HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
PANEL SPECIAL MEETING
April 20, 2023
7:00 P.M.
CITY HALL
1 FRANK H. OGAWA PLAZA, CITY COUNCIL CHAMBERS
OAKLAND, CA 94612

MINUTES

1. **CALL TO ORDER**

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 7:07 p.m.

2. **ROLL CALL**

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

Staff Present

Braz Shabrell	Deputy City Attorney
Marguerita Fa-Kaji	Senior Hearing Officer (RAP)
Briana Lawrence-McGowan	Administrative Analyst II (RAP)

3. **PUBLIC COMMENT**

No members of the public spoke during public comment.

4. **APPEALS***

a. L22-0050, Lu v. Tenants

No parties were present. The Board moved on to the next appeal case.

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

Appearances:	Helen Grayce Long	Owner Representative
	David Hall	Tenant Representative

This case involved an owner appeal of a remand decision granting the tenant restitution in an amount of $35,340.00 for decrease housing services. The tenant petition was filed in April 2019, contesting rent increases, and alleging decreased housing services. After a hearing, the Hearing Officer found that no RAP notice had been provided to the tenant, therefore invalidating prior rent increases—and making a finding of decreased housing services in an amount of $25,110.00 between October 1, 2016, and February 29, 2020. The owner filed an appeal, and the case came before the Board for the first time in September 2020. The Board remanded the case back to the Hearing Officer to recalculate the restitution amount so that the amount granted for May 2019 did not exceed 100% of the rent, to limit the restitution period to the date of the hearing, and for the Hearing Officer to consider prior cases from the Board regarding decreased housing services so that the reductions were consistent with prior cases.

A remand hearing decision was issued in August 2021, and this decision lowered the restitution amount by $165 to account for May 2019—but was otherwise unchanged. There was then an appeal of the remand decision, and this came before the Board for a second time in February 2022. The Board again remanded for the Hearing Officer to limit the restitution period to the date of the hearing, and to again consider prior decisions of restitution for decreased housing services to make the decision consistent. A second remand decision was issued in January 2023, and the decision held that there were so many violations of the health and safety code that the unit had no rental value, and the lawful rent was $0.00. The amount of restitution from October 2016 to January 13, 2020, was changed from $24,945 to $35,340. This is an appeal of that remand decision and there are numerous grounds for the appeal, including that the Hearing Officer did not follow Board instructions, the decision isn't supported by substantial evidence, and the Hearing Officer is biased. In addition, the appeal also requested that this case be

heard by or reviewed by a different Hearing Officer. The following issues were presented to the Board:

1.) Did the Hearing Officer exceed the scope of remand and/or fail to follow the Board's prior instructions,
2.) Is the Hearing Officer's decision supported by substantial evidence, and
3.) When, if ever, is it appropriate for a case to be heard by a different Hearing Officer?

The owner representative contended that in 2019 the Hearing Officer failed to review the entire record and was not consistent with prior decisions. The owner representative argued that a previous Hearing Officer did a site inspection in 2017, saw the property, said there was nothing wrong with the property—and only reduced the rent because the laundry facility had been taken away. The owner representative contended that the owner waived rent and completed many repairs on the property, which was in good condition in 2016 and 2017. The owner representative argued that the issue related to the RAP notice is where the three years' worth of restitution came from because at the time when the tenant filed these two petitions in 2019, no RAP notice had been given to her. The owner representative contended that at the initial hearing in 2019, the tenant only testified that she did not receive a RAP notice at the inception of her tenancy, and that she didn't say she didn't receive one at the time of the hearing—however, the Hearing Officer assumed that she hadn't and did not read whole record.

The owner representative argued that when the case was remanded back again, the Hearing Officer raised the restitution amount by $11,000 and decided with no evidence and no site inspection that the property was worth $0 rent for three years. The owner representative contended that this exceeded the scope of the remand and that the Hearing Officer failed to follow the Board's instructions. The owner representative argued that the decision was not supported by substantial evidence and that it is appropriate for the case to be heard by a different Hearing Officer. The owner representative contended that the Hearing Officer did not review the full record and with no justification the restitution amount was increased by $11,000, which is a violation of due process.

The owner representative contended that they are not trying to put new evidence in front of the Board, and that they are arguing about what's on the record. The owner representative argued that one of the reasons for an appeal is that the remand decision was inconsistent with the prior Hearing Officer's decision in this case and that there was a site inspection in 2017. The owner representative argued that they are not adding new facts, that the owner has the right to have the record reviewed, and that the Hearing Officer had a duty to look at the record. The owner representative contended that the fact that three years of restitution

was awarded is not based on substantial evidence and that no reasonable person who reviewed this file could make these rulings. The owner representative argued that the rules aren't being followed, the owner shouldn't be penalized by this, and that this case is completely inequitable.

The tenant representative contended that this appeal is almost identical to the appeal heard on September 10, 2020, and the appeal heard on February 24, 2022. The tenant representative argued that the grounds of those two appeals are very clear, and that the 2022 appeal was designed to do two things: recalculate the restitution amount for 2019, such that did not exceed 100% of the rent; and to consider prior decisions of the Board regarding rent reduction for similar housing services. The tenant representative contended that the first of these was done on remand, as the Hearing Officer decreased the amount so that it did not exceed 100% of the rent—and the Hearing Officer also limited the end date of restitution to the date of the hearing. The tenant representative argued that the only issue left was whether prior decisions of the Board regarding rent reductions for similar housing service reductions were met.

The tenant representative argued that the appellant has not provided convincing argument or evidence that the rent reduction falls outside the bounds of Rent Board’s precedents. The tenant representative contended that in the 2020 appeal decision, the Board found in the respondent’s favor on the following issues that they could go back 36 months to calculate restitution, and that this was proper. The tenant representative argued that appeal hearings should be based on the record as presented to the Hearing Officer, unless the appeal body determines that an evidentiary hearing is required—and that the regulations of the Rent Adjustment Program say that allowing new evidence to be considered in this appeal would be inconsistent with prior board decisions. The tenant representative contended that allowing the appellant to present new evidence would render the initial hearing both meaningless and irrelevant.

The tenant representative contended that the remand decision never said that the Hearing Officer had to change the decision, it just stated that the decision had to be justified, and this burden was met. The tenant representative argued that for this case, the Board should focus on the body of the record for this appeal, and that none of the evidence that the owner representative is citing was presented at the hearing and should not considered. The tenant representative contended that at the original hearing, the appellant didn't send an attorney, which was the owner's decision—and that there was evidence that was presented, which is being used to determine this case. The tenant representative argued that the tenant can't start the case all over again, unless there is some sort of cogent and quantified argument as to why that why these numbers are out of whack, what the numbers should be, or what the ballpark of these numbers should be. The tenant representative contended that it would not be appropriate to remand this case again or to do a De Novo hearing.

After parties' arguments, questions to the parties, and Board discussion, Member K. Sims moved to remand the case back to the Hearing Officer to recalculate the award on decreased housing services and by limiting the timeframe from January 29, 2019, to November 7, 2019—and to provide justification for the $0 rent determination. Chair Ingram seconded the motion.

The Board voted as follows:

Aye: D. Ingram, K. Sims
Nay: R. Nickens
Abstain: None

The motion was approved.

c. T19-0184, Beard v. Meridian Management Group

Appearances:	James Beard	Tenant
	Nancy Conway	Tenant Representative
	Gregory McConnell	Owner Representative

This case involved a tenant appeal of a tenant petition that was denied. The petition was contesting a single rent increase and alleged decrease housing services based on a noisy refrigerator and a garage water leak. The owner filed a response, alleging that the rent increase did not exceed CPI and that the decreased housing services claims were already addressed and decided in a prior hearing decision. The petition was denied in an administrative decision without a hearing.

The tenant appealed and this case came before the Board in January 2023. The Board remanded the case on two issues: 1.) to determine if the issue is a new leak or an old leak considered in the prior case and 2.) consider the factual basis on the refrigerator issue as a decreased housing service. The case was remanded, and a hearing was held in June 2022. A remand hearing decision was issued in September 2022, again denying the tenant's petition. The remand decision found that the leak was the same leak that was considered in prior cases—and even if the Hearing Officer were to treat the leak as a new leak, the Hearing Officer still could have denied the decreased housing services claim because the owner acted reasonably to install drain trench and dump to address the issue.

On the issue of the refrigerator, the Hearing Officer found that the tenant's testimony of a noisy refrigerator was not credible. The Hearing Officer also based this decision on the basis that the tenant received a new refrigerator in 2019, and

that the tenant's old refrigerator continued working in another unit. The Hearing Officer also denied the quiet enjoyment claims based on the noisy refrigerator. Both claims for decreased housing services were denied.

On appeal, the tenant argues that the Hearing Officer failed to decide whether the water leak was new, that the Hearing Officer failed to precisely explain what leak was previously denied and how those leaks relate to the current leak, that the resident manager's testimony that the tenant's old refrigerator was given to a neighbor was not truthful, that the tenant's inability to determine exact dates of sound recordings of the refrigerator did not take away from the fact that the refrigerator was loud and disturbed the tenant—and that the Hearing Officer misapplied the case of Larson to mean that an intrusive and disruptive sound from a noisy refrigerator cannot be the basis for a decreased housing services claim. The following issues were presented to the Board:

1.) Does substantial evidence support the Hearing Officer's conclusion that the water leak in this case does not constitute a decreased housing services claim?
2.) Was the denial of water leak claim by the Hearing Officer supported by substantial evidence?
3.) Was the denial of refrigerator claim as a decreased housing service by the Hearing Officer supported by substantial evidence?

The tenant representative contended that the reason it was requested for the Board to watch the refrigerator video is because there was a notice posted for the first hearing date in January 2019, prior to COVID. The tenant representative argued that the Hearing Officer said she had no idea what the date was for the video because the tenant didn't announce it—but there are records, including the video. The tenant representative contended that in this case, after the tenant filed this petition, he received an unlawful detainer based on non-payment of rent. The tenant representative argued that this important because the tenant was current on his rent, his rent was not allowed to be mailed to the landlord or to be deposited into a bank account for the landlord—they were only allowed to be deposited in an unmanned mailbox in the lobby of the building.

The tenant representative argued that the tenant asked for an appeal previously, that the Board determined that the matter depended on how loud the refrigerator was, and that the Hearing Officer should review the video and listen to it. The tenant representative contended that the tenant had submitted a thumb drive with the video and that a copy was requested to be sent to the Board, but the Hearing Officer said she didn't have it. The tenant representative argued that it took until February 2023 to get a copy of the video after filing a formal request. The tenant representative contended that a part of the Hearing Officer's decision stated that the tenant couldn't remember dates of the videos. The tenant representative argued that during the hearing, the owner's representative questioned the tenant

about certain dates with a copy of the petition in front of him, but neither the tenant or tenant representative had a copy of the petition in front of them at the time—so the tenant responded that he was not sure, that he would have to look at the petition, and that the petition would reflect what the dates are.

The tenant representative contended that the decision was not supported by substantial evidence because the Hearing Officer based her decision in part on the property managers testimony. The tenant representative argued that the building was bought, and the new owners were trying to get rid of long-term tenants. The tenant representative contended that several evictions took place at this property and the other properties that the owners bought in Oakland and that uncorroborated evidence supported the denying the refrigerator petition. The tenant representative argued that regarding the leak, another Hearing Officer made a decision a long time ago—which gave the tenant a rent reduction because this storage area that he rents in the garage had become full of mold and leaky, and needed to be repaired.

The owner representative contended that the owner objects to the introduction of evidence at the appeal hearing. The owner representative argued that the Hearing Officer reviewed the record and made findings that not only was the refrigerator noise reviewed by the property manager, it was also reviewed by a technician that was brought in. The owner representative argued that the refrigerator was put in the storage and subsequently was put into another tenant's unit—and that there have been no complaints about it. The owner representative contended that the Hearing Officer found that the property manager who was at the hearing had credible testimony—and that the Hearing Officer is the finder of fact who reviews credibility. The owner representative argued that they also object to the reference made to an unlawful detainer case and any of its history because it's not a part of this case. The owner representative argued that the Hearing Officer would not allow that testimony either because she knew that the purpose of it was to prejudice the case and to make it appear that something was done inappropriately in another forum.

The owner representative argued that the Hearing Officer's decision regarding the leak was credible, she made a finding that the issue had been raised before, and she made a finding that the tenant in his own petition stated that this was the same leak that occurred in April. The owner representative contended that there is ample evidence to support this and that the Hearing Officer also found that the tenant attempted to mislead her when he said he was swimming in water. The owner representative argued that the Hearing Officer found out from the tenant's own videos that the water that he was referring to were trickles of water less than 1/4 inch. The owner representative contended that a standard practice is that if you find that a person misrepresents the facts, you can discount or find everything that he or she says to not be credible. The owner representative argued that this is the Hearing Officer's job and that she decided the case based

upon substantial evidence in the record. The owner representative contended that regarding the refrigerator and breach of quiet enjoyment, RAP and the Board does not have authority over those cases and that the Hearing Officer's decision is sustainable by substantial evidence in the record and the decision should be affirmed.

The owner representative argued that the Hearing Officer must make a decision based upon the evidence in the record, that the Hearing officer has a right to determine the credibility of the witnesses—and that in this case, it was determined that the manager, the manager's husband, and the technician testified credibly. The owner representative contended that they did not hear, see, or discover any problems with the refrigerator—so they placed it in storage and then they gave it to somebody else. The owner representative argued that regarding the issue of the leak, the tenant signed the petition under penalty of perjury, stating that this was the same leak that had not been repaired in a prior case. The owner representative contended that the Hearing Officer clearly said that the water was water that comes about periodically because the garage is below grade and when it rains hard, water comes through—which is a common occurrence in garages in Oakland. The owner representative argued that the tenant has not demonstrated that there was a decreased service on the garage, and that the tenant had the burden of proof, not the owner. The owner representative contended that the tenant did not prove that there was a noisy refrigerator that disturbed his peace and enjoyment—and that if there was one, that's not the kind of case that RAP decides, that claim would have to be pursued in court.

After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved affirm the Hearing Officer's decision. Member K. Sims seconded the motion.

The Board voted as follows:

Aye: D. Ingram, K. Sims, R. Nickens
Nay: None
Abstain: None

The motion was approved.

d. L22-0050, Lu v. Tenants

Appearances: Kibret Fisseha Tenant

The owner appellant was not present. Chair Ingram moved dismiss the appeal. Member R. Nickens seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, K. Sims, R. Nickens
Nay:	None
Abstain:	None

The motion was approved.

5. **OPEN FORUM**

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

6. **ADJOURMENT**

   a. The meeting was adjourned at 9:00 p.m.