

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
December 9, 2021
5:00 P.M.
Meeting Will Be Conducted Via Zoom**

AGENDA

PUBLIC PARTICIPATION

The public may observe and/or participate in this meeting in many ways.

OBSERVE:

- To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or AT&T Channel 99 and locating City of Oakland KTOP – Channel 10

- To observe the meeting by video conference, please click on the link below:
When: Dec 9, 2021 5:00 PM Pacific Time (US and Canada)

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD FULL BOARD MEETING- December 9, 2021

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/89385209429>

Or One tap mobile :

US: +16699009128,,89385209429# or +13462487799,,89385209429#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592

Webinar ID: 893 8520 9429

International numbers available: <https://us02web.zoom.us/j/89385209429>

COMMENT:

There are two ways to submit public comments.

- To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Instructions on how to “Raise Your Hand” are available [here](#).

- To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “*9” to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Please unmute yourself by pressing “*6”.

If you have any questions, please email BMcGowan@oaklandca.gov .

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

1. CALL TO ORDER
2. ROLL CALL
3. ELECTION OF OFFICERS OR PRO TEM OFFICERS
4. RENEWAL: ADOPTION OF AB 361 RESOLUTION (pp. 4-6)
5. WELCOME NEW BOARD MEMBERS
6. OPEN FORUM
7. CONSENT ITEMS
 - a. Approval of Board Minutes- Adoption of AB 361, 10/14/2021 (pp. 7-8)
 - b. Approval of Board Minutes, 10/14/2021 (pp. 9-13)
8. APPEALS*
 - a. T19-0384, Salvador v. Fong (pp. 34-90)
 - b. T21-0046, Warmesley v. Hill (pp. 91-141)
9. INFORMATION AND ANNOUNCEMENTS
 - a. Litigation Update Report (pp. 14-19)
 - b. Board Training—Rules of Evidence and Appeals (pp. 20-33)
10. ADJOURNMENT

**Staff appeal summaries will be available on the Rent Adjustment Program’s website and the City Clerk’s office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B and 2.20.090*

**Pursuant to California Government Code section 54953(e), Housing, Residential Rent and Relocation Board Members, as well as City staff, will participate via phone/video conference, and no physical teleconference locations are required.*

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

Accessibility: Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at RAP@oaklandca.gov or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantonese, Mandarín o de lenguaje de señas (ASL) por

favor envíe un correo electrónico a RAP@oaklandca.gov o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 RAP@oaklandca.gov 或致電 (510) 238-3721 或711 California relay service.

OAKLAND HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB)

RESOLUTION NO. _____

ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB) AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(e), A PROVISION OF AB-361.

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. *See* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

WHEREAS, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. *See* <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

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WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. See <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

WHEREAS, persons without symptoms may be able to spread the COVID-19 virus. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

WHEREAS, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh / outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

WHEREAS, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

WHEREAS, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households; and

WHEREAS, on October 14, 2021 the Housing, Residential Rent and Relocation Board (HRRRB) adopted a resolution determining that conducting in-person meetings would present imminent risks to attendees' health, and electing to continue conducting meetings using teleconferencing in accordance with California Government Code Section 54953(e), a provision of AB-361; now therefore be it:

RESOLVED: that the Housing, Residential Rent and Relocation Board (HRRRB) finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this resolution; and be it

FURTHER RESOLVED: that, based on these determinations and consistent with federal, state and local health guidance, the Housing, Residential Rent and Relocation Board (HRRRB) renews its determination that conducting in-person meetings would pose imminent risks to the health of attendees; and be it

FURTHER RESOLVED: that the Housing, Residential Rent and Relocation Board (HRRRB) firmly believes that the community's health and safety and the community's right to participate in local government, are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and be it

FURTHER RESOLVED: that the Housing, Residential Rent and Relocation Board (HRRRB) will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Housing, Residential Rent and Relocation Board (HRRRB) finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING**

October 14, 2021

4:30 P.M.

VIA ZOOM CONFERENCE

OAKLAND, CA

MINUTES

1. CALL TO ORDER

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order at 4:50 p.m. by Board Chair D. Ingram.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant		X	
Vacant	Tenant			
C. LIEU	Tenant Alt.			X
H. FLANERY	Tenant Alt.	X		
D. INGRAM	Undesignated	X		
Vacant	Undesignated			
Vacant	Undesignated			
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
T. WILLIAMS	Landlord	X		
N. HUDSON	Landlord	X		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.			X

Staff Present

Braz Shabrell
Harman Grewal
Briana Lawrence-McGowan
Susan Ma
Mike Munson

Deputy City Attorney
Business Analyst III (HCD)
Administrative Analyst I (RAP)
Program Analyst III (RAP)
KTOP

3. ADOPTION OF RESOLUTION AB 361

- a. H. Flanery moved to adopt Resolution AB 361. Chair Ingram seconded.

The Board voted as follows:

Aye: D. Ingram, H. Flanery, N. Hudson

Nay: None

Abstain: T. Williams

The resolution was adopted.

4. ADJOURNMENT

- a. Chair Ingram moved to adjourn the meeting. H. Flanery seconded. The meeting was adjourned at 4:56 p.m.

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING**

October 14, 2021

5:00 P.M.

VIA ZOOM CONFERENCE

OAKLAND, CA

MINUTES

1. CALL TO ORDER

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order at 5:02 p.m. by Board Chair D. Ingram.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant	X		
Vacant	Tenant			
C. LIEU	Tenant Alt.			X
H. FLANERY	Tenant Alt.	X		
D. INGRAM	Undesignated	X		
Vacant	Undesignated			
Vacant	Undesignated			
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
T. WILLIAMS	Landlord	X		
N. HUDSON	Landlord	X		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.			X

Staff Present

Braz Shabrell
Harman Grewal
Briana Lawrence-McGowan
Susan Ma
Mike Munson

Deputy City Attorney
Business Analyst III (HCD)
Administrative Analyst I (RAP)
Program Analyst III (RAP)
KTOP

3. WELCOME NEW BOARD MEMBERS

- a. Chair D. Ingram introduced himself as a new member and acting Board Chair and introduced and welcomed new member N. Hudson.

4. OPEN FORUM

- a. Gregory McConnell acknowledged Barbara Kong-Brown’s service as the Senior Hearing Officer with the Rent Adjustment Program, stating that she was always objective, fair, and an excellent Senior Hearing Officer. Mr. McConnell wished Ms. Kong-Brown well and extended his appreciation for her, stating that she will be missed.

5. CONSENT ITEMS

- a. Approval of Board Minutes from the September 23, 2021 Full Board Special Meeting

T. Williams moved to approve the minutes. Chair Ingram seconded.

The Board voted as follows:

Aye: D. Ingram, T. Williams, R. Nickens, Jr., N. Hudson

Nay: None

Abstain: H. Flanery

The motion was adopted.

6. APPEALS

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

Appearances: Victoria Wentworth Tenant
Ethan Silverstein Tenant Appellant Representative
Gregory McConnell Owner Respondent Representative

This case involved a previously granted owner petition for rent increases based on capital improvements in which a percentage of costs for work done on the property were passed through to the tenants.

The owner’s petition for rent increases based on capital improvements were submitted for six categories of work performed, including a new entry system, interior painting, light fixtures, boiler replacement, carpet replacement, and roofing. The tenants appealed the hearing decision on the grounds that many of the pass throughs were improper, calculations were improper, and that the

Hearing Officer failed to properly analyze for gold plating and primary benefit to the tenants.

The following issues are presented to the Board:

- 1.) Was the pass through for the boiler replacement proper?
- 2.) Did the calculations account for work that was done to areas that were not residential?
- 3.) Did the Hearing Officer in error grant a pass through for work that was not listed in the original petition?
- 4.) Is the finding that no gold plating occurred supported by substantial evidence?
- 5.) Is the finding in this case that the work primarily benefited the tenants supported by substantial evidence?

The tenant representative contended that the owner did not meet the requirements for passing costs through to the tenants for capital improvements because the boiler replacement was unpermitted, costs were passed through for work done on commercial portions of the property, costs were passed through for tiling, which was not listed on the owner's petition, and that the Hearing Officer failed to conduct a proper analysis on gold plating and whether the improvements benefited the tenants.

The owner representative contended that many of the grounds the tenants raised on appeal were not presented at the initial hearing and that tiling was included in the owner's petition as an expense, but it was miscategorized underneath lighting, which was discovered at the hearing and mentioned to the Hearing Officer.

After parties' arguments and questions to the parties, during extensive Board discussions, H. Flanery moved to take a 5-minute break at 6:40 p.m. The motion was approved by consensus.

After Board discussion, H. Flanery moved to remand the case back to the Hearing Officer with the following instructions:

1. Regarding the entry system, tenants have met their burden in the gold plating analysis. The Hearing Officer is to analyze evidence presented at the hearing and to apply that evidence to determine whether the property owner has met their burden on the gold plating analysis.
2. Make a determination as to whether or not a permit was required for the boiler. If so, remove all costs related to the boiler.
3. Remove all costs related to tiling since tenants did not receive proper notice of the tiling costs in the petition.
4. Remove costs related to the portion of the roof covering the commercial

- portion of the property.
5. Remove all costs related to paint, lighting, and carpet due to a lack of substantial evidence from the property owner.

R. Nickens, Jr. seconded the motion.

The Board voted as follows:

Aye: D. Ingram, H. Flanery, N. Hudson, R. Nickens, Jr.

Nay: None

Abstain: T. Williams

The motion was adopted.

b. T19-0394, Thompson v. Goldstone

Appearances:	Naomi Felomino	Owner Appellant Representative
	Jayi Thompson	Tenant Respondent

This case involved a previously granted tenant petition contesting a rent increase which alleged decreased housing services. The tenant's petition was granted because it was determined by the Hearing Officer that the rent increase was unlawful due to the tenant not being provided sufficient notice. A rent reduction was granted based on decreased housing services due to the condition of the tenant's oven and because the tenant was not provided with a replacement garage door opener after the tenant's opener was lost and a new one was requested.

The owner appealed the rent reduction as it relates to the replacement garage door opener, alleging that the tenant could open the garage manually using a key and that the tenant was issued two garage door openers.

The following issue is presented to the Board:

1. Does the evidence in this case support a reduction for the full value of the tenant's parking space?

The owner representative alleges that the tenant had two garage door opener remotes and that although one was lost, the tenant still had a second remote. The owner representative contended that since the tenant still had one garage door opener and the ability to open the garage manually using a key, a portion of the rent reduction should not have been granted. The owner representative alleges that documentation was submitted that proves that two remotes were

previously issued.

The tenant contended that documentation that proves issuance of two garage door opener remotes does not exist and that the lease agreement states that only one opener was issued. The tenant contended that only one garage door opener was received and when it was reported missing and a new one was requested, it was not provided until 22 months later.

After parties' arguments, questions to the parties and Board discussion, N. Hudson moved to uphold the Hearing Officer's decision based on substantial evidence. R. Nickens, Jr. seconded.

The Board voted as follows:

Aye: D. Ingram, T. Williams, N. Hudson, H. Flanery, R. Nickens, Jr.

Nay: None

Abstain: None

The motion was adopted.

7. Information and Announcements

- a. None

8. Adjournment

T. Williams moved to adjourn the meeting. H. Flanery seconded.

The Board voted as follows:

Aye: D. Ingram, H. Flanery, N. Hudson, T. Williams, R. Nickens, Jr.

Nay: None

Abstain: None

The motion was approved. The meeting was adjourned at 7:48 p.m.

Writs Filed or Litigated Against HRRRB
January 1, 2017 to December 2, 2021

	Case Name and Number	Issue	HRRRB Decision and Date	Superior Court Decision and Date
1	<p><i>Owens v. City of Oakland</i> RG18914638; A157663</p> <p>Owner Writ</p>	<p>Does Costa Hawkins' "separately alienable" language exempt rooms rented out separately in a single family home?</p>	<p>March 21, 2018 - HRRRB Affirmed decision finding that individual rooms in a single-family home were not exempted because the rooms were not "separately alienable" units under Costa Hawkins.</p>	<p>Writ Denied - May 29, 2020 – Appellate Court upheld Superior Court's Denial of Writ. RAP applies to rooms rented out in a single-family home. The court interpreted "dwelling unit" as the area of exclusive possession of the tenant. In this case it was a room, and the room was not separately alienable from other dwelling units in the single-family home, and therefore not subject to the Costa Hawkins exemption from rent control.</p>
2	<p><i>Farley Levine v. City Oakland,</i> RG18923811</p> <p>Owner Writ</p>	<p>Is the occurrence of dry rot, by itself, sufficient evidence to make a finding of deferred maintenance?</p> <p>Does prohibition against passing through cost of coin-operated equipment (such as laundry machines) extend to improvements to the structure.</p>	<p>HRRRB affirmed hearing decision that dry rot showed deferred maintenance.</p>	<p>Writ Granted – December 23, 2020 - Occurrence of dry rot, by itself, is not sufficient evidence of deferred maintenance. Finding of deferred maintenance required evidence that owner (or previous owners) "knew or should have known" of the conditions that caused the dry rot.</p> <p>Passthrough of costs for improvement of laundry were wrongfully denied from capital improvements. While the cost of coin operated equipment itself could not be passed through, cost of improving the structures when they also housed other equipment used for the operation of the apartment building, was permitted.</p>

Writs Filed or Litigated Against HRRRB
January 1, 2017 to December 2, 2021

3	<i>Dezerega v. City of Oakland,</i> <i>RG19017611</i> Owner Writ	Are units constructed in 1999 in same footprint as burned-down residential units considered new construction under RAP and Costa Hawkins?	November 29, 2018 – Affirmed hearing officer’s decision that the properties constructed in 1999 did not constitute “new construction” because they were constructed in a space that was previously residential and only replaced the previous residential units. Units would be exempt if additional units were added.	Writ Granted - August 28, 2020 - The HRRRB erred in denying the certificate of exemption. A new certificate of occupancy had been issued in 1999. The Court Rejected the hearing officer’s “footprint” analysis and the HRRRB’s “additional unit” analysis for the new construction exemption. Instead, it found that the units being completely burned down and that they were issued a new certificate of occupancy in 1999 meant the units were exempt pursuant to Costa Hawkins.
4	<i>Niko Arms, LLP v. City of Oakland,</i> <i>RG19032114</i> Owner Writ	Should costs associated with construction work done before the issuance of a building permit be passed through to a tenant as a capital improvement.	July 19, 2019 – Board Affirmed hearing officer’s decision that construction costs made before the issuance of a permit could not be passed on to a tenant as a capital improvement.	Writ Denied -March 13, 2020 - failed to appeal RAP’s decision on remand to HRRRB before filing writ in Superior Court.
5	<i>Donnelly v. City of Oakland</i>	Where a promotional rent is offered for 6 months in the lease, after which rent increases, what is the base rent for the property?	Affirmed hearing officer’s decision that base rent was a discounted “promotional rate” offered for the first six months of the contract, rather than	Demurrer Scheduled for December 9, 2021 – writ filed after 90-day deadline for seeking judicial review. We expect case will be dismissed.
6	<i>Kelly v. City of Oakland,</i> <i>RG19038113</i>	Writ filed alleging hearing officer and HRRRB erred in factual determinations	July 27, 2019 - Affirmed hearing officer’s decision.	Writ Denied – September 27, 2020 amended complaint was never properly served on City
7	<i>Beasley v. City of Oakland,</i> <i>RG19042040</i>	Writ filed alleging hearing officer and HRRRB erred in factual determination concerning settlement agreement in three separate cases	July 27, 2019. Affirmed hearing officer’s decision	Denied – December 21, 2020 – One of the cases was dismissed on procedural grounds. The two other appeals did not present evidence of City error in making factual determinations.

Writs Filed or Litigated Against HRRRB
January 1, 2017 to December 2, 2021

8	<i>Wiebe v. City of Oakland,</i> <i>RG1908666</i> Owner Writ	What proof must owner provide to substantiate expenses in a substantial rehabilitation petition? Due process claims based on alleged misinformation by RAP, lost documents, and lack of quorum by HRRRB.	September 27, 2018 – Affirmed hearing officer’s decision that owner is required to submit both invoices AND receipts to support substantial rehabilitation petition. Board did not reach due process claims	Settled
9	<i>Lantz v. City of Oakland,</i> <i>RG19008583</i> Owner Writ	Was elevator invoice marked “paid” and listing two check payments sufficient documentation to support a capital improvements rent increase.	October 18, 2018 – Affirmed the hearing officer’s decision that the owner had not presented proof of payment because an invoice marked “paid” appeared to have been prepared by the petitioner instead of the elevator company.	Settled
10	<i>Fanfu v. City of Oakland,</i> <i>RG19012876</i> Owner Writ	Interpretation of Costa Hawkins condominium exemption	November 8, 2018 – Affirmed hearing officer’s decision that condominium units were not covered by exemption because units had not been “sold separately,” but in one large transaction.	Settled
11	<i>Fong v. City of Oakland</i> <i>RG 18930130</i> Owner Writ	Interpretation of Costa Hawkins condominium exemption	November 8, 2019 – Affirmed hearing officer’s decision that condominium units were not covered by rent control because units had not been “sold separately,” but in one transaction to a new owner	June 6, 2019 – Superior Court Granted Writ. “Sold separately” in Costa Hawkins only refers to units that have title “alienable separate from the title to any other dwelling unit” and not whether the units were sold in separate transactions or to separate owners.

Writs Filed or Litigated Against HRRRB
January 1, 2017 to December 2, 2021

12	<i>Turner v. City of Oakland</i> <i>RG17878757</i> Tenant Writ	Was there substantial evidence for granting capital improvement pass-through?	July 7, 2017 – Gas line re-routing constituted capital improvement and could be passed through.	April 18, 2019 – Superior Court denied writ. Finds that petitioner has not clearly laid out her claim, but that there appears to be substantial evidence in record for establishing a capital improvement pass-through.
13	<i>525 Hyde Street, CNML Properties v. City of Oakland</i> <i>RG17-862841</i> Owner Writ	Can tables issued by the Chief Building Inspector pursuant to O.M.C. 8.22.030.B.2.b. be modified by RAP to more accurately reflect current cost estimates for construction?	December 8, 2016 – HRRRB affirmed hearing officer’s decision on substantial rehabilitation petition. Hearing officer had modified the City-issued “City of Oakland Building Services Construction Valuation,” which was years out of date, with a “Quarterly Cost Indexes” to make the tables accurately reflect the costs at the time project started.	December 12, 2018 - Owner writ granted by Superior Court. Superior Court interpreted O.M.C. 8.22.030.B.2.b. to require that table used for calculation be 1) “issued by the chief building inspector” and; 2) “be applicable for the time period when the substantial rehabilitation was completed.” The Cost index had not been issued by the chief building inspector and therefore could not be lawfully used for the substantial rehabilitation calculation Real Parties in Interest have appealed. City is not taking part in appeal.
14	<i>Golden State Ventures v. City of Oakland</i> <i>RG16834166</i> <i>A151421</i> Owner Writ	Interpretation of Costa Hawkins condominium exemption	July 9, 2016 – HRRRB affirmed decision that former apartments, converted to condominiums by developer, and sold in separate transactions to same purchaser did not satisfy the “sold separately” requirement in Costa Hawkins because they had all been sold to the same purchaser on the same day, and therefore were still subject to RAP.	March 21, 2017 – Superior Court Trial court granted plaintiff’s writ petition. The "plain meaning" of the "sold separately" only refers to the title of the condominium. Nothing in the statute or legislative intent suggests that the condominiums in a building are not sold separately if they are sold at the same time to the same buyer. Jan. 25, 2018 – Court of Appeal Affirmed

Writs Filed or Litigated Against HRRRB
January 1, 2017 to December 2, 2021

15	<p><i>Bader v. City of Oakland</i> <i>RG16809738</i></p> <p>Owner Writ</p>	<p>Interpretation of “date of proposed increase” under former Regulation 10.2.1 in situation where an owner both noticed a rent increase and petitioned the board to pass-through a capital improvement</p>	<p>November 12, 2015 – HRRRB affirmed hearing officer’s decision denying capital improvement pass-through because the work took place more than two years before “date of proposed increase.” The hearing officer had found that the earliest date the owner could have proposed the rent increase was the 120 days after filing the petition for rent increase, based on the Ordinance’s goals for hearing petitions. The owner had argued that the hearing officer should use a date that the owner had actually noticed the rent increase.</p>	<p>January 18, 2018 – Superior Court Granted Writ</p> <p>Court determined that the date of the proposed rent increase was the date that the owner’s notice of rent increase would have gone into effect, regardless of whether the landlord also filed a petition for capital improvements pass through</p>
16	<p><i>Baragano v. City of Oakland</i> <i>RG14732655</i> <i>A148852</i></p> <p>Tenant Writ</p>	<p>Can a seismic retrofit be considered a capital improvement</p>	<p>April 17, 2014 – HRRRB affirmed hearing officer’s decision that seismic retrofit work primarily benefited the tenant, and therefore could be considered a capital improvement.</p>	<p>Superior Court – March 18, 2016. HRRRB had substantial evidence to determine that seismic retrofit work primarily benefited the tenant and therefore was a valid capital improvement expense.</p> <p>Appeal dismissed by Barragano 10/03/2017</p>

Writs Filed or Litigated Against HRRRB
January 1, 2017 to December 2, 2021

17	<p><i>Sherman v. City of Oakland</i> RG15785257 No. A147769</p> <p>Tenant Writ</p>	<p>Can evidence submitted to HRRRB and not to Hearing Officer be excluded by HRRRB?</p> <p>Substantial evidence for finding of exemption.</p>	<p>July 2014 – HRRRB affirmed hearing officer’s decision exempting the property and refused to hear tenant’s new evidence showing owner was not entitled to exemption</p>	<p>Superior Court – Denied Writ entirely While CCP 1094 permits remand of a matter to an administrative agency when it appears relevant evidence exists, which, in the exercise of reasonable diligence, could not have been produced earlier or was improperly excluded at the hearing, trial court has discretion to make that decision, and the decision will not be disturbed unless abused. Substantial evidence existed that evidence could have been produced earlier, and substantial evidence existed to support decision to grant exemption</p> <p>April 26, 2017 – Court of Appeal Affirmed Denial of Writ</p>
18	<p><i>Michelsen v. City of Oakland</i> RG14711450</p> <p>Owner Writ</p>	<p>When does exemption from RAP take effect?</p>	<p>October 28, 2013 – HRRRB affirmed hearing officer’s finding that the owner’s rent increases were unlawful for failure to provide RAP notice.</p>	<p>Superior Court – Denied Writ claiming that landlord’s later- granted exemption petition barred the earlier case granting rent restitution</p> <p>Exemption did not take effect until after landlord petitioned for exemption and the Rent Board’s decision was final</p>

Appeal Hearing Outline

I. Appellate Body

A. Full Board

1. Quorum.

a) Four.

b) One of each category of Board member first time matter comes up.

c) Any four Board members next time matter comes up.

d) Parties may waive requirement for one of each category, but not numerical quorum.

B. Appeal Panels

1. Quorum.

a) One of each category on Board member.

2. Should only hear appeals on issues already decided by the Board or more routine cases.

II. Appeals

A. Grounds for Appeal (Reg. 8.22.120B):

1. The decision is inconsistent with Rent Law, the Regulations, or prior Board decisions;

2. The decision is inconsistent with other Hearing Officer decisions;
3. New policy issue;
4. The decision violates federal, state, or local law;
5. The decision is not supported by “substantial evidence”.
6. The Hearing Officer made a procedural error denying sufficient opportunity adequately present claim or respond to opposing party; or
7. Owner denied a fair return.

B. Timelines and Deadlines

1. Party must appeal in 15 days after decision + 5 days for mailing.
 - a) If appeal is late, staff dismisses.
2. 10 day notice for appeal hearing.
3. Goal of hearing appeal w/i 30 days (give reasons in writing for each 30 day extension)
4. Postponements of Appeal Hearings
 - a) Granted by Board or staff.
 - b) Only for good cause and in the interest of justice.
 - (1) Illness.

(2) Travel plans scheduled before notice of hearing.

(3) Impractical to appear due to unforeseen circumstances or prearranged plans.

(4) Difficulty or inconvenience in appearing not sufficient.

c) Must be verified.

d) Mutual consent by parties.

e) Request must be submitted at earliest possible time prior to appeal hearing.

C. Appeal submissions.

1. Appeal must be on Board form.

2. Must state reason for appeal.

3. Must serve other parties.

4. Staff reviews for deficiency.

a) For example, failure state reasons for appeal.

b) Staff sends deficiency letter.

c) If not corrected, staff dismisses.

5. Limited to 25 pages (record is 2300).

D. Reconsideration by staff.

1. If appeal presents minor, facial error, Hearing Officer may be asked to review, correct, and issue corrected decision.

- a) For example, calculation error.

E. Failure to appear.

1. Appellant -- Board may dismiss.
2. Respondent – Board continues with appeal hearing, appellate must still put forward case.

F. Conduct of Appeal Hearing

1. Open and recorded.
2. Parties may be represented or assisted.
3. Parties may have translators, but if City is to provide, request must be made in advance.
4. Presentation.
 - a) Each side gets 15 minutes, unless Board votes otherwise.
 - b) 5 minutes for presentation.
 - c) 5 minutes for rebuttal.
 - d) 5 minutes for Board questions.
5. Comments by members of the public not considered.

6. Additional documents not provided with packet cannot be used.

a) Due process concerns, opposing party has a right to respond.

b) If documents are part of the record, they may be found in case file and referred to.

7. New evidence.

a) No new evidence may be presented at an appeal hearing.

b) Exceptions

(1) As proffer of what evidence might have been presented because party did not have opportunity to present at hearing and that is basis of appeal.

(2) As proffer of good cause for failure to appear.

c) Board does not consider evidence, but rather refers to Hearing Officer if proffer is sufficient.

(1) For example, if evidence is sufficient to constitute good cause for excuse, it is referred to

Hearing Officer to determine veracity. If it is not sufficient cause, no need to refer.

G. Board's Decision on Appeal

1. Voting

- a) Majority of those present required to overturn (provided quorum is present).
- b) Tie vote or no vote upholds decision.

2. Written Decision

- a) Staff prepares written decision; comes back Board consideration at subsequent meeting only if Board requests.
- b) Decision must include analysis articulating how the evidence supports the findings and how the findings support the conclusion.

III. Appeal on the record or de novo.

A. On the record.

- 1. No new testimony taken or documents submitted.
- 2. Parties allowed to argue and to discuss evidence before the hearing office, but not to submit new evidence.

3. The decisions must be apparent from documents or findings.
4. Parties can agree on what facts are from hearing below.
5. Staff prepares limited portion of record for Board.
 - a) Board may review the file at office or at Board meeting.
6. Record of oral proceedings not available unless:
 - a) Party transcribes or plays portion of hearing.
 - b) Board member listens at office or requests copy of recorded hearing.

B. De novo (new hearing).

1. Board takes new evidence (testimony and or documentary) on entire case or specific issues.
2. De novo or evidentiary hearings by the Board are not recommended:
 - a) Hearing Officers are better equipped to handle evidentiary hearings.
 - b) Board would have to make evidentiary rulings.
3. Must be at subsequent hearing to allow other party to prepare to contest evidence or to submit contrary evidence.

4. Witnesses must be sworn.

a) Representatives cannot testify.

IV. Evidence.

A. Decision must be based on preponderance of evidence.

B. Strict rules of evidence don't apply.

C. Board can accept hearsay, but give it appropriate weight.

1. Out of court statement offered for the truth.

2. One person testifying as to what another person says.

3. Primary issue is whether the testimony is reliable because it is not direct.

4. Must be other corroborative evidence.

D. Direct and circumstantial evidence.

1. Direct.

a) I saw her eat a piece of cake.

2. Circumstantial.

a) I saw the cake with a slice out and cake crumbs on her mouth.

E. Documents that are not agreed to as being true and correct should be attested to or certified.

F. Evaluating conflicting evidence.

1. Look at surrounding circumstances.

a) Are there other facts to support one side or the other.

2. Motivation of the person testifying.

3. Credibility of the person testifying.

G. Proffered evidence (offer of proof).

1. This is the evidence I would have presented or would present if I have had the opportunity to do so.

a) I can show why I was late.

V. Addressing Appeal Issues.

A. What issues did party appeal on?

B. Should the Board address issues that are apparent, but that neither party appealed on?

1. For example, when a party plainly missed a time deadline and the decision is in error on this point, but there is no appeal on this issue.

C. The Board should assume that issues not brought forward on appeal that are necessary to support the Hearing Officer's decision were correctly decided.

1. For example, that the tenant timely filed the petition or that the landlord gave the proper notices.

D. Substantial evidence.

1. The appellant who claims there was not substantial evidence supporting the decision has the burden of producing the evidence presented and demonstrating it was not substantial.

E. Findings do not support decision or a conclusion.

1. The findings point to an opposition conclusion.
 - a) Example: The finding states that housing services were decreased, but the conclusion is that no rent decrease was granted.

2. There is an analytical gap between the findings and the conclusion.

- a) The findings do not state “why” the conclusion follows.

- b) Example:

- (1) “The roof work was not a capital improvement.” (Why not?).

- (2) “The roof work was not a capital improvement

because it was just the repair of a small leak and not a replacement of the roof.”

VI. Burdens of Proof.

A. The party with the burden of proof must present evidence to meet that burden.

1. If the party with the burden fails to produce competent evidence, that party loses.

B. Examples of burdens.

1. Landlord.

a) Burden of proving eligibility for rent increase.

b) Exemption.

2. Tenant

a) Rent decrease.

VII. Options for Decisions.

A. Affirm hearing officer.

1. No action is affirmation.

2. Affirm with recalculation.

a) Staff performs recalculation and it becomes Board decision with or without further review.

B. Reverse hearing officer.

1. Make a new decision.

C. Remand to Hearing Officer.

1. Board gives instructions as to what issues to address.
2. Hearing officer may make new decision or keep existing decision.

VIII. Decision

- A. Decisions must be in writing.
- B. Decisions should have findings.
- C. The Board should respond to all issues raised on appeal.
- D. The Board should articulate the reasons for its decision.
- E. Board's decision is final as to City.
- F. Decision can only be appealed to court by writ.
 1. Court considers only case record.

IX. Types of Cases for Board.

A. Rent

1. Tenant.
 - a) Rent in excess of CPI.
 - b) Lack of notice at commencement.
 - c) Lack of notice with Rent Increase.
 - d) Decreased housing services.

- e) Uncured code violations.
- f) No timely summary after request.
- g) Contests exemption.

2. Landlord

- a) Rent increase.
- b) Exemption from Rent Law.

(1) Board does deal with Just Cause exemptions.

B. Just Cause for Eviction.

1. Protected status.

- a) Senior.
- b) Disabled.
- c) Catastrophically ill.

2. Time for rehabilitation longer than 3 months.

C. Relocation.

1. Amount of relocation benefits for redevelopment or other relocation.

- a) Not code enforcement relocation.

D. Housing Code

1. Interpretations of housing code.

X. Communications With the Board

A. Ex parte communications.

1. Parties communicating with the Board or Hearing Officer outside of the appeal process.

B. Non-parties speaking at Appeal Hearings.

1. Brown Act permits the public to speak on any item on the Board Agenda.
2. Because of due process and fairness considerations, the Board should not consider comments of non-parties at appeal hearings.

401755v2

CHRONOLOGICAL CASE REPORT

Case No.: T19-0384

Case Name: Salvador v. Fong

Property Address: 1354 81st Avenue, Oakland, CA 94621

Parties: Ana Salvador (Tenant)
Jackie Zaneri (Tenant Representative)
May Fong (Owner)

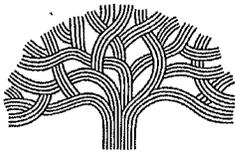
TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	August 9, 2019
Property Owner Response filed	January 28, 2020
Addendum Response to Tenant Claim	January 28, 2020
Administrative Decision mailed	August 31, 2021
Tenant Appeal with Brief filed	September 20, 2021

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T19-0384 ^{AS} MS / MASK

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
For date stamp.
2015 AUG -9 AM 11:28

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

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

Please print legibly

Your Name Ana Jeronimo Salvador	Rental Address (with zip code) 1354 81st Avenue #A Oakland, CA 94621	Telephone: 510-688-1892
		E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) May Lee Fong	Mailing Address (with zip code) 358 Cerro Court, Daly City, CA 94015	Telephone:
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 6

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

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

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

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

For more information phone (510) 238-3721.

Petition prepared by Centro Legal de la Raza

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

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

Date you moved into the Unit: 8/3/2012 Initial Rent: \$ 1150 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 7/5/2018. If never provided, enter "Never."

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
6/11/2019	9/1/2019	\$ 1375	\$ 2000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Additional rent increases I want to challenge are listed on my prior petition T18-0392				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

T18-0392

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

Yes No

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

Yes No

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

Yes No

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

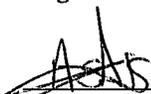
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

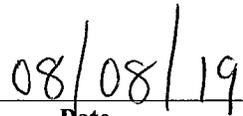
You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature



Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File This form must be **received** at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

File Review

Your property owner(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Property Owner's Response. The petition and attachments to the petition can be found by logging into the RAP Online Petitioning System and accessing your case once this system is available. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

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

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

Tenant Petitioner
Ana Salvador
1354 81st Avenue #A
Oakland CA 94621

Addendum A- Exemption Sought or Obtained through Fraud or a Mistake

Specifically, the condominium conversion project for 1354 and 1356 81st Avenue did not receive a final approval from the Planning and Building Department because the Landlord did not meet all requirements of the condominium conversion ordinance and fraudulently asserted that the building contained four units, rather than six. The Tenant discovered these facts very recently, after reviewing the file associated with the property's condominium conversion and engaging in discussion with the Planning and Building Department.

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Tenant Petitioner
Ana Salvador
1354 81st Avenue #A
Oakland CA 94621

Addendum B- Decreases In Service and Bad Conditions

The decreases in service and bad conditions I continue to experience are listed in my previous petition T18-0392.

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Strengthening Community
Since 1969*

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2019 AUG -9 AM 11:28

August 9, 2019

Analyst Margaret Sullivan
City of Oakland
Rent Adjustment Program
Department of Housing and Community Development
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Via Hand Delivery

RE: Petition submission and request for consolidation

Dear Analyst Sullivan:

Please find attached a tenant petition.

The tenant petitioner requests that this petition be consolidated with Cases: T19-0159, T19-0160, T18-0382, T18-0383, and T18-0392.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns at (510) 947-9898.

Sincerely,

Noel Munger
Housing Advocate
Tenants' Rights Program

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 CITY OF OAKLAND CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: JAN 28 2020 RENT ADJUSTMENT PROGRAM OAKLAND PROPERTY OWNER RESPONSE
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T TI 9-0384

Your Name May Lee Fong Michael B Lee	Complete Address (with zip code) 358 Cerro Court Daly City, Ca 94015	Telephone: 415-812-9908 Email: mayfong@pacbell.net
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) Ana Jeronimo Salvador	Complete Address (with zip code) 1354 81st Ave Unit A Oakland, Ca 94621	
Property Address (If the property has more than one address, list all addresses) 1354 81st Ave Unit A, Oakland, Ca 94621		Total number of units on property 6

Have you paid for your Oakland Business License? Yes No Lic. Number: 00149707
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 42-4247-85
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 03 /29 / 12.

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

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

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

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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

Property Owner's Signature

10/31/19

Date

CASE NUMBER T T19-0384 IV. EXEMPTION

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)? NO
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)? NO
3. Was the prior tenant evicted for cause? NO
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
NO
5. Is the unit a single family dwelling or condominium that can be sold separately? YES
6. Did the petitioning tenant have roommates when he/she moved in? NO
7. If the unit is a condominium, did you purchase it? If so:
 - 1) from whom? ? YES FROM AMERIQUEST MORTGAGE SECURITIES INC
 - 2) Did you purchase the entire building? YES

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CASE NUMBER T19-0382, T19-0383 AND T19-0384
ADDENDUM RESPONSE TO TENANT CLAIM

RECEIVED

JAN 28 2020

RENT ADJUSTMENT PROGRAM
OAKLAND

A) *Petition Invalid Unit Exemption is under Claim Preclusion and Issue Preclusion*

This issue or claim is preclusion, that the issues raised in this new case were already decided in the prior case or could have been decided in the case. Please see attached Motion to Dismiss this petition is by barred res judicata and collateral estoppel. The hearing officer and RAP should conclude Tenant's fraud or mistake claim is barred by the decision in *The Fong v City of Oakland Rent Board and Tenants*, because opinion was issued final judgment on the merits allowing Fong to invoke the claim preclusion or issue preclusion doctrines.

B) *Petition Invalid Filed Past Deadline*

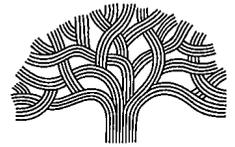
TENANT filed petition past the deadline set forth by the Oakland Municipal Code. It states "You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

C) *Petition Invalid Filed Past Deadline Procedurally Incorrect*

TENANT cannot contest the Property exemption by fraud or mistake since this petition is procedurally filed too early. LANDLORD requests this case be dismissed. Oakland Rent Board ordinance allows a tenant may contest a prior certificate of exemption based on "fraud or mistake regarding the granting of the certificate." (Oakland Mun. Code, §§ 8.22.030.B.1.c) However, there was no fraud or mistake with exemption. LANDLORD purchased the units as "alienable separate from the title to any other dwelling unit," which includes condominiums because (unlike apartments) they can be sold individually without affecting other units' titles. (§ 1943.52, subd. (a)(3)(A); see also *Burien*, supra, 230 Cal.App.4th at p. 1045; § 4105 [defining a "[c]ommunity apartment project"]; § 4125, subd. (b) [defining a "condominium"].) and this was proven and judgment ruled by Superior Court.

TENANT cannot make a claim of fraud or mistake with this petition since the Certificate of Exemption was not issued until after this petition was filed. This was petition was filed August 9, 2019 and the unit was not issued an exemption until September 20, 2019.¹ Therefore, this petition was filed prior to the exemption issued and a hearing cannot be heard unless the petition was made after the exemption was issued. This petition should be dismissed and tenant must refile a new petition after the certificate of exemption was issued by Oakland Rent Board if not ruled under claim and issue preclusion.

000045

**ADMINISTRATIVE DECISION**

CASE NUMBER: T19-0384

CASE NAME: Salvador v. Fong

PROPERTY ADDRESS: 1354 81st Avenue
Oakland, CA

DATE OF DECISION: August 31, 2021

SUMMARY OF DECISION

The Tenant's petition is denied.

INTRODUCTION

Reason for Administrative decision: An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and there are no material facts in dispute. Therefore, an administrative decision, without a hearing, is being issued.

BACKGROUND

The Tenant filed the petition, T19-0384, on October 9, 2019. The Tenant's petition contests the previously granted exemption to the Landlord in L16-0083, arguing that the exemption was issued based on fraud or mistake. The petition also alleges unlawful rent increases and decreased housing services.

//

The Landlord filed the first petition involving the parties, L16-0083, on October 31, 2016, asserting that the subject unit, as well as other units at the property, are condominiums, and requested an exemption from RAP under the Costa Hawkins Rental Housing Act (hereinafter “Costa Hawkins”).¹

On April 14, 2017, a hearing decision was issued in L16-0083, denying the exemption. The L16-0083 Hearing Officer found that while the property had been converted to condominiums, the property was not exempt because it “[had] not been sold separately by the subdivider to a bona fide purchaser for value.”² The Hearing Officer also determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately, and therefore were not exempt from rent control.³

The Landlord filed a timely Writ of Administrative Mandate with the Alameda County Superior Court to direct the Board to set aside its decision denying the Landlord’s exemption. The Landlord filed a timely appeal, and the Oakland Housing, Residential Rent, and Relocation Board (hereinafter “Board”) affirmed the holding on June 2018.⁴ The Court found that the units at the subject property had been sold separately and granted the Landlord’s petition for an Administrative Mandate in June 2019.⁵ Thereafter, the Hearing Officer assigned to L16-0083 issued a Certificate of Exemption, as directed by the Superior Court of Alameda County, pursuant to the ruling issued in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins Rental Housing Act.”⁶

The Tenant now argues that the focus of the Landlord’s arguments and the Court’s analysis was narrow and alleges that the only question before the Court was whether the units at issue could be considered “sold separately” under the exemption to Costa Hawkins, given that the Landlord owned all the units in the building and had acquired them on one day through one transaction.⁷ Tenant alleges that because the Court cited a prior Board decision that addressed a similar issue, *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*, the Court’s finding was limited in scope that the units at the

¹ Civil Code Section 1954.52(a)(3)

² RAP Hearing Decision, L16-0083, p. 4

³ *Id.*

⁴ *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130

⁵ *Id.*

⁶ Certificate of Exemption, L16-0083.

⁷ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

property had been sold separately and that on this limited basis, granted the Landlord's petition for an Administrative Mandate in June 2019.⁸

The Court's Order also prohibits the Board from relitigating this issue by the doctrine of collateral estoppel.⁹ Notwithstanding the Court's order, the Tenant seeks to relitigate the exemption alleging that said prohibition relates only to further hearings on the "statutory bona fide purchaser test." The Landlord disagrees.

The Tenant claims that the Court made no finding with regard to whether the property meets other requirements for an exemption from RAP under Costa Hawkins; specifically, the Tenant alleges that to qualify for a Costa Hawkins exemption from rent control, the Landlord must also show that the units are "alienable separate from the title to any other dwelling unit" under California Civil Code § 1954.52(a)(3)(A). The Court's Order notes that the parties agree that the units in question, including the unit herein, are condominium units; and that "sold separately" means sold as condominiums, with separate titles.

The Tenant herein brought this petition, T19-0384, alleging that the exemption was based on fraud or mistake, and the decision to award the exemption should be reversed because the units are not separately alienable. The Tenant, and her attorney of record, do not deny that the Tenant was a party and represented when the Landlord filed the petition in L16-0083.

On March 31, 2021, the undersigned continued the matter, sua sponte, to allow the parties the opportunity to brief the issue of whether the June 7, 2019 Order prohibited the petition herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is undisputed that the Tenant herein was a party to the prior case, L16-0083. Therefore, it is found that additional litigation between the parties is prohibited by the Superior Court Order dated June 7, 2019.¹⁰

//

⁸ *Id.*

⁹ *Id.*

¹⁰ *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

ORDER

1. Petition T19-0384 is denied.
2. The matter will not be set for further hearing.

Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within fifteen (15) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 31, 2021



Élan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T19-0384

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

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

Documents Included

Administrative Decision

Owner

May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant

Ana Jeronimo Salvador
1354 81st Avenue Unit A
Oakland, CA 94621

Tenant Representative

Jackie Zaneri, Centro Legal de la Raza
3022 International Blvd. Suite 410
Oakland, CA 94601

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 31, 2021** in Oakland, CA.

Brittni Lothlen

Brittni Lothlen

Oakland Rent Adjustment Program

000050

 CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp.
	<u>APPEAL</u>

Appellant's Name Ana Jeronimo Salvador		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1354 81st Avenue, Unit A, Oakland, CA 94602			
Appellant's Mailing Address (For receipt of notices) 1354 81st Avenue, Unit A, Oakland, CA 94602		Case Number T19-0384	
		Date of Decision appealed August 31, 2021	
Name of Representative (if any) Xavier Johnson Gregory Ching		Representative's Mailing Address (For notices) 3400 E 12th Street, Oakland, CA 94601	

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

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

For more information phone (510) 238-3721.

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

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

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

I declare under penalty of perjury under the laws of the State of California that on September 20, 2021, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	May Lee Fong
<u>Address</u>	358 Cerro Court
<u>City, State Zip</u>	Daly City, CA 94015
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

DocuSigned by:  2CBF4868723942B...	9/20/2021
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

We seek permission to use more than 25 pages in documentation due to the complex nature of the case, and due to the fact that we are also required to cite to the original landlord exemption petition and a separate writ of mandamus, and due to the fact that we have not been able to have a hearing on the record to admit documents into evidence.

For more information phone (510) 238-3721.

APPEAL BRIEF IN SUPPORT OF TENANT PETITION T19-0384

To: Rent Adjustment Program Appeals Board
From: Xavier Johnson and Gregory Ching, Attorneys for Ana Jeronimo Salvador

Case No: T19-0384
Case Title: Salvador v. Fong
Property Address: 1354 81st Avenue Unit A, Oakland, CA 94602

FACTS AND PROCEDURAL HISTORY

The Landlord May Fong (“Landlord”) filed the first petition involving the parties, L16-0083, on October 31, 2016. The petition asserted that Tenant Ana Jeronimo Salvador’s (“Salvador”) unit and three other units at the property are condominiums and sought an exemption from the Oakland Rent Adjustment Program (“RAP”) under the Costa Hawkins Rental Housing Act (“Costa Hawkins”), California Civil Code Section 1954.52(a)(3). The property that is the subject property of this case is 1354 81st Avenue Unit A, Oakland, CA 94602 (“Subject Property”).

At the hearing on October 31, 2016, Landlord testified that Tenant Salvador’s unit qualified for an exemption under Costa Hawkins because the property had been subdivided into five parcels – four condominium parcels and one parcel containing two “unconverted” apartments.¹ A proper condominium conversion divides apartments into unique parcels capable of having separate owners. When asked to produce the Conditions, Covenants and Restrictions (“CC&Rs”) that are required for the condominium subdivision², the Landlord responded that she did not have them.³ In contrast, co-owner Michael Lee indicated that the CC&Rs were “verbal.”⁴

¹ Hearing Recording for L16-0083, 0:14:05-0:14:15, 0:19:50-0:20:05

² The CC&Rs are the documents which govern how property is supposed to be used by separate property owners when the property is subdivided.

³ Hearing Recording for L16-0083, 0:24:35-0:25:31.

⁴ Hearing Recording for L16-0083, 0:26:52-0:27:20.

On April 14, 2017, a hearing decision was issued in L16-0083 denying the exemption relying solely on one theory: that the properties were not “sold separately.”⁵ The decision made no analysis as to whether the property was separately alienable from other property.

The hearing officer found that while the property had been converted to condominiums, the property was not exempt from Costa Hawkins because it “[had] not been sold separately by the subdivider to a bona fide purchaser for value.”⁶ The hearing officer determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately, and, therefore they were not exempt from rent control.⁷ At the time this was a common ruling by the Rent Adjustment Program and the theory had been used to decide many prior cases.

The Landlord appealed the hearing decision, but the Oakland Housing, Residential Rent and Relocation Board (“RAP Board”) affirmed the holding in June 2018.⁸ On November 28, 2018, Landlord petitioned the Alameda County Superior Court for a Writ of Administrative Mandate to direct the RAP Board to set aside its decision denying the Landlord an exemption. The focus of the Landlord’s arguments and the Court’s analysis was narrow: whether the units at issue were “sold separately” under the exemption to Costa Hawkins because the Landlord owned all the units in the building and acquired them on one day through one transaction.⁹ The only remedy sought by the landlord was a vacation of the appeal decision made in case L16-0083 and T17-0015.¹⁰ The briefing of the property owner in their appeal argument to RAP as well as in

⁵ RAP Hearing Decision, L16-0083

⁶ RAP Hearing Decision, L16-0083, p. 4

⁷ *Id.*

⁸ OHRRRB Appeal Decision, L16-0083, p.2

⁹ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

¹⁰ *Fong v. City of Oakland, Housing, Residential Rent and Relocation Board*, RG18930130 (petition for writ of administrative mandamus)

their appeal argument to the superior court was all narrowly focused on the “sold separately” theory.

Citing a prior RAP case from 2018 that addressed whether multiple condominiums purchased in one transaction constituted properties that were “sold separately,” the Court found that the subject property’s units had been sold separately and granted the Landlord’s petition for an Administrative Mandate in June 2019.¹¹

In response to the Court’s June 2019 order, the hearing officer for petition L16-0083 issued a Certificate of Exemption without providing further analysis on the issue of separate alienability. The Hearing Officer stated, “on June 13, 2019, the Superior Court of Alameda County ruled in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins Rental Housing Act.”¹² A careful review of the writ shows that the Court made no such determination. Instead, the Court ruled that the subject property’s units were sold separately, and, therefore, did not fall into the narrow exception to Costa Hawkins outlined in California Civil Code Section 1954.52(3)(B)(ii). Although the Court determined that the units were sold separately, and that the Landlord was, therefore, a bona fide purchaser for value, the Court made no finding with regard to whether the property met other requirements for an exemption from RAP under Costa Hawkins.

The Tenant filed a timely appeal of the RAP’s decision to grant the exemption, but was told that the exemption decision was not appealable. Thus, the Tenant brings this action alleging that the exemption was awarded based on fraud or mistake.

On October 9, 2019, Tenant Salvador brought tenant petition, T19-0384, because the Landlord not only failed to meet their burden of showing separate alienability, but the evidence

¹¹ *Id.*; See Also *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*

¹² Certificate of Exemption, L16-0083.

and testimony submitted in support of L16-0083 make clear that the units at the subject property are in fact *not* separately alienable. Moreover, the Tenant uncovered evidence on July 8, 2019 that the Landlord made several critical misrepresentations about the nature of the property and the process used to convert the units to condominiums. Accordingly, the exemption was based on fraud or mistake, and the decision to award the exemption should have been reversed.

On August 31, 2021, Hearing Officer Elan Lambert denied the tenant's petition in an administrative decision. For the reasons stated below, the Tenant requests that a hearing be granted which allows the Hearing Officer to evaluate whether there was fraud or a mistake in granting an exemption for the subject property. First, the hearing officer erroneously found that the Superior Court's narrow holding, which was limited to the theory of "sold separately," was sufficient to bar the tenant's petition. It is the tenant's position that there was more analysis that needed to be completed prior to granting the original exemption petition, namely that RAP needed to make a finding of whether the property was separately alienable prior to granting an exemption. Second, it is the tenant's position that the owner made fraudulent representations at the original exemption hearing. Finally, even if the exemption was legitimately granted, the Landlord has used the subject property as a duplex; thus, the subject property is subject to rent control.

ARGUMENT

1. The petition is not barred by the doctrine of res judicata or collateral estoppel.

In responding to Tenant Salvador's petition, the Landlord asserts in a Motion to Dismiss, that RAP should not relitigate the issue of the exemption on the basis of the doctrines of res judicata and collateral estoppel. In fact, neither doctrine applies in this case.

"[R]es judicata describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them."¹³ Res judicata bars a subsequent claim when "(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding."¹⁴

The Rent Adjustment Program has considered cases in which RAP granted a landlord petition for exemption, but then later invalidated the exemption due to fraud or mistake.¹⁵ *Michelson v. Sherman* went to the Superior Court on a writ and the Superior Court remanded the case back to the Rent Board to decide on the issue of fraud.¹⁶ At the hearing on the issue of fraud, the board vacated the exemption due to fraud or mistake.¹⁷

In the instant case, the Court held that even though the Landlord purchased all the units at the subject property from the subdivider in one transaction, the units were indeed "sold separately to a bona fide purchaser for value" for purposes of the Costa Hawkins exception that was at issue, namely California Civil Code Section 1954.52(3)(B)(ii).¹⁸ The Court ordered RAP to vacate its denial of the Landlord's exemption petition and forbade the RAP from further litigating the question of whether the units were sold separately. Because the original denial of the exemption petition was decided on other grounds (namely, the narrow exception found in California Civil Code Section 1954.52(3)(B)(ii)), the RAP has not yet made any findings around

¹³ *Colombo v. Kinkle, Rodiger & Spriggs*, 35 Cal. App. 5th 407, 416

¹⁴ *Id.*

¹⁵ *Michelson v. Sherman*, L18-0081; see also RAP appeals index

¹⁶ *Id.*; see also RAP appeals index

¹⁷ *Id.*; see also RAP appeals index

¹⁸ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

the alienability of the units. In short, the Court reversed the RAP's denial of the exemption, but did not find that the Landlord was indeed entitled to an exemption. Critically, the Court made *no* finding regarding the broader question of the Landlord's right to an exemption from rent control.

Specifically, the Court's order indicated that the RAP was collaterally estopped from further hearings on the "statutory bona fide purchaser test," but the Court did not forbid the RAP from further hearings on the broader question of whether the units are separately alienable and therefore exempt from rent control under *Costa Hawkins*.¹⁹ In fact, the Court stopped well short of this question. This is additionally true because all of the filings by the landlord in the writ pertained to the sold separately theory.²⁰ There was no mention of separate alienability either in the decision by the Rent Adjustment Program or in the documents filed by the landlord demonstrating that these questions have not been actually litigated or decided on.²¹

As is laid out in detail below, based in part on evidence submitted by the Landlord herself, Tenant Salvador has demonstrated through evidence submissions that the units at the property are not separately alienable and therefore do not qualify for an exemption under *Costa Hawkins*. Unfortunately, after the Court issued the Administrative Mandate, the RAP granted the exemption without holding a hearing or making any findings on the broader issue of separate alienability.

The issues present in this petition, namely the fraud or mistake, are not barred by collateral estoppel or *res judicata* because the issues have not been litigated before. The ruling in the writ of mandamus pertaining to this case was narrowly limited to the theory of sold

¹⁹ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

²⁰ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019), complaint

²¹ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019), complaint

separately, and has no bearing on whether there was fraud or a mistake in the underlying exemption petition.

2. The exemption was issued based on fraud or mistake.

a. Under California and Oakland law, the Landlord did not meet the burden required to establish separate alienability.

Costa Hawkins stipulates that any dwelling or unit that is separately alienable from any other dwelling or unit is exempt from rent control, except under certain circumstances.²² The Court’s interpretation of “sold separately” applies only to California Civil Code § 1954.52(a)(3)(B)(ii). However, in order to qualify for a Costa Hawkins exemption from rent control, the Landlord must also show that the units are “alienable separate from the title to any other dwelling unit” pursuant to California Civil Code § 1954.52(a)(3)(A).

California law requires that an owner must first obtain a Notice of Subdivision Public Report from the California Department of Real Estate in order to legally sell individual units in a subdivision of five or more parcels.²³ In applying this law, the California Court of Appeal has held that without a Notice of Subdivision Public Report, subdivided units cannot be considered separately alienable.²⁴ In *City of West Hollywood v. 1112 Inv. Co.*, the City brought an action against a property owner for violation of the local rent control ordinance, arguing that the units at issue were no longer capable of being sold as condominiums—and therefore no longer entitled to an exemption under Costa Hawkins—because the property owner had allowed to lapse the property’s Notice of Subdivision Public Report.²⁵ The Court sided with the City of West Hollywood, highlighting the breadth of the state statutory scheme and the policy goals it

²² CA Civ. Code § 1954.52(a)(3)(A)

²³ CA Business and Profession Code § 11018.2

²⁴ *City of W. Hollywood v. 1112 Inv. Co.*, 105 Cal. App. 4th 1134 (2003).

²⁵ *Id.* at 1152.

embodies, and ultimately holding that the units “are not alienable within the meaning of the rent control exemption in Civil Code Section 1954.52.”²⁶

Here, the Landlord did not submit this required report with her exemption petition, and public records requests submitted by the Tenants confirm that no such report exists for the subject property.²⁷ In the original February 2017 hearing on the exemption petition, the Landlord did not submit sufficient evidence to establish that the units are separately alienable. Moreover, the little evidence she did submit establishes that the units at the subject property are in fact *not* separately alienable. In support of her exemption petition, the Landlord submitted preliminary title reports and records from the Alameda County Assessor. She also testified that the property had been subdivided into five parcels—four condominium parcels and one parcel containing two apartments.²⁸ Thus, in accordance with prior findings by the California Court of Appeal, the units are not separately alienable and do not qualify for an exemption from rent control under Costa Hawkins.

In addition to the state’s regulations governing the sale of condominiums, the City of Oakland imposes similar reporting and disclosure requirements under Oakland Municipal Code Section 16.36.120. Again, the Landlord submitted no evidence of her compliance with these provisions and public records requests confirm that the required reports and disclosures do not exist.²⁹ Because the landlord did not comply with state or Oakland law regulating condominium conversions, the RAP should find that the process employed to convert the units was fraudulent and incomplete. Consequently, the units in question are not separately alienable and therefore should not be considered exempt from rent control.

²⁶ *Id.* at 1152.

²⁷ *See* Public Records Request No. 19-4131

²⁸ Hearing Recording 0:14:05-0:14:15, 0:19:50-0:20:05

²⁹ *See id.*

b. The documentary evidence the Landlord submitted contradicts her description of the property and makes clear that the units are not separately alienable.

California and Oakland law regulating condominiums dictate that the easements established by the CC&R in a subdivision's common area are necessary for condominium units to exist as legal dwelling units. If the two dwelling units contained in the APN 42-4247-85 were sold separately to another party, the four condominium units at the subject property would lose their interest in the common area and a number of easements and characteristics necessary to be viable dwelling units.³⁰ Additionally, the units would lose the utility easements necessary to furnish utilities, rendering the units untenable.³¹ Because the dwelling units exist in the common area, and because the title to the common area cannot be legally separated from the condominiums, the condominium titles are not separately alienable from other dwelling units, or each other.

As noted previously, the Landlord testified in the hearing that the subject property consisted of six units in five parcels—four condominium parcels and a fifth parcel, APN 42-4247-85, containing the title for two "unconverted" apartments.³² In fact, the Assessor's Map submitted by the Landlord indicates that the parcel in question is assessed as a condominium common area.³³ Under the laws governing condominium conversions, this renders the two "unconverted" units inalienable from all dwelling units on the lot.

Unfortunately, because the hearing officer for L16-0083 decided the case on other narrower grounds, findings by RAP related to the Landlord's misstatements or the legal implications of the Assessor's map do not appear in the original hearing decision for L16-0083.

³⁰ See OMC § 16.32.000, OMC § 15.12.010, CA Fire Code Chapter 10, OMC § 17.17.050.

³¹ CA Civ Code § 1941.

³² Hearing Recording 0:14:05-0:14:15, 0:19:50-0:20:05.

³³ Alameda County Assessor's Map and property info.

The fact that there was never any affirmative analysis provided by RAP on the issue of separate alienability is a clear mistake on the part of the Rent Adjustment Program and it is inconsistent with the evidence provided by the Landlord at the time of the hearing.

c. The Landlord failed to submit the CC&Rs for the condominium subdivision; the CC&Rs provide further evidence that Tenant Salvador's unit is not separately alienable.

State Law provides an exemption for dwelling units which are separately alienable in title to any other dwelling units.³⁴ However, the First District Court of Appeal for California has held that a single-family home used as if it were a multi-unit building can be regulated under rent control in *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*.³⁵ The key definition of a dwelling unit is that it is “any area understood to be committed to the habitation of a given tenant or tenants to the exclusion of others.”³⁶ The Court, quoting the underlying hearing decision, found that where “the owner has chosen to rent rooms out separately to a number of people,” the single-family home is transformed into a multi-unit dwelling.³⁷

At the hearing for L16-0083, the Landlord, when asked why she did not submit the CC&Rs for the condominium subdivision, responded that she did not have them and later a co-owner indicated that the CC&Rs were verbal.³⁸ Tenant Salvador recently discovered that this is in fact not true. A search at the County Recorder's office revealed that CC&Rs for the property were recorded on November 8, 2007.³⁹ This information was squarely within the property owner's burden to provide at the time of the hearing, but the owner failed to provide it.

³⁴ Cal. Civ. Code Section 1954.53

³⁵ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

³⁶ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

³⁷ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 2

³⁸ Hearing Recording for L16-0083, 0:24:35-0:25:31; 0:26:52-0:27:20.

³⁹ CC&Rs.

Importantly, the CC&Rs provide evidence to support a finding that Tenant Salvador's unit is not separately alienable.

The fact that the units are not separately alienable is best illustrated by the pictures attached to this brief. Tenant Salvador's unit is addressed as 1354 81st Avenue, Apt A. According to the CC&Rs and County Assessor's map associated with the property, her unit is located within the subdivided airspace corresponding to APN 42-4247-81. However, the parcel drawn on the map in the CC&Rs is much larger than Ms. Salvador's unit.⁴⁰ This is because the parcel where she lives contains another dwelling unit. This unit, which has been referred to as 1354 81st Avenue Apt B, and 1356 81st Avenue Apt. A, in prior hearings was formerly occupied by Tenant Alondra Apodaca, who attended the initial hearing between the parties for case number L16-0083. This subdivision places two dwelling units within the space corresponding to one parcel, APN 42-4247-81. Because these two units are not separately alienable from one another, they cannot be granted an exemption from rent control pursuant to Costa Hawkins.

Even if one were to find that the initial Landlord Petition involved no fraud or mistake, one must recognize that at least as of the creation of the secondary tenancies, the units must fall within the jurisdiction of the Rent Adjustment Program according to the law in *Owens*.

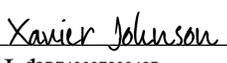
CONCLUSION

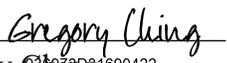
In light of the aforementioned, Tenant Salvador respectfully requests that the appeals board order a hearing on the merits to permit the hearing officer to evaluate whether exemption in the case of L16-0083 was granted as a result of fraud or a mistake, and also to hear tenant petition T19-0384.

⁴⁰ See demonstratives and photos of the property

Date: September 20, 2021

Respectfully submitted,

DocuSigned by:

Xavier Johnson
Attorney for Tenant Ana Salvador

DocuSigned by:

Gregory Chung
Attorney for Tenant Ana Salvador

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T1

000066



Key:

- =Boundaries of lot
- =Boundaries of APN 42-4247-81 aka "Unit-1354 A"
- =Boundaries of dwelling unit of Tenant Petitioner Ana Salvador

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

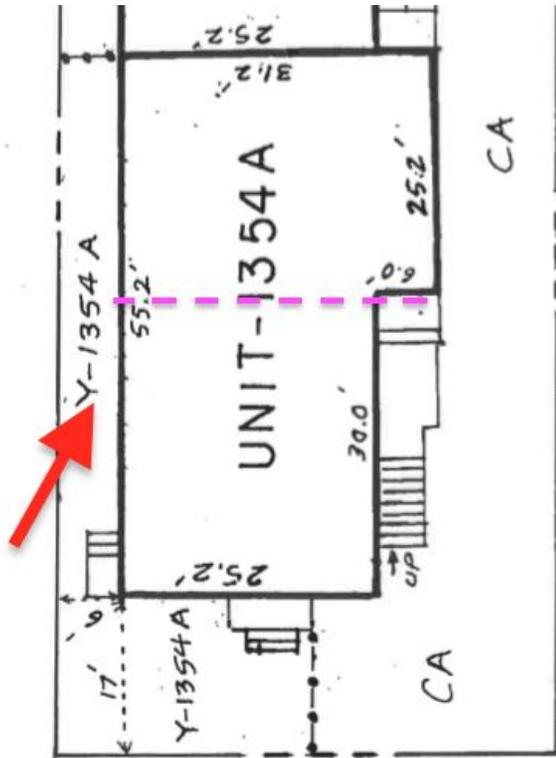
Exhibit T2

000068



— = Approximate line of bifurcation of the two dwelling units within APN 42-4247-81

Red Arrow below marks position and angle of photo above



City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

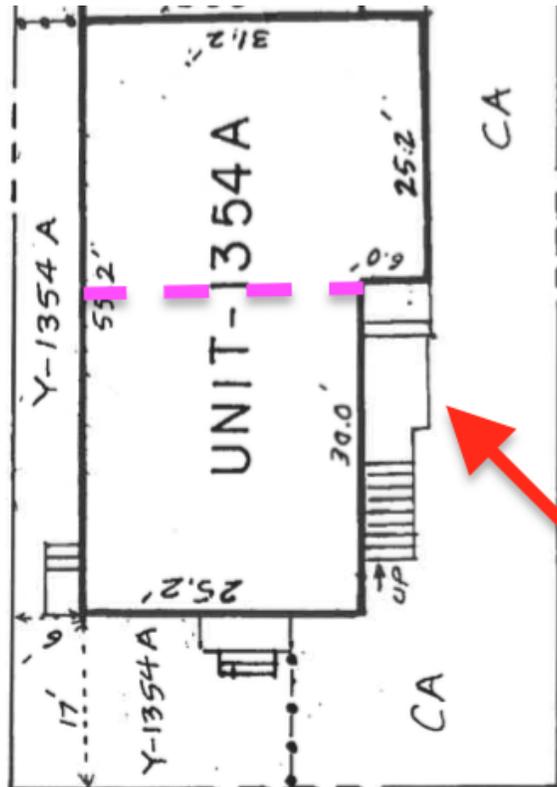
Exhibit T3

000070



----- = Approximate line of bifurcation of the two dwelling units within APN 42-4247-81

Red Arrow belows marks position and angle of photo above



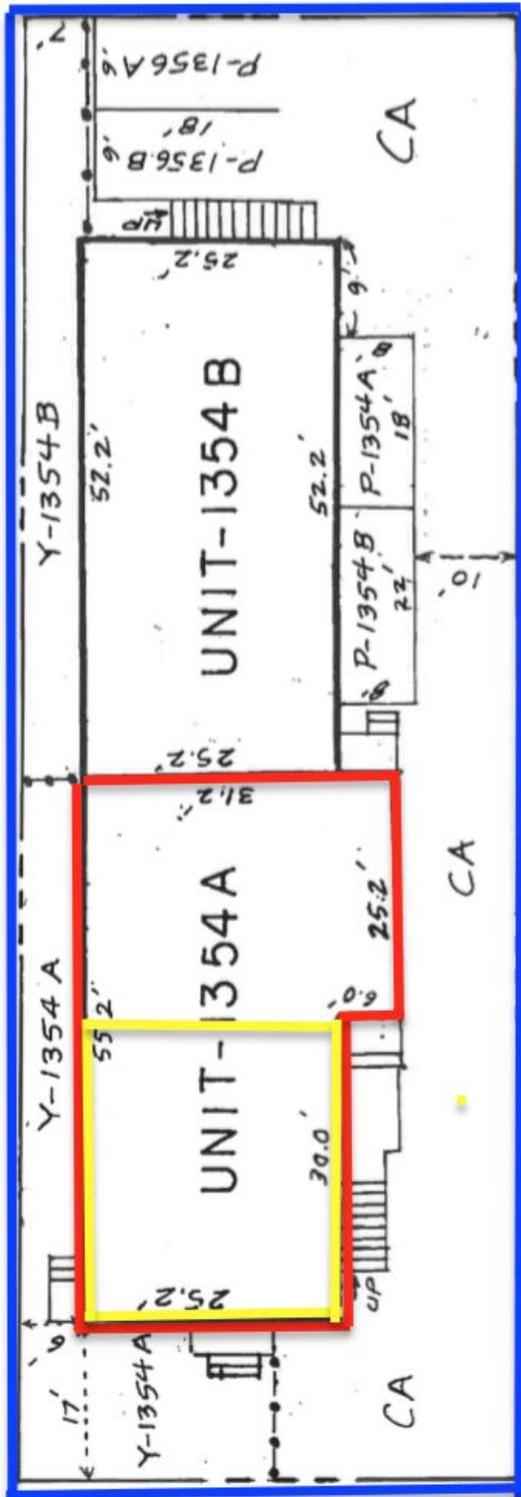
City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T4

000072



LOWER FLOOR AND SITE PLAN

NOT TO SCALE

LEGEND

- PROPERTY LINE
- - - P-1354 A
- - - P-1354 B
- - - P-1356 A
- - - P-1356 B
- - - Y-1354 A
- - - Y-1354 B
- - - YARD LIMIT
- CA COMMON AREA

Key:

- █ =Boundaries of lot
- █ =Boundaries of APN 42-4247-81 aka "Unit-1354 A"
- █ =Boundaries of dwelling unit of Tenant Petitioner Ana Salvador

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T5

000074



21097587

1 PAUL J. KATZ (CA Bar No. 243932)
2 **KATZ APPELLATE LAW**
3 60 29th Street #557
4 San Francisco, CA 94110
5 Tel: (415) 906-9884
6 Email: paul@katzappellate.com

FILED
ALAMEDA COUNTY

NOV 28 2018

7 Attorney for Petitioners May Lee Fong and Michael B. Lee

CLERK OF THE SUPERIOR COURT
By Asher Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED JURISDICTION

11 MAY LEE FONG and MICHAEL B. LEE,
12 Petitioners,

CASE NO. Rt 18930130

**PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS**

13 v.

14 CITY OF OAKLAND, HOUSING,
15 RESIDENTIAL RENT AND RELOCATION
16 BOARD,

17 Respondent,

18 RICHARD DOMINGUEZ, ANA JERONIMO
19 SALVADOR, CARLA FLURRY, ANA
20 ROSAS, ROSA GAONA, IGNACIO GAONA,
21 LEO PENA, LORENA ARECHIGA, MARIA
22 ARECHIGA, and RAFAEL ARECHIGA,

23 Real Parties in Interest.

24 Petitioners May Lee Fong and Michael B. Lee bring this petition seeking a peremptory writ of
25 administrative mandamus (Code Civ. Proc., § 1094.5) to compel Respondent City of Oakland, Housing,
26 Residential Rent and Relocation Board ("Rent Board") to set aside its October 2, 2018 decision that four
27 of petitioners' condominiums are not exempt from Oakland's Rent Ordinance.

INTRODUCTION

28 Notwithstanding local rent control laws, the Costa-Hawkins Act guarantees that a condominium
buyer can charge market-rate rent. And that is what petitioners tried to do here. But the Rent Board

1 frustrated petitioners' right under Costa-Hawkins by ruling that four condominiums were not covered
2 by that act and thus are subject to Oakland's Rent Ordinance. The Rent Board ruled that the
3 condominiums were not "sold separately," a requirement under Costa-Hawkins, since petitioners bought
4 an entire building containing four condominiums.

5 The condominiums were "sold separately," however, since petitioners bought each one under
6 separate title. The fact that petitioners bought several condominiums within a single physical structure is
7 irrelevant. Thus, this court should issue a peremptory writ of administrative mandamus directing the
8 Rent Board to set aside its erroneous appeal decision.

9 PARTIES

10 1. Petitioner May Lee Fong resides in Daly City, California and petitioner Michael B. Lee resides
11 in Richmond, California. They jointly own four condominiums located in Oakland, California: 1854
12 81st Avenue, Unit A; 1854 81st Avenue, Unit B; 1856 81st Avenue, Unit A (otherwise known as 1854
13 81st Avenue, Unit D); and 1856 81st Avenue, Unit B (otherwise known as 1854 81st Avenue, Unit E).
14 Petitioners have a beneficial interest in this petition because they were injured by respondent's appeal
15 decision, as explained immediately below.

16 2. Respondent Rent Board is part of the City of Oakland's Rent Adjustment Program, which in turn
17 is a public agency established by the City Council to administer Oakland's Rent Ordinance. The Rent
18 Board hears appeals from decisions regarding landlord or tenant petitions. On October 2, 2018, the Rent
19 Board mailed its appeal decision ruling that petitioners' four Oakland condominiums are not exempt
20 from Oakland's Rent Ordinance. This petition challenges that appeal decision.

21 3. Real Parties in Interest Richard Dominguez and Ana Jeronimo Salvador (1854 81st Avenue,
22 Unit A); Carla Flurry (1854 81st Avenue, Unit B); Ana Rosas, Rosa Gaona, and Ignacio Gaona
23 (1856 81st Avenue, Unit A); Leo Pena, Lorena Arechiga, Maria Arechiga, and Rafael Arechiga
24 (1856 81st Avenue, Unit B) are tenants residing in the four above-referenced condominiums.

25 JURISDICTION AND VENUE

26 4. This court has jurisdiction to issue writs of mandamus, including writs of administrative
27 mandamus, pursuant to Code of Civil Procedure section 1085, subdivision (a).

1 5. Venue is proper in this court because the Rent Board’s appeal decision injured petitioners in
2 Alameda County, where the four condominiums at issue are located. (Code Civ. Proc., § 393, subd. (b).)

3 6. Petitioners have a clear, present, and beneficial right to the Rent Board correcting its challenged
4 appeal decision so that petitioners can charge market-rate rent for their four condominiums, in
5 conformance with the Costa–Hawkins Act.

6 7. Petitioners have no plain, speedy, and adequate remedy at law. This petition for writ of
7 administrative mandamus is the only way to contest the Rent Board’s final administrative decision.
8 (Code Civ. Proc., § 1094.5, subd. (a).)

9 8. Petitioners have exhausted all available administrative remedies, as alleged in paragraph 13
10 below.

11 **CHRONOLOGY OF PERTINENT EVENTS**

12 9. On March 29, 2012, petitioners purchased each of the four subject condominiums from Deutsche
13 Bank National Trust Company, as trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-
14 Through Certificates, Series 2003-2. At the time of purchase, each condominium had a unique assessor
15 parcel number (APN).

16 10. On October 31, 2016, petitioners filed a Landlord Petition for Certificate of Exemption with
17 Oakland’s Rent Adjustment Program. Petitioners sought to exempt the four subject condominiums from
18 Oakland’s Rent Ordinance pursuant to the Costa-Hawkins Act because each of the condominiums was
19 separately alienable.

20 11. On January 10, 2017, real party in interest Rosa Gaona filed a Tenant Petition alleging, among
21 other things, that petitioners had attempted to increase her rent in excess of that allowed under
22 Oakland’s Rent Ordinance.

1 12. On April 18, 2017, an Oakland Rent Adjustment Program hearing officer served a single ruling
2 for both the Landlord Petition and the Tenant Petition. (Ex. A.) The hearing officer ruled, among other
3 things, that the Costa-Hawkins Act did not exempt the four condominiums from Oakland's Rent
4 Ordinance. (*Id.* at p. 4.) Although that act generally exempts units that are separately alienable such as
5 condominiums, the act does not exempt condominiums that have not been "sold separately by the
6 subdivider to a bona fide purchaser for value." (*Ibid.*) The officer ruled the four condominiums had not
7 been sold separately to petitioners because they had bought "the entire building, which consists of four
8 units." (*Ibid.*) The officer also noted that the Rent Board in another decision (*Tenants v. Golden State*
9 *Ventures*, Rent Board Case Nos. T15-0229, T15-0230, T15-0336, and T15-0337) had ruled that Costa-
10 Hawkins did not apply to four condominiums in a single building purchased by a single buyer "because
11 the units were not purchased by individual purchasers." (*Id.* at p. 4 & fn. 4.)

12 13. On May 3, 2017, petitioners filed an appeal to the hearing officer's ruling. The appeal explained
13 that the "sold separately" language in Costa-Hawkins relied upon by the hearing officer requires only
14 that the original subdivider to have sold the condominium to a bona fide purchaser for value and that
15 the condominium maintained its separate title. The appeal also explained that Alameda Superior Court
16 had granted a writ of administrative mandamus reversing the Rent Board's decision in *Golden State*
17 *Ventures*.

18 14. Because an appeal in *Golden State Ventures* was pending before the First District Court of
19 Appeal, the Rent Board continued petitioners' appeal hearing in this case. Then the Court of Appeal in
20 *Golden State Ventures* issued an unpublished opinion affirming the superior court's grant of the writ of
21 administrative mandamus. The Court of Appeal ruled that Costa-Hawkins' "sold separately" language
22 excluded only original subdividers, not subsequent purchasers, from the act's coverage—regardless of
23 how many condominiums are sold to a single purchaser. Petitioners sent a copy of the *Golden State*
24 *Ventures* opinion to the Rent Board and to real parties in interest.

25 15. Yet the Rent Board affirmed the hearing officer's ruling in this case that Costa-Hawkins does not
26 exempt the four condominiums at issue here. (Ex. B, at p. 2.) The Rent Board mailed that ruling to the
27 parties on October 2, 2018. (*Id.* at p. 4.)
28

PRAYER

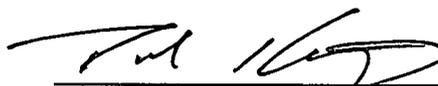
Petitioners pray that this court:

1. Issue a peremptory writ of administrative mandamus directing respondent to set aside its decision.
2. Alternatively, issue an alternative writ of administrative mandamus directing respondent to set aside its decision, or to show cause why it should not be ordered to do so, and upon return to the alternative writ issue a peremptory writ as set forth in paragraph 1 of this prayer or such other extraordinary relief as warranted.
3. Award petitioners their costs of suit herein, including out-of-pocket expenses and reasonable attorneys' fees.
4. Grant petitioners further relief as this court may deem just and proper.

DATED: November 28, 2018

Respectfully submitted,

KATZ APPELLATE LAW



PAUL J. KATZ
Attorney for Petitioners

City of Oakland Rent Adjustment Program

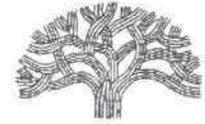
Case Number: T19-0384

Tenant Evidence Submission

Exhibit T6

000081

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L16-0083, Fong v. Tenants
T17-0015, Gaona v. Fong

PROPERTY ADDRESS: 1356 81st Ave., No. A,B
1354 81st Ave., No. A(aka D), B
Oakland, CA

DATE OF HEARING: February 23, 2017

DATE OF DECISION: April 14, 2017

APPEARANCES:	Maria Pelayo	Tenant
	Rosa Gaona	Tenant
	Alondra Juliana	Tenant
	Gary Cloutier, Esq.	Tenant Representative for Tenant Apodaca Salazar
	Ana Jeronimo	Tenant
	Marica Zarate	Tenant
	Virginia Dominguez	Tenant
	Mabel Nielsen	Interpreter
	May Fong	Owner
	Michael Lee	Owner

SUMMARY OF DECISION

The owner petition is denied. Tenant Gaona's petition is granted in part.

INTRODUCTION

On October 31, 2016, May Fong and Michael Lee, the owners, filed a Landlord Petition for Certificate of Exemption regarding the above referenced property, on the grounds that the units are condominiums.

Tenants Alondra Yuliana filed a timely tenant response on November 23, 2016, to the Landlord Petition. The following tenants filed untimely tenant responses to the Landlord Petition:

<u>Tenant</u>	<u>Date Filed</u>
• Maria Pelayo	January 6, 2017
• Ricardo Dominguez	December 28, 2016
• Rosa Gaona	January 10, 2017

Tenant Gaona also filed a petition on January 10, 2017, which contests the following rent increases in 2012, 2014, 2015, November 30, 2016, and December 19, 2016:

- 3/2012 \$850.00 to \$900.00
- 11/1/14 \$900.00 TO \$930.00
- 10/31/15 \$930.00 to \$1,000.00
- 11/30/16 \$1,000.00 to \$1,200.00
- 12/19/16 \$1,200.00 to \$1,210.00

Tenant Gaona challenged the rent increases on the following grounds:

- The increase exceeds the CPI adjustment and is justified or is greater than 10%;
- No concurrent RAP notice was given with the notice of the rent increase;
- She did not receive the RAP notice 6 months prior to the challenged rent increases.

The two petitions were consolidated for Hearing on February 15, 2017, which was held on February 23, 2017.

THE ISSUES

1. Are the units exempt from the Rent Ordinance?
2. Has tenant Gaona received the form notice of the existence of the Rent Adjustment Program?
3. Are the rent increases valid regarding tenant Gaona?

EVIDENCE

Exemption

The owners testified that the subject units are condominiums and are exempt from the Rent Adjustment Program. They purchased the entire building, which consists of four units, from Deutsche Bank National Trust Company, Trustee for Ameriquest Mortgage Securities Inc., asset-Backed Pass-Through Certificates, Series 2003-2. They provided a copy of the Grant Deed was dated March 29, 2012.¹

¹ Ex. Nos. 1-2

The owner provided documentation that each unit has a separate assessor parcel number as follows;

<u>Unit No.</u>	<u>Assessor's Parcel No.</u>
1354A-81 st Avenue	042-4247-081-00
1354B 81 st Avenue	042-4247-082-00
<u>Unit No.</u>	<u>Assessor's Parcel No.</u>
1356 A 81 st Avenue	042-4247-083-00
1356B 81 st Avenue	042-4247-084-00 ²

T17-0015, Gaona v. Fong

Rent History and Notice of Rent Adjustment Program

The owners' petition states that tenant Gaona received the Notice of the existence of the Rent Adjustment Program (RAP) on November 1, 2014. Tenant Gaona testified that moved into her unit in 2007 at an initial monthly rent of \$850.00. She first received the Notice of the Rent Adjustment Program in 2014. She is currently paying \$1,000.00 monthly.

Code Violation

The tenant representative for Ms. Salazar provided a copy of a Notice of Violation from the Planning and Building Department, June 23, 2015, regarding the following:

- Smoke detectors missing or not working properly throughout the apartment. Provide a working smoke detector in each bedroom and at the outside of the immediate vicinity of each bedroom such as the hallway. Carbon monoxide detectors are required on the outside for immediate vicinity of bedrooms;
- Unapproved drain trap under the kitchen sink. Replace in an approved manner. Obtain required permits, inspections, and approvals;
- Unpermitted installation of stove exhaust vent in the kitchen. Base board heater detached from the wall in the living room. Exposed electrical wires in the crawlspace at the front of the house. Obtain required permits, inspections and approvals;
- Smoke stains in ceiling and top wall throughout the house. Remove stains and re-paint areas if needed.

This document was not submitted at least seven days prior to the Hearing. The tenant representative testified that he had just been advised of the Hearing one hour prior to the Hearing. The Hearing Officer found good cause for the delay in submission of the documents and received them into evidence.

² Ex. Nos. 3-5

The owner representative testified that the owner received the Notice of Violation from the City and corrected the violations as of July 21, 2015. This testimony was undisputed.

Decreased Housing Services

The tenant's petition, Checked the box Yes for the question "Are you being charged for services originally paid by the owner? Attached in evidence." She did not list any specific complaints for this item in her petition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts single family dwellings and condominiums which are separately alienable from any other dwelling or unit pursuant to the Costa-Hawkins Act, California Civil Code §1954.52, except under certain circumstances.

However, Costa-Hawkins **does not exempt dwelling units that have not been sold separately** by the subdivider to a bona fide purchaser for value.

Section 1954.52 of the California Civil Code, known as the Costa-Hawkins Bill, states that an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or unit except §1954.52(3)(B)(ii) which states that this paragraph does not apply to a condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value

The units were not sold separately. The owner purchased the entire building, which consists of four units. Therefore, the owner's units are not exempt from the Rent Ordinance.³

The Board has also held that an owner who purchased a four building from the subdivider was not entitled to an exemption from the Rent Ordinance because the units were not purchased by individual purchasers.⁴

RAP Notice-Tenant Gaona

Notice and Filing Requirements: The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy⁵ and together with any notice of rent increase.⁶

Tenant Gaona received the notice of the Rent Adjustment Program in 2014.

³ California Civil Code, Section 1954.3(A)

⁴ T15-0229, 0230,0336,0337, Tenants v. Golden State Ventures

⁵ O.M.C. Section 8.22.060(A)

⁶ O.M.C. Section 8.22.070(H)(1)(A)

A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.² The rent increases for 2012, 2014, and 2015 are not timely filed and are dismissed. The challenges were not filed within the 90 day time period.

The challenge to the rent increase effective November 30, 2016, is valid. The owners' claim for exemption from the Rent Ordinance is denied and they have not provided any justification for the two hundred dollar rent increase. The challenge to the rent increase effective December 19, 2016, from \$1,200.00 to \$1,210.00 is a second rent increase within a twelve month period and is invalid. The tenant's monthly rent remains \$1,000.00.

Code Violation

The tenants provided documentation in support of a building code violation. However, the violations were corrected in July 2015 and the owner may increase the tenant's rent in accordance with the Rent Ordinance and Section 827 of the California Civil Code.

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment.⁷ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. The tenant has the burden of proving decreased housing services by a preponderance of the evidence. The tenant also has the burden of proving notice to the owner about a complaint and the owner must be afforded a reasonable opportunity to respond to the complaint.

The tenant did not list any complaints in her petition regarding decreased housing services. Therefore, the owners were unaware of any such complaints and had no opportunity to respond. Therefore, this claim is denied.

ORDER

1. The subject units are not exempt from the Rent Ordinance.
2. Tenant Gaona's petition is granted in part. The challenge to the rent increases in 2012, 2014, and 2015, are untimely and are dismissed.
3. The rent increase from \$1,000.00 to \$1,200.00 effectively November 13, 2016, and the rent increase from \$1,200.00 to \$1,210.00, are invalid.
4. Tenant Gaona's monthly base rent is \$1,000.00.

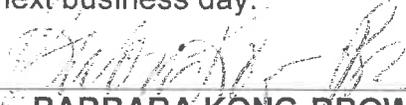
⁷ O.M.C. Section 8.22.060(C)

5. The claim for decreased housing services is denied.

6. The owners are otherwise entitled to increase the tenants' rents upon proper notice in accordance with the Rent Ordinance and Section 827 of the California Civil Code.

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

Dated: April 14, 2017



BARBARA KONG-BROWN, ESQ.
Senior Hearing Officer
Rent Adjustment Program

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T7

000088

Katz Appellate Law
 Attn: Katz, Paul J.
 484 Lake Park Ave #603
 #557
 Oakland, CA 94610_____

City Attorney's Office
 Attn: Jefferson, Jamilah A.
 One Frank H. Ogawa Place, 6th Floor
 Oakland, CA 94612

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

<p>Fong</p> <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>City of Oakland , Housing , Residential Rent & Relo</p> <hr/> <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	<p>No. <u>RG18930130</u></p> <p>Order</p> <p>Date: 06/07/2019 Time: 02:00 PM Dept: 17 Judge: Frank Roesch</p>
---	--

The Petition for Writ of Mandate was set for hearing on 06/07/2019 at 02:00 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB") to set aside its decision denying Petitioners' application for certificate of exemption from Oakland's Rent Adjustment Program ("RAP"). (Oakland Mun. Code ch. 8.22.)

Fong and Lee bid for and purchased several condominiums in the same building at a foreclosure sale. The building's prior owner had operated the building as an apartment house, but the units were converted to condominiums before being sold to Fong and Lee. The same tenants remained in the condominium units (formerly apartments) and were unaware that a conversion had even occurred. Fong and Lee applied for exemption from the RAP on the grounds that the units were condominiums exempt from local rent control under the Costa-Hawkins Act (Civ. Code § 1954.50 et seq.). OHRRRB denied the application on the grounds that Fong and Lee had "stepped into the shoes" of the prior landlord.

The sole issue on this petition is a question of law and statutory interpretation of the provision of the Costa-Hawkins Act that exempts condominiums from local rent control ordinances after they are sold to a bona fide purchaser. (Civ. Code § 1954.52(a)(3) [exempting dwelling units "alienable separate from the title to any other dwelling unit" from local rent control].) After the Costa-Hawkins Act was initially passed, the Legislature became concerned that some apartment buildings were being legally converted to condominiums but never sold to new owners; buildings could escape local rent control through a trick of paperwork while maintaining the same ownership, management, and tenants. (See Decl. of P.J. Katz Ex. A (Sen. J. Comm. Analysis) ["[S]ome apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process. . . ."]) The legislature amended the exemption to provide that condominiums is not available for "[a] condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value." (Stats 2001, ch. 729 (S.B. 985), § 2, codified as Civ. Code § 1954.52(a)(3)(B)(ii); see also Decl. of P.J. Katz Ex. A ["This bill would close that loophole and provide that the exemption would apply only when the unit is sold separately to a bona fide purchaser for value. Thus, apartment units that have remained

rentals would be subject to local rent control laws."].) In other words, the Legislature provided that the exemption from rent control is not available to the owner who subdivides his property into condominiums though it is available to subsequent bona fide purchasers of the individual condominium units.

The parties agree that the units in question are condominium units and that Fong and Lee were bona fide purchasers. OHRRRB argues that the units were not "sold separately" because they were sold on the same day, one owner continues to own the entire building, no units were sold to individual owners, and the same tenants continue to occupy the units. The small phrase "sold separately" can carry this weight. The word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title.

The OHRRRB is also prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (*Key v. Tyler* (2019) 34 Cal.App.5th 505, -.)

Here, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* (Alameda Cty. Super. Ct. Case No. RG16 834166, 1st Dist. Ct. App. Case No. A151421, Jan. 25, 2018) 2018 WL 549174. That is, both this Court and the Court of Appeal held that the Costa-Hawkins Act exempts such condominiums from the RAP because they were sold separately to a bona fide purchaser. (Civ. Code § 1954.52(a)(3)(A), (a)(3)(B)(ii).) The judgment in *Golden State Ventures* is final, and the OHRRRB filed its return certifying compliance with this Court's writ and the Court of Appeal's decision on June 7, 2018.

The Court does not agree with the OHRRRB's argument that the issues are distinguishable on their facts. To apply the statutory bona fide purchaser test, the Court need not determine whether the condominiums were sold in one transaction or a series of transactions, whether the condominiums were sold directly by the subdivider, and whether the building's condominium conversion was total or partial.

The OHRRRB is therefore collaterally estopped from relitigating the issue. Fong and Lee's petition is GRANTED.

Dated: 06/07/2019

Facsimile


Judge Frank Roesch

CHRONOLOGICAL CASE REPORT

Case No.: T21-0046

Case Name: Warmsley v. Hill

Property Address: 2767 76th Avenue, Oakland, CA 94605

Parties: LaTasha Monique Warmsley (Tenant)
Kenyattah Hill (Owner)
Maya Clark (Owner Representative)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	March 15, 2021
Property Owner Response filed	May 10, 2021
Hearing Date	July 13, 2021
Hearing Decision mailed	August 31, 2021
Tenant Appeal filed	September 21, 2021

000091



City of Oakland Rent Adjustment Program
 250 Frank H. Ogawa Plaza, Suite 5313
 Oakland, CA 94612
 (510) 238-3721

TENANT PETITION

RECEIVED

Property Address: 2767 76TH AV
Case: Petition: 13713
Date Filed: 03-15-2021

T21-0046 RC/LM

MAR 15 2021

7/13

RENT ADJUSTMENT PROGRAM
 OAKLAND

Parties

Party	Name	Address	Mailing Address	
Manager	Kenyatta Hill	2769 76th Avenue Oakland CA, 94605	2769 76th Avenue Oakland CA, 94605	
Owner	Kenyattah Hill	2769 76th Avenue Oakland,	2769 76th Avenue Oakland,	
Tenant	LaTasha Monique Warmsley Warmasley	2767 76th Avenue Oakland, CA 94605		(707) 712-9394 latasha_monique@yahoo.com
Representative	LaTasha Monique Warmsley	2767 76th Avenue Oakland, CA 94603	2767 76th Avenue Oakland, 94603	(707) 712-9394 latasha_monique@yahoo.com

Number of units on the property 4

Type of unit you rent Apartment, Room or Live-work

Are you current on your rent? Yes

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

Grounds for Petition

For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:

Rental History

Date you moved into the Unit	
Initial Rent	\$ 850.00 /month
Current Rent	\$ 1,001.73 /month
Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?	No
List the case numbers of any relevant prior Rent Adjustment case(s):	

List all rent increases that you want to challenge.

Date you received the notice	Date increase goes into effect	Monthly rent increase From	Monthly rent increase To	Are you Contesting this Increase in this Petition? *	Did You Receive a Rent Program Notice With the Notice Of Increase?
	01-01-1900	\$ 0.00	\$ 0.00	No	No

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

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

Description of Decreased or Inadequate Housing Services

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

Loss of Service

Date Loss Began 04-01-2020

Date Owner Was Notified of Loss 04-15-2020

Estimated Loss 2500

Reduced Service Description Trash services has stopped in terms of my trash being emptied. This is a service that I have had since the beginning of my tenancy and was included as part of my rent. I have never had to move or roll my bins out.

Ms. Hill decided to switch recycle services due to improper recycling at one point. My trash bin came up missing altogether for a short period of time resulting in no trash services at all. Then as my recycle piled up with trash I was told I should be receiving official notice that Ms. Hill will no longer provide trash services (this came after she tried to make me responsible for paying me own utilities but being told she could not). I feel this is a reduction of services as it cost me to have someone else complete this service. Also, because she has consistent removed services such as water and trash (and called them complimentary). This services has always been included with rent.

Mediation

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you want to request mediation for your case.

I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator. No

Consent to Electronic Service

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will only send documents electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition. No

Interpretation Services

If English is not your primary language, you have the right to an interpreter in your primary language at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

I request an interpreter fluent in the following language at my Rent Adjustment proceeding: No



280078

000096

Re: Resending (trash)

From: Maya Clark (maya@sevillepropertymanagement.com)

To: latasha_monique@yahoo.com

Cc: maya@sevillepropertymanagement.com

Date: Friday, December 18, 2020, 04:10 PM PST

Yes I told the Attorney that Ms. Hill previously lived onsite and had a 96 gallon trash bin that she made sure was rolled to the curb weekly. He suggested that since she is not living there and the tenants agreed to be responsible for their trash when they signed the lease, that we order each tenant their own trash cans. Which is what we did.

We have notified the other tenants and none have expressed an issue or feel entitled to continued concierge services that Ms. Hill provided while living onsite in an effort to maintain her property (not as a service to tenants). Keep in mind, we opted not to raise the rent again this year despite increases in costs to the owner now that water and PGE usage has almost doubled. I think this was a nice gesture and very considerate because many of my owners opted to increase rents as allowed by the City of Oakland.

Sent from my iPad

Maya Clark
Seville Property Management
(510)244-1289 x101
Seville Real Estate & Mgmt, Inc. Broker / Owner
(510)244-1268 x101
BRE (CA) Broker #01734062
TREC (TX) Broker #523554
(510)469-7398 Direct

On Dec 18, 2020, at 5:25 PM, LaTasha Monique <latasha_monique@yahoo.com> wrote:

Also, does your legal team know she agrees to take out the trash? I am tired of her reducing services. This is not ok

Sent from my iPhone

On Dec 18, 2020, at 3:24 PM, LaTasha Monique <latasha_monique@yahoo.com> wrote:

Nah, we had a separate agreement. It should stand whether she moved or not. We agreed she would take the trash out. It was part of my tenancy

Sent from my iPhone

On Dec 18, 2020, at 2:32 PM, Maya Clark <maya@homesbyseville.com> wrote:

LaTasha everyone will be getting their own separate trash cans and recycle bins. My Assistant will be sending a notice to everyone to notify them that the bins will be delivered on 12/29.

000097

In your lease it clearly states that the tenant is responsible for pulling their trash out. The owner does not live there anymore so she is not obligated to continue offering a **courtesy** service she provided in the past as a means to keep the building maintained when that is clearly written a tenant responsibility. Please take responsibility for getting your garbage and recycling to the curb. This is not asking too much and is totally within reasonable expectations. I spoke with our Legal team for confirmation.

Seville Property Management
BRE #02081505
TREC #0523554

On Dec 18, 2020, at 4:16 PM, LaTasha Monique <latasha_monique@yahoo.com> wrote:

Maya,

Since the beginning of my tenancy I have never been responsible for pulling the trash to the curb. NEVER. My tenants rights state that even if unwritten if it had been happening then to take it away is a reduction of services. She took my trash out every week for over 5 years. It's is part of my tenancy. She cannot simply stop

Sent from my iPhone

On Dec 18, 2020, at 12:00 PM, Maya Clark <maya@sevillepropertymanagement.com> wrote:

Good Afternoon LaTasha,

Per page 1 of your lease agreement, trash service is paid by the owner. Additionally, page 3 of your lease says "Trash: Tenant agrees to dispose of their ordinary household trash by placing it in the Waste Management containers for periodic collection..." The lease nor local/state ordinances require the owner to take responsibility for the tenant's garbage to be pulled to the curb.

Apparently Ms. Hill was doing this as a courtesy while she was living onsite but she is not obligated contractually or legally to do so. We have ordered separate garbage bins for each unit to be delivered on 12/29. From that point forward, each tenant will be responsible for pulling **both** their own garbage and recycle bins to the curb for pickup on Monday night. For the next couple of weeks until the individual bins are delivered, the large trash bin will be pulled to the curb but each tenant will be responsible for pulling their own recycle bins to the curb. We will be sending notices out via email from the portal to all residents as a reminder.

Sorry for any confusion or misunderstanding in the earlier emails. Please stay safe and well.

Scheduling with me is easy. <https://sevillepm.appointlet.com>.

Residents: Please call or text (510)617-1930 for all maintenance issues or submit through your online Resident Portal.

NOTE: Our staff are working remotely Monday - Friday 8:30am -5:30pm. Please stay safe.

Maya Clark, Broker/Owner
Seville Property Management
www.sevillepropertymanagement.com
BRE (CA) Broker #01734062
TREC (TX) Broker #523554
maya@sevillepropertymanagement.com
(510)244-1289 x101
(469) 841-0233

000098

On Thu, Dec 17, 2020 at 8:01 PM LaTasha Monique <latasha_monique@yahoo.com> wrote:

Maya,

This is yet another reduction in services. Trash services has always been included in my rent . This goes against my rights as a tenant.

Thanks for your time and understanding. Enjoy your winter break.

Wars of nations are fought to change maps. But wars of poverty are fought to map change ~Muhammad Ali

On Thursday, December 17, 2020, 05:53:37 PM PST, Maya Clark <maya@sevillepropertymanagement.com> wrote:

Ok. From my communications with Ms. Hill, all tenants are now responsible for bringing their trash and recycle bins to the curb. It may be that Ms. Hill has stopped pulling the bins to the curb since SPM is now managing the property (since October 2019, I believe). Please begin pulling the bins to the curb on Monday evenings so they are in place when the drivers come by on Tuesday mornings. If at any time you are missing your bin, please let us know as soon as possible so we can contact WM to have it replaced ASAP.

Thanks for your prompt response. Have a great weekend and upcoming holidays. Please stay safe and well.

Sent from my iPad

Maya Clark
Seville Property Management
(510)244-1289 x101
Seville Real Estate & Mgmt, Inc. Broker / Owner
(510)244-1268 x101
BRE (CA) Broker #01734062
TREC (TX) Broker #523554
(510)469-7398 Direct

On Dec 17, 2020, at 7:47 PM, LaTasha Monique <latasha_monique@yahoo.com> wrote:

Hello Maya,

I am not sure if the trash is being pulled to the curb every week or not as I have never been responsible for trash service the whole 7.5 years I've lived here. In the past, and from the beginning as part of my tenancy. the trash has been moved to the curb by Ms. Hill or some other party.

So far this year she has taken away my bin, and now I guess refused to put it on the curb. I am not sure why this is happening, but she has consistently taken services away that once were included with my tenancy.

Thanks for your help.

Wars of nations are fought to change maps. But wars of poverty are fought to map change ~Muhammad Ali

On Thursday, December 17, 2020, 04:38:46 PM PST, Maya Clark <maya@sevillepropertymanagement.com> wrote:

Hi LaTasha,

As a follow up to the earlier email...I reached out to Ms. Hill to see if there was an issue or change to the services provided by WM. She confirmed the garbage and recycling services have not changed and she was not aware of any of the bins not being emptied. Please confirm you (or someone else on your behalf) are pulling both bins to the curb Monday evening/night for the pickup on Tuesday. If so, we will ask Ms. Hill to contact WM to let them know the service is not being completed and have the issue looked into.

Thank you.

Maya

Scheduling with me is easy. <https://sevillepm.appointlet.com>.

Residents: Please call or text (510)617-1930 for all maintenance issues or submit through your online Resident Portal.

NOTE: Our staff are working remotely Monday - Friday 8:30am -5:30pm. Please stay safe.

Maya Clark, Broker/Owner
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www.sevillepropertymanagement.com
BRE (CA) Broker #01734062
TREC (TX) Broker #523554
maya@sevillepropertymanagement.com
(510)244-1289 x101
(469) 841-0233

On Thu, Dec 17, 2020 at 12:55 PM Maya Clark <maya@sevillepropertymanagement.com> wrote:

Good Morning LaTasha,

Thanks for resending this email. We have not received any previous emails so I am not sure what has happened to them. As a suggestion, it will be a good idea to register for your online portal and communicate with the office/team/me through the portal. This is really the only fail proof way to communicate with us because we typically have a team member monitoring the communications throughout the day. I am not as involved in the day-to-day operations of the PM business so I want to ensure you are receiving prompt responses and action to your needs. The best way to do this is through your Resident Portal or via text to (510)244-1289.

For your current need, please confirm the issue is that your recycle bin has not been emptied at all or its not consistently being emptied. Is this also an issue with the garbage/trash bin as well? Finally, do you know if any of the other tenant's trash/recycle bins are not being emptied? This information will be helpful in determining if it is an issue with changes to the service plan or the service provider.

Thank you for your patience. Hope you are staying safe and well.

Maya

Scheduling with me is easy. <https://sevillepm.appointlet.com>.

Residents: Please call or text (510)617-1930 for all maintenance issues or submit through your online Resident Portal.

NOTE: Our staff are working remotely Monday - Friday 8:30am -5:30pm. Please stay safe.

000100

Maya Clark, Broker/Owner
Seville Property Management
www.sevillepropertymanagement.com
BRE (CA) Broker #01734062
TREC (TX) Broker #523554
maya@sevillepropertymanagement.com
(510)244-1289 x101
(469) 841-0233

On Thu, Dec 17, 2020 at 1:25 AM LaTasha Monique <latasha_monique@yahoo.com> wrote:

Not sure if you have been getting my last few emails (pretty sure you are not because you usually respond), but I wanted you to know that since the last email of my trash can being missing, I am continuously having trash can issues. Most notably my recycle bin has not been emptied. As a result I have lost the privileges of having a free/reduced cost seeing-person to assist me in separating trash. I must now pay full price for services. This service is expensive. I have also had to cancel my meal delivery service because there is simply no place to put the empty boxes/trash. Ms. Hill made it clear that if recycling goes in garbage bin I will get fined. Three weeks ago the bin was so full I had to set the box and other recyclables on the side of the trash can. Ms. Hill moved the box and items to the street a week later...AND IT IS STILL THERE! I tried to take trash out today and the bin was not taken out this week. As a person who is at high risk and just was deathly ill, I cannot afford to keep my meal service canceled because I have no place to put the trash. Me not being able to use the trash services means I must pay someone/service to bring me meals. This should not be the case. the recycle bin should be emptied every week.

Thank you for understanding and working to correct his situation. It has been hard to not have a place to dump my trash/recyclables. and I have been dealing with this for months now. I appreciate you.

Wars of nations are fought to change maps. But wars of poverty are fought to map change ~Muhammad Ali

Proof of Service Confirmation TENANT PETITION

I declare under penalty of perjury under the laws of the State of California that on 03-15-2021 I, LaTasha Monique Warmasley, served a copy of the below document(s), and all attached pages, to each opposing party, whose names and addresses are listed below, by Personal Service..

Names of Served 3/19/2021
Document(s)

Addresses Information 2709 74TH AVENUE
OAKLAND CA 94605

No items to show...

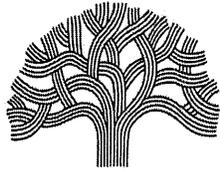
LaTasha Monique Warmasley

03-15-2021

SIGNATURE OF PETITIONER OR
DESIGNATED REPRESENTATIVE

LaTasha Monique Warmasley
DATE: 3/20/21

City of Oakland



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

RECEIVED

MAY 10 2021

RENT ADJUSTMENT PROGRAM
CASE NUMBER OAKLAND

**PROPERTY OWNER RESPONSE
TO TENANT PETITION**

Please fill out this form as completely as you can. Use this form to respond to the Tenant Petition you received. By completing this response form and submitting it in the required time for filing, you will be able to participate in the hearing. Failure to provide the required information may result in your response being rejected or delayed. See "Important Information Regarding Filing Your Response" on the last page of this packet for more information, including filing instructions and how to contact the Rent Adjustment Program ("RAP") with questions. Additional information is also available on the RAP website. **CONTACT A HOUSING COUNSELOR TO REVIEW YOUR RESPONSE BEFORE SUBMITTING.** To make an appointment email RAP@oaklandca.gov.

Rental Unit Information			
Street Number: <u>2767</u>	Street Name: <u>76TH AVE</u>	Unit Number: <u>N/A</u>	Oakland, CA <u>94605</u> Zip Code
Is there more than one street address on the parcel? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If yes, list all addresses: <u>2771, 2769</u>	
Type of unit(s) (check one): <input checked="" type="checkbox"/> Single family home <input type="checkbox"/> Condominium <input type="checkbox"/> Apartment, room, or live-work	Number of units on property: <u>3</u> Date acquired property: <u>2010</u>		
Case number(s) of any relevant prior Rent Adjustment case(s): _____			
Tenant Information			
Name of Tenant Petitioner(s): <u>LaTasha Warmstley</u>			
Date tenant(s) moved into rental unit: <u>May 2013</u>	Initial rent amount: \$ <u>850</u>	Is/are tenant(s) current on rent?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Property Owner Information			
First Name: <u>Kenyattah</u>		Last Name: <u>Hill</u>	
Company/LLC/LP (if applicable): <u>N/A</u>			
Mailing address: <u>PO Box 880782 San Francisco, CA 94188</u>			
Primary Telephone: <u>N/A</u>	Other Telephone: <u>N/A</u>	Email: <u>Kenyattah31@live.com</u>	
Property Owner Representative (Check one): <input type="checkbox"/> No Representative <input type="checkbox"/> Attorney <input checked="" type="checkbox"/> Non-attorney			
First Name: <u>Maya</u>	Last Name: <u>Clark</u>	Firm/Organization (if any): <u>Seville Property Mgt</u>	
Mailing Address: <u>248 3rd # 462 Oakland, CA 94607</u>			
Phone Number: <u>510-244-1289</u>	Email: <u>pm@sevillepropertymanagement.com</u>		

GENERAL FILING REQUIREMENTS

To file a Response to a Tenant Petition, the property owner must be current on the following requirements and submit supporting documentation of compliance. Property Owner Responses that are submitted without proof of compliance with the below requirements will be considered incomplete and may limit your participation in the hearing.

Requirement	Documentation
<input checked="" type="checkbox"/> Current Oakland business license	Attach proof of payment of your most recent Oakland business license.
<input checked="" type="checkbox"/> Payment of Rent Adjustment Program service fee ("RAP Fee")	Attach proof of payment of the current year's RAP Fee for the subject property.
<input checked="" type="checkbox"/> Service of the required City form entitled "NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") on all tenants	Attach a signed and dated copy of the <u>first</u> RAP Notice provided to the petitioning tenant(s) or check the appropriate box below. <input checked="" type="checkbox"/> I first provided tenant(s) with the RAP Notice on (date): <u>May 2013</u> <input type="checkbox"/> I have never provided a RAP Notice. <input type="checkbox"/> I do not know if a RAP Notice was ever provided.

PROPERTY OWNER CLAIM OF EXEMPTION

If you believe that the subject property is exempt from the Rent Adjustment Ordinance (pursuant to O.M.C. § 8.22.030), check each box below that is the claimed basis of exemption. Attach supporting documentation together with your response form. If you do not claim any exemption, proceed to the "Response to Tenant Petition" section on the following page.

- The unit is a single-family residence or condominium exempted by the Costa Hawkins Rental Housing Act (Civil Code 1954.50, et seq.). **If claiming this exemption, you must answer the following questions. Attach a separate sheet if necessary.**
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
 2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
 3. Was the prior tenant evicted for cause?
 4. At the time the prior tenant vacated were there any outstanding violations of building housing, fire or safety codes in the unit or building?
 5. Is the unit separately alienable, meaning it can be sold separately from any other unit on the parcel?
 6. Did the petitioning tenant have roommates when he/she moved in?
 7. If the unit is a condominium, did you purchase it? If so: 1) From whom? 2) Did you purchase the entire building?
- The rent for the unit is controlled, regulated, or subsidized by a governmental unit, agency, or authority other than the City of Oakland Rent Adjustment Ordinance. (Attach documentation.)
- The unit was newly constructed and issued a Certificate of Occupancy on or after January 1, 1983. (Attach copy of Certificate of Occupancy.)
- The unit is located in a motel, hotel, or rooming/boarding house, which the tenant petitioner has occupied for less than 30 days.
- The unit is in a building that was previously issued a certificate of exemption from RAP based on substantial rehabilitation. (Attach copy of Certificate of Exemption.)
- The unit is an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for the aged, or dormitory owned and operated by an educational institution. (Attach documentation.)

OWNER VERIFICATION

(Required)

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



Property Owner 1 Signature

5/5/2021

Date

Property Owner 2 Signature

Date

CONSENT TO ELECTRONIC SERVICE

(Highly Recommended)

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will send certain documents only electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this response.

MEDIATION PROGRAM

Mediation is an optional process offered by RAP to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. A trained third party will work with the parties prior to the hearing to see if a mutual agreement can be reached. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you agree to mediation in your case.

I agree to have the case mediated by a Rent Adjustment Program staff mediator.



Property Owner Signature

5/5/2021

Date

INTERPRETATION SERVICES

If English is not your primary language, you have the right to an interpreter in your primary language/dialect at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

I request an interpreter fluent in the following language at my Rent Adjustment proceeding:

- Spanish (Español)
- Cantonese (廣東話)
- Mandarin (普通话)
- Other: _____

-END OF RESPONSE-

RESPONSE TO TENANT PETITION

Use the chart(s) below to respond to the grounds stated in the Tenant Petition. Enter your position on each claim in the appropriate section(s) below. You may attach any documents, photographs, or other tangible evidence that support your position together with your response form. If you need more space, attach additional copies of this page or state your response in a separate sheet attached to this form.

A. Unlawful Rent Increase(s)

Complete this section if any of the grounds for the Tenant Petition fall under Category A on the Tenant Petition.

List all rent increases given within the past five years, starting with the most recent increase.

Date tenant given notice of rent increase: (mm/dd/yy)	Date rent increase went into effect: (mm/dd/yy)	Amount of increase:		Did you provide a RAP Notice with the notice of rent increase?		Reason for increase (CPI, banking, or other):
		FROM	TO	YES	NO	
03/21/16	9/1/16	\$ 850	\$880.60	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPI
07/3/17	9/1/17	\$ 880.60	\$ 936.96	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPI
07/11/18	9/1/18	\$ 936.96	\$ 968.82	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPI
07/12/18	9/1/19	\$ 968.82	\$ 1002.73	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPI
		\$	\$	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPI

If the Tenant Petition is based on either of the following grounds, state your response in the space below or in a separate sheet attached to this form.

Tenant Petition Grounds	Owner Response
(A2) Tenant did not receive proper notice, was not properly served, and/or was not provided with the required RAP form with rent increase(s).	<i>See attach</i>
(A3) A government agency has cited the unit for serious health, safety, fire, or building code violations.	

B. Decreased Housing Services

Complete this section if any of the grounds for the Tenant Petition fall under Category B on the Tenant Petition.

Tenant Petition Grounds	Owner Response
(B1) The owner is providing tenant(s) with fewer housing services and/or charging for services originally paid for by the owner.	<i>(Diagonal line)</i>
(B2) Tenant(s) is/are being unlawfully charged for utilities.	

C. Other

Complete this section if any of the grounds for the Tenant Petition fall under Category C on the Tenant Petition.

Tenant Petition Grounds	Owner Response
(C1) Rent was not reduced after a prior rent increase period for capital improvements.	<i>(Diagonal line)</i>
(C2) Owner exemption based on fraud or mistake.	
(C3) Tenant's initial rent amount was unlawful because owner was not permitted to set initial rent without limitation (O.M.C. § 8.22.080 (C)).	

**CITY OF OAKLAND
BUSINESS TAX CERTIFICATE**

**ACCOUNT
NUMBER**
00131211

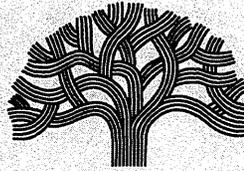
The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 5.04.190(A), of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

DBA HILL KYNATTAH TR

BUSINESS LOCATION 2771 76TH AVE
OAKLAND, CA 94605-2862

BUSINESS TYPE M Rental - Apartment

EXPIRATION DATE
12/31/2021



Starting January 1, 2021, Assembly Bill 1607 requires the prevention of gender-based discrimination of business establishments. A full notice is available in English or other languages by going to:
<https://www.dca.ca.gov/publications>



HILL KYNATTAH TR
PO BOX 880782
SAN FRANCISCO, CA 94188-0782

A BUSINESS TAX CERTIFICATE
IS REQUIRED FOR EACH
BUSINESS LOCATION AND IS
NOT VALID FOR ANY OTHER
ADDRESS.

ALL OAKLAND BUSINESSES
MUST OBTAIN A VALID
ZONING CLEARANCE TO
OPERATE YOUR BUSINESS
LEGALLY. RENTAL OF REAL
PROPERTY IS EXCLUDED
FROM ZONING.

PUBLIC INFORMATION ABOVE
THIS LINE TO BE
CONSPICUOUSLY POSTED!

000107



CITY OF OAKLAND
Revenue Division - Business Tax Section
250 Frank H. Ogawa Plaza, #1320
Oakland, CA 94612
(510) 238-3704 TDD (510) 238-3254
www.oaklandnet.com

Acknowledgement of Payment Received

Date: February 18, 2021

The City of Oakland acknowledges receipt of the following payment on the date printed above.

This payment will be tendered against the following account(s)

Account #: 00131211
Account Name: HILL KYNATTAH TR
Account Address: PO BOX 880782 SAN FRANCISCO, CA 94188-0782
Account Paid: M - RESIDENTIAL RENTAL PROPERTY
Business Address: 2771 76TH AVE OAKLAND, CA 94605-2862

Please keep this acknowledgement for your records. Thank you.

Payment received by: Online Payment

2021

Business Tax <i>Credit Card</i>	\$418.50
BT Recordation and Tech <i>Credit Card</i>	\$3.00
BT SB1186 (AB1379) <i>Credit Card</i>	\$4.00
RAP Rent Adjustment Program (M) <i>Credit Card</i>	\$303.00
Total	\$728.50



May 7th, 2021

Owner Response:

T19-0349 / T21-0046

Hello, my mailing address is PO BOX 880782 San Francisco, CA 94188. Tenants who live at 2769 76th Ave Oakland, CA 94605 notified me of the complaint. LaTasha W is also aware that all communication from tenants must be sent to Seville property management to communicate with owners.

Trash service have been available to all tenants, including LaTasha W. However, in the recent past, Waste Management, the trash company, has issued a warning about inappropriate and unacceptable items being placed in the recycling bin i.e. sanitary napkin(s). Waste Management will not empty the bins when there are disallowed items in the bins after a warning has been given. Since this was creating an issue for every tenant and their service, the owner temporarily removed the recycling bin in order to identify the source of the problem.

As was suggested by Waste Management, the owner has since provided each tenant with their own trash and recycling bins. Each tenant is responsible for bringing their individual bins with their garbage to the curb for trash pickup. This is not to be considered a decrease in services because the lease nor law does not require the Owner to move the bins for the tenants for pickup.

When the Owner was living onsite full-time and there was only the shared bin, the owner took responsibility for bringing the bins to the curb as a courtesy. LaTasha W and all tenants have access to the bins. Now, since giving birth to a baby, the Owner is protecting her baby's health and safety by not being around strangers.



000109



FedEx Office

Address: 1155 HARRISON ST
 SAN FRANCISCO
 CA 94103
 Location: SFOKI
 Device ID: -BTC02
 Transaction: 940300337720

FedEx Express Saver

786906637619 0.20 lb (M) 8.90

Declared Value 0

Recipient Address:

ATTN: LATASHA WARMSLEY
 2767 76TH AVE
 OAKLAND, CA 94605-2862
 0000000000
 LATASHA_MONIQUE@YAHOO.COM

Scheduled Delivery Date 5/12/2021

Pricing option:
 ONE RATE

Package Information:
 FedEx Envelope

Shipment subtotal: \$8.90

Total Due: \$8.90

(S) CreditCard: \$8.90

*****6047

M = Weight entered manually
 S = Weight read from scale
 I = Taxable item

Terms and Conditions apply. See
fedex.com/us/service-guide for details.

Visit us at: fedex.com
 Or call 1.800.GoFedEx
 1.800.463.3339

May 07, 2021 12:20:46 PM

000110

Residential Tenancy Agreement

Owner rents to Tenants and Tenants rent from Owner the Premises subject to the following terms and conditions.

Terms of Tenancy

Owner KSH Property

Agent for Rent & Notices PO Box 880782 San Francisco, CA 94188 (Name)
(510) 712-2805 / Kshproperty@gmail.com (Address)
(510) 712-2805 / Kshproperty@gmail.com (Phone & Email)

Tenants Latacha Warmley (Name) 01031977 (DOB) _____ (Name) _____ (DOB)

Premises 2767 76TH AVE Oakland, CA 94605 (Address)

Rent \$ 850.00 per month payable in advance on the 1 day of each month.

Parking Parking space assigned 0 Monthly charge \$ 0 payable with monthly rent.

Storage Storage space assigned 0 Monthly charge \$ 0 payable with monthly rent.

Rent Payments Electronic Funds Transfer (EFT) Account # 2425573827
 Personal check
 Cashier's check or money order
 Cash

Security Deposit \$ 1000.00

Late Charge \$ 50.00 if Owner does not receive rent in full within 5 days after the due date.

Returned Payment \$ 50.00 in the event any check or other form of payment by Tenant is returned for lack of sufficient funds, a "stop payment" or any other reason.

Term of Tenancy The Tenancy begins on 6/1/13 and ends on 6/1/14 and thereafter continues on a month-to-month basis until terminated.

Pets Approved pets NO

Owner's Utilities Owner pays for Trash, Water, PG&E

Tenant's Utilities Tenant pays for Cable, telephone, internet ect

Appliances & Fixtures Owner provides Stove, refrigerator

General Terms and Conditions of Tenancy

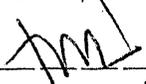
Use and Occupancy

The Premises are to be occupied and used only as a private residence by Tenants, without Owner's prior written consent, subject to applicable state and local laws. Occupancy by additional persons for more than two weeks in any six-month period is prohibited without Owner's written consent. Violation of the provisions of this Section is a substantial violation of a material term of the tenancy and is a just cause for eviction.

I have reviewed this page tm (Tenant initials)

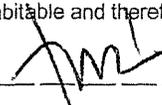
Residential Tenancy Agreement

- Possession** If Owner is unable to deliver possession of the Premises at the beginning of the Term, Tenant will have the right to terminate this Agreement upon proper notice as required by law. Owner will not be liable for any resulting damage. If Tenant fails to take possession of the Premises, Tenant will still be responsible for paying rent and complying with all other terms of this Agreement.
- Rent** Rent will be paid in full to Owner or Owner's agent without offsets, deductions or credits. Tenant bears the risk of loss or delay of any mailed payment. Owner reserves the right to refuse any partial payment. Payment will be applied to any outstanding obligation of Tenant to Owner, notwithstanding any other designation by Tenant.
- Late Payments** Tenant will pay Owner a late charge if rent is not received on time. By accepting a late charge, Owner does not waive the right to insist on payment of the rent in full on the due date. Tenant and Owner agree that the late charge represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. Tenant and Owner agree that paying rent more than five days late on three separate occasions in any 12-month period is a substantial violation of a material term of the tenancy and is a just cause for eviction.
- Returned Payments** Tenant will pay Owner a returned payment fee in the event any check or other form of payment offered by Tenant to Owner in payment of rent or any other amount due under this Agreement is returned for lack of sufficient funds, a "stop payment" or any other reason. Tenant and Owner agree that this amount represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. A returned check may constitute late payment of rent. In the event of a returned check, Owner reserves the right to demand payment by money order or certified funds for the current and all future payments.
- Individual Liability** Each person who signs this Agreement, whether or not they remain in possession of the Premises, will be jointly and severally liable for the full performance of this Agreement, including the payment of all rent due and the payment of costs to remedy damages to the Premises caused by Tenant, guests or invitees.
- Failure to Pay** As required by law, Tenant is notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations, such as your obligations under the terms of this Agreement.
- Security Deposit** Tenant may not apply the security deposit to the last month's rent or to any other sum due under this Agreement. Within two weeks after Tenant has vacated the Premises, Owner will furnish Tenant with an itemized written statement of the reasons for, and the dollar amount of, any of the security deposit retained by the Owner, along with a check for any deposit balance. Under Section 1950.5 of the California Civil Code, Owner may withhold only that portion of Tenant's security deposit necessary to: (1) remedy any default by Tenant in the payment of rent; (2) repair damages to the Premises exclusive of ordinary wear and tear; and (3) clean the Premises if necessary. Under state and local law, no interest payments are required on security deposits.
- Subletting** Tenant will not sublet any part of the Premises or assign this agreement without the prior written consent of Owner. The named Tenants are the only "Original" Tenants. No person other than the named Tenants will be permitted to regularly or continuously use or occupy the Premises unless all of the following conditions are met: 1) Tenant notifies Owner in writing, signed by every Tenant, stating a request to have a new person occupy the Premises; 2) said prospective occupant completes and gives to Owner Owner's rental application; 3) Owner approves of the prospective occupant's creditworthiness and references from prior landlords; and 4) the new occupant signs Owner's Change of Tenant Agreement for such occupancy before occupying the Premises, which agreement will include a provision that the new occupant will abide by and perform all the obligations of this Agreement. The rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises.
- In the event that Owner consents to any sub-tenancy, it is hereby agreed that the Original Tenant may not charge more to the sub-tenant(s) than that proportional share of the rent which is being charged by and paid to Owner.
- No action or inaction or acceptance of rent or knowledge on the part of Owner will be deemed to be a waiver of the provision of this Section on the part of Owner and will not be deemed an approval of any person as a "sub-tenant" for any purpose.
- Parking** The assigned parking space is for the exclusive use of the Tenants and may be used for the parking of motor vehicles only. No vehicle longer than 20 feet may be parked in the Space. Any motor vehicle maintenance or repair performed in the Space, or any other use of the property without the prior consent of Owner, is prohibited.
- Owner will not be liable for any damage done by bursting, leaking or running of any gas or water or any plumbing fixture in, above, upon or about the parking lot; for damage by water, snow or ice being upon or coming off the lot; damage arising from acts or neglect of other occupants of the lot or other motor vehicles; or theft or vandalism by others. It is encouraged that Tenants purchase insurance to cover the above-mentioned instances.
- Storage** Tenants release Owner from any liability for loss or damage to Tenants' property while stored on the Premises. Any property stored in designated storage areas shall be removed on or before the date of termination of tenancy. In the event such property is not so removed, Owner may dispose of same without any liability to Tenants. Tenants waive any rights as defined in Civil Code Section 1980 et. seq. Owner reserves the right to inspect all such storage areas and require necessary removal or clean up as deemed necessary for the health and safety of the Premises, the building and/or its occupants. No storage of any kind will be permitted on fire escapes or in other common areas.

I have reviewed this page  (Tenant initials)

Residential Tenancy Agreement

- Condition of Premises** Tenant agrees to: (1) keep the Premises clean and sanitary and in good repair and, upon termination of the tenancy, to return the Premises to Owner in a condition identical to that which existed when Tenant took occupancy, except for ordinary wear and tear; (2) immediately notify Owner of any defects or dangerous conditions in and about the Premises of which they become aware; and (3) reimburse Owner, on demand by Owner, for the cost of any repairs to the Premises damaged by Tenant or Tenant's guests or invitees through misuse or neglect.
- Appliances and Fixtures** Tenant acknowledges that all appliances, window and floor coverings, attached light fixtures, and other attached or semi-attached items are the property of Owner.
- Pets** Only Approved Pets are allowed on or about the Premises. Owner may require a photo of all Approved Pets. No other animals are allowed even temporarily or with a guest, without Owner's prior written consent, excepting guide, service or signal dogs pursuant to California Civil Code Sections 54.1 and 54.2. Stray animals shall not be kept or fed in or around the Building. Strays can be dangerous and Owner must be notified immediately of any strays in or around the Building.
- Approved Pets are not permitted outside Tenant's unit unless on a leash. Tenant agrees to immediately clean up any defecation in a sanitary manor. If Tenant fails to prevent any infestations of fleas, ticks, or other creatures, Tenant may be charged for cleaning, de-fleaing, deodorizing or shampooing any portion of the building or Premises. Tenant shall not permit the pets to cause any discomfort, annoyance, nuisance, or in any other way inconvenience any other Tenant. Any "mess" created by the Pet(s) shall immediately be cleaned up by Tenant. Tenant shall be liable to Owner, and shall defend Owner, hold Owner harmless, and indemnify Owner for all injuries, damages, expenses, losses or obligations of any kind incurred by or in connection with the pet.
- Trash** Tenant agrees to dispose of their ordinary household trash by placing it in the Waste Management containers for periodic collection. Tenant agrees to dispose of extraordinary trash, such as damaged furniture, broken appliances and the like, by immediately hauling it to the dump themselves or by paying someone else to remove it. In the event that Tenant's trash is left outside the Premises, Owner will arrange to have it removed at Tenant's expense.
- Owner's Access** California law allows Owner to enter the Premises for certain purposes during normal business hours. Owner will provide written notice to Tenant prior to entering the Premises whenever required by state law (Civil Code Section 1954).
- Extended Absences** Tenant agrees to notify Owner in the event that Tenant will be away from the Premises for 14 consecutive days or more. During each absence, Owner may enter the Premises at times reasonably necessary to maintain the property and inspect for damage and needed repairs.
- Quite Enjoyment** Tenant will be entitled to quiet enjoyment of the Premises. Tenant and Tenant's guests or invitees will not use the Premises or adjacent areas in such a way as to: (1) violate any law or ordinance, including laws prohibiting the use, possession or sale of illegal drugs; (2) commit waste or nuisance; or (3) annoy, disturb, inconvenience or interfere with the quiet enjoyment and peace and quiet of any other tenant or nearby resident.
- Repairs and Alterations** Tenant will not, without Owner's prior written consent, alter, re-key or install any locks to the Premises or install or alter any burglar alarm system. Tenant will provide Owner with a key or keys capable of unlocking all such re-keyed or new locks as well as instructions on how to disarm any altered or new burglar alarm system.
- Except as provided by law or as authorized by the prior written consent of Owner, Tenant will not make or allow to be made any installation or modification of cable or telephone wiring, decorations (such as painting and wallpapering), alterations, or repairs (inclusively, "Changes") to the Premises. Tenant agrees to pay all costs of correcting any unauthorized Changes.
- Financial Responsibility** Tenant agrees to accept financial responsibility for any loss or damage to personal property belonging to Tenant and Tenant's guests and invitees caused by theft, fire or any other cause. Owner assumes no liability for any such loss. Owner recommends that Tenant obtain a renter's insurance policy from a recognized insurance firm to cover Tenant's liability, personal property damage and damage to the Premises.
- Water-filled Furniture** No waterbed or other item of water-filled furniture will be kept on the Premises.
- Smoke Detectors** The Premises are equipped with functioning smoke detection devices. Tenant will be responsible for testing the devices weekly and immediately reporting any problems, maintenance or need for repairs to Owner. Tenant will not remove their batteries or otherwise disable them.
- Termination** The tenancy may be terminated by Tenant by serving a 30-day written notice of termination upon Owner, and by Owner by serving a 30-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for less than one year, or by serving a 60-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for one year or longer. Any termination notice is subject to applicable local rent control ordinances and regulations. If the Premises are damaged by fire, flood, earthquake or any other cause so as to render them uninhabitable and therefore destroyed, the tenancy is terminated.

I have reviewed this page  (Tenant initials)

Residential Tenancy Agreement

Attorney Fees In any action or legal proceeding to enforce any part of this Agreement, each party will be responsible for their own attorneys' fees and court costs, subject to local rent control ordinances and regulations that may apply.

Megan's Law Pursuant to Section 290.46 of the California Penal Code, information about specified registered sex offenders is made available to the public via an internet web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and the ZIP code in which he or she resides.

Notices Any required notices may be delivered to Tenant at the Premises and to Owner or Agent for Rent and Notices.

Validity of Each Part If any portion of this Agreement is held to be invalid, its invalidity will not affect the validity or enforceability of any other provision of this Agreement.

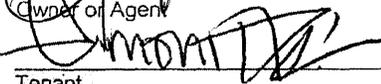
Captions and Headings The captions and headings in this Agreement are included to improve readability and are not part of the terms or provisions of this Agreement.

Application Any rental application or related document submitted by Tenant is incorporated herein as though set forth in full. Any misrepresentations contained therein will be considered a substantial violation of a material term of the tenancy and is a just cause for eviction.

Attachments The following attachments are incorporated as part of this Agreement:
 Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards
 Move-In-Move-Out Checklist
 Oakland Notice to Tenants
 EPA booklet entitled "Protect Your Family from Lead in Your Home"

Entire Agreement This document and Attachments identified above constitute the entire Agreement between the parties, and no promises or representations, other than those contained here and those implied by law, have been made by Owner or Tenant. Any modifications to this Agreement must be in writing signed by Owner and Tenant except that Owner may change the terms of the tenancy and this Agreement pursuant to Civil Code Section 827.

By:

 _____ Owner or Agent	5/28/13 _____ Date		
 _____ Tenant	5/10/13 _____ Date	_____ Tenant	_____ Date
_____ Tenant	_____ Date	_____ Tenant	_____ Date
_____ Tenant	_____ Date	_____ Tenant	_____ Date

Receipt

By signing above, Owner acknowledges having received, and Tenant acknowledges payment of, the following:

Security Deposit:	\$ 1,000 ⁰⁰ / ₁₀₀	
Rent:	\$ 850 ⁰⁰ / ₁₀₀	for the period 6/1/13 to 6/1/14
Other:	\$ N/A	for _____
Total received:	\$ 1,000 ⁰⁰ / ₁₀₀	payment method <u>Cashier Check</u>



Form provided by the Rental Housing Association of Northern Alameda County®

www.rhanac.org

Form Oakland Tenancy Agreement© (05/11)



Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards
Addendum to Residential Tenancy Agreement Dated: _____

Owner: KSH Property Tenants: Latasha Warmstey

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling. Tenants must also receive a federally approved pamphlet on lead poisoning prevention.

Owner's Disclosure (Owner to initial and check appropriate boxes)

(a) Presence of lead-based paint or lead-based paint hazards (check one below):

Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

Owner has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to Owner (check one below):

Owner has provided Tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

Owner has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Tenant's Acknowledgment (Tenant to initial as acknowledgement)

(c) Tenant has received copies of all information, if any, listed above.

(d) Tenant has received the pamphlet, "Protect Your Family from Lead in Your Home."

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

By:

Owner or Agent

Tenant

Date

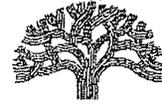
Date

5/28/13

7/20/13

000115

Oakland Notice to Tenants
Addendum to Residential Tenancy Agreement



CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CALIFORNIA 94612-0243

Community and Economic Development Agency
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing.
- If there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <http://www.oaklandnet.com/government/hcd/rentboard/tenant.html>.
- If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has **not** been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay for the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex **must** be evicted. If the owner does not evict, the City Attorney may do so.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit 2167 the unit you plan to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in the tenant's building, attach a list of units in which smoking is permitted.)
- Smoking is PROHIBITED in all common areas, both indoors and outdoors.
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____

I received a copy of this notice on

5/26

此份屋崙(奧克蘭)市租客權利通知書附有中文版本。請致電 (510) 238-3721 索取副本。

La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

Baun Thoang Baun quyeàn lóii cuàa ngöðøi thueâ trong Oakland naøy cuông còu baêng tieáng Vieät. Neã còu moät baun sao, xin goii (510) 238-3721.



INVOICE

To view your Insert
Click the link below:

[INSERT1](#)
[INSERT2](#)

Customer ID:
Customer Name:
Service Period:
Invoice Date:
Invoice Number:

9-12450-23007
KYNATTAH HILL
OCT-NOV-DEC SERVICE
10/01/2020
3178201-2216-4

How To Contact Us

Visit **wm.com**

To setup your online profile, sign up for paperless statements, manage your account, view holiday schedules, pay your invoice or schedule a pickup



Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

Pymt due upon receipt of invoice & delinquent 45 days later. Delinquent invoices are subject to monthly late charges of a minimum of \$5.00 up to 1.5% of the invoice amount, and are subject to property assessment, and a City subscription charge. See NOTICE on last page of invoice for details.

Your Total Due

\$501.24

See Reverse for Important Messages

Previous Balance	501.24	+	Payments	(501.24)	+	Adjustments	0.00	+	Current Charges	501.24	=	Total Due	501.24
------------------	--------	---	----------	----------	---	-------------	------	---	-----------------	--------	---	-----------	---------------

Details for Service Location: Hill, Kynattah, 2771 76th Ave, Oakland CA 94605-2862 **Customer ID: 9-12450-23007**

Description	Date	Ticket	Quantity	Amount
96 Gallon toter per unit	10/01/20		1.00	360.84
96 Gallon cart service - organics	10/01/20		3.00	0.00
Monthly recycle per unit	10/01/20		3.00	140.40
Total Current Charges				501.24

----- Please detach and send the lower portion with payment ----- (no cash or staples) -----

Waste Management
WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
172 98TH AVENUE
OAKLAND, CA 94603
(510) 613-8710
(510) 562-2854 FAX
CALOAKLAND@WM.COM

Invoice Date	Invoice Number	Customer ID (Include with your payment)
10/01/2020	3178201-2216-4	9-12450-23007
Payment Terms	Total Due	Amount
Due Upon Receipt	\$501.24	

*** DO NOT PAY-AUTOMATIC PAYMENT WILL BE PROCESSED ***
Your credit card will be charged \$501.24.

2216000091245023007031782010000005012400000050124 2

I2216R82

KYNATTAH HILL
PO BOX 880782
SAN FRANCISCO CA 94188-0782

Remit To: **WM CORPORATE SERVICES, INC.**
AS PAYMENT AGENT
PO BOX 541008
LOS ANGELES, CA 90054-1008

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000117 Printed on recycled paper

065-4306103-2716-6

IMPORTANT MESSAGES

Notice to California Residents: We collect personal information in conjunction with accounts and processing of payments. You have certain rights regarding your personal information under California law. To learn more about your rights, visit wm.com/privacy or call us at 1-855-782-6445.

The WM office is temporarily closed for the safety of employees from COVID-19. For more information, please visit wm.com/alerts.

WASTE MANAGEMENT OBSERVES THE FOLLOWING HOLIDAYS: New Year's Day, Thanksgiving and Christmas. If your collection day falls on the holiday or after, your service will be one day late.

Manage your account and pay your bill online or on your iPhone or Android. More at wm.com/GoMobile.

5 EASY WAYS TO PAY



Automatic Payment
Set up recurring payments with us at wm.com/myaccount.



Pay Through Your Financial Institution
Make a payment from your financial institution using your Customer ID.



One-Time Payment
At your desk or on the go, use wm.com or our WM mobile app for a quick and easy payment.



Pay by Phone
Payable 24/7 using our automated system at 866-964-2729.



Mail it
Write it, stuff it, stamp it, mail it. Envelope provided.

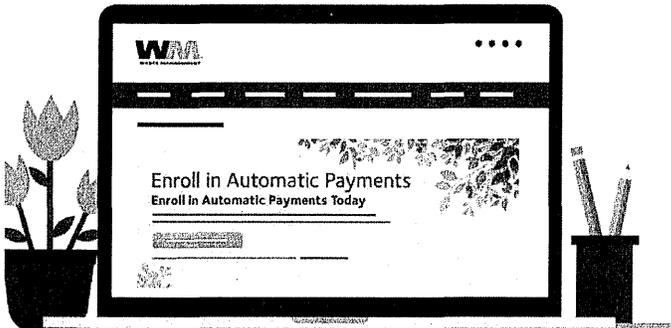
HOW TO READ YOUR INVOICE

How To Contact Us Visit wm.com <small>To set up your online profile, sign up for paperless billing, manage your account, view holidays schedules, pay your bill or schedule a pickup.</small> Customer Service (866) 909-4458		Your Payment is Due August 19, 2017 <small>If full payment of the invoiced amount is not received by the invoice due date, you will be charged a monthly late charge of 2.5% of the unpaid amount, with a maximum charge of \$5.00, or such lesser late charge allowed under applicable law, regulation or contract.</small>		Your Total Due \$124.73 <small>If payment is received after 08/19/2017: \$126.60</small> <small>See reverse for important messages</small>	
Previous Balance	Payments	Adjustments	Current Charges	Total Due	
7.12	(97.12)	0.00	124.73	124.73	
Details for Service Location 311 Jackson Street, Stockton CA 95205		Customer ID: 3-82290-00885 PO Numbers: 45693			
Description	Date	Ticket	Quantity	Amount	
966 Meter	07/01/17		1.00	96.00	
966 Meter Recycle	07/01/17		1.00	0.00	
Enrollment Service	07/01/17	5934	1.00	15.00	
Fuel/Environmental Charge				19.73	
Total Current Charges				124.73	

States the date payment is due to Waste Management. Anything beyond that date may incur additional charges. Your **Total Due** is the total amount of current charges and any previous unpaid balances combined.

Previous balance is the total due from your previous invoice. We subtract any **Payments Received/Adjustments** and add your **Current Charges** from this billing cycle to get a **Total Due** on this invoice. If you have not paid all or a portion of your previous balance, please pay the entire **Total Due** to avoid a late charge or service interruption.

Service location details the total current charges of this invoice.



www.wm.com/autopay

Automatic Payments

Simplify your life with easy and reliable automatic payments. Save time, prevent late charges and help the environment, too. Get started by visiting wm.com/autopay.

CHECK HERE TO CHANGE CONTACT INFO

List your new billing information below. For a change of service address, please contact Waste Management.

Address 1	
Address 2	
City	
State	
Zip	
Email	
Date Valid	

CHECK HERE TO SIGN UP FOR AUTOMATIC PAYMENT ENROLLMENT

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Email Address	
Date	
Bank Account Holder Signature	

NOTICE: By sending your check, you are authorizing the Company to use information on your check to make a one-time electronic debit to your account at the financial institution indicated on your check. The electronic debit will be for the amount of your check and may occur as soon as the same day we receive your check.

In order for us to service your account or to collect any amounts you may owe (for non-marketing or solicitation purposes), we may contact you by telephone at any telephone number that you provided in connection with your account, including wireless telephone numbers, which could result in charges to you. Methods of contact may include text messages and using pre-recorded/artificial voice messages and/or use of an automatic dialing device, as applicable. We may also contact you by email or other methods as provided in our contract.

000118

NOTICE

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Payment is due upon receipt and becomes delinquent (a) **45 days** after the invoice date for customer accounts billed quarterly, and (b) on the final day of the billing period for customer accounts billed monthly. Late payments may be subject to additional charges including late fees and property assessment.

If the invoice remains unpaid (a) after 90 days for customer accounts billed quarterly, and (b) after 75 days for customer accounts billed monthly, then Waste Management may terminate service and the City of Oakland may subscribe to service on behalf of the property owner. Once the City subscribes, property owners will be subject to a City subscription charge (authorized by Oakland Municipal Code Section 8.28.190) of \$116 or 10% of the delinquent amount (whichever is greater) for each service invoice. **All future invoices for which the City maintains subscription are subject to City subscription charges and Alameda County Property Tax special assessment.**

Total Amount Due - This balance represents the total payment that is due upon receipt of the invoice. To verify the Total Amount Past Due, calculate:

Total Amount Due minus Total Current Charges

Payments may be made by any of the following:

- Mail payment with the Payment Coupon to the address provided on the invoice
- Pay online, go to wm.com and use the Online WM ezPay ID number listed on the invoice, 24 hours a day/7 days a week
- Call the automated ezPay phone number at 1-866-964-2729, 24 hours a day/7 days a week
- Call the Customer Service Call Center at 510-613-8710, Monday - Friday 8:00 am to 6:00 pm

For billing inquires, choose any of the following

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Inquiries concerning acceptability of specific wastes should be directed to the Customer Service number on the front of this invoice.

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000119



INVOICE

To view your Insert
Click the link below:

INSERT1
INSERT2
INSERT3

Customer ID:

Customer Name:
Service Period:
Invoice Date:
Invoice Number:

9-12450-23007

KYNATTAH HILL
JAN-FEB-MAR SERVICE
01/01/2021
3307692-2216-8

How To Contact Us

Visit **wm.com**

To setup your online profile, sign up for paperless statements, manage your account, view holiday schedules, pay your invoice or schedule a pickup



Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

Pymt due upon receipt of invoice & delinquent 45 days later. Delinquent invoices are subject to monthly late charges of a minimum of \$5.00 up to 1.5% of the invoice amount, and are subject to property assessment, and a City subscription charge. See NOTICE on last page of invoice for details.

Your Total Due

\$501.24

Previous Balance	+	Payments	+	Adjustments	+	Current Invoice Charges	=	Total Account Balance Due
501.24		(501.24)		0.00		501.24		501.24

IMPORTANT MESSAGES

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Manage your account and pay your bill online or on your iPhone or Android. More at wm.com/GoMobile.

----- Please detach and send the lower portion with payment --- (no cash or staples) -----



WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
172 98TH AVENUE
OAKLAND, CA 94603
(510) 613-8710
(510) 562-2854 FAX
CALOAKLAND@WM.COM

Invoice Date	Invoice Number	Customer ID (Include with your payment)
01/01/2021	3307692-2216-8	9-12450-23007
Payment Terms	Total Due	Amount
Due Upon Receipt	\$501.24	

*** DO NOT PAY-AUTOMATIC PAYMENT WILL BE PROCESSED ***
Your credit card will be charged \$501.24.

2216000091245023007033076920000005012400000050124 6

12216R98

KYNATTAH HILL
PO BOX 880782
SAN FRANCISCO CA 94188-0782

Remit To: **WM CORPORATE SERVICES, INC.**
AS PAYMENT AGENT
PO BOX 541008
LOS ANGELES, CA 90054-1008

THINK GREEN.®

000120



065-4306103-2216-6

DETAILS OF SERVICE

Details for Service Location:

Hill, Kynattah, 2771 76th Ave, Oakland CA 94605-2862

Customer ID: 9-12450-23007

Description	Date	Ticket	Quantity	Amount
96 Gallon Toter Per Unit	01/01/21		1.00	360.84
96 Gallon Cart Service - Organics	01/01/21		3.00	0.00
Monthly Recycle Per Unit	01/01/21		3.00	140.40
Total Current Charges				501.24

5 EASY WAYS TO PAY



Automatic Payment

Set up recurring payments with us at wm.com/myaccount.



Pay Through Your Financial Institution

Make a payment from your financial institution using your Customer ID.



One-Time Payment

At your desk or on the go, use wm.com or our WM mobile app for a quick and easy payment.



Pay by Phone

Payable 24/7 using our automated system at 866-964-2729.



Mail it

Write it, stuff it, stamp it, mail it. Envelope provided.

HOW TO READ YOUR INVOICE

How To Contact Us

Visit wm.com

To set up your online profile, sign up for paperless billing, manage your account, view holiday schedules, pay your bill or schedule a pickup.

Customer Service
(866) 909-4458

Your Payment Is Due

August 19, 2017

If full payment of the invoiced amount is not received by the invoice due date, you will be charged a monthly late charge of 2.5% of the unpaid amount, with a maximum charge of \$5.00, or such lower late charge allowed under applicable law, regulation or contract.

Your Total Due

\$124.73

If payment is received after 08/19/2017: **\$126.60**

See reverse for important messages.

Previous Balance	Payments	Adjustments	Current Charges	Total Due
7.12	(97.12)	0.00	124.73	124.73

Details for Service Location: 311 Jackson Street, Stockton CA 95205 Customer ID: 2-82296-00885
PO Numbers: 45693

Description	Date	Ticket	Quantity	Amount
96 Gallon Toter	07/01/17		1.00	360.84
96 Gallon Cart Service - Organics	07/01/17		3.00	0.00
Monthly Recycle	07/01/17	5933	1.00	140.40
Fuel/Environmental Charge				19.73
Total Current Charges				124.73

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Service location details the total current charges of this invoice.



Automatic Payments

Don't worry about missing bills or payments. With AutoPay, you can set it once and let us do the rest.

Get started by visiting wm.com/autopay

CHECK HERE TO CHANGE CONTACT INFO

List your new billing information below. For a change of service address, please contact Waste Management.

Address 1	
Address 2	
City	
State	
Zip	
Email	
Date Valid	

CHECK HERE TO SIGN UP FOR AUTOMATIC PAYMENT ENROLLMENT

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Email Address	
Date	
Bank Account Holder Signature	

NOTICE: By sending your check, you are authorizing the Company to use information on your check to make a one-time electronic debit to your account at the financial institution indicated on your check. The electronic debit will be for the amount of your check and may occur as soon as the same day we receive your check.

In order for us to service your account or to collect any amounts you may owe (for non-marketing or solicitation purposes), we may contact you by telephone at any telephone number that you provided in connection with your account, including wireless telephone numbers, which could result in charges to you. Methods of contact may include text messages and using pre-recorded/artificial voice messages and/or use of an automatic dialing device, as applicable. We may also contact you by email or other methods as provided in our contract.

000121

Please send all bankruptcy correspondence to RMCbankruptcy@wm.com or PO Box 43290 Phoenix, AZ 85080. Using the email option will expedite your request. (this language is in compliance with 11 USC 342(c)(2) of the Bankruptcy Code)

NOTICE

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Total Amount Due minus Total Current Charges

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- Call the automated ezPay phone number at 1-866-964-2729, 24 hours a day/7 days a week
- Call the Customer Service Call Center at 510-613-8710, Monday - Friday 8:00 am to 6:00 pm

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000122



INVOICE

To view your Insert
Click the link below:

INSERT1
INSERT2

Customer ID:

Customer Name:
Service Period:
Invoice Date:
Invoice Number:

9-12450-23007

KYNATTAH HILL
JUL-AUG-SEP SERVICE
07/01/2020
3050005-2216-2

How To Contact Us

Visit **wm.com**

To setup your online profile, sign up for paperless statements, manage your account, view holiday schedules, pay your invoice or schedule a pickup



Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

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Your Total Due

\$501.24

See Reverse for Important Messages

Previous Balance	+	Payments	+	Adjustments	+	Current Charges	=	Total Due
487.74		(487.74)		0.00		501.24		501.24

Details for Service Location: Hill, Kynattah, 2771 76th Ave, Oakland CA 94605-2862

Customer ID: 9-12450-23007

Description	Date	Ticket	Quantity	Amount
96 Gallon toter per unit	07/01/20		1.00	360.84
96 Gallon cart service - organics	07/01/20		3.00	0.00
Monthly recycle per unit	07/01/20		3.00	140.40
Total Current Charges				501.24

----- Please detach and send the lower portion with payment ----- (no cash or staples) -----



WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

172 98TH AVENUE
OAKLAND, CA 94603
(510) 613-8710
(510) 562-2854 FAX
CALOAKLAND@WM.COM

Invoice Date	Invoice Number	Customer ID (Include with your payment)
07/01/2020	3050005-2216-2	9-12450-23007
Payment Terms	Total Due	Amount
Due Upon Receipt	\$501.24	

*** DO NOT PAY-AUTOMATIC PAYMENT WILL BE PROCESSED ***
Your credit card will be charged \$501.24.

2216000091245023007030500050000005012400000050124 0

12216R62

KYNATTAH HILL
PO BOX 880782
SAN FRANCISCO CA 94188-0782

Remit To: **WM CORPORATE SERVICES, INC.**
AS PAYMENT AGENT
PO BOX 541008
LOS ANGELES, CA 90054-1008

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045-4306103-2216-6

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Get collection calendars, reminders and complete rates at OaklandRecycles.com.

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Pay Through Your Financial Institution

Make a payment from your financial institution using your Customer ID.



One-Time Payment

At your desk or on the go, use wm.com or our WM mobile app for a quick and easy payment.



Pay by Phone

Payable 24/7 using our automated system at 866-964-2729.



Mail it

Write it, stuff it, stamp it, mail it. Envelope provided.

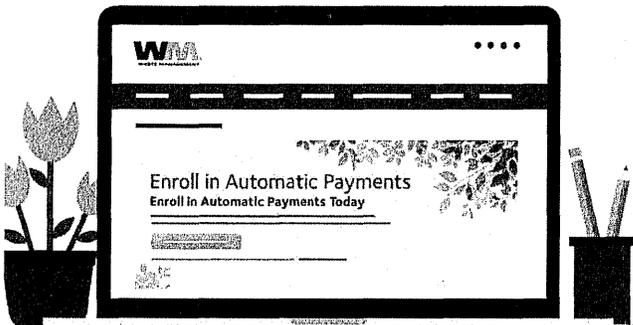
HOW TO READ YOUR INVOICE

How To Contact Us		Your Payment Is Due		Your Total Due				
Visit wm.com <small>To set up your online profile, sign up for paperless billing, manage your account, view holiday schedules, pay your bill or schedule a pickup.</small> Customer Service (866) 909-4458		August 19, 2017 <small>If full payment of the invoice amount is not received by the invoice due date, you will be charged a monthly late charge of 2.5% of the unpaid amount, with a minimum charge of \$5.00, or such lesser late charge allowed under applicable law, regulation or contract.</small>		\$124.73 <small>If payment is received after 08/19/2017, \$126.60. See reverse for important messages.</small>				
Previous Balance	+	Payments	+	Adjustments	+	Current Charges	=	Total Due
112		(97.12)		0.00		124.73		124.73
Details for Service Location: 311 Jackson Street, Stockton CA 95205		Customer ID: 2-82290-00885 PO Numbers: 45693						
Description	Date	Ticket	Quantity	Amount				
96 Cans Refer	07/01/17		1.00	00.00				
96 Cans Recycle	07/01/17		1.00	00.00				
Extr./Equip Service	07/01/17	5934	1.00	15.00				
Fuel/Environmental Charge				19.73				
Total Current Charges				124.73				

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www.wm.com/autopay

Automatic Payments

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Address 1	
Address 2	
City	
State	
Zip	
Email	
Date Valid	

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Email Address	
Date	
Bank Account Holder Signature	

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In order for us to service your account or to collect any amounts you may owe (for non-marketing or solicitation purposes), we may contact you by telephone at any telephone number that you provided in connection with your account, including wireless telephone numbers, which could result in charges to you. Methods of contact may include text messages and using pre-recorded/artificial voice messages and/or use of an automatic dialing device, as applicable. We may also contact you by email or other methods as provided in our contract.

000124

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000125



INVOICE

To view your Insert
Click the link below:

INSERT1
INSERT2

Customer ID:

Customer Name:
Service Period:
Invoice Date:
Invoice Number:

9-12450-23007

KYNATTAH HILL
APR-MAY-JUN SERVICE
04/01/2020
2918863-2216-8

How To Contact Us

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Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

Pymt due upon receipt of invoice & delinquent 45 days later. Delinquent invoices are subject to monthly late charges of a minimum of \$5.00 up to 1.5% of the invoice amount, and are subject to property assessment, and a City subscription charge. See NOTICE on last page of invoice for details.

Your Total Due

\$487.74

See Reverse for Important Messages

Previous Balance	+	Payments	+	Adjustments	+	Current Charges	=	Total Due
487.74		(487.74)		0.00		487.74		487.74

Details for Service Location: Hill, Kynattah, 2771 76th Ave, Oakland CA 94605-2862

Customer ID: 9-12450-23007

Description	Date	Ticket	Quantity	Amount
96 Gallon toter per unit	04/01/20		1.00	351.66
96 Gallon cart service - organics	04/01/20		3.00	0.00
Monthly recycle per unit	04/01/20		3.00	136.08
Total Current Charges				487.74

----- Please detach and send the lower portion with payment ----- (no cash or staples) -----



WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

172 98TH AVENUE
OAKLAND, CA 94603
(510) 613-8710
(510) 562-2854 FAX
CALOAKLAND@WM.COM

Invoice Date	Invoice Number	Customer ID (Include with your payment)
04/01/2020	2918863-2216-8	9-12450-23007
Payment Terms	Total Due	Amount
Due Upon Receipt	\$487.74	

*** DO NOT PAY-AUTOMATIC PAYMENT WILL BE PROCESSED ***
Your credit card will be charged \$487.74.

2216000091245023007029188630000004877400000048774 0

12216R44

KYNATTAH HILL
PO BOX 880782
SAN FRANCISCO CA 94188-0782

Remit To: WM CORPORATE SERVICES, INC.
AS PAYMENT AGENT
PO BOX 541008
LOS ANGELES, CA 90054-1008

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000126



065-4206102-271E-6

IMPORTANT MESSAGES

Notice to California Residents: We collect personal information in conjunction with accounts and processing of payments. You have certain rights regarding your personal information under California law. Effective January 1, 2020, to learn more about your rights, visit wm.com/privacy or call us at 1-855-782-6445. The WM office is temporarily closed for the safety of employees from COVID-19. For more information, please visit wm.com/alerts. WASTE MANAGEMENT OBSERVES THE FOLLOWING HOLIDAYS: New Year's Day, Thanksgiving and Christmas. If your collection day falls on the holiday or after, your service will be one day late. Manage your account and pay your bill online or on your iPhone or Android. More at wm.com/GoMobile.

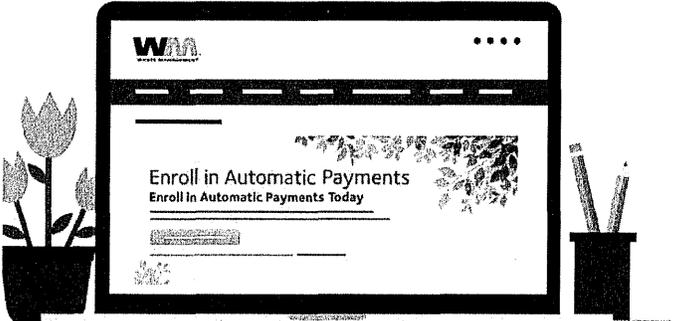
5 EASY WAYS TO PAY

-  **Automatic Payment**
Set up recurring payments with us at wm.com/myaccount.
-  **Pay Through Your Financial Institution**
Make a payment from your financial institution using your Customer ID.
-  **One-Time Payment**
At your desk or on the go, use wm.com or our WM mobile app for a quick and easy payment.
-  **Pay by Phone**
Payable 24/7 using our automated system at 866-964-2729.
-  **Mail it**
Write it, stuff it, stamp it, mail it. Envelope provided.

HOW TO READ YOUR INVOICE

How To Contact Us	Your Payment Is Due	Your Total Due																														
<p>Visit wm.com</p> <p>To set up your online profile, sign up for paperless billing, manage your account, view holiday schedules, pay your bill or schedule a pickup</p> <p></p> <p>Customer Service (866) 909-4458</p>	<p>August 19, 2017</p> <p>If full payment of the invoiced amount is not received by the invoice due date, you will be charged a monthly late charge of 2.5% of the unpaid amount, with a maximum charge of \$5.00, or such lesser late charge allowed under applicable law, regulation or contract.</p>	<p>\$124.73</p> <p>If payment is received after 08/19/2017: \$126.60</p> <p>See reverse for important messages</p>																														
<table border="1"> <tr> <th>Previous Balance</th> <th>Payments</th> <th>Adjustments</th> <th>Current Charges</th> <th>Total Due</th> </tr> <tr> <td>12</td> <td>(97.12)</td> <td>0.00</td> <td>124.73</td> <td>124.73</td> </tr> </table>			Previous Balance	Payments	Adjustments	Current Charges	Total Due	12	(97.12)	0.00	124.73	124.73																				
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CHECK HERE TO CHANGE CONTACT INFO

List your new billing information below. For a change of service address, please contact Waste Management.

Address 1	
Address 2	
City	
State	
Zip	
Email	
Date Valid	

CHECK HERE TO SIGN UP FOR AUTOMATIC PAYMENT ENROLLMENT

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Email Address	
Date	
Bank Account Holder Signature	

NOTICE: By sending your check, you are authorizing the Company to use information on your check to make a one-time electronic debit to your account at the financial institution indicated on your check. The electronic debit will be for the amount of your check and may occur as soon as the same day we receive your check.

In order for us to service your account or to collect any amounts you may owe (for non-marketing or solicitation purposes), we may contact you by telephone at any telephone number that you provided in connection with your account, including wireless telephone numbers, which could result in charges to you. Methods of contact may include text messages and using pre-recorded/artificial voice messages and/or use of an automatic dialing device, as applicable. We may also contact you by email or other methods as provided in our contract.

NOTICE

According to the Oakland Municipal Code Section 8.28.100, the owner of any premises generating garbage is responsible for maintaining garbage service including paying garbage collection bills.

Payment is due upon receipt and becomes delinquent (a) **45 days** after the invoice date for customer accounts billed quarterly, and (b) on the final day of the billing period for customer accounts billed monthly. Late payments may be subject to additional charges including late fees and property assessment.

If the invoice remains unpaid (a) after 90 days for customer accounts billed quarterly, and (b) after 75 days for customer accounts billed monthly, then Waste Management may terminate service and the City of Oakland may subscribe to service on behalf of the property owner. Once the City subscribes, property owners will be subject to a City subscription charge (authorized by Oakland Municipal Code Section 8.28.190) of \$116 or 10% of the delinquent amount (whichever is greater) for each service invoice. **All future invoices for which the City maintains subscription are subject to City subscription charges and Alameda County Property Tax special assessment.**

Total Amount Due - This balance represents the total payment that is due upon receipt of the invoice. To verify the Total Amount Past Due, calculate:

Total Amount Due minus Total Current Charges

Payments may be made by any of the following:

- Mail payment with the Payment Coupon to the address provided on the invoice
- Pay online, go to wm.com and use the Online WM ezPay ID number listed on the invoice, 24 hours a day/7 days a week
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000128



INVOICE

To view your Insert
Click the link below:
[INSERT1](#)

Customer ID:
Customer Name:
Service Period:
Invoice Date:
Invoice Number:

9-12450-23007
KYNATTAH HILL
JAN-FEB-MAR SERVICE
01/01/2020
2785515-2216-4

How To Contact Us

Visit **wm.com**

To setup your online profile, sign up for paperless statements, manage your account, view holiday schedules, pay your invoice or schedule a pickup



Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

Pymt due upon receipt of invoice & delinquent 45 days later. Delinquent invoices are subject to monthly late charges of a minimum of \$5.00 up to 1.5% of the invoice amount, and are subject to property assessment, and a City subscription charge. See NOTICE on last page of invoice for details.

Your Total Due

\$487.74

See Reverse for Important Messages

Previous Balance	+	Payments	+	Adjustments	+	Current Charges	=	Total Due
487.74		(487.74)		0.00		487.74		487.74

Details for Service Location: Hill, Kynattah, 2771 76th Ave, Oakland CA 94605-2862
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WASTE MANAGEMENT OF ALAMEDA COUNTY
172 98TH AVENUE
OAKLAND CA 94603

(510) 613-8710
(510) 562-2854 FAX
CALOAKLAND@WM.COM

Invoice Date	Invoice Number	Customer ID (Include with your payment)
01/01/2020	2785515-2216-4	9-12450-23007
Payment Terms	Total Due	Amount
Due Upon Receipt	\$487.74	

*** DO NOT PAY-AUTOMATIC PAYMENT WILL BE PROCESSED ***
Your credit card will be charged \$487.74.

2216000091245023007027855150000004877400000048774 6

12216R24

KYNATTAH HILL
PO BOX 880782
SAN FRANCISCO CA 94188-0782

WASTE MANAGEMENT OF ALAMEDA COUNTY
PO BOX 541008
LOS ANGELES, CA 90054-1008

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065-4306103-2216-6

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-  **Pay Through Your Financial Institution**
Make a payment from your financial institution using your Customer ID.
-  **One-Time Payment**
At your desk or on the go, use wm.com or our WM mobile app for a quick and easy payment.
-  **Pay by Phone**
Payable 24/7 using our automated system at 866-964-2729.
-  **Mail it**
Write it, stuff it, stamp it, mail it. Envelope provided.

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How To Contact Us

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To set up your online profile, sign up for paperless billing, manage your account, view holidays schedule, pay your bill or schedule pickup

 Customer Service
(866) 908-4458

Your Payment is Due

August 19, 2017

If full payment of the invoiced amount is not received by the invoice due date, you will be charged a monthly late charge of 2.5% of the unpaid amount, with a minimum charge of \$5.00, or such lesser late charge allowed under applicable law, regulation or contract.

Your Total Due

\$124.73

If payment is received after 08/19/2017: **\$126.60**

See reverse for important messages

Previous Balance	12	+	Payments	(97.12)	+	Adjustments	0.00	+	Current Charges	124.73	=	Total Due	124.73
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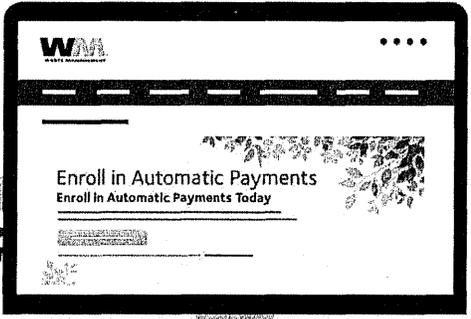
Details for Service Location: 311 Jackson Street, Stockton CA 95205 Customer ID: 2-83200-00885 PO Numbers: 45693

Description	Date	Ticket	Quantity	Amount
96 Paper Toner	07/01/17		1.00	90.00
96 Paper Toner Recycle	07/01/17		1.00	0.00
13 Recycling Service	07/01/17	5934	1.00	15.00
Fuel/Environmental Charge				19.73
Total Current Charge				124.73

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Customer ID:

9-12450-23007

Customer Name:

KYNATTAH HILL

Service Period:

JAN-FEB-MAR SERVICE

Invoice Date:

01/01/2020

Invoice Number:

2785515-2216-4

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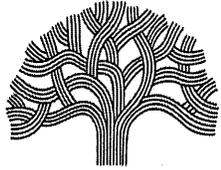
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CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR RESPONSE (PLUS ANY ATTACHMENTS) ON THE TENANT(S) PRIOR TO FILING YOUR RESPONSE WITH RAP.

- 1) Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.
- 2) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) File a completed copy of this PROOF OF SERVICE form with RAP together with your Response. Your Response will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 5/6/2021 I served a copy of (check all that apply):

- PROPERTY OWNER RESPONSE TO TENANT PETITION** plus attached pages
(number of pages attached to Response not counting the Response form or PROOF OF SERVICE)
- Other: 11 pg mailed to Tenant / 28 mailed to RAP

by the following means (check one):

- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below.
- Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

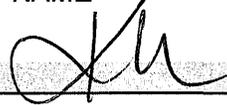
Name	<u>Kenyatta Hill</u>
Address	<u>PO Box 880782</u>
City, State, Zip	<u>San Francisco, CA 94188</u>

Name	Kenyatta Hill
Address	PO Box 880182
City, State, Zip	San Francisco, CA 94188

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Kenyatta Hill

PRINTED NAME



SIGNATURE

5/5/2021

DATE SIGNED

CITY OF OAKLAND



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

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T21-0046, Warmasley v. Hill
PROPERTY ADDRESS: 2767 76th Ave., Oakland, CA
DATE OF HEARING: July 13, 2021
DATE OF DECISION: August 27, 2021
APPEARANCES: LaTasha Monique Warmasley, Tenant
Kenyattah Hill, Owner
Maya Clark, Seville Property Management Co.,
Property Manager for the Owner

SUMMARY OF DECISION

The tenant petition is denied.

CONTENTIONS OF THE PARTIES

On March 15, 2021, the tenant filed a tenant petition alleging decreased and/or a loss of housing services relating to her trash bin being pulled to the curb.

The owner filed a response alleging that no housing services were decreased or lost and that pulling the tenant's trash bin to the curb was not included in the tenant's housing services.

THE ISSUE

Have the tenant's housing services been decreased and, if so, by what amount?

000134

EVIDENCE

Background and Prior Hearing Decision

The tenant's unit is located in a building consisting of four (4) residential units. The tenant moved into her unit in May of 2013 at an initial monthly rent of \$850.00.

The tenant's current monthly base rent is \$982.68 per the prior Hearing Decision in T19-0349 (Warmesley v. Hill), issued on April 29, 2021. This Hearing Decision was not appealed and became a final decision. It also states that the tenant received the first notice of the existence of the Rent Adjustment Program (RAP Notice) on July 6, 2016.¹

The owner testified at the hearing that she did not receive any notices of the tenant petitions T19-0349 and the current one T21-0046, nor did she receive the notices of the hearing dates, because the tenant wrote an incorrect address for the owner on her petitions. She explained that she used to live in the fourplex but moved out several years ago; her mailing address is in San Francisco and Seville Management is the proper contact for the tenants. Another tenant received the owner's mail at the subject property and notified her about the current petition, although tenant Warmesley knows that the owner has a different address, retained Seville Management Co., and no longer lives at the subject property.

Decreased Housing Services

The tenant stated on her petition and testified at the hearing that, since April 1, 2020, her trash bin service stopped as her trash bin was not rolled out to the curb on garbage collection days. She testified that someone always pulled her bins to the curb for the last seven (7) years, until April 2020, when this service stopped. She testified at the hearing that she cannot roll the bin to the curb by herself due to her disability, but that she did not make any request for a reasonable accommodation to the owner or the property manager.

The owner testified that, when she lived at the property, she rolled the bins out to the curb on collection days as a courtesy and because she lived there and did not mind doing that. Once she moved out and had a baby, she stopped coming to the property, in order to protect herself and her newborn from COVID-19.

The Residential Tenancy Agreement signed by the parties in May of 2013 states that the owner pays for trash, water and PG&E and the tenant pays for cable, telephone, and internet.² The RAP Notice is attached to the Agreement, signed by the tenant and dated 5/28/13.³ The owner testified that she never stopped paying for the

¹ Hearing Decision T19-0349, Warmesley v. Hill (referencing Tenant Petition filed on 7/10/19)

² Exhibit A

³ Exhibit A, page 6

utilities and submitted Waste Management invoices, showing only current charges due and no unpaid prior balances.⁴

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Tenant Petition is Untimely Filed for a Loss of Housing Service

For a petition claiming decreased/loss of housing services, the petition must be filed within ninety (90) days of whichever of the following is later: (1) the date the tenant is noticed or first becomes aware of the decreased/loss of housing service; or (2) the date the tenant first receives the RAP Notice. If the decreased housing service is the result of a discrete change (e.g. removal of parking), the petition must be filed within 90 days.⁵

The tenant received her RAP Notice in 2015 and again in 2016 (per T19-0349). The tenant stated on her petition that the loss of service occurred on April 1, 2020. She testified that she had not had to move or roll her trash bin out to the curb for seven (7) years until this service stopped in April of 2020. The loss of this service is a discrete act, and the tenant petition should have been filed within 90 days after the date of the change, which was April 1, 2020. Therefore, the petition filed on March 15, 2021, was untimely filed.

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent⁶ and may be corrected by a rent adjustment.⁷ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided due to parties' contractual obligation at the beginning of the tenancy and is no longer being provided. The tenant has the burden of proving decreased housing services by a preponderance of the evidence. In a decreased services case, the tenant must establish that she has given the owner notice of the problem and the opportunity to correct the problem before she is entitled to relief.

Trash Service: As explained above, this claim is denied as untimely filed, because a loss of curbside service is a discrete act and the tenant petition should have been filed within 90 days⁸ after the service stopped (April 1, 2020).

Even if timely filed, there is no evidence that the tenant's housing services included the service of having someone else pull the tenant's trash bin out to the curb.

⁴ Exhibit B (15 pages)

⁵ O.M.C. §8.22.090A(3)(a)

⁶ O.M.C. §8.22.070(F)

⁷ O.M.C. §8.22.110(E)

⁸ O.M.C. §8.22.090(A)(3)

The lease agreement does not include this service. The agreement states that the owner will pay for utilities, which include trash, water and PG&E. This service did not stop. The owner paid, and still keeps paying, without any interruption in service, for trash, water and PG&E.

While the owner may have pulled the tenant's trash bin to the curb during the time she lived at the property, the lease agreement was never modified to reflect that pulling the tenant's trash bin to the curb became part of tenant's rent. There is no evidence of any other written agreement or any other document showing that rolling the tenant's bin to the curb on the trash collection day was included at any time during the tenancy in the bundle of tenant's housing services provided by the owner. When the owner lived at the property, she rolled out the trash bins out of courtesy and as her good deed for all tenants who also lived there, but this did not create any contractual obligation. The tenant did not satisfy her burden of proof showing that pulling her trash bin to the curb was included in her housing services. Therefore, the tenant's claim is also denied for this reason.

Finally, if the tenant is not able to roll the bin to the curb due to her disability, she needs to make a formal request to the property manager for a reasonable accommodation per ADA guidelines.

ORDER

1. Tenant Petition T21-0046 is denied.
2. The claim for decreased/loss of housing service is denied.

Right to Appeal: This is the final decision of the Rent Adjustment Program (RAP). Either party may appeal by filing a completed RAP appeal form, which must be received within 15 days after service of the decision, shown on the attached Proof of Service.

Dated: August 27, 2021

Linda Moroz

Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T21-0046

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

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

Documents Included
Hearing Decision

Owner
Kenyattah Hill
PO Box 880782
San Francisco, CA 94188

Owner Representative
Maya Clark
Seville Property management
248 3rd Street, Unit #462
Oakland, CA 94607

Tenant
Latasha Monique Warmesley
2767 76th Avenue
Oakland, CA 94605

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 31, 2021 in Oakland, CA.



Robert F. Costa
Oakland Rent Adjustment Program

000138



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

For date stamp.

APPEAL

Appellant's Name LATASHA MONIQUE WATMSLEY		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 2707 76th Avenue Oakland, CA		
Appellant's Mailing Address (For receipt of notices) Same as above		Case Number
		Date of Decision appealed
Name of Representative (if any) N/A	Representative's Mailing Address (For notices) N/A	

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

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

For more information phone (510) 238-3721.

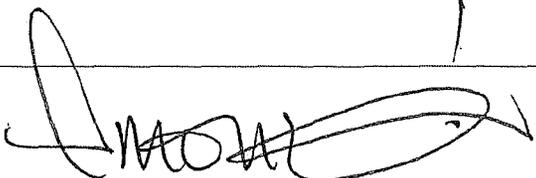
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

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

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

I declare under penalty of perjury under the laws of the State of California that on 17, 2021, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Maya Clark
<u>Address</u>	248 3rd St. #402
<u>City, State Zip</u>	Oakland, CA 94607
<u>Name</u>	Kenyatta Hill
<u>Address</u>	1300 Evans Ave #880782
<u>City, State Zip</u>	SF, CA 94188

	9/17/21
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

I am asking for an appeal on the following basis:

- ★ The decision added that I waited too long to file the appeal and this is not true. The petition came within 60 days of the original official letter. This means I was within the time limit.
 - What had been happening for a year is the missing trash can and spotty removal of trash.
 - So the time between the official stopping of the trash bins and the petition are not too long. The email that I would be getting an official letter came much before the letter.
 - Ms. Hill did not submit the official letter and until the petition was filed my items were making the curb, though still spotty
 - The petition stated that the lease did not change and this is true. Therefore I am curious as to why the same rules to the original lease were allowed to change.
 - If the ruling stated that the lease did not change, having me begin moving my trash out to the curb after 8+ years constitutes a change in the terms. So I believe that RAP's decision allows my landlord to change the terms of my lease/service agreement.
- ★ During our mediation session the attending mediator did not say much, however, she did stop the entire conversation to give a soliloquy that outlined that I was wrong in the fact that I kept bringing up that I was advised to file a petition. In her response she explicitly stated that she could absolutely choose the side of the owner and that she was autonomous and not partial to any of the advisement I received. Her response was so pointed, deliberate and precise I asked her was she ruling in that moment because it definitely sounded like she rendered a ruling.
 - In this way, I feel as if the decision was made before the entire case could be heard.
 - Largely, it was that the person gave a very biased opinion of how she felt and how she would rule during our mediation. It was clear how she felt. I would like this reassessed, please and thank you.

000141



MEMORANDUM

Date: December 2, 2021
To: Members of the Housing, Rent Residential & Relocation Board (HRRRB)
From: Kent Qian, Deputy City Attorney
Re: Appeal Summary in T19-0384
Salvador v. Fong

Appeal Hearing Date: December 9, 2021

Property Address: 1354 81st Avenue Unit A, Oakland, CA
Appellant/Tenant: Ana Jeronimo Salvador
Appellant/Tenant: Xavier Johnson and Michaela Alvarez
Representatives:
Respondent/Owner: May Fong

BACKGROUND

The tenant filed a petition contesting a certificate of exemption previously granted to the owner in L16-0083. The tenant argues that the exemption was issued on the basis of fraud and mistake. The petition also alleges unlawful rent increases and decreased housing services.

RULING ON THE CASE

The Hearing Officer denied the petition in an administrative decision. The decision ruled that because the tenant was a party to the previous exemption case, L16-0083, the tenant may not relitigate the exemption issue in the instant petition.

GROUND FOR APPEAL

The tenants appealed on the ground that:

1. The tenant is entitled to a new hearing on the merits on fraud and mistake claim;

2. The unit is not separately alienable because the condo conversion process was not completed;
3. The unit is not separately alienable because another unit is on the same parcel.

ISSUES

1. Should the tenant be allowed to challenge an exemption that was previously granted in a petition where the tenant was a party to the case?

APPLICABLE LAW AND PAST BOARD DECISIONS

Board Decisions

A. New Hearing Based on Fraud or Mistake After Previously Granted Exemption

L18-0081 Michelsen v. Sherman

Owner was granted exemption on basis of new construction. Court of Appeal denied tenant appeal. Tenant filed new petition alleging fraud or mistake which was administratively denied, and a second writ. Court remanded case to Board for hearing on fraud claim. Board vacated administrative appeal decision and ordered a hearing; Hearing decision found fraud and evidence of prior residential use. Owner appealed. Board affirmed hearing decision and rescinded certificate of exemption.



MEMORANDUM

Date: December 2, 2021

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

From: Kent Qian, Deputy City Attorney

Re: Appeal Summary in 21-0046
Warmesley v. Hill

Appeal Hearing Date: December 9, 2021

Property Address: 2767 76th Ave., Oakland, CA
Appellant/Tenant: LaTasha Monique Warmesley
Respondent/Owner: Kenyattah Hill
Respondent/Owner: Maya Clark, Seville Property Management Co.
Representative:

BACKGROUND

The tenant filed a petition alleging decreased housing services due to her trash bins no longer being pulled to the curb.

RULING ON THE CASE

The Hearing Officer denied the petition on two grounds. First, the Hearing Officer ruled that the petition was untimely because it was filed more than 90 days after April 2020, when the owner stopped pulling the tenant's trash bins to the curb. Second, the Hearing Officer concluded that there was no loss of housing services because the owner pulled the trash bins as a courtesy and pulling the trash bins was never included in the lease or added as a housing service after the commencement of tenancy.

GROUNDS FOR APPEAL

The tenants appealed on the grounds that:

1. The petition was timely because it was filed within 60 days of official notification of the loss of the housing service;
2. Having trash pulled to the curb was a decreased housing service;
3. The hearing officer was biased toward the owner.

ISSUES

1. Was the petition timely filed?
2. If the petition was timely filed, did the Hearing Officer correctly rule that there was no loss of housing services?

APPLICABLE LAW AND PAST BOARD DECISIONS

Petition Deadline

O.M.C. 8.22.090.A.3

3. For a petition claiming decreased housing services:
 - a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is later:
 - i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
 - ii. The date the tenant first receives written notice of the existence and scope of this Chapter as required by Section 8.22.060.
 - b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.