacate the unit and to determine the legal sufficiency of the notice to vacate. Remand decision affirmed original decision.

T17-0271 ***Jacobs v. Montoya***
Board affirmed Hearing Decision invalidating a rent increase served without a RAP notice and awarding restitution for the lack of garbage services, finding that the current owner stands in the shoes of the prior owner (who failed to provide the legally required services).

T16-0365 ***Johnson v. Thornton***
Board remanded case to Hearing Officer to hold a de novo Hearing where the Hearing Decision allowed the property owner to testify but there was no testimony or evidence that business tax

and RAP fees were paid (owner was operating a facility for people with mental illness and allowed tenant to move into an office because she had nowhere else to live). Hearing Officer was directed that if fees were not paid, the owner's testimony should not be considered and the owner could only cross-examine the tenant. Additionally, the Board stated that the Remand Hearing should include the issues of whether there was adequate heat and whether loss of access to the toilet had been a decrease in service. On remand, the owner did not appear at the Hearing. The Remand Decision stated that the unit was a covered unit; the RAP fee and business license was not paid; the owner's testimony was inadmissible; and that the failure to provide an installed heater, lack of access to a bathroom with a shower, and that lack of a smoke detector were all decreases in housing services. However, since the tenant no longer lived in the unit, the order only stated the restitution owed to the tenant because there was no way for RAP to enforce the order.

T15-0615 ***Foucault v. Beacon Properties***
T15-0626 ***Lyngen v. Beacon Properties***
T15-0627 ***Ballinger v. Beacon Properties***
T15-0633 ***Langston v. Beacon Properties***
Board remanded Hearing Decision that granted the owner a 70% capital improvement pass-through for a seismic retrofit which took one year to complete and directed Hearing Officer to receive testimony and make a finding on whether the owner exercised due diligence to complete the project. Board affirmed denial of tenants' decreased housing services claims based on loss of parking (untimely) and problem with backstairs (no notice) but granted claim regarding dilapidated fence (5%). On remand, the Hearing Officer found that the owner reasonably, diligently pursued completion of the work and upheld the capital improvement pass-through.

T14-0046 ***Lynch v. Cook***
T14-0047 ***Vickers v. Cook***
T14-0151 ***Lynch v. Cook***
Board affirmed Hearing Decision invalidating rent increase and awarding restitution for decreased services (lack of access to garage and parking space) where the Owner did not file a response to any of the petitions and did not appear at the Hearing on the basis that the Owner did not provide good cause (at the Appeal Hearing) for these failures.

T10-0026 ***Butcher v. Murry***
Board affirmed a Hearing Decision without comment where decrease services were found relating to the condition of the stairway and railing (3%) and holes in the bathroom wall and tile (3%).

T08-0298 ***Sanchez v. Community Realty Property Management***
Board affirmed Hearing Decision which denied tenant's claim of decreased housing services for cockroaches because both parties testified that there was ongoing fumigation and otherwise, the parties were equally credible as to the presence or absence of cockroaches and tenant has burden of proof on a decreased services claim..

b. <u>Decreased Housing Services - Procedural Issues</u>

T18-0302 ***Spencer v. Eagle Environmental***

Board remanded Hearing Decision that granted rent reduction and restitution for a number of decreased services and directed the Hearing Officer to recalculate amounts by considering restitution owed from prior Hearing Decision involving the same tenant in the same unit even though prior Hearing Decision was three years earlier, the owner was not the same owner as in the prior case and the tenant had received RAP Notice more than 90 days prior to second petition. Board granted Hearing Officer discretion to determine if new evidentiary hearing was required.

T17-0572 ***Hetelson v. Cleveland***

Board upheld Hearing Decision dismissing tenant's petition challenging rent increases and alleging decreased services where tenant was not current on rent and where Hearing Officer found that the tenant was not justified in paying a lower amount because there was not a substantial breach of the warranty of habitability where the elevator broke down occasionally but the owner repaired it on a timely basis.

T17-0419 ***Beard v. Stewart***

Board Panel affirmed Hearing Decision that denied decreased housing services claim regarding removal of electrical outlets in garage on the basis of the issue having been litigated in prior case between the parties.

T15-0263 ***Panganiban v. Chang***

1st appeal: Board remanded Hearing Decision that denied some of tenant's decreased housing services claims on timeliness grounds. The Board held that the 60-day (under prior law) filing period did not begin until a reasonable period after an owner asserts that he will make repairs but fails to do so; therefore, the Hearing Officer was directed to review the evidence in the record to determine whether the tenant reasonably relied on such an assertion. On remand, Hearing Officer found no evidence of reasonable reliance. 2nd appeal: Board dismissed appeal of remand decision because tenant representative left appeal hearing after making an initial statement.

T15-0003 ***Newman v. Lee Ware Trust***
T15-0012 ***Harper v. Lee Ware Trust***
T15-0013 ***De Vault v. Lee Ware Trust***
T15-0014 ***Wallner v. Lee Ware Trust***

Board Panel affirmed Hearing Decision that granted decreased housing services claims (loss of use of washer/dryer, problems with windows) to three tenants who had received the RAP Notice more than 60 days prior to filing their petition but limited their recovery to a period 60 days prior to filing because RAP Notice had been given. Hearing Decision granted restitution for a longer period (amounting to more than one year prior to filing for some claims) to tenant who had not been given the RAP Notice when she moved into the building and was given the RAP Notice less than 60 days before she filed her petition. (This case was decided under the prior Ordinance.)

T14-0076 ***Clark v. Ghaderi***
T14-0108

Board affirmed Hearing Decision that granted restitution for decreased services (bathroom water leak, inoperable bathroom fan, kitchen countertop issue, damaged bedroom window

screen) but corrected start of restitution period (sixty days before filing of petition) to one month later than in original decision because Hearing Officer used the incorrect date.

T10-0093 ***Davis v. Dorntge***
Board affirmed Hearing Decision where tenant appellant asserted that Hearing Officer did not allow him to discuss PG&E bills at Hearing based on the Board's determination that the PG&E bills were not relevant to an issue raised in the petition or response for the case.

T10-0064 ***Burns v. Landlord***
Board remanded Hearing Decision that granted decreased housing services claim (leaking in hallway during heavy rainfall) for Hearing Officer to determine whether owner had in fact served tenant with RAP Notice, which would limit time period for claim. On remand, Hearing Officer determined tenant had received RAP Notice, and therefore denied tenant's claim because the problem did not occur during the 60 days prior to the filing of the petition. (Note case decided under prior Ordinance.)

T06-0181 ***Pinnock v. Fong***
Board upheld Hearing Decision that denied tenant's challenge of rent increases based on proper RAP notices having been provided and amount being within CPI and denied tenant's claims of decreased housing services based on untimeliness of laundry room repair claim, lack of sufficient evidence on yard maintenance claim, lack of jurisdiction (car towing), and tenant's failure to comply with owner's repair attempts (water damage).

T06-0131 ***Nairobi v. Nwamu***
Board Panel affirmed Hearing Decision that denied decreased housing services claims on the basis of items having been subject of settlement agreement between parties in unlawful detainer action (and remaining items not being serious enough to be compensable under Rent Adjustment Ordinance).

c. <u>Kinds of Allegations Granted in Decreased Housing Services Claims</u>

T19-0424 ***Thornton v. Joyce***
Board affirmed Hearing Decision based on substantial evidence where Hearing Officer found that even though billed separately charges for parking were part of housing services, and hence, a part of rent.

T19-0394 ***Thompson v. 0384Goldstone***
The Board affirmed a Hearing Decision based on substantial evidence that decreased tenant rent by $60 a month because of owner's failure to provide a replacement garage door opener after tenant lost the original opener. (Note Hearing Decision also included a 5% rent decrease for the broken oven knob and a determination that a rent increase had been improperly served but the owner did not appeal those portions of the decision.)

T19-0294 ***Schlageter v. Mael***
Board affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice and granted rent reduction plus rent restitution (beginning 90 days before the petition filing date) for decreased services: moisture intrusion in kitchen walls (5%); mold in bedroom (2%); and

non-working alarm system (5%), although the latter claim was limited in time to a starting date 15 days before the petition filing date because that is when the alarm stopped working.

T18-0409 ***Luther v. CCC Property Management***
Board Panel affirmed Hearing Decision that granted rent restitution (beginning 90 days before the petition filing date) for decreased services: mice (10%) and cockroaches (7%). Restitution was also awarded for one month when the shower drain did not work (7%).

T18-0387 ***Villalobos v. Tran***
Board panel reduced restitution amounts when the Hearing Decision granted rent restitution for period greater than stated in tenant petition. Remand decision reduced the restitution accordingly: cracked floor tile (2%) from 43 months to 20 months and reduced kitchen ceiling light (1%) from 37 months to 17 months.

T18-0310 ***Alkebsi v. Noori***
Board Panel affirmed Hearing Decision that invalidated a rent increase based on lack of RAP Notice and granted rent reduction plus rent restitution for decreased services: non-working heater for three years (10%) and lost storage space for 18 months (10%). Restitution was also awarded for an inoperable closet light fixture for 27 months (2%), a loose toilet (2%) for 26 months, and loss of a parking space for one month ($50 rental fee).

T18-0301 ***Lowery v. Abdul***
T18-0325 ***Lowery v. Abdulla***
Board Panel affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice and granted rent reduction plus rent restitution over a 35-month period for a number of decreased services: inoperable oven (25%); inoperable refrigerator (25%); inadequate heat (25%); pest infestation (10%); no carbon monoxide detector (1%); toilet that is “off the hinges” (1%). Restitution was also awarded for a bathroom door off the hinges for 29 months (1%); and no smoke detector (1%), bathroom/kitchen/hallway lights not working (1%) and walls that needed painting (1%) for a 32-month period.

T18-0293 ***Kelly v. Claridge Hotel LLC***
Board affirmed Hearing Decision that awarded rent decrease and restitution of 10% of monthly rent for a nonworking heater. (Note Board also upheld denial of further rent restitution for pests where owner took immediate action to resolve pest issue when owner was notified of issue.)

T18-0164 ***Garcia v. SMC East Bay***
Board affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice and granted rent reduction plus rent restitution for a number of decreased services: roof leak and wall damage (2%); bathroom water leak and wall damage (2%); insecure handrail on exterior front stairs (1%); missing bullnose on interior front stairs (1%); and rot/decay on back stairs (5%).

T18-0153 ***Bush v. Dang***
Board panel reduced rent restitution for hole in window from 10% of rent to 5% and directed staff to recalculate the restitution amount.

T17-0599 ***Clements v. Vick Enterprise, LLC***

T17-0600 ***Brown v. Vick Enterprise, LLC***
Board panel affirmed Hearing Decision that granted tenants restitution of 75% of their rent for a period beginning 90 days before they filed their petition due to a non-working bathroom that required them to move out of the unit for a period (at owner expense) and was not restored until over two months after they moved back into the unit.

T17-0477 ***Dobbe v. Marshall***
Board panel affirmed Hearing Decision that invalidated rent increases based on no RAP notice and granted 1% ongoing rent reduction plus restitution for a hole in the caulking around the bathtub that caused water leakage when the shower was in use, as verified by an inspection by the Hearing Officer.

T17-0418 ***Jackson v. Barnaby***
Board panel remanded case to Hearing Officer on due process grounds to determine whether owner had submitted evidence to rebut tenant's claims of mold and other concerns. On remand, Hearing Officer held that no evidence had been submitted by owner prior to the Hearing that should change the original determination. Hearing Officer upheld underlying decision which found that the tenant was entitled to a 1% rent decrease for the kitchen cabinets; a 2% decrease for the partially broken stove; a 1% decrease for a broken stove fan; a 3% decrease for a broken refrigerator; a 1% decrease for a kitchen faucet leak; a 3% decrease for a dangerous condition related to the baseboards; a 5% decrease because the tenant did not have a key to a locked patio gate; a 5% decrease because there was no working carbon monoxide sensor; a 3% decrease for a bathroom faucet leak; a 1% decrease for a broken towel bar and a 15% decrease because of the significant condition of mold throughout the unit. The tenant's claims regarding conditions of the exterior of the building; the light switch; the broken toilet handle; the tub caulking; bubbles in the tile; and peeling paint on the furnace were all denied because the tenant did not establish she had complained about the problems, they were just minor inconveniences or the conditions were not as the tenant described.

T17-0328 ***Guzman v. Mann Edge Properties***
Board upheld Hearing Decision granting tenant's restitution of 4% of the monthly rent for a period of time when the owner decreased the size and number of garbage bins resulting in overflowing garbage that attracted vermin to the area and a $40 a month restitution for loss of second parking space.

T17-0274 ***Peters v. Sullivan Management***
Board affirmed Hearing Decision that invalidated rent increase given without a RAP notice and granted tenant restitution (although no restitution order was issued because tenant had moved out) for diminished use of backyard and driveway.

T17-0271 ***Jacobs v. Montoya***
Board affirmed Hearing Decision invalidating a rent increase served without a RAP notice and awarding restitution for the lack of garbage services, finding that the current owner stands in the shoes of the prior owner (who failed to provide the legally required services).

T17-0176 ***Guerra v. Marquez et al.***
Board panel remanded Hearing Decision that granted 10% rent reduction and restitution for windows that were improperly installed to determine and make findings as to when the window

was fixed due to owner's contention on appeal that tenant agreed windows were fixed prior to date permit was finaled. Board panel also granted tenant's request on appeal that the Hearing Officer make a new payment plan for the $4,236.40 restitution amount and hold a new hearing if necessary. On remand, Hearing Officer affirmed original date of window repair as date permit was finaled and restated that the $4,236.40 restitution amount would be amortized over 12 months as a rent reduction.

T17-0116 ***Zamora v. Telles***
Board panel affirmed Hearing Decision granting restitution of 1% of rent for a broken window and 25% of rent for water leaks into bedroom closet and bedroom, plus extensive mold and water intrusion on walls and floors of several rooms.

T17-0082 ***Holman v. Eastshore Properties***
Board panel affirmed Hearing Decision granting 3% restitution for tenant's claim of decreased housing services based on a worn and torn carpet despite owners' claims on appeal that they were never notified of concern and that damage to the carpet was caused by tenant.

T17-0070 ***Lee v. Dixon***
Board panel upheld Hearing Decision that found no good cause for the owner's failure to file a response and to appear at the hearing. The Hearing Decision granting 3% rent reduction and restitution for bedroom window that did not fully close is affirmed.

T17-0040 ***Gonzalez v. Leon***
T17-0041 ***Miranda v. Leon***
T17-0042 ***Canales v. Leon***
T17-0043 ***de la Torre v. Leon***
T17-0044 ***Maciel v. Leon***
T17-0045 ***Lopez v. Leon***
T17-0078 ***Ortiz v. Leon***
Board remanded Hearing Decision invalidating rent increases and granted restitution claims on narrow issue of whether RAP Notices given in English were sufficient. Hearing Decision granted the following decreased services claims: broken fan hood (1%); missing bathroom doorknob and lock (3%); covered over living room window (5%); and wet wooden floor board under kitchen sink (2%).

T16-0188 ***Ali v. Morris***
Board panel remanded case for hearing officer to consider additional evidence the owner would have provided had he had adequate notice of tenant's decreased housing service claims. The owners were served with the list on July 14, 2016, and the hearing was held on July 25, 2016, which did not give the owner sufficient time to gather necessary evidence. At the remand hearing, the owner submitted an additional five exhibits into evidence and the resulting restitution award (for nonworking bedroom light fixtures, nonworking kitchen drawers, cracked and missing bathroom tiles, and living room ceiling leak) was reduced. Tenant was awarded restitution for broken light fixtures (3%); broken kitchen drawers (2%); cracked and broken bathroom tile (2%); and living room ceiling leak (2%).

T16-0104 ***Meyer v. Harris***

Board affirmed Hearing Decision granting restitution for tenant's claims of decreased housing services and found no good cause for owner's failure to file a response even though the owner's address was different from the address on the petition, where the owner testified at the Hearing that he had received the petition and a letter informing him of the 35 day limit to respond, and that at the Hearing he did not provide any reason for his failure to respond even though at the appeal hearing he claimed he did not get the petition until one week before the Hearing.

T16-0034 ***Lima et al. v. R&B LLC***
Board affirmed Hearing Decision that granted restitution of 10% of rent for rodent infestation and 10% for broken drainpipe and backed-up toilet.

T16-0006 ***Raney v. Tesfa***
Board affirmed Hearing Decision that granted restitution to tenant appellant for unsanitary bathroom (5%) and a hole in the ceiling (3%) but denied tenant's other claims as either not supported by the evidence or beyond owner's control.

T16-0004 ***Miller v. Hinds***
Board panel affirmed Hearing Decision that granted 1% ongoing rent reduction and restitution to tenant for loss of use of dryer.

T15-0374 ***Didrickson v. Dang***
Board affirmed Hearing Decision which partially granted tenant petition challenging rent increase, based on prior decisions between same parties, and granted restitution and ongoing 9% rent reduction for decreased housing services [bedroom ceiling leak (2%), broken patio door (3%), and uneven patio boards (4%)].

T15-0518 ***Bowens v. Eubanks***
Board affirmed Hearing Decision that had been appealed by both parties that granted restitution of $90 (5%) for failure of owner to install heater in a timely manner and found there was overpaid rent.

T11-0101 ***Howard v. Smith***
Board affirmed Hearing Decision that granted rent reduction based on cost of service, until tenant was allowed to resume use of garage for any purpose, including storage where tenant was given access to garage at beginning of tenancy.

T10-0079 ***Miller v. J&R Associates***
Board affirmed Hearing Decision granting tenant's decreased services claim regarding storage space being taken away when this service was not included in rental agreement but where tenant produced canceled checks to prior owner showing he had paid an extra monthly fee for storage.

T08-0294 ***Pivtorak v. Ma***
Board affirmed Hearing Decision based on substantial evidence that granted a rent decrease for lack of adequate heat of 5% of the rent where the owner had an automatic timer on the heating system that did not allow it to run until 5:00 p.m. (In this case the Board also held that parking

was a housing service included in the rent and that unpaid late fees and RAP fees are not a part of the rent, allowing tenant to bring his claim.)

T07-0237 ***Kosmos v. Negrete***
In the first appeal, Board remanded case to Hearing Officer because no evidence existed to support Hearing Officer's decision that the tenant was not paying utilities for both units in the building where only one furnace existed in the building.

T06-0059 ***Martinez & Newsom v. Wu***
T06-0060
Board affirmed Hearing Decision granting tenant petitions challenging rent increases served without RAP notice as well as restitution for decreased services for leaking pipe and water damage under sink (3%) and mold in the bedroom closet (5%).

T19-0238 **Didrickson v. Commonwealth Company**
Board affirmed 1% rent reduction for a tarp covering their window during construction. Decreased housing services.

T20-0143 **Wheaton v. Ngo**
Board remanded decision to grant decreased housing service claim in case where problems with toilet continued even though owner responded to complaints

T21-0029, **Eason v. Bao**
This case involved a tenant petition alleging decreases in housing services, which was granted in part and denied in part. The Hearing Officer granted a rent decrease of 5% for an on-going leaky window, 5% for mildew stains, and 15% for failure to properly remove asbestos. The board upheld the hearing decision.

d. <u>Denial of Decreased Housing Services Claims</u>

T26-0093 ***Angelos v. 317 Hanover Apartments LLC***
The Board affirmed dismissal of a tenant's excessive-neighbor-noise claim because the ordinance and regulations lacked clear standards for quantifying excessive noise, while recognizing that excessive noise could constitute a decreased housing service in principle. It expressly distinguished a potential decreased-services claim from a separate quiet-enjoyment cause of action.

T19-0148 ***Holman v. East Shore Properties***
Board affirmed Administrative Decision that denied tenant's petition for decreased services alleging "loss of quiet enjoyment" due to newly installed garage doors under tenant's unit (causing noise and vibrations) on the basis that the RAP lacks jurisdiction over such claims.

T19-0011 ***Aguirre v. Diamond Properties***
Board affirmed Hearing Decision that denied loss of use of a patio because the loss was due to a temporary repair that was not "unreasonably delayed."

T18-0293 ***Kelly v. Claridge Hotel LLC***

Board affirmed Hearing Decision that denied a decreased housing services claim for pest infestation (bed bugs and roaches) where the Hearing Officer found that the owner began pest control treatment immediately after receiving notice from the tenant. (Note, the Board also upheld the decreased rent and restitution of 10% for a non-working heater.)

T18-0012 ***Edwards v. Bay Apartment Advisors***
Board affirmed Hearing Decision that denied tenant's decreased housing services claim that there was a lack of maintenance of common areas and that the laundry room hours had been reduced. Hearing Officer conducted inspection of property and found no evidence that the common areas were not cleaned/maintained. Hearing Officer also determined that laundry room hours had not been reduced.

T17-0574 ***Weisman v. Oakmore***
Board affirmed Hearing Decision denying tenant's claim for decreased services regarding the use of backyard where the tenant claimed that the stones in the backyard area were uneven but the Hearing Officer found that the tenant did not use the backyard anymore since the Owner reconfigured it. Board explicitly found that the tenant did not sustain his burden of proof regarding a dangerous condition or diminution of value of the patio. (Neither party appealed the underlying finding of 6% restitution for water damage resulting from bathroom hallway and living room.)

T17-0446 ***Martin v. Dang/Do***
Board affirmed Hearing Decision denying tenant's decreased services claims where some claims had been litigated in prior hearings, and the other claims were fixed after one day (door stopper on main entry door falling down) or not a loss of service (window cleaning that was done twice in 15 years and not part of the services provided by the owner).

T17-0152 ***Holt v. Tang***
T17-0313 ***Holt v. Tang***
Board panel dismissed appeal for lack of sufficient grounds because appellant failed to identify and explain the inconsistency in prior decisions issued by other hearing officers. Hearing Decision denying tenant's claims of decreased housing services (water damage in unit due to rain, pet odor, rundown carpet, crack in toilet, hole in floor, lack of garage door opener, lack of front gate key, broken mailbox) affirmed.

T16-0076 ***Lee v. Millar***
Board affirmed Hearing Decision that denied tenant's claims of decreased housing services and found that items were tenant's responsibility or were due to tenant maintenance and sanitation issues.

T15-0576 ***Kellybrew v. Lewis***
Board affirmed Hearing Decision that denied claim for mold due to leaking bathroom faucets because owner responded within a reasonable time and found that bugs in ceiling light fixture was not a hazardous condition affecting habitability of the unit.

T15-0544 ***Green v. Keith***

Board affirmed Hearing Decision that denied decreased housing services claim for loss of use of pool during repairs.

T14-0527 ***Weinstein v. Baradat***
Board Panel remanded Hearing Decision that denied tenant's decreased services claim for a major elevator repair that resulted in the elevator being out of service for six weeks. On remand, the Hearing Officer affirmed original decision because the owner provided a reasonable alternative accommodation in that the complex consisted of two buildings, each with an elevator, connected by a bridge, such that the tenants could access unit via the working elevator during the repair period.

T14-0243 ***Katz v. Urosevic***
Board remanded Hearing Decision that denied tenant challenge to rent increase and denied various decreased services claims (no regular janitorial services, malfunctioning elevator, dirt throughout common areas, broken intercom, weeds, peeling/stained/chipped paint in unit) for the Hearing Officer to provide a clarification of standards for decreased housing services that do not include code violations and a factual analysis of issues raised in tenant's appeal. On remand, the Hearing Officer stated that the decreased housing service must seriously affect the habitability of the unit and that hardship or inconvenience are insufficient, discussed the evidence regarding each of the tenant's claims, and affirmed original decision.

T13-0308 ***Marker v. Discovery Investments***
Board affirmed Hearing Decision that denied tenant's decreased services claims for poor quality building management where Hearing Officer found that evidence from both sides was equally balanced.

T12-0294 ***White v. Zhu***
Board affirmed a Hearing Decision denying tenant's claim for gender discrimination (lack of jurisdiction) and determining that the tenant's claims of decreased services did not seriously effect the habitability of the unit. (Note: that the tenant's claims mostly consisted of conditions of her unit at the time she moved in.)

T07-0025 ***Chang v. Brown***
Board affirmed a Hearing Decision without comment which held that a claim for emotional distress damages was not a claim for decreased services and was denied.

T03-0377 ***Aswad v. Fields***
Board affirmed part of Hearing Decision that rejected a claim for decrease in housing services for excessive street noise because Rent Adjustment Ordinance does not have jurisdiction over a claim for breach of implied covenant of quiet enjoyment when complaint about conditions beyond owner control & prior denial

T02-0139 ***Dorche v. Key***
Board affirmed Hearing Decision that denied decreased services claim where tenant allegations in the petition were too vague to put property owner on notice of what was claimed and the tenant offered no excuse for his failure to clearly set forth his claims.

T01-0633 ***Kennedy v. Rose Ventures III***

T00-0437
Board upheld denial of tenant's decreased housing services claims where tenant did not file his petition until 2000, when the decreased service, which was the loss of the skyroom, occurred in 1998.

e. <u>Loss of Parking and Storage Can Be a Decreased Service</u>

T19-0424 ***Thornton v. Joyce***

Parking was considered a housing service and part of the tenant's rent, and therefore the parking fee could not be raised without limitation. Parking was considered part of overall rent even though the parking agreement was entered into later in the tenancy (i.e., it not part of the original lease) and parking fee was billed separately. Board affirmed based on substantial evidence.

T18-0055 ***Vargas et al v. 3000 Nicol Avenue Properties LLC***
Board Panel affirmed Hearing Decision that granted tenants restitution and ongoing rent reduction of 10% for loss of use of garage that they had been given at inception of tenancy even though the use of the garage was an oral agreement not included in their lease.

T17-0328 ***Guzman v. Mann Edge Properties***
Board affirmed Hearing Decision that granted $40 a month restitution for loss of an additional parking space that was not included in original lease but the use of which was granted to tenants by owner immediately after they moved in.

T17-0294 ***Armas v. Noh et al***
Board Panel affirmed Hearing Decision that invalidated a stand-alone $50 a month rent increase for parking where tenant was initially allowed to park on the premises for no charge.

T17-0048 ***Chau v. Cai***
Board Panel affirmed Hearing Decision granting tenant restitution for decreased housing services where Owner never served tenant with a RAP notice and, even though the Owner argued that the tenant was renting a room in a house for storage rather than residential purposes, the Hearing Decision found that the tenant proved by preponderance of the evidence that it was a residential unit.

T08-0294 ***Pivtorak v. Ma***
Board affirmed Hearing Decision that determined that parking was a housing service provided by the property owner included with the rental. (Board also held that late charges are not part of rent and that substantial evidence supports the finding that there was inadequate heat for which the Hearing Officer gave a 5% rent reduction.).

T02-0291 ***Rouse v. Patino***
T02-0292 ***McQuillion v. Patino***
Board panel reversed (without explanation) portion of Hearing Decision that granted decreased service claim based on loss of access to outside parking on the property.

T18-0156 **Romero v. Kim**
Change in parking from garage space to off-site parking constituted a decrease in housing services, and owner's claim that tenant signed a new lease agreement (and/or estoppel) that

precluded her claims was rejected because the tenant had not been provided with a copy of the lease in the language it was negotiated in, and therefore it failed to comply with Civil Code 1632.

T21-0088, Lerer v. Addleman
Tenant petition contesting a rent increase for the monthly parking fee. The owner argued that the increase for parking was not a rent increase because the agreement for parking was separate and entered into years after the tenancy began. The Hearing Officer issued an administrative decision and granted the tenant's petition. Board reaffirmed the principle that a housing service added after the commencement of the tenancy is a housing service and included in the total amount of rent and affirmed the hearing officer's decision regarding the increase in parking fees except to make a technical correction. The board also found that the hearing officer erred in considering an issue outside the scope of the petition.

f. Tenant's Refusal to Allow Access is Not Dispositive Because Owner Has Right to Enter to Make Repairs Under State Law

T05-0245 ***Hobbs v. Bernstein***[2]
Board affirmed Hearing Decision which granted a decreased services claim despite owner's assertion that tenant would not let him into the unit. The Board held that since the owner had the right to enter with notice under California law, refusal of entry did not excuse property owner's failure to make repairs.

g. Timing of RAP Notice Affects Decreased Housing Services Claims

T17-0040 ***Gonzalez v. Leon***
T17-0041 ***Miranda v. Leon***
T17-0042 ***Canales v. Leon***
T17-0043 ***de la Torre v. Leon***
T17-0044 ***Maciel v. Leon***
T17-0045 ***Lopez v. Leon***
T17-0078 ***Ortiz v. Leon***

Board remanded Hearing Decision that invalidated rent increases, granted decreased services claims, and held that tenants were required to be served with RAP Notices in Spanish as monolingual Spanish speakers, to consider any evidence the parties may present regarding leases of these units for the narrow purpose of considering whether the leases are subject to the Soriano decision (RAP Notices required in language tenant speaks if parties use that language for negotiations) and the underlying statute, CCC §1632. On remand, the Hearing Officer found that the original decision remained unchanged because the tenants were Spanish speakers who negotiated their rental agreement in Spanish and were only given copies of the rental agreement and RAP Notice in English.

h. Splitting Utilities Can Be a Decreased Housing Services Claim

[2] The RAP Program does not currently have a signed copy of this Appeal Decision.

T18-0057 ***McGill v. Horn et al***
Board Panel affirmed Hearing Decision that denied tenant's various decreased housing services claims but awarded rent restitution because owner was charging tenant for shared water and PG&E bills.

T17-0575 ***Titcomb v. Vineyard-Ide***
Board affirmed Hearing Decision where the decision granted restitution for the tenant's payments towards water bills (that were not separately metered) and amounted to "splitting utilities" in violation of the Ordinance. (The Hearing Decision also granted repayment for tenant's garbage bills which were the owner's responsibility per the lease.)

T16-0546 ***Green v. Tran***
Board affirmed a Hearing Decision based on substantial evidence that: invalidated a rent increase because it was not served with a RAP Notice and the rent increase was for more than 10% of the rent (the upper limit at the time of this decision); and determined that the owner could not charge the tenant for water or garbage because to do so would be splitting utilities in violation of the Regulations and would decrease her housing services.

T16-0037 ***Tabet v. Siu***
Board panel affirmed Hearing Decision that owner cannot transfer water bill to the tenant even though the lease provision stated that the tenant was responsible for water bill due to a shared meter. Although the owner subsequently installed a separate water meter, he was not allowed to enforce the lease provision because the lease provision was an illegal provision at the time it was made.

T15-0137 ***Oliver v Levias***
Board affirmed Hearing Decision granting tenant $7,868 in restitution because tenant established that there was only one utility meter on the property (for two units) and that she paid the owner for utility bills.

T22-0124, Benafield v. Equity Avg. LLC
The Hearing Officer found in the remand decision that the owner was splitting waste management bill because (1) the utility bills were in the owner's name; (2) owner never submitted utility bills into evidence; (3) the owner would not had to take so long to submit the utility ledger if the garbage bill was individually billed; (4) lease required separately metered utilities to be placed in the tenant's name; (6) lease required commonly metered utilities to be split proportionally, and the tenants were charged equal amounts; and (7) the waste management bills provided to tenants showed the charges for other units, which is evidence of proportional billing to show that they were charged equally. The owner appealed the remand decision, arguing that there still isn't any substantial evidence in the record to prove that the waste management was in fact a split utility bill—and attached new evidence of the waste management bills. The owner also argued on appeal that he wasn't really put on notice of the split bill issue because the tenant petition only identified back billing, and the split bill issue never came up at the hearing. The Board affirmed the remand decision.

i. <u>Statute of Limitations in Decreased Housing Services Cases</u>

T19-0472, T19-0473, T19-0474, T19-0475, T19-0476, T19-0479, T19- 0480, T19-0482, Hoffman et al v. Alma Apartments LP

Tenants filed petitions for decreased housing services due to the loss of an on-site resident manager. The Hearing Officer issued a decision that denied the tenant petitions, ruling that 1) the petitions were filed untimely and 2) even if the petitions were filed timely, the tenants did not demonstrate that the loss of the services in a resident manager led to a loss in housing services that would warrant a deduction in rent. The board affirmed the hearing decision, including affirming that the petitions were filed timely as they were based on the official notice sent by the owner that the services were being terminated and to affirm the Hearing Officer's decision regarding the decrease in housing services.

j. Restitution Period

See Restitution section

k. Restitution amounts should be consistent with other decisions with similar housing problems

T19-0272 & T19-0325, Jeffers v. BD Opportunity 1 LP

The Hearing Officer granted restitution extending beyond the hearing date. The Board remanded the case to the Hearing Officer with instructions to: (1) limit the restitution period to the hearing date; (2) consider prior Board decisions involving similar housing service reductions so that the decision is consistent with prior decisions; and (3) identify the prior cases and decisions concerning similar housing service reductions on which the Hearing Officer relied.

l. Unreasonable refusal of one-for-one roommate replacement

T24-0080 Singer v. Jabbari
L24-0041 Jabbari v. Tenant
Board reversed hearing decision that found owner unreasonably denied tenant right to one-for-one roommate replacement when evidence in the record showed tenant subletted the unit.

7. Exemptions

a. <u>Single Family Residences and Condominium Exemption [NOTE: RAP no longer grants permanent exemptions for single family residences and condominiums after Owens v. City Oakland, see L19-0169, Archer v. Tenants)</u>

T19-0196 ***Yoquelet v. Oaktown Properties***
Board affirmed Hearing Decision denying tenant petition challenging rent increase and granting owner single-family residence exemption despite tenant's allegation that the prior tenant was evicted where tenant submitted no evidence to support his allegation.

T17-0200 ***Arcos v. Sun***
T17-0204 ***Garcia et al v. Sun***
T17-0207 ***Nuno v. Sun***
T17-0468 ***Ramirez v. Fanfu Investments***
T17-0198 ***Hernandez v. Fanfu Investments***
Board vacated original Appeal Decision affirming a Hearing Decision that denied an exemption from the Rent Adjustment Ordinance on the basis of the Costa-Hawkins condominium exemption where the owner had purchased 25 of the 26 units, after the Alameda Superior Court and the 1st District California Court of Appeals held that the condominiums were sold separately to a bona fide purchaser.

L17-0015 ***Rafaty v. Tenant***
L17-0016 ***Rafaty v. Tenant***
T17-0084 ***Ullman v. Rafaty***
T17-0086 ***Hellman v. Rafaty***
Board affirmed Hearing Decision denying the owner certificates of exemption on the basis of the condominium exemption and granting tenants petitions challenging rent increases based on a finding that the owner was not a bona fide purchaser for value and the purported sales were sham transactions.

T17-0274 ***Peters v. Sullivan Management***
Board affirmed Hearing Decision that invalidated rent increase given without a RAP notice and granted tenant restitution over owner claim at appeal hearing that unit was exempt from RAP as a single-family residence. Owner did not appear at underlying Hearing because tenant had moved out and the owner had assumed the issue was moot. Board affirmed underlying decision without addressing owner's claim of exemption.

T16-0259 ***Barghout v. Owens***
Board affirmed Hearing Decision that found that a single-family residence was not exempt from the Rent Adjustment Ordinance because the owner rented out two rooms to tenants who paid him separately and thus the rental units could not be sold separately. This Decision was upheld by the California Ct. of Appeals in *Owens v. City of Oakland,* 49 Cal.App.5th 739 (2020).

T16-0073 ***Ullman v. Tse***
Board remanded Hearing Decision that found unit exempt from Rent Adjustment Ordinance as a condominium that had been sold separately pursuant to Costa Hawkins. The Board requested evidence that supports that there was an arms-length transaction in the purchase of the

property from the prior owner to the second owner, especially as to proof of the amount of the down payment; proof of rents received during the period of ownership; and proof of the amount paid from the second owner to the first owner to satisfy the mortgage when the property was transferred to a third purchaser. Remand decision determined that there was no arm's length transaction between prior owner and second owner and the unit was not exempt from the Ordinance.

L15-0077 ***Premji v. Tenant***
T16-0068 ***Nazzari et al v. Massoumeh***
Board affirmed Hearing Decision that granted exemption from Rent Adjustment Ordinance to owner where rental unit was single family residence with a furnished basement where tenants lived in residence as one family and the tenants' adult son lived in the basement (which did not meet the requirements of a separate dwelling unit).

T15-0229 ***Haley v. Golden State Ventures, LLC***
T15-0230 ***Cruz v. Golden State Ventures, LLC***
T15-0336 ***Haley v. Golden State Ventures, LLC***
T15-0337 ***Cruz v. Golden State Ventures, LLC***
Board initially upheld Hearing Decision that denied exemption from Rent Adjustment Ordinance as condominiums where the Hearing Officer found the units were not exempt from the RAP Ordinance as "units sold separately," since Owner purchased entire 4-unit building, and granted tenants' challenge to rent increases but denied tenants' decreased services claims. Superior Court reversed Rent Board decision, and District Court of Appeals affirmed Superior Court decision, finding that the units were exempt from the Ordinance as condominium units. Hearing Decision following ruling by Court of Appeals granted Certificate of Exemption to subject units.

L15-0002 ***McGrath v. Tenant***
L15-0003 ***McGrath v. Tenant***
Board upheld Hearing Decision that denied exemption from Rent Adjustment Ordinance as condominiums where the Hearing Officer found the units were not exempt from the RAP Ordinance as "units sold separately," based on the Owner's having purchased the entire property (single lot with two single family dwellings) from the subdivider.

L17-0093 ***Page v. Tenant***
T17-0146 ***Ross v. Page***
Board affirmed Hearing Decision that denied a tenant petition against an Owner who rented out two bedrooms in a four-bedroom house and lived in one of the other bedrooms, on the basis of a temporary exemption from the Rent Control ordinance. The Hearing Officer denied the Owner's petition for a permanent exemption because he rents out multiple rooms to multiple different persons. (Note this decision was made under the prior law where duplexes and triplexes were temporarily exempt from the Ordinance.)

T10-0085 ***Travis v. Wood***
Board affirmed Hearing Decision that denied tenant petition on grounds that unit was single family residence, despite tenant appellant's argument that she was exempt from Costa-Hawkins because she operates a wildlife rescue; Hearing Decision found that a private nonprofit corporation's status as a co-tenant did not mean that the Costa-Hawkins exception for units where the owner is receiving assistance from a public entity applies.

T01-0462 ***Williams v. Price***
Board affirmed Hearing Decision which found that the unit was exempt solely as a single-family residence despite the fact that the owner's response alleged the unit was not subject to the RAP because it was a commercial, and not residential, unit because a childcare center was being run on the premises. The Hearing Decision found that the commercial enterprise did not prevent jurisdiction because the tenant also lived in the unit.

T18-0414
T18-0472 **Martin et al v. Zalabak**
Hearing officer granted certificate of exemption to single family home which had an accessory unit previously used as rental but later vacated and converted back to office. Board overturned hearing decision on the basis that owner failed to establish a permanent exemption.

L19-0169 **Archer v. Tenant**
Single-family home was not entitled to a certificate of exemption even though it was owner-occupied, no tenants presently resided there, and the owner testified she had no plans to rent to tenants in the future. Since the lower portion of the property had been rented to tenants in the past, the single-unit dwelling had the capacity to transform into a multi-unit dwelling, and therefore was not entitled to permanent exemption. SFH, Costa-Hawkins.

T20-0093, **Bolanos v. Olivieri**
This case involved an owner appeal of a remand decision finding that the subject property was not exempt from the Rent Adjustment Ordinance. The case was originally heard in 2019 and at the hearing, the Hearing Officer found that the tenant's unit was not exempt because there was more than one dwelling at the property. It was found that there was a front structure and rear structure, but the owner argued that the rear structure was not a dwelling and was a storage unit. The Hearing Officer disagreed and found that the structure was a dwelling. Board upheld the Hearing Officer's decision based upon substantial evidence.

T21-0128, **Smith v. Chan**
the Hearing Officer found that the unit was exempt from the Rent Adjustment Ordinance as a single-family residence. This was based on the fact that there were no other buildings on the property, the owner never rented out the house as separate units, and the property was always rented to a single party. On appeal, the tenant argued that The tenant argued that the property has been rented to them for residential living and that it was rented to others previously, even though the property was previously a dental office and storage unit and is not zoned as a residential property. The Board remanded the case back to the Hearing Officer, as the definition of residential real property was not met, therefore Costa Hawkins does not apply; and for the Hearing Officer to hold a hearing to address the tenant's alleged decreased housing services claims.

b. <u>New Construction Exemptions</u>

T18-0400 ***Abernathy v. Best Bay Apartments***
Board Panel affirmed Hearing Decision dismissing tenant's petition contesting a rent increase on the grounds of new construction. At the Hearing, the owner submitted a finaled permit from 1989 with a project description "New 32 Unit Apt Bldg."

L17-0212 ***Shen v. Tenants***
Board affirmed Hearing Decision that granted owner petition for exemption based on new construction but corrected decision to reflect that subject 6-unit apartment building was not built on an empty lot but behind an existing single-family dwelling on the same parcel.

L17-0177 ***Dichoso et al v. Tenants***
Board affirmed Hearing Decision that a lower unit in a duplex that was formerly a single-family residence was exempt as new construction but remanded case for Hearing Officer to determine whether upper unit was new construction. On remand, the Hearing Officer found that the original residence was demolished and rebuilt except for two walls, therefore it was exempt as new construction.

L17-0126 ***DeZarenga v. Tenants***
Board affirmed Hearing Decision denying exemption on the basis of new construction because there was no net addition of new units, simply a one for one replacement of two residential units. (This Decision was overturned by Superior Court.)

L17-0120 ***Bergen v. Tenants***
Board affirmed Hearing Decision that granted exemption from the Rent Ordinance for a new ground floor unit as new construction where the owner converted a single-family residence into two units by raising the original house and constructing a new unit on the ground floor. The decision held that the second floor was a pre-existing residential unit and was not exempt from the Rent Ordinance.

L17-0061 ***Feiner v. Tenants***
Board affirmed Hearing Decision granting exemption from the Rent Ordinance on the grounds of new construction for two new units (B and C) that were built when the owner "gutted" the existing house (Unit A), raised it, and added units B and C underneath. The Board remanded to the Hearing Officer the issue of whether Unit A was exempt. The remand decision found that Unit A was not exempt either on the basis of new construction or substantial rehabilitation.

T17-0390 ***Allen v. Casalongue***
Board Panel affirmed Hearing Decision that granted tenant petition challenging rent increase where Owner did not appear for Hearing because he was granted an exemption for the same property in a previous case. Hearing Decision stated that exemption could not be granted without owner meeting burden of proof to establish exemption. Board Panel explicitly found that there was no good cause for owner not to appear at underlying hearing.

T17-0173 ***Cortes v. Wong***
L17-0068 ***Yip v. Tenants***
Board rejected the Hearing Decision which held that the portion of the new building that was built in the footprint of the prior building was not "new construction" and held that the footprint of the old structure is not relevant. According to the Board, there is no "footprint" requirement in the Rent Ordinance or Regulations. The Board affirmed that the entire building is exempt from rent control.

T16-0377 ***Buggs v. Bay Property***

Board reversed a Hearing Decision that had improperly held that because a unit that had previously been on the premises was a residential unit, that the new 10-unit building was not exempt as "New construction." The subject unit is exempt because it was entirely new construction, even though a formerly residential unit was on the property.

T15-0269 ***Attarzadeh v. Lin***
L15-0060 ***Lin v. Tenant***
Board affirmed Hearing Decision granting Owner Petition and denying Tenant Petition that the subject unit, a condominium in a complex constructed in 2008 (with a certificate of occupancy issued in 2009) was exempt from Rent Adjustment Program as new construction.

T15-0202 ***Rodriguez v. Taplin***
T15-0203 ***Lopez v. Taplin***
Board affirmed Hearing Decision denying owner's exemption claim on the basis of new construction and granting tenants' rent restitution due to lack of RAP Notice, because there was a prior dwelling unit in the lower level of the subject building.

L15-0061 ***4CH Inc. v. Tenants***
Board affirmed a Hearing Decision based on substantial evidence which granted a new construction exemption to residential units on the 3rd and 4th floor of the subject building because the units received a Certificate of Occupancy in 2008 and there was no evidence of prior residential use.

T12-0112 ***Williams v. Best Bay Apartments***
Board affirmed Hearing Decision that found building exempt as new construction based on finaled permits, even though certificate of occupancy was unavailable due to Oakland Building Department records being lost in 1989 earthquake (decision took official notice of decision in T05-0110 Peacock et al v. Vulcan Props. LP).

T11-0109 ***Kinyua v. BRE Properties***
Board affirmed Hearing Decision that denied tenant petition based on owner establishing that the property (282 apartment units with certificates of occupancy dated June 2001) was exempt from the Ordinance as new construction.

T05-0110 ***Peacock et al v. Vulcan Properties***
Board affirmed Hearing Decision denying tenant petition (contesting rent increase and claiming decreased services) on basis of building being exempt as new construction and rejected tenant's claims that Hearing Officer could not call City of Oakland witness to explain documents at second day of hearing.

T04-0163 ***Garsson v. Collins***
Board remanded Hearing Decision granting tenant's petition challenging rent increase where owner claimed tenant's unit was commercial (not residential) and that it was exempt from the Ordinance as new construction. Board found unit was residential, but remanded case to Hearing Officer to determine if it was exempt based as new construction. On remand, Hearing Officer found that it was not exempt and granted tenant's petition because unit had been used for residential purposes since 1980, although owner was excused from obtaining a certificate of occupancy because those were not available for live-work conversions until 2004.

T01-0178 ***Parfait v. Miller***

The Board overturned an Administrative Decision which granted the tenant's petition because the owner did not file a proper response, pay the filing fee or submit evidence of a business tax certificate, but the owner did send a letter claiming that the unit was exempt as new construction. At the appeal hearing the Board voted to take evidence on the issue of exemption and declared that the property was exempt as new construction.

T00-0425 ***Johnson v. Obando***

Board remanded Administrative Decision (dismissing tenant petition on the grounds that the RAP program did not have jurisdiction due to new construction) for remand hearing on owner's exemption claim because certificate of occupancy for alteration and repairs (and not for new construction) was insufficient to establish exemption. On remand, petition was administratively dismissed when tenant petitioner failed to appear.

T00-0410 ***Piedra v. Wong***

Board reversed Administrative Decision (granting tenant's petition contesting rent increases) on the grounds of new construction, where the owner did not submit a response but submitted a copy of the building permit showing the date of construction was after 1983. The Board further determined that the HRRRB had no jurisdiction over the subject property.

T18-0372 et al., Amory et al. v. Green Sage

The hearing officer decided that the property was exempt on the basis of new construction because a Certificate of Occupancy was issued in 2011, and there was no evidence of residential use prior to January 1, 1983. On February 24, 2022, the Board remanded the hearing decision in part for reevaluation (1) reconsider the burden of proof and re-evaluate whether the record contains a preponderance of any evidence that the landlord has met their burden of proof, demonstrating that there was no prior residential use at any time before the conversion occurred and that the certificate of occupancy was obtained on or after 1983; (2) re-evaluate prior decision in light of the fact that Oakland has a live-work space exemption; and (3) re-evaluate the decision in light of the lack of temporal limitation on residential use prior to conversion.

L19-0257, Underwood v. Tenants

This case involved an owner appeal, which was previously brought to the Board in January 2022—however, the parties did not show up to the appeal hearing, so the Board dismissed the appeal. The owner filed a petition for a certificate exemption for three units: 763, 765, and 767 15th Street, on the basis that the units were exempt from the Rent Adjustment Ordinance on the grounds of new construction. The Hearing Officer found that the 763 and 765 units did not qualify for the new construction exemption because the units fell within the footprint of the prior residential building—however, the 767 15th Street unit qualified for the new construction exemption because it did not fall within the footprint of prior residential use. The owner appealed the Hearing Decision, arguing that 763 15th Street qualifies because it is new construction and is not redevelopment of the existing unit. The owner contended that he tried to obtain a certificate of occupancy from the City, but the City only provided a certificate for 767 15th Street and not 763 15th Street.

Board found that there was good cause for nonappearance at the previous appeal hearing due to the parties not receiving notice of the appeal hearing and to reverse the Hearing Officer's decision as it relied on the principle of footprint, which has been rejected by other rent boards—and to remand the case back to the Hearing Officer for a new hearing to consider whether unit 763 only is exempt from the Rent Ordinance under the concept of new construction and based on the certificate of occupancy or last finalized permit.

L22-0028, Richerson v. Tenants

This case involved an owner petition for a certificate of exemption for properties on Magnolia Street. The Hearing Officer granted the petition based on evidence that the two units were converted from non-residential use to residential use without any evidence of prior residential activity. However, the Hearing Officer also decided that even though the properties are exempt from the Rent Ordinance, they were not exempt from the Just Cause Ordinance because they were not built from the ground up, which is required for an exemption from the Just Cause Ordinance. Since the property is not exempt from the Just Cause Ordinance, the Hearing Officer also decided that the property is subject to the rent program service fee. The owner appealed the decision and argues that he was not aware that the hearing would decide whether the property was subject to the Just Cause Ordinance, and that even though the properties were converted, they should be considered built from the ground up according to the zoning laws. The board affirmed the Hearing Officer's decision.

L19-0013 etc., Vulcan Lofts, LLC v. Tenants

The Hearing Officer granted the property owner's exemption petition and dismissing the tenant petitions. The Hearing Officer found that the evidence established that the property was newly constructed after the purchase of the property in December 1985—and that the property was not residential before the purchase. The Hearing Officer also found that the residential occupancy started after the purchase in 1985, and that the certificate of occupancy was finalized on October 20, 1987. Based on these findings, the hearing decision concluded that the owners had met their burden of proof to establish that the property received a certificate of occupancy after January 1, 1983—and therefore, the subject property is exempt from the Rent Adjustment Ordinance. The Board remanded the case back to the Hearing Officer for a determination on the exemption based on the Amory v. Green Sage decision. For clarification, to qualify for an exemption, the property must have been entirely non-residential—i.e., no residential use, prior to the issuance of the certificate of occupancy. If the Hearing Officer determines that the property is not exempt, the Hearing Officer is to conduct a hearing and make a decision on the tenant petitions based on the merits.

L19-0013, Vulcan Lofts LLC et al. v. Tenants (Mar. 5, 2026)

Issue: Long-running dispute over new construction exemption, tied to pre-Certificate-of-Occupancy residential use.

Hearing Officer Remand Decision (2025): Found property exempt, concluding no residential use existed before Certificates of Occupancy in 1987.

Tenants' Appeal: Argued substantial evidence of pre-1987 residential use and misapplication of *Armory v. Green Sage*.

Board Decision (Feb. 12, 2026): Reversed Hearing Officer; found substantial evidence of pre-COO residential use. Property not exempt. Remanded all tenant petitions for merits hearings. Requested new Hearing Officer for remand. Vote: 6–0.

c. Stock Cooperatives Can Be Exempt if Proper Evidence is Presented

T13-0083 ***Bissell v. Kreuzer***
Board affirmed Hearing Decision denying exemption as a stock cooperative because owner did not meet burden of proof. Board held that decision was not binding on subsequent litigation between the parties.

d. Substantial Rehabilitation Exemptions (based on prior law)

L18-0161 ***Jackman v. Tenants***
Board affirmed Hearing Decision that denied substantial rehabilitation exemption on timeliness grounds (project not completed prior to start of moratorium and owners did not provide good cause for relief from moratorium). Hearing Decision also found that owners did not meet 50% threshold for average costs of new construction.

L17-0165 ***Kuhner v. Tenants***
Board remanded Hearing Decision to correct the calculation using the correct amount per square foot and to review proof of payment for certain items. On remand, the Hearing Officer recalculated the threshold amount and reviewed the proofs of payment but determined that the building had not been substantially rehabilitated.

L17-0132 ***Freeland Cooper & Foreman, LLP v. Tenants***
Board affirmed Hearing Decision which denied an exemption for substantial rehabilitation on the grounds that the owner did not meet the burden of proof as to the costs of the project. The owners had not been able to establish how much of the money spent was for the work that was done on the exterior of the building, which is not counted in a substantial rehabilitation case.

L17-0103 ***JDW v. Tenants***
Board dismissed the appeal contesting denial of substantial rehabilitation petition due to failure of the owner to appear subject to showing of good cause.

L17-0083 ***Abidi v. Tenants***
Board affirmed Hearing Decision denying substantial rehabilitation exemption due to owner's failure to provide copies of contracts, invoices, and proofs of payment for the work performed.

L17-0062 ***Kahan v. Tenants***
Board affirmed Hearing Decision denying an exemption due to owner's failing to meet his burden of showing what work was done and the value of the work based on invoices and proofs of payment as required by the Ordinance.

L17-0024 ***Cordaro v. Tenants***
Board Panel affirmed Hearing Decision that denied an exemption for substantial rehabilitation on the grounds that the owner did not meet the burden of proof because he provided invoices but no proof of payments for the costs of the work that was done.

L17-0018 ***Ghahyaz v. Tenants***

Board affirmed Hearing Decision denying substantial rehabilitation exemption where the owner took thirteen years to complete the project, because the owner's explanations for his failure to complete the project within two years did not constitute good cause.

L16-0094 ***Wiebe v. Tenants***
Board upheld denial of substantial rehabilitation exemption where owner did not provide proof of payments and invoices to establish the necessary expenses to qualify for substantial rehabilitation. Owner filed a writ in Superior Court and a settlement agreement was reached to allow owner to produce all the necessary documents. On remand, certificate of exemption was granted because owner provided sufficient evidence to establish that he had spent ½ the cost of new construction with the proper permits.

L16-0070 ***Oakvel Enterprises v. Tenants***
Board panel affirmed Hearing Decision denying substantial rehabilitation exemption on grounds that there was no invoices and proofs of payment for many of the claimed costs.

L16-0056 ***Khanna v. Tenants***
Board affirmed Hearing Decision denying substantial rehabilitation exemption on grounds that Rent Board policy requires invoices, agreements, or proofs of payment for work that was done on the building despite the fact that the current owner was unable to obtain this information because the building was sold pursuant to a deed in lieu of foreclosure to the prior owner.

L16-0048 ***Truckee Zurich Place, LLC v. Tenants***
Board affirmed Hearing Decision denying substantial rehabilitation exemption on the grounds that the owner did not complete the work within a two-year period and did not provide sufficient documentation of the expenses incurred.

L15-0016 ***Nand LLC v. Tenants***
Board remanded Hearing Decision for Hearing Officer to determine if the building's square footage includes the deck and, if not, to re-calculate the square footage to include the deck. On remand, the Hearing Officer determined the deck had not been included, re-calculated the square footage, and found that the owner had spent enough to be granted an exemption based on substantial rehabilitation.

L12-0052 ***Isenberg v. Tenant***
Board affirmed Hearing Decision that denied an exemption for substantial rehabilitation on grounds that repair of units with insurance money is not covered by substantial rehabilitation provision of Rent Ordinance. This decision was then overturned by the Superior Court which held that the RAP could not deny substantial rehabilitation claims because the work was done with insurance proceeds.

e. <u>Prior Ruling of Exemption Can by Overturned if Fraud or Mistake is Shown</u>

T16-0258 ***Sherman v. Michelsen***
In response to the property owner appeal, the Board affirmed a Hearing Decision ruling that a prior decision that had held that a unit was exempt as new construction was based on fraud committed by the property owner (L13-0054); that the RAP had the authority to determine

whether that earlier decision was based on fraudulent testimony and was not precluded by res judicata or collateral estoppel; that the property had been used as a residential property with the property owner's knowledge prior to the new construction date; and in light of these facts, the RAP would file a Recission of the Certificate of Exemption previously granted. Additionally, in response to the tenant appeal, the Board remanded the case to the Hearing Officer to determine the correct rent amount and amount of restitution owed to the tenant. At the Remand Hearing the parties settled the case. (See more information about this case in Restitution, § 7.)

T19-0384 Salvador v. Fong

Tenant filed a petition contesting a certificate of exemption that was granted in a prior case, alleging that the owner's testimony at the initial hearing was false, and the exemption was therefore based on fraud and/or mistake. Board remanded to the hearing officer for a limited scope hearing on the claim of fraud. On remand, the Hearing Officer agreed that there had been fraud or mistake and that the certificate of exemption should not have been issued. The Hearing Officer found that there had been fraud or mistake because the certificate of exemption was issued based on the representation that the unit was a separate condo; and because there were misrepresentations about the layout of the property. The unit is not its own condo—it is a unit as part of the structure that contains 2 separate units. At the prior hearing for the certificate of exemption, the owners denied the existence certain documents, such as the CC&Rs, and stated that they were verbal—both of which were not true. Discovery of the CC&Rs demonstrated that the parcel map conflicted with the actual layout of the property and the tenant's petition was granted. The Board upheld the Hearing Officer's remand decision on the basis that the determination made by the Hearing Officer, that there was mistake or fraud, was supported by substantial evidence.

8. Exemptions-Temporary

a. <u>Owner Occupied Duplex/Triplex (Prior Law)</u>

L17-0093 ***Page v. Tenant***
T17-0146 ***Ross v. Page***
Board affirmed Hearing Decision that denied a tenant petition against an Owner who rented out two bedrooms in a four-bedroom house and lived in one of the other bedrooms, on the basis of a temporary triplex exemption from the Rent Control ordinance. The Hearing Officer also denied the Owner's petition for a permanent exemption because he rents out multiple rooms to multiple different people.

T14-0284 ***Jin v. Ha Lee***
Board affirmed Hearing Decision that denied owner's exemption claim (and granted tenant's challenge to rent increases based on lack of RAP Notice and decreased service claims) because owner rented out several rooms (including one to tenant) in the side of the duplex that owner lived in, as well as several rooms in the other half of the duplex.

b. <u>Rent Regulated by Other Governmental Agency</u>

T15-0618 ***Ross v. Claridge Hotel***
T15-0635 ***Anderson v. Claridge Hotel***
T15-0636 ***Mason v. Claridge Hotel***
Board affirmed Hearing Decision that granted exemption in one case (T15-0618) where owner had filed a timely response and based on a Tax Credit Allocation Committee (TCAC) Regulatory Agreement governing the building's rents. Board also upheld the denial of the exemption in cases T15-0635 and T15-0636 where the owner filed an untimely response at the Hearing below without good cause and failed to appear at appeal hearing.

T15-0176 ***Graves v. Claridge Hotel***
Board Panel affirmed Hearing Decision that denied tenant's decreased services petition because building was exempt from the Rent Adjustment Ordinance based on a TCAC Regulatory Agreement governing the building's rents.

9. Extension of Time For Vacancy

a. **Board denies Appeal of Extension of Time for Tenant Vacancy when Owner Failed to Produce** sufficient evidence

E18-0012 ***Homes East Bay 4 LLC v. Tenants***
E18-0013 ***Homes East Bay 4 LLC v. Tenants***
E18-0014 ***Homes East Bay 4 LLC v. Tenants***
E18-0015 ***Homes East Bay 4 LLC v. Tenants***
E18-0016 ***Homes East Bay 4 LLC v. Tenants***
E18-0017 ***Homes East Bay 4 LLC v. Tenants***

Board affirmed a Hearing Decision based on substantial evidence which denied the owner's right to extend time for vacancy where owner failed to submit sufficient documentation, the reason for the non-submission was legally insufficient, and the original building permit was taken out in late 2017, but the petition was not filed until November 2018.

10. Hearing Procedures

a. Hearing Procedures – Generally

T19-0359 ***Kelly v. Claridge Hotel LP***
Board affirmed Hearing Decision dismissing petition pursuant to tenant's request at the Hearing despite tenant's assertion at the Appeal Hearing that he had requested a continuance and not a dismissal. Board listened to audio of underlying Hearing to make its determination that a dismissal was requested.

T14-0283 ***Schoren v. McClain***
Board affirmed Hearing Decision (with correction of numerical error in underlying decision) that denied owner's claim of increased rent based on banking where owner failed to check that box on owner response.

T10-0080 ***Cortez v. Wang***
Board affirmed Corrected Hearing Decision (granting tenant challenge to most recent increase and denying challenges to other increases as untimely, along with denying decreased services claims) despite tenant's assertion on appeal that Hearing Officer was biased and unethical because original decision inadvertently omitted some of tenant's decreased services claims.

T05-0110 ***Peacock et al v. Vulcan Properties***
Board affirmed Hearing Decision denying tenant petition (contesting rent increase and claiming decreased services) on basis of building being exempt as new construction and rejected tenant's claims that Hearing Officer could not call City of Oakland witness to explain documents at second day of hearing.

T01-0562 ***Galvez v. Horizon Management***
T01-0561 ***Aguirre v. Horizon Management***
T01-0560 ***Martinez v. Horizon Management***
T01-0559 ***Gameros v. Horizon Management***
T01-0558 ***Maldonado v. Horizon Management***
T01-0550 ***Garcia v. Horizon Management***
T01-0549 ***Martinez v. Horizon Management***
In a case where the author of the Hearing Decision was not the Hearing Officer who heard the case, the Board upheld the Hearing Decision with respect to tenant's appeals, but remanded case due to clear discrepancies between findings of fact and documentary evidence in the record as to owner's appeal because of manifest discrepancies between the record and the Hearing Decision and as to the tenant in the Garcia case, a determination as to whether the tenant could contest rent increases given more than 3 years prior to petition filing. On Remand, the Hearing Officer held that tenant Garcia did not contest rent increases served more than 3 years prior and held that tenants who were monolingual Spanish speakers were required to be served the RAP Notice in Spanish.

b. Hearing Procedures – Evidence

T11-0105 ***Kidd v. Ly***

Board affirmed Hearing Decision denying tenants' decreased service claims but modified Decision to remove finding that tenants were not current in rent because there was not substantial evidence to support this finding.

T10-0073 ***Hunter-Nicholson v. Hogan & Vest***
Board remanded Hearing Decision that granted tenant's challenge to rent increase based on lack of RAP Notice but denied decreased services claims for determination of whether tenant had good cause to submit documents less than seven days before Hearing. Board also directed Hearing Officer to exclude from evidence an elevator permit that Hearing Officer observed during site inspection. On remand, Hearing Officer found no good cause for failure to submit documents on time, but partially granted tenant decreased services claim regarding elevator.

T19-0454 **Lee v. Harvest Real Estate**
Board remanded case for an additional hearing to consider evidence that was submitted but left out of the case file at the time of the hearing. Evidence.

c. <u>Failure for Respondent to Appear at Hearing Can Result in Decision Against Respondent</u>

T01-0446 ***Occena v. Binion & Associates***
Board affirmed a Hearing Decision where it was found that rent increase was invalid for lack of required RAP Notice and for failure to comply with Civil Code § 827 and where owner did not appear at hearing despite owner's claim that he did not get proper notice of the hearing.

d. <u>Good Cause (or Lack Thereof) for Failure to Appear at Hearing Effects Board Decision</u>

T19-0307 **Edwards v. Lam**
Board remanded case to Hearing Officer to determine if owner had good cause for failure to appear and failure to file a response where owner alleged that she did not read or write English and did not recall receiving any documents from the RAP. On remand, the Hearing Officer determined that the tenant had communicated in written English with the owner and her son on a regular basis and had informed them that she filed a petition with the RAP and that therefore there was no good cause for the failure to appear at Hearing or respond to the petition.

T18-0493 ***Peoples v. Ma***
Board remanded case for new hearing on the merits where Owner contended on appeal that he did not appear for Hearing (tenant challenged rent increase based on more than one rent increase in a year) because RAP office informed him that tenant's initial petition had been dismissed and he never received notice of second petition.

T18-0218 ***Durrett et al v. Guiton***
Board Panel found no good cause for owner's failure to appear at a Hearing where the Hearing Decision awarded restitution to tenants for several decreased housing services. Board Panel remanded case to Hearing Officer to determine if any of the tenant petitioners were tenants at the time the petition was filed and determined that restitution was contingent on such a finding.

T18-0172 ***Embaye v. Amin***
T18-0183 ***Embaye v. Amin***
Board reversed Hearing Decision dismissing tenant's petition for failure to appear at Hearing based on tenant's assertion on appeal that he had moved out of the unit and did not receive notice of the Hearing and remanded for a Hearing on the merits. Subsequent hearing dismissed when tenant failed to appear.

T17-0577 ***Patrick v. Um et al***
Board affirmed Hearing Decision granting tenant's petition contesting a rent increase based on no RAP notice where the owner did not appear at the hearing and the Board found the owner did not provide good cause for his failure to do so.

L16-0075 ***Stewart v. Tenant***
Board panel affirmed Hearing Decision denying owner's capital improvement petition due to owner's not showing good cause for failing to appear at the hearing despite owner's claim that he did not believe he had to appear because tenant did not file a response to his petition.

L15-0074 ***Ghahyaz v. Tenants***
Board affirmed Hearing Decision dismissing owner's petition for certificate of exemption due to lack of showing of good cause for failure to appear at the hearing because he did not meet his burden of showing that he had not received notice of the hearing.

T14-0237 ***Daniels v. Do***
Board Panel remanded case to Hearing Officer to determine if the tenant had good cause for failure to appear at the Hearing where tenant alleged he was sick on the day of the Hearing and wrote the wrong date for the Hearing on a piece of paper despite the fact that the owner claimed at the Appeal Hearing that the tenant was not current on his rent at the time the petition was filed, a wrongful detainer had been filed against the tenant and the parties settled and the tenant was longer living on the premises. The tenant did not appear at the Remand Hearing and the case was dismissed. (note: It was unclear whether the RAP had a correct address for the tenant at the time the Remand Hearing was set.)

T13-0312 ***Harris v. Best Bay Apartments***
Board Panel affirmed dismissal of tenant's petition where tenant did not appear at Hearing subject to showing of good cause for non-appearance. (Tenant also did not appear at Appeal Hearing.)

T13-0138 ***Rax v. Eng***
Board affirmed dismissal of tenant's petition where tenant did not appear at Hearing.

T12-0072 ***Quinn v. Nakama***
Board affirmed dismissal of tenant's petition where tenant did not appear at Hearing (tenant asserted on appeal she could not appear because she was attempting to obtain a restraining order against owner).

T03-0135 ***Scott v. Lipscomb***
T03-0148

Board affirmed Administrative Dismissal where tenant did not appear at time set for Mediation even though he appeared later that day at time set for Hearing because Notice of Mediation stated that petition would be dismissed if petitioner failed to appear for mediation.

T01-0595 ***Salaam v. Rose Ventures III, Inc.***
The Board upheld an Administrative Decision that dismissed a tenant petition when the tenant failed to appear at the original hearing despite the tenant's claim of a medical condition preventing his arrival.

00-409 ***Salaam v. Rose Ventures III, Inc.***
The Board upheld an Administrative Decision that dismissed a tenant petition when the tenant failed to appear at the original hearing despite the tenant's claim of a medical condition preventing his arrival.

T19-0410 **DeLuna Garcia v. Chang**
Owner failed to attend a hearing due to lack of notice. The notice of hearing was mailed to one of the owner's rental properties, not to the owner's primary residence. Owner contended that the tenant's representative should have checked court records showing his address on the deed of trust. Board upheld the hearing decision and found that the owner did not have good cause for failure to appear, since California law requires landlords to provide their contact information in rental agreements and the landlord had not done so in this case. Failure to attend, lack of notice, owner contact information required in lease.

L22-0057 **Bajaj v. Tenants**
Owner's petition was dismissed due to owner's nonappearance at hearing scheduled over Zoom. On appeal, the owner argued that they should receive a new hearing because they never received a Zoom link to the hearing, despite requesting it from RAP before the hearing. The board remanded the base back to the Hearing Officer for a full hearing, as there was good cause for the owner not to be present at the hearing.

e. <u>Failure to Submit Response Affects Outcome if There is No Good Cause</u>

T19-0307 **Edwards v. Lam**
Board remanded case to Hearing Officer to determine if owner had good cause for failure to appear and failure to file a response where owner alleged that she did not read or write English and did not recall receiving any documents from the RAP. On remand, the Hearing Officer determined that the tenant had communicated in written English with the owner and her son on a regular basis and had informed them that she filed a petition with the RAP and that therefore there was no good cause for the failure to appear at Hearing or respond to the petition.

T19-0294 ***Schlageter v. Mael***
Board affirmed Hearing Decision invalidating rent increases based on lack of RAP Notice and granting rent reduction plus rent restitution for a number of decreased services when the owner

failed to submit a response and he asserted at the hearing that he was a new owner and thought he could just appear at hearing and resolve the matter.

T18-0310 ***Alkebsi v. Noori***
Board Panel affirmed Amended Hearing Decision invalidating a rent increase based on lack of RAP Notice and granting rent reduction plus rent restitution over a period of up to three years for a number of decreased services where the owner appeared at the rescheduled Hearing but failed to submit a response and did not provide a reason for that failure.

00-361 ***Colbert v. Ngow***
Board upheld a Hearing Decision invalidating a rent increase where the owner was not allowed to present evidence at a Hearing because the owner did not file a response. While the owner's representative provided evidence at the Hearing that the owner was very ill, this fact did not provide good cause for failure to file a response because the owner representative provided information that she was the property owner's agent and had been managing the affairs of the property at the time the notice of the tenant's petition had been sent to the property owner.

T23-0075 **Willis v. Godwin Properties**
Board remanded the case back to the Hearing Officer for a limited hearing on the issue of whether or not the owner filed the owner response where the owner testified she mailed the owner response, the tenant responded to the owner response, but RAP never received the owner response.

T25-0161 – Moran v. De Jesus Guzman (Mar. 5, 2026)
Issue: Tenants challenged rent increases from 2020–2024, alleging no RAP Notice ever provided.
Hearing Officer Decision: Owner did not respond. All increases invalid. Tenant overpaid $28,560.58. Ordered restitution: $1,050/mo for 27 months + $210.58.
Owner's Appeal: Claimed factual inaccuracies, confusion about fees for parking, verbal improvement agreements, language barriers, mediation misinformation.
Board Decision: Found good cause for owner's failure to respond based partly on owner's limited English proficiency. Remanded for full hearing. Owner gets 30 days to file a response. Hearing Officer must ensure language access. Any restitution must begin no earlier than Sept. 22, 2022 (three years before petition). Vote: 6–0.

f. **<u>Prior Litigation Between the Parties Can Impact Outcome</u>**

T18-0480 ***Beasley v. Horejsi***
T17-0523
T16-0549
Board considered three different cases between parties, the earliest two which had been previously remanded (on remand, the Hearing Officer decreased the restitution amount awarded to the tenant because the restitution period should have begun the day after the parties entered into a stipulation in Superior Court). Board affirmed most recent Hearing Decision that denied tenant petition because the owner was justified in issuing rent increase based on banking and decreased service claims were included in a prior settlement agreement, except for new claim (burnt out refrigerator light bulb). Regarding the new claim, the tenant failed to sustain burden of proof and claim was denied. Board directed Hearing Officer to review

two previous decisions in light of affirmed T18-0480 decision. On remand, Hearing Officer found previous decisions conformed with T18-0480.

T12-0071 ***Austin v. Schrader***
Board remanded case for binding arbitration where prior settlement agreement between parties provided for binding arbitration of any dispute between parties before RAP staff, with no right of appeal to the Board. On remand, Hearing Officer denied tenant's rent increase challenge and decreased services claim.

T09-0150 et al ***Foster et al v. Howard***
Board affirmed Hearing Decision granting tenants' challenge to rent increases due to lack of RAP Notice and denying tenants' decreased services claims, where owner appellant raised same arguments (that the termination of HUD subsidy did not constitute a rent increase, that the Civil Code precluded application of the RAP Ordinance, that the Hearing Officer was not a neutral adjudicator, and that pending litigation governed issues between parties) as in two previous finalized Hearing Decisions that were issued against owner.

T19-0514 Green v. Mosser Companies Inc.
Hearing officer did not have authority to issue an order based on an unsigned settlement agreement. Case remanded for a hearing with a hearing officer. Settlement unenforceable where no signed, written agreement between the parties.

T20-0054, McQuillon v. JJCM Investments
T19-0313, McQuilliion v. American Liberty
T19-0510, McQuilliion v. American Liberty

Tenant petition contesting several rent increases was dismissed via administrative decision on the grounds that the parties signed a settlement agreement precluding the claims, and therefore the court assumed jurisdiction. Tenant's argument that the settlement only released the prior owner and not the current one was rejected. Board affirmed based on substantial evidence.

g. <u>Reasonable Reliance Can Be Considered in Allowing Party to Proceed With Claims</u>

T15-0263 ***Panganiban v. Chang***
1st appeal: Board remanded Hearing Decision that denied some of tenant's decreased housing services claims on timeliness grounds. The Board held that the 60-day filing period did not begin until a reasonable period after an owner asserts that he will make repairs but fails to do so; therefore, the Hearing Officer was directed to review the evidence in the record to determine whether the tenant reasonably relied on such an assertion. On remand, Hearing Officer found no evidence of reasonable reliance. 2nd appeal: Board dismissed appeal of remand decision because tenant representative left appeal hearing after making an initial statement.

T02-0143 ***Tengeri v. Wai Louie***
T01-0320 ***Tengeri v. Allen Associates***
00-0132 ***Tengeri v. Allen Associates***

Board upheld a series of prior decisions (including a Remand Decision) based on substantial evidence. In earliest case (00-0132), Board had sent case back to Hearing Officer to determine if property owner had reasonably relied on statements from Hearing Officer and staff to withdraw certain rent increase justifications. On Remand, the Hearing Officer allowed a $53.10 per month rent increase based on increased housing service costs and a $1.53 monthly increase based on capital improvement costs. (Note: This case was decided under prior Ordinance.)

11. Jurisdiction

a. <u>Workspaces Can Be Covered Units</u>

T02-0157 ***Sinick v. Wengerd***

Board remanded Administrative Decision that dismissed tenant petition for lack of jurisdiction on basis of unit being a workspace, and not a rental unit, based on rental agreement between parties in prior case (T01-0253). On appeal, tenant claimed unit was a "live-work space." Board directed Hearing Officer to determine if unit was subject to ordinance. Remand was administratively dismissed because parties reached an agreement.

T01-0462 ***Williams v. Price***

Board affirmed Hearing Decision which found that the unit was exempt solely as a single-family residence even though the owner's response alleged the unit was not subject to the RAP because it was a commercial, and not residential, unit because a childcare center was being run on the premises. The Hearing Decision found that the commercial enterprise did not prevent jurisdiction because the tenant also lived in the unit.

b. **<u>The RAP Has No Jurisdiction Over Retaliatory Eviction, Improper Service of Eviction Notices, Security Deposit Claims or Civil Rights Violations</u>**

T01-0577 ***Tatum v. Maisel Property Management***

Board administratively dismissed a tenant appeal which contested a Hearing Decision that held that the RAP had no jurisdiction to determine a retaliatory eviction. The appeal was dismissed because of the RAP's lack of jurisdiction over all the tenant's claims, including retaliatory eviction, improper service of eviction notices, failure to refund security deposit or civil rights violations.

c. <u>A Property Owner Must Make the Claim that RAP Does Not Have Jurisdiction Because of An Exemption in A Timely Fashion or a Decision May Be Made Against the Owner</u>

T01-0099 ***Hill v. Brown***[3]

Despite the property owner's claim that the unit was exempt under Costa-Hawkins, the Board upheld an Administrative Decision that denied a rent increase where the property owner response was filed late, the RAP Notice was not served as required, and the rent increase notice was not served in compliance with Civil Code § 827.

d. <u>Even Where a Property Owner Does Not Properly Respond to Tenant Petition the Board Can Overturn a Decision Where Undisputed Evidence Exists that the Unit is Exempt</u>

T01-0178 ***Parfait v. Miller***

[3] The RAP Program does not currently have a signed copy of this Appeal Decision.

The Board overturned an Administrative Decision which granted the tenant's petition because the owner did not file a proper response, pay the filing fee or submit evidence of a business tax certificate, but the owner did send a letter claiming that the unit was exempt as new construction. At the appeal hearing the Board voted to take evidence on the issue of exemption and declared that the property was exempt as new construction.

T24-0092 ***Gold v. Mill Creek Residential***
The Board affirmed an administrative decision which had denied tenant petition due to a prior decision that had determined the property was exempt from the Rent Adjustment Ordinance on the basis of new construction. Board affirmed despite tenant appeal that owner should not have been able to submit response, including providing prior case, due to lack of compliance with owner filing requirements.

T14-0150 ***Harris v. Sullivan Management***

Board remanded hearing decision to determine if RAP has jurisdiction under Costa Hawkins.

T24-0138 **Little v. Advent Properties**

The hearing officer issued an administrative decision granting the tenant petition against a rent increase. The owner filed a response claiming exemption only after the administrative decision was issued and then asserted exemption on appeal. Board found that the appellant failed to demonstrate good cause for failing to file a response. However, the Board found that jurisdiction is at issue; therefore the Board remanded the matter for a hearing. At the hearing, the owner shall be limited to the provisions of Regulation 8.22.110(E), and they shall be allowed to submit evidence concerning exemption/jurisdiction. At least seven days before the hearing, both sides are allowed to submit any written documents concerning exemption to RAP, along with a proof of service stating they serve these documents to the opposing party.

12. Petition Filing Requirements

a. A Tenant Must be Current on Rent In Order to File a Petition

T17-0572 ***Hetelson v. Cleveland***
Board upheld Hearing Decision dismissing tenant's petition challenging rent increases and alleging decreased services where tenant was not current on rent and where Hearing Officer found that the tenant was not justified in paying a lower amount because there was not a substantial breach of the warranty of habitability where the elevator broke down occasionally but the owner repaired it on a timely basis.

T08-0294 ***Pivtorak v. Ma***
Board affirmed Hearing Decision that determined that late charges and tenant's portion of the RAP fee are not part of rent, allowing tenant to proceed with claim despite property owner's assertion that tenant was not current on his rent..

T05-0130 ***Wright v. Christian-Miller***
Board remanded Hearing Decision that denied tenant petition because tenant was not current in rent at time petition was filed because Hearing Officer's reasoning was not clear in initial decision. On remand, then corrected remand, Hearing Officer reached same conclusion as in initial decision. Tenant appealed Corrected Remand Decision, and Board affirmed finding of Hearing Officer.

b. <u>Petitions Must Be Timely Filed</u>

T06-0181 ***Pinnock v. Fong***

Board upheld Hearing Decision that denied tenant's challenge of rent increases based on proper RAP notices having been provided and amount being within CPI and denied tenant's claims of decreased housing services based on untimeliness of laundry room repair claim, lack of sufficient evidence on yard maintenance claim, lack of jurisdiction (car towing), and tenant's failure to comply with owner's repair attempts (water damage).

T22-0015, Fleurentin v. Meridian Management Group
This case involved a tenant petition contesting a rent increase from $1178 to $2800, noticed on April 15, 2020, and effective January 1, 2021. The owner filed a response in February 2022 and the response included a checked box on the section indicating when a RAP notice was first provided—however, in lieu of listing the requested date that it was served, it included text stating "upon acquiring the building and by prior owners". An Administrative Decision was issued in March 2022, and the decision noted that the rent increase notice included the RAP notice, and dismissed the petition for lack of timeliness, citing to OMC section 8.22.090.(A)(2)(a)(i), which requires petitions contesting rent increases to be filed within 90 days of the rent increase notice if the owner provided the RAP notice both at the inception of tenancy and with the rent increase notice. The decision did not address whether a RAP notice was provided at the inception of tenancy. Board found that the record does not contain substantial evidence to support the Hearing Officer's finding that the tenant's petition was filed untimely and to remand the case back to the Hearing Officer for a new hearing.

c. <u>Tenancy Must Be Established Before Petition Can Be Granted</u>

T02-0205 ***Brown v. Bell***
Board upheld Hearing Decision denying tenant's right to contest first rent increase because it was given while he was an occupant of the premises but not yet a "tenant" because owner had not accepted rent from him yet (Petitioner had been living in the unit for several years with other family members as a subtenant). Hearing Decision allowed tenant to contest only the rent increase that was given after the owner accepted rent from him.

d. <u>Owners must provide evidence of service of RAP notice before filing petition</u>

L21-0054, Winters Marital Trust v. Tenants
This case involved an owner petition requesting a rent increase for capital improvements, which was filed in October 2021. The hearing officer dismissed the petition on the basis that tenants in two of the four units (units one and three) were not given the initial RAP notice in required

languages other than English. Since the decision found that all of the affected tenants were not given the complete RAP notices required, the owner's petition was dismissed. The Board affirmed the Hearing decision. [But see Ruelas v. Tenants]

L23-0001 Ruelas v. Tenants

This case involved an owner petition for capital improvement rent increases and it affected a number of units on the property. The Hearing Officer held a number of hearings over three days and in the Hearing Decision, the Hearing Officer dismissed the petition on the basis that two of the RAP notices were defective because the owner did not file evidence that they were served in all three languages as required by the ordinance—which includes English, Spanish, and Chinese. The Board reversed the Hearing Officer's decision to dismiss the petition on the grounds that OMC section 8.22.060B applies only to the filing requirement of the RAP notice; and whereas OMC section 8.22.060C applies to the sufficiency of the RAP notice. Here, there is substantial evidence that the owner filed evidence consistent with OMC section 8.22.060B of providing a RAP notice to each tenant. Any penalties as a result of a deficient notice are to be considered under OMC section 8.22.060C. Additionally, the case is to be remanded to the Hearing Officer to render a new decision applicable to all units. The Hearing Officer may consider the deficiencies of any RAP notices and apply any penalties under OMC section 8.22.060C.

e. <u>Petition must include proof of service by personal service or first-class mail</u>

T23-0011 Rattanamongkhoun v. Fong

This case involved a tenant appeal of a tenant petition that was dismissed by the Hearing Officer on the basis that the tenant did not serve the proof of service via first class mail. The tenant in the petition attached a certified mail receipt and the Hearing Officer ruled that the ordinance requires proof of service by first class mail. Since the tenant did not attach a proof of service by first class mail, the proof of service was invalid. The board found that the tenant satisfied the proof of service requirement and remanded the case back to the Hearing Officer for a full hearing.

T25-0211 Fox v. SG Investments

A tenant filed a petition with a blank proof of service and no cover page. RAP sent the standard 30-day notice of incomplete petition. Two days before the deadline, the tenant emailed what she believed was a cure, but attached only page two of the proof of service, omitting the key service details. RAP acknowledged receipt but did not promptly inform the tenant that her submission remained deficient. After the deadline passed, the Hearing Officer dismissed the petition. The tenant submitted a corrected proof of service the next day. The Board reversed the dismissal and remanded the matter for a hearing on the merits because staff responded to the petitioner's timely effort to comply with the notice of incompleteness but failed to inform her, within the cure period, that the attempted cure was deficient.

f. <u>Owner petition must include all affected tenants</u>

L24-0026 *Samaniego v. Tenants*

After a hearing decision denied owner Fair Return petition due to discrepancies and insufficient supporting documentation, the Board remanded back to the hearing officer to determine whether all tenants were included in the petition and served the petition. Board direction further included that, should the hearing office determine that all tenants were not included or served, to then determine the impact, if any, on the failure to include and/or serve all tenants, and, if the hearing officer determined the petition may move forward, the hearing officer shall provide an analysis regarding the evidentiary standard for fair return.

g. <u>Payment of RAP fee is required for petitions</u>

L250013 – Nesmith v. Tenant (Feb. 3, 2026)

Issue: Owners sought rent increase based on $22,243 capital improvement costs. Fifth unit's RAP fee status was central.

Hearing Officer Decision: Petition dismissed due to owner's failure to pay RAP fee for the fifth unit.

Appeal: Owners argued lack of substantial evidence and incorrect analysis of occupancy.

Board Decision: Found no substantial evidence the fifth unit was subject to fee. Remanded to determine RAP fee applicability and, if exempt, decide petition on merits.

13. RAP NOTICE Requirements

a. RAP Notice generally

T19-0202 ***Pacheco v. Newsome***
Board affirmed Hearing Decision that invalidated a series of rent increases tenant had received based on lack of RAP Notice for all but the most recent rent increase, and setting rent back to tenant's initial rent level, plus granting of rent restitution for the three years prior to petition filing date. (Owner response was filed one day late but allowed by the Hearing Officer.)

T18-0379 ***Alvarez v. Geary***
Board affirmed Hearing Decision that invalidated rent increase based on lack of RAP Notice but corrected error regarding maximum rental amount ($1,300 vs. $1,295) in restitution chart and statement that tenants have 120 days (versus 90 days) to contest a rent increase served with a RAP Notice when the tenant was not given RAP Notice at start of tenancy.

T18-0164 ***Garcia v. SMC East Bay***
Board affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice where tenant claimed he never received the RAP Notice and owner claimed that his company always served RAP Notices but lease did not have RAP Notice attached and owner did not produce the RAP Notice.

L17-0124 ***Bellinger v. Tenant***
C17-0030 ***Madrigale v. Bellinger***
T17-0546 ***Madrigale v. Bellinger***
Board affirmed Hearing Decision that found Owner had not complied with prior Administrative Decision invalidating rent increase and that denied Owner's petition for rent increase (on the basis of banking, capital improvements, increased housing service costs, fair return and uninsured repair costs) because Owner had never served RAP Notice.

T17-0575 ***Titcomb v. Vineyard-Ide***
Board affirmed Hearing Decision where the decision set the rent to move-in rent and granted restitution for overpaid rent because the owner did not serve *RAP Notices* with the rent increases.

T17-0413 ***Piceno v. Hernandez***
T17-0414 ***Avalos et al v. Hernandez***
Board Panel affirmed Hearing Decision that invalidated rent increases for several tenants in different units at the same property based on lack of RAP Notice, set rent back to previous levels, and granted restitution ranging from three to four years of rent overpayments.

T17-0103 ***Worekneh v. Landlord***
Board affirmed Hearing Decision that invalidated four rent increases based on lack of RAP Notice, set rent back to previous level, and granted restitution for more than two years of rent overpayments.

T16-0271 ***Tsay v. DeMara***

Board affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice where Owner appeared at the Hearing but did not have good cause for failing to file a response. Board remanded for the limited purpose of having the Hearing Officer recalculate the overpaid rent for a five-month period and allowing new evidence limited to the issue of how much the tenant had paid for that period. At the Remand Hearing, the owner submitted canceled checks demonstrating that the tenant had not paid the final rent increase, and the Remand Decision decreased the restitution amount owed to the tenant.

T15-0368 ***Bivens v. Ali***
At the Appeal Hearing, Board affirmed Hearing Decision granting tenant rent decrease and restitution and declined to accept new evidence proffered by owner at appeal (which consisted of copies of prior RAP notices signed by the tenant) even though this evidence contradicted tenant's assertion in her petition that she never received the RAP notice, because owner failed to appear at original hearing.

T11-0106 ***Johnston v. Warren***
Board affirmed Hearing Decision invalidating rent increase where the tenant was not given RAP Notice six months prior to the rent increase.

T10-0026 ***Butcher v. Murry***
Board affirmed a Hearing Decision without comment where a rent increase was invalidated because the tenant had not received the RAP Notice at any point during her tenancy.

T06-0051 ***Barajas & Avalos v. Chu***
Board affirmed Hearing Decision that invalidated six (6) years' worth of rent increases on the basis of no RAP notice and granted restitution for three (3) years' worth of rent overpayments and decreased services, denying owner's claim that rent could only be reduced to level three (3) years prior to date of hearing decision.

T05-0292 ***English v. Nero***
Board affirmed Hearing Decision granting tenant petition challenging rent increases on the basis that no RAP notice was served when owner did not respond to tenant petition nor appear at hearing and rejected new evidence owner attempted to introduce for the first time at appeal hearing.

T03-0075 ***Freeman v. Lewald***
Board affirmed Hearing Decision denying owner rent increases because the RAP Notice was never served over the owner's objection that he was being denied a fair return on his investment. Board held that to claim fair return the owner must first establish that he or she had complied with the procedural requirements of the Ordinance.

T02-0291 ***Rouse v. Patino***
T02-0292 ***McQuillion v. Patino***
Board panel affirmed portion of Hearing Decision that granted challenge to rent increase based on untimeliness of RAP Notice.

T01-0446 ***Occena v. Binion & Associates***

Board affirmed a Hearing Decision where it was found that rent increase was invalid for lack of required RAP Notice and for failure to comply with Civil Code § 827 and where owner did not appear at hearing despite owner's claim that he did not get proper notice of the hearing.

T01-0179 ***Lee v. Ma***

The Board upheld a Hearing Decision denying the rent increase where it was found that the owner did not serve the required RAP Notice, did not give the required notice under Civil Code § 827, and that the owner unreasonably withheld consent for subletting. (Note: the Board did strike the word "illogical" from the Hearing Decision at page 4.)

T01-0099 ***Hill v. Brown***

The Board upheld an Administrative Decision that denied a rent increase where the property owner response was filed late, the RAP Notice was not served as required, and the rent increase notice was not served in compliance with Civil Code § 827, despite the owner's claim that the unit was exempt under Costa-Hawkins.

00-422 ***Berson/Omar v. Randle***

The Board upheld a Hearing Decision which held that a rent increase notice that was served without a RAP Notice was invalid.

00-368 ***Knox v Progeny Properties***
00-367 ***Page/Wong v. Progeny Properties***
00-340 ***Dunn v. Progeny Properties***

The Board upheld a Hearing Decision that found that the RAP Notice had not been served with the contested rent increase notices and the determination of proper service is a factual question that will not be overturned where there is substantial evidence to support it. (note the Board also overturned a portion of the Hearing Decision that had wrongfully determined the rent one tenant had paid.)

00-268 ***Frierson et al v. Grand Lake Terrace Apts. LLC***
00-271 ***Searles, Pasarica v. Grand Lake Terrace Apts. LLC***
00-314 ***Kinyua v. Grand Lake Terrace Apts. LLC***
00-329 ***Savage v. Grand Lake Terrace Apts. LLC***
00-365 ***Baker, Cardoza v. Grand Lake Terrace Apts. LLC***
00-391 ***Bell v. Grand Lake Terrace Apts. LLC***
00-404 ***Neequaye v. Grand Lake Terrace Apts. LLC***
00-449 ***Swanson v. Grand Lake Terrace Apts. LLC***
00-322 ***Lawson v. Grand Lake Terrace Apts. LLC***
00-392 ***Branch v. Grand Lake Terrace Apts. LLC***
00-403 ***Heine v. Grand Lake Terrace Apts. LLC***

The Board reversed a Hearing Decision regarding the proper service of the RAP Notice where the owner had previously provided each of the tenants with a full proper copy of the RAP Notice but

only served a paraphrased copy with the rent increase because the paraphrased information contained substantially the same information as the Rent Program's form and did not contain false or misleading information. (Note this decision was made under prior law.)

97-11 ***Brown v. Rudman***
Board determined that failure to provide RAP Notice with rent increase resulted in an invalid rent increase. Tenant was granted restitution and the rent was set properly pursuant to law at time decision was reached.

T20-0003 Aguilera v. Wong
Parties disputed whether a RAP Notice was ever provided. Owner testified that it was his pattern and practice, and attempted to submit evidence of signed RAP Notices from other tenants, which were not accepted by the hearing officer. The hearing officer found the tenant to be credible, and when the only evidence is testimony (without any physical proof), tenant credibility can constitute substantial evidence since the owner has the burden of proof. RAP Notice, witness credibility.

b. <u>Language of served RAP Notice must be in language the tenant speaks</u>

T20-0003 ***Aguilera v. Wong***
Board upheld a Hearing Decision granting restitution of $27,560 and setting the base rent at the $1,050 move-in rent. Substantial evidence supported the Hearing Officer's findings that the owner had not provided any RAP Notice, in either English or Spanish, and that, because the tenant was a monolingual Spanish speaker, the owner should have served the Spanish-language RAP Notice.

T01-0562 ***Galvez v. Horizon Management***
T01-0561 ***Aguirre v. Horizon Management***
T01-0560 ***Martinez v. Horizon Management***
T01-0559 ***Gameros v. Horizon Management***
T01-0558 ***Maldonado v. Horizon Management***
T01-0550 ***Garcia v. Horizon Management***
T01-0549 ***Martinez v. Horizon Management***
In a case where the author of the Hearing Decision was not the Hearing Officer who heard the case, the Board upheld the Hearing Decision with respect to the tenants' appeals but remanded the case as to the owner's appeal because of material discrepancies between the findings of fact and the documentary evidence in the record. The Board also remanded the Garcia case for a determination of whether the tenant could contest rent increases given more than three years before the petition was filed. On remand, the Hearing Officer held that Garcia did not contest rent increases served more than three years earlier, that tenants who were monolingual Spanish speakers were required to receive the RAP Notice in Spanish, and adjusted the allowable rents accordingly.

T19-0363, T19-0508 Gonzalez v. Huang
Board affirmed hearing decision that invalidated rent increases on the basis that the tenant was not provided a RAP Notice in Spanish, despite the fact that the lease was negotiated in Spanish.

c. Burden of Proof of Serving RAP Notice on Property Owner

T05-0317 ***Thompson et al v. Peper***

Board affirmed Hearing Decision which determined that owner had the burden of proof to establish that RAP Notice had been served and that owner had not met the burden in this case.

T20-0003 **Aguilera v. Wong**

Parties disputed whether a RAP Notice was ever provided. Owner testified that it was his pattern and practice, and attempted to submit evidence of signed RAP Notices from other tenants, which were not accepted by the hearing officer. The hearing officer found the tenant to be credible, and when the only evidence is testimony (without any physical proof), tenant credibility can constitute substantial evidence since the owner has the burden of proof. RAP Notice, witness credibility.

14. Rent Increases[4]

a. <u>Banking Rent Increases</u>

T19-0357 ***Martin v. Dang & Do***
Board remanded Administrative Decision that took official notice of prior decision and allowed banking. Board remanded based on tenant's assertion that banking should not have been allowed during the 14-month period he was not living in his unit because it was uninhabitable. Hearing Officer directed to hold full hearing to determine if banking was calculated correctly due to the period of non-occupancy and tenant relocation.

T18-0226 ***Baragano v. Discovery Investments***
Board remanded Hearing Decision that denied a tenant petition contesting a rent increase based on banking with an instruction that a rent increase notice must state the dollar amount of the increase and not just a percentage increase and directed the Hearing Officer to find that the notice was defective.

T17-0446 ***Martin v. Dang/Do***
Board affirmed Hearing Decision that denied a tenant petition contesting a rent increase based on banking where the proposed rent increase did not exceed the amount allowed by banking and where the rent increase notice stated that it was based on banking and included the banking calculation sheet.

T15-0062 ***Martin v. Do***
T15-0094
T15-0106
T15-0162
Board affirmed Hearing Decision partially granting tenant petition contesting a rent increase based on invalid service but struck out the portion of the decision discussing what would have been the allowable banking increase and also struck out a paragraph discussing whether a rent increase would be valid should an additional tenant move into the unit.

T02-0291 ***Rouse v. Patino***
T02-0292 ***McQuillion v. Patino***
Board panel affirmed portion of Hearing Decision that granted rent increase based on banking.

T00-0252 ***Hirsch v. Haas***
Board overturned original Hearing Decision in tenant's favor and found that Owner was entitled to rent increase based on banking but delayed rent increase for six (6) months due to owner's not providing tenant with RAP notice. (Note: This case was decided under prior Ordinance.)

99-176 ***Dabit v. Beacon Properties***
Board overturned Hearing Decision where Hearing Officer determined that an owner could not bank the full CPI in a year when the owner took a capital improvement increase. The Board determined that the full amount of the CPI was available to be banked for later. (Note: This case was decided under prior Ordinance.)

[4] Note that capital improvement cases have their own section. See § __.

b. Consumer Price Index (CPI) Rent Increases Are Allowed

T16-0175 ***Didrickson v. Dang***
Board affirmed Hearing Decision that granted a monthly CPI increase of $48.89 and restitution in the amount of $4,370 to tenants for rent overpayments in excess of CPI.

c. Debt Service Costs (Prior law)

T02-0150 ***Sen v. Key***
T02-0139 ***Dorche v. Key***
Board affirmed a Hearing Decision granting a debt service increase to a property owner (which was less than the owner's noticed rent increase) where owner was allowed undocumented expenses based on his testimony per the "standard" expense allowance set forth in the Regulations.

T02-0145 ***Wang v. Marr***
Board affirmed Administrative Decision allowing rent increase based on debt service costs granted in previous hearing between parties (T01-0169), implementation of which had been delayed due to notice requirements. (Note: Appeal decision erroneously identifies landlord as the appellant; database and content of decision establish that tenant is appellant.)

T01-0446 ***Occena v. Binion***
Board affirmed a Hearing Decision invalidating rent increase of 29% where owner filed a timely response alleging increase justified for debt service but did not appear at the Hearing.

00-390 ***Morgan v. Williams***
Board affirmed a Hearing Decision which granted a property owner a rent increase of 25.4% based on debt service. The Hearing Decision denied the owner's capital improvement and increased housing service costs justifications.

d. Increased Housing Service Costs

L15-0007 ***Wong v. Tenants***
Board affirmed Hearing Decision denying owner's petition for rent increase based on increased housing costs where the Hearing Officer found that the increase did not exceed the annual CPI rent increase.

T14-0079 ***Desta v. Wong***
Board remanded Hearing Decision that denied owner's petition for rent increase based on increased housing service costs because owner only provided PG&E bills for half of the year in question, and instructed the Hearing Officer to hold a full hearing if the owner showed good cause for failure to provide bills for the entire year. On remand, after the owner provided the entire set of bills, the Hearing Officer found that the owner was not entitled to a rent increase based on increased housing service costs.

T11-0113 ***Poe v. Warren***

Board affirmed Remand Decision where in calculating the Increased housing service cost claim, the Hearing Officer imputed rent to vacant units, used rental income in both the base year and the following year and calculated 8% for repair costs.

T05-0122 ***Valentine v. Crown Fortune Properties***
T05-0132 ***Pun v. Crown Fortune Properties***
T05-0133 ***Hogan v. Crown Fortune Properties***
T05-0135 ***Brenneis v. Crown Fortune Properties***
T05-0136 ***Grimmett v. Crown Fortune Properties***
T05-0137 ***Aries v. Crown Fortune Properties***
T05-0138 ***Rothstein v. Crown Fortune Properties***
T05-0139 ***Brustman v. Crown Fortune Properties***
T05-0141 ***Schnur v. Crown Fortune Properties***
T05-0142 ***Pun v. Crown Fortune Properties***
T05-0143 ***Bertrand v. Crown Fortune Properties***
T05-0147 ***Schneider v. Crown Fortune Properties***
T05-0157 ***Mapp v. Crown Fortune Properties***
T05-0158 ***Longwell v. Crown Fortune Properties***
Board directed staff on an Increased Housing Service Costs rent increase to recalculate allowable rent increases based on increases in owner expenses (for PG&E, elevator maintenance, taxes, insurance, and refuse removal), then approved recalculations. (Decided under prior law.)

L20-0089, Haig Mardikian Telegraph & 23rd LLC v. Tenants
This case involved a tenant appeal of a rent increase that was granted based on increased housing services costs. In this case, the increase in operating costs was primarily based on property taxes—and on appeal, the tenants argued that a rent increase should not be granted primarily based on property taxes. The regulations define a housing service as services related to the use and occupancy of a unit and do not explicitly include property taxes in the list of eligible expenses. However, the list is non-exhaustive, and comparable expenses, such as insurance and management fees, are allowed and listed. Board remanded the case back to the Hearing Officer for recalculation, excluding property taxes, as they are not increased housing service costs per OMC 8.22, as it relates to the use or occupancy of a covered unit.

e. <u>Fair Return</u>

L16-0021 ***Durham-Hammer et al v. Tenants***
T16-0203 ***Falconer v. Durham-Hammer***
Board affirmed Hearing Decision (without prejudice) denying owner's petition for a rent increase on the basis of fair return over the owner's objection that he should not have to provide information regarding his bills and costs nor provide an appraisal of the property.

T03-0075 ***Freeman v. Lewald***
Board affirmed Hearing Decision denying owner rent increases because the RAP Notice was never served over the owner's objection that he was being denied a fair return on his investment. Board held that to claim fair return the owner must first establish that he or she had complied with the procedural requirements of the Ordinance.

L22-0065 Sukarto v. Tenants
The hearing officer denied a fair return petition based on (1) owner's failure to submit 2014 expenses and (2) owner's failure to provide valuation of property. Board remanded the case back to the Hearing Officer to apply the MNOI method and to allow the parties to submit additional evidence upon a showing of good cause. The Hearing Officer may schedule a new hearing if necessary. The Hearing Officer is to determine whether or not the evidence is sufficient underneath the regulations for the MNOI standard.

L25-0011 Miguel v. Tenants
The hearing decision dismissed the owner's petition for failure to submit documents for the base year 2014. The owner appealed on the basis the base year should not be 2014 because the subject property was not within the jurisdiction of the Rent Adjustment Ordinance in 2014 but exempt as owner-occupied duplex until 2018. The Board remanded the case to allow the owner to submit amended Worksheet C and supporting documents for base year 2018.

f. Justification for Rent Increase Required in a Property Owner Response

T18-0105 *Rachal v. Franko*
Board Panel affirmed Hearing Decision invalidating rent increase in excess of CPI based on owner's failure to list justification for rent increase on Owner Response to Tenant Petition.

g. Rent Increase Notices Must Be Served According to Law[5]

T01-0179 *Lee v. Ma*
The Board upheld a Hearing Decision denying the rent increase where it was found that the owner did not serve the required RAP Notice, did not give the required notice under Civil Code § 827, and that the owner unreasonably withheld consent for subletting. (Note: the Board did strike the word "illogical" from the Hearing Decision at page 4.)

T18-0379 *Alvarez v. Geary*
Board affirmed Hearing Decision that invalidated rent increase based on lack of RAP Notice but corrected error regarding maximum rental amount ($1,300 vs. $1,295) in restitution chart and statement that tenants have 120 days (versus 90 days) to contest a rent increase served with a RAP Notice when the tenant was not given RAP Notice at start of tenancy.

T18-0164 *Garcia v. SMC East Bay*
Board affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice where tenant claimed he never received the RAP Notice and owner claimed that his company always served RAP Notices but lease did not have RAP Notice attached and owner did not produce the RAP Notice.

L17-0124 *Bellinger v. Tenant*
C17-0030 *Madrigale v. Bellinger*
T17-0546 *Madrigale v. Bellinger*

[5] Note that issues related to RAP Notices are in a separate chapter of the index.

Board affirmed Hearing Decision that found Owner had not complied with prior Administrative Decision invalidating rent increase and that denied Owner's petition for rent increase (on the basis of banking, capital improvements, increased housing service costs, fair return and uninsured repair costs) because Owner had never served RAP Notice.

T17-0575 ***Titcomb v. Vineyard-Ide***
Board affirmed Hearing Decision where the decision set the rent to move-in rent and granted restitution for overpaid rent because the owner did not serve *RAP Notices* with the rent increases. (See also this case description in decreased services.)

T17-0413 ***Piceno v. Hernandez***
T17-0414 ***Avalos et al v. Hernandez***
Board Panel affirmed Hearing Decision that invalidated rent increases for a number of tenants in different units at the same property based on lack of RAP Notice, set rent back to previous levels, and granted restitution ranging from three to four years of rent overpayments.

T17-0103 ***Worekneh v. Landlord***
Board affirmed Hearing Decision that invalidated four rent increases based on lack of RAP Notice, set rent back to previous level, and granted restitution for more than two years of rent overpayments.

T16-0271 ***Tsay v. DeMara***
Board affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice where Owner appeared at the Hearing but did not have good cause for failing to file a response. Board remanded for the limited purpose of having the Hearing Officer recalculate the overpaid rent for a five-month period and allowing new evidence limited to the issue of how much the tenant had paid for that period. At the Remand Hearing, the owner submitted canceled checks demonstrating that the tenant had not paid the final rent increase, and the Remand Decision decreased the restitution amount owed to the tenant.

T15-0368 ***Bivens v. Ali***
At the Appeal Hearing, Board affirmed Hearing Decision granting tenant rent decrease and restitution and declined to accept new evidence proffered by owner at appeal (which consisted of copies of prior RAP notices signed by the tenant) even though this evidence contradicted tenant's assertion in her petition that she never received the RAP notice, because owner failed to appear at original hearing.

T11-0106 ***Johnston v. Warren***
Board affirmed Hearing Decision invalidating rent increase where the tenant was not given RAP Notice six months prior to the rent increase.

T10-0026 ***Butcher v. Murry***
Board affirmed a Hearing Decision without comment where a rent increase was invalidated because the tenant had not received the RAP Notice at any point during her tenancy.

T06-0051 ***Barajas & Avalos v. Chu***

Board affirmed Hearing Decision that invalidated six (6) years' worth of rent increases on the basis of no RAP notice and granted restitution for three (3) years' worth of rent overpayments and decreased services, denying owner's claim that rent could only be reduced to level three (3) years prior to date of hearing decision.

T05-0292 ***English v. Nero***
Board affirmed Hearing Decision granting tenant petition challenging rent increases on the basis that no RAP notice was served when owner did not respond to tenant petition nor appear at hearing and rejected new evidence owner attempted to introduce for the first time at appeal hearing.

T02-0291 ***Rouse v. Patino***
T02-0292 ***McQuillion v. Patino***
Board panel affirmed portion of Hearing Decision that granted challenge to rent increase based on untimeliness of RAP Notice.

T01-0179 ***Lee v. Ma***
The Board upheld a Hearing Decision denying the rent increase where it was found that the owner did not serve the required RAP Notice, did not give the required notice under Civil Code § 827, and that the owner unreasonably withheld consent for subletting. (Note: the Board did strike the word "illogical" from the Hearing Decision at page 4.)

h. <u>Rent Increase Notices Must Be Served Properly and Contain Proper Information</u>

T18-0226 ***Baragano v. Discovery Investments***
Board remanded Hearing Decision that denied a tenant petition contesting a rent increase based on banking with an instruction that a rent increase notice must state the dollar amount of the increase and not just a percentage increase and directed the Hearing Officer to find that the notice was defective.

T16-0546 ***Green v. Tran***
Board affirmed a Hearing Decision based on substantial evidence that: invalidated a rent increase because it was not served with a RAP Notice and the rent increase was for more than 10% of the rent (the upper limit at the time of this decision); and determined that the owner could not charge the tenant for water or garbage because to do so would be splitting utilities in violation of the Regulations and would decrease her housing services.

T15-0062 ***Martin v. Do***
T15-0094
T15-0106
T15-0162
Board affirmed Hearing Decision partially granting tenant petition contesting a rent increase based on invalid service because owner posted rent increase notice on the tenant's door but did not properly serve the rent increase as required by Civil Code § 827, which requires the rent increase notice to be served personally or by mail. The Board struck out the portion of the decision discussing what would have been the allowable banking increase and also struck out a

paragraph discussing whether a rent increase would be valid should an additional tenant move into the unit.

T01-0446 ***Occena v. Binion & Associates***
Board affirmed a Hearing Decision where it was found that rent increase was invalid for lack of required RAP Notice and for failure to comply with Civil Code § 827 and where owner did not appear at hearing despite owner's claim that he did not get proper notice of the hearing.

00-268 ***Frierson et al v. Grand Lake Terrace Apts. LLC***
00-271 ***Searles, Pasarica v. Grand Lake Terrace Apts. LLC***
00-314 ***Kinyua v. Grand Lake Terrace Apts. LLC***
00-329 ***Savage v. Grand Lake Terrace Apts. LLC***
00-365 ***Baker, Cardoza v. Grand Lake Terrace Apts. LLC***
00-391 ***Bell v. Grand Lake Terrace Apts. LLC***
00-404 ***Neequaye v. Grand Lake Terrace Apts. LLC***
00-449 ***Swanson v. Grand Lake Terrace Apts. LLC***
00-322 ***Lawson v. Grand Lake Terrace Apts. LLC***
00-392 ***Branch v. Grand Lake Terrace Apts. LLC***
00-403 ***Heine v. Grand Lake Terrace Apts. LLC***
Board remanded case to the Hearing Officer where the Hearing Decision had found that the owner did not appear at the second Hearing and that particular rent increase notices were not properly served under Civil Code § 827. The Board directed the Hearing Officer to determine whether the property owner had been properly served with notice of a second hearing (the owner had argued that it did not have notice or would have appeared and been able to produce evidence that rent increase notices were properly served.)

i. <u>Rent Increase – Recalculation by Board</u>

T18-0379 ***Alvarez v. Geary***
Board affirmed Hearing Decision that invalidated rent increase based on lack of RAP Notice but corrected error regarding maximum rental amount ($1,300 vs. $1,295) in restitution chart and statement that tenants have 120 days (versus 90 days) to contest a rent increase served with a RAP Notice when the tenant was not given RAP Notice at start of tenancy.

T11-0115 ***Schacher v. McClain***
Board affirmed Hearing Decision that allowed rent increase but amended decision to allow CPI and banking increase to be applied to parking fee, which is included as part of base rent.

T02-0404 ***Santiago v. Vega***
Board affirmed Hearing Decision that granted tenant petition for rent overpayment on basis of no RAP notice and decreased services, but Board recalculated restitution amount based on incorrect rent calculations in the Hearing Decision.

j. <u>What Is the Proper Rent?</u>

T16-0258 ***Sherman v. Michelsen***

Board remanded Hearing Decision to Hearing Officer to reconsider proper rent where Hearing Officer found that prior decision (L13-0054, Michelsen v. Tenant) was based on fraudulent testimony of the owner but Hearing Officer did not decrease rent to the tenant's rent at the time of the fraudulently obtained Hearing Decision but instead found that the proper rent was the rent set by the Superior Court. The case was settled at the Remand Hearing. (See more information about this case in Exemptions-Permanent.)

k. **Rent Can Only Be Increased Once Per Calendar Year**

T01-0376 ***Millar v. Black Oak Properties (in database as Millar v. Sycamore Investments)***
An Administrative Decision had been issued denying a rent increase for parking because the owner failed to file a timely response. The Board upheld the result on a different ground because a prior rent increase on the subject unit had been given less than 12 months earlier. The Board held that parking is a part of the housing services provided and an increase in the parking charge is a rent increase.

l. **Rent Increases Are Not Operative After a Petition Has Been Filed While the Unit Is Cited in an Inspection Report as Containing Serious Health, Safety, Fire, or Building Code Violations**

T10-0026 ***Butcher v. Murry***
Board affirmed a Hearing Decision without comment where a rent increase was invalidated because the tenant had established that there was an outstanding Notice to Abate issued by a City Inspector.

T23-0140 ***Didrickson v. Dang***
Board remanded the case to the Hearing Officer to determine whether the rent increase was lawful, with instructions to review and consider Civil Code section 1942.4 and O.M.C. section 8.22.070.D.6.

m. **Costa-Hawkins Rent Increase**

T18-0018, Sund v. Vernon Street Apartments
This case involved a tenant petition challenging a Costa-Hawkins rent increase. The Hearing Officer decided that the rent increase was valid because the tenant no longer resided in the unit as her permanent principal residence. The tenant appealed, arguing that her absence was temporary and attributable to the needs of her newborn child, that she had always paid the rent, and that she had always intended to return. She also contended that the Costa-Hawkins statute permits such an increase only as to an unlawful sublessee or assignee because she was an original occupant. The Board remanded the case to the Hearing Officer to determine, based on the record, whether sublessees or assignees resided in the unit and, if so, whether Civil Code section 1954.53(d)(2) justified the increase. The Hearing Officer was also directed to consider the effect of section 1954.53(d)(3) on whether an increase under section 1954.53(d)(2) could be imposed on an original occupant who entered into the lease with the owner. The parties were to be allowed to brief the issues before the Hearing Officer issued a decision. No remand decision was issued because the parties settled.

15. Restitution

a. <u>Restitution is granted for up to three years prior to petition filing date.</u>

T19-0202 ***Pacheco v. Newsome***
Board affirmed Hearing Decision that invalidated a series of rent increases tenant had received based on lack of RAP Notice for all but the most recent rent increase, and setting rent back to tenant's initial rent level, plus granting of rent restitution for the three years prior to petition filing date. (Owner response was filed one day late but allowed by the Hearing Officer.)

T18-0164 ***Garcia v. SMC East Bay***
Board affirmed Hearing Decision that invalidated rent increases based on lack of RAP Notice and granted rent reduction plus rent restitution for overpaid rent and decreased services starting three years prior to petition filing date (resulting in restitution for overpayments made over a 47-month period).

T17-0575 ***Titcomb v. Vineyard-Ide***
Board affirmed Hearing Decision where the tenants were granted over $20,000 for overpaid rent over a 40-month period (3 years before petition filing date) and decreased services from illegal utility charges because the owner did not serve *RAP Notices* with the rent increases, the garbage charges were the responsibility of the owner, and the water charges violated the Ordinance because the bills were for the whole building. (See also this case description in RAP Notice and decreased services sections.)

T12-0332 ***Sherman v. Michelsen***
Board affirmed a Hearing Decision holding that restitution begins three years before the Tenant Petition was filed.

b. <u>For ongoing decreased housing services, restitution is granted for only 90 days prior to petition filing date (old law/new law effective 12/23).</u>

T19-0326, Williams v. Crane Management
Board remanded the case back to the Hearing Officer for the Hearing Officer to recalculate the restitution amount for decreased housing services based upon OMC 8.22.090(a)(3)(b), restricting the restitution to 90 days prior to the petition being filed and up until tenant moved from unit.

T23-0075 **Willis v. Godwin Properties**
Board remanded the case to the Hearing Officer to recalculate the tenant's restitution award using the 90-day period for any ongoing decreased housing services.

c. <u>Restitution Calculation Should Not Include Periods After the Hearing Date</u>

T19-0272 & T19-0325, Jeffers v. BD Opportunity 1 LP

The Hearing Officer granted restitution extending beyond the hearing date. The Board remanded the case to the Hearing Officer with instructions to: (1) limit the restitution period to the hearing date; (2) consider prior Board decisions involving similar housing service reductions

so that the decision is consistent with prior decisions; and (3) identify the prior cases and decisions concerning similar housing service reductions on which the Hearing Officer relied.

T19-0278, Ivory v. SF Rents
This case involved an owner appeal from a decision granting a tenant petition alleging decreased housing services based on an unclean elevator and common areas, a broken security gate, and missing or defective security cameras. The decision awarded rent reductions of 4% for the unclean elevator and common areas, 4% for the broken security gate, and 3% for the missing or defective security cameras. The Board affirmed the decreased housing service findings and rent reductions but remanded the case to the Hearing Officer to recalculate restitution and limit it to the period beginning 90 days before the petition was filed and ending on the hearing date.

T23-0075, Willis v. Godwin Properties
The Board affirmed the Hearing Examiner's finding that the owner failed to file a response with RAP and adopted the City Attorney's recommendation to: (1) reverse the finding that the owner failed to satisfy the response requirement of providing evidence of compliance with the Rent Registry, because that requirement did not apply in June 2023; (2) revise the decreased housing service awards to (a) begin on February 26, 2023, and end on August 22, 2023, the date of the original hearing, except for the heat, mold, and kitchen-breaker claims, which had different end dates, and (b) prorate the awards for the partial months of February and August 2023; and (3) reconsider whether an amortization period longer than 12 months was appropriate under Regulation 8.22.110.F.4 in light of the reduced awards.

d. <u>Restitution Cannot Be Awarded as a Lump Sum; It Must Be Subtracted from the Rent</u>

T07-0237 ***Kosmos v. Negrete***
On second appeal, Board held that tenant's request to have her overpayments returned to her in a lump sum could not be granted, as the Ordinance required restitution to be subtracted from rent over the time specified in the Ordinance.

e. <u>Restitution Can Be Charged Against a New Property Owner for Acts of Prior Owner</u>

T06-0239 ***Gibson v. Cromwell***
Board Panel upheld Hearing Decision granting restitution against new property owner for acts of prior owner referring to prior Board case T05-0220, McGhee v. Carraway-Brown.

T05-0220 ***McGhee v. Carraway-Brown*** ***PRECEDENTIAL DECISION***
Board upheld a Hearing Decision and specifically agreed with the determination about successor liability where the Hearing Decision determined that new owners "stand in the shoes" of a prior owner with respect to both the rights of the prior owner and the liabilities.

16. Response Filing Requirements

a. <u>Response Filing Requirements – Response Must State Justification for Rent Increase Over CPI</u>

T16-0184 ***Waller v. Logos Property***
An Administrative Decision originally granted a tenant petition challenging a rent increase on the basis that both parties agreed the RAP Notice was initially given less than six months before the increase's effective date. The owner argued on appeal that an attachment to the initial response showed an earlier date for the RAP Notice. The Board remanded and directed the Hearing Officer to determine when the RAP Notice was first given. On remand, the Hearing Officer determined the date of the RAP Notice but found that the rent increase was invalid because the Owner Response did not state a justification for the increase above the CPI.

b. <u>Response Must Be Timely Filed for Owner's Claims to be Considered</u>

00-361 ***Colbert v. Ngow***
Board upheld a Hearing Decision invalidating a rent increase where the owner was not allowed to present evidence at a Hearing because the owner did not file a response. While the owner's representative provided evidence at the Hearing that the owner was very ill, this fact did not provide good cause for failure to file a response because the owner representative provided information that she was the property owner's agent and had been managing the affairs of the property at the time the notice of the tenant's petition had been sent to the property owner.

T00-0313 ***Burrell v. Lane***
Board upheld an Administrative Decision that denied a rent increase where the property owner did not file a response.

T19-0007 Cortez et al v. Qmacin
The 30-day timeline to file a response to a petition is based on the proof of service, not the postmark on the envelope, and hearing officer did not abuse their discretion by rejecting the owner's response, even though it was only three days late.

T23-0075, Willis v. Godwin Properties
In case where the owner was not allowed to present evidence at a hearing because the owner did not file a response but the tenants received a service copy of the response, the Board remanded the case back to the Hearing Officer for a limited hearing on the issue of whether or not the owner filed the owner response. The parties are to be allowed to submit evidence (including testimony, documentary evidence, etc.). On remand, the hearing officer found that the owner did not file the response.