

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

October 8, 2020

5:00 P.M.

Meeting Will Be Conducted Via Zoom Conference

AGENDA

PUBLIC PARTICIPATION

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

OBSERVE:

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

- To observe the meeting by video conference, please click on this link: You are invited to a Zoom webinar.

When: September 24, 2020 5:00PM Pacific Time (US and Canada)

You are invited to a Zoom webinar.

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION FULL BOARD SPECIAL MEETING October 08, 2020 5:00 PM

Please click the link below to join the webinar:

<https://zoom.us/j/93435891175>

Or iPhone one-tap :

US: +16699006833,,93435891175# or +13462487799,,93435891175#

Or Telephone:

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

US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 934 3589 1175

International numbers available: <https://zoom.us/j/93435891175>

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” is available at:

[https://support.zoom.us/hc/en-us/articles/205566129 - Raise-Hand-In-Webinar.](https://support.zoom.us/hc/en-us/articles/205566129-Raise-Hand-In-Webinar)

- 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 Bkong-brown@oaklandca.gov.

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT ITEMS

- a) Approval of Board minutes from September 24, 2020

4. OPEN FORUM

5. APPEALS*

- a) T18-0018, Sund v. Vernon St. Apartment LP aka Flynn Family Holdings LLC
- b) T17-0221, Kaufman v. Nguyen
- b) T19-0196, Yoquelet v. Tenants

6. ACTION ITEMS

- a) Board Member R. Auguste’s proposal re nomenclature

7. INFORMATION AND ANNOUNCEMENTS

- a. Legislative Updates (Office of the City Attorney)

8. COMMITTEE REPORTS AND SCHEDULING

9. ADJOURNMENT

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. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email sshannon@oaklandca.gov or call (510) 238- 3715 or California relay service at 711 by 5:00 P.M. one day before the meeting.

*Staff appeal summaries will be available at the Rent Program website and the Clerk’s office at least 72 hours prior to the meeting pursuant to O.M.C. 2.20.080.C and 2.20.090

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandca.gov o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語,

粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandca.gov 或致電 (510) 238-3715 或 711 California relay service.

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

September 24, 2020

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 5:00 p.m. by Chair, R. Stone.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. HALL	Tenant	X		
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			X
Vacant	Tenant Alt.			
R. STONE	Homeowner	X		
A. GRAHAM	Homeowner	X		
S. DEVUONO- POWELL	Homeowner	X		
E. LAI	Homeowner Alt.			X
J. MA POWERS	Homeowner Alt.			X
K. FRIEDMAN	Landlord	X		
T. WILLIAMS	Landlord			X
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.	X		

Staff Present

Oliver Luby
Barbara Cohen

Barbara Kong-Brown

Deputy City Attorney
Acting Program Manager, Rent Adjustment
Program
Senior Hearing Officer, Rent Adjustment
Program

3. CONSENT ITEMS

- a) Approval of Board Minutes from September 10, 2020, Full Board Special Meeting

K. Friedman moved to approve the Rent Board minutes from September 10, 2020. A. Graham seconded.

The Board voted as follows:

Aye: T. Hall, R. Auguste, R. Stone, A. Graham, S. Devuono-Powell, K. Friedman, K. Sims

Nay: None

Abstain: None

The motion was approved by consensus.

4. OPEN FORUM

Sherri Pacheco

- Asked when her case would be re-scheduled. It was postponed for tonight's hearing due to a last-minute request from the owner's representative.

Cynthia Hollins

- Wanted to make sure that her appeal case, scheduled for tonight, was going forward.

5. APPEALS

- a) T19-0359, Pariss Kelly v. Claridge Hotel, LLC

Appearances: Pariss Kelly Tenant

No Appearance by Owner

The tenant appellant began to present his arguments, but his remarks were garbled. Board Chair R. Stone passed his case and returned to Mr. Kelly's case after hearing the appeal in L19-0037, Pan Pacific Corp, LLC v. Tenants.

The tenant contended that the owner did not file a response and did not appear at the hearing. He did not consent to the participation of the

owner's agent because he is a third party, and the owner is a judgment debtor because he failed to respond. The tenant requested a dismissal of his petition.

The hearing officer dismissed the tenant's petition at his request. The tenant stated that he requested a continuance, not a dismissal.

After arguments made by the tenant, the Board requested to hear the tape of the underlying hearing. After hearing the tape of the hearing, Board questions to the tenant and Board discussion, K. Sims moved to affirm the hearing decision. A Graham seconded.

The Board voted as follows:

Aye: T. Hall, R. Auguste, A. Graham, R. Stone, S. Devuono-Powell, T. Williams, K. Friedman

Nay: None

Abstain: None

The motion was approved by consensus.

b) T19-0202, Pacheco v. Newsome

This case has been postponed at the request of the owner's representative.

c) L19-0037, Pan Pacific Corp. LLC v. Tenants

Appearances:	Nicholas Morgan	Owner
	Jeff Rosenblum	Owner
	Cynthia Hollins	Tenant
	Tim Bussemer	Tenant

The owner appellant representative argued that they requested approval for seismic retrofit totaling \$110,000. They had a hearing for the capital improvements in a prior case in December 2018 and submitted all the records, including cancelled checks, completed inspections, and permits, but the hearing officer denied the request because the owners did not request pre-approval for the rent increase.

In the current case, the owners did not re-submit the prior records because they assumed that the hearing officer had access to these documents. They received a deficiency letter about certain payments which

they corrected, but they were not notified that they were missing any documents and contend that this is unjust and unfair as the records were readily available to the hearing officer.

Tenant Hollins argued that the owners did earthquake work in 1998, converted certain units, removed the laundry room, and renovated 3 of 5 the units except her unit and Mr. Bussemer's unit.

Tenant Bussemer argued that certain of the expenses are not for seismic retrofit, that roofing, drywall, stucco, exterior sheetrock, framework, beams, and trusses need to be subtracted from the cost.

On rebuttal, the owners stated that they did some seismic work in 1998, including removing the lower baseboard and changing the bolts to the existing foundation. In the current case they drilled out the old foundation, poured a new slab and installed seismic shear to adjust to current code requirements.

On rebuttal the tenants stated that no new evidence is permitted in an appeal hearing and it is unfair for the owner to raise rents on the two long term tenants with no renovation to their units.

After arguments and rebuttal made by both parties, Board questions to the parties and Board discussion S. Devuono-Powell moved to affirm the hearing decision. R. Auguste seconded the motion.

The Board voted as follows:

Aye: T. Hall, R. Auguste, A. Graham, R. Stone

Nay: K. Friedman, K. Sims, S. Devuono-Powell

Abstain: None

The motion carried.

6. ACTION ITEMS

None

7. INFORMATION AND ANNOUNCEMENT

a) Legislative Updates

Deputy City Attorney Luby reported that the Efficiency Ordinance went to City Council on September 15, 2020. There were some changes on the floor and the first reading was continued to October 6, 2020. The purpose of the Ordinance is to change the terms for appeals, the time frame for arguments, and appointment of an appeal officer.

b) Designation/Nomenclature

Board member R. Auguste stated that no member of the Rent Board should be identified as a neutral, that all the Board members are neutral, and referring to someone as neutral means some members are neutrals and others are not. Calling any one board member as neutral and others as tenant or owner representatives is problematic and sets a tone.

8. COMMITTEE REPORTS AND SCHEDULING

- a) Board Chair R. Stone requested that Board member R. Auguste's proposal be added to the Agenda as an action item for the next Board meeting

b. Ad hoc committee

Board Chair R. Stone asked if the ad hoc committee had received copies of the proposed changes to the regulations. Mr. Luby replied that the ad hoc committee has not met and is not sure when the draft will be ready. Board Chair R. Stone asked that staff communicate his concern to C. Franklin Minor regarding the deadline for the regulations.

Board member A. Graham stated he will email the other committee members and C. Franklin Minor and they can meet next Thursday.

Mr. Luby stated the schedule depends on completion of the draft.

9. ADJOURNMENT

The HRRRB meeting was adjourned at 7:17 p.m. by Board Chair R. Stone.

CHRONOLOGICAL CASE REPORT

Case No.: T18-0018

Case Name: Sund v Vernon Street Apartments

Property Address: 633 Alma Ave., #5, Oakland, CA

Parties:

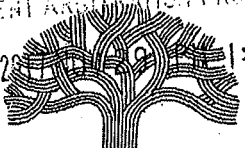
Jessica Sund	(Tenant)
Paul Kranz	(Attorney for Tenant)
Kim Rohrbach	(Paralegal for Petitioner)
Greg McConnell	(Owner Representative)
JR McConnell	(Owner Representative)
Don MacRitchie	(Witness for Owner)
Ursula Morales	(Property Manager)
Jessica Vernaglia	(Property Supervisor)
Dave Wasserman	(Owner Representative)
Lucky Stewart	(Agent for Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 29, 2017
Owner Response filed	April 2, 2018
Hearing Decision mailed	December 20, 2018
Tenant Appeal filed	January 9, 2019
Tenant filed Brief in Support of Appeal	January 24, 2019
Attorney for Tenant filed "Notice of Errata And Amended Submission in Support of Appeal of Hearing Officer's Decision"	January 29, 2019

000009

T18-0018 RC/MA

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. <div style="text-align: center; border: 1px solid black; padding: 5px;"> TENANT PETITION </div>
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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 Jessica Sund	Rental Address (with zip code) 633 Alma Avenue, #5 Oakland, CA 94610	Telephone: E-mail:
Your Representative's Name Paul Kranz	Mailing Address (with zip code) 639 San Gabriel Avenue Albany CA 94706	Telephone: Email:
Property Owner(s) name(s) Vernon Street Apartments, LP aka Flynn Family Holdings, LLC	Mailing Address (with zip code) C/O Russell B. Flynn 1717 Powell Street, Suite 300 San Francisco, CA 94133	Telephone: Email:
Property Manager or Management Co. (if applicable) Ursula Morales, Resident Manager	Mailing Address (with zip code) 633 Alma Avenue Oakland, CA 94619	Telephone: Email:

Number of units on the property: 18 → Thomas Preston, Property Supervisor; 411

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

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

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

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

<input type="checkbox"/>	(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.)
<input type="checkbox"/>	(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).
<input type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input type="checkbox"/>	(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)
<input type="checkbox"/>	(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)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" type="checkbox"/>	(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).
<input checked="" type="checkbox"/>	(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) <u>Unit is not exempt under Costa-Hawkins*</u>
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

* See Notice of Change to Terms of Tenancy (Attachment 1)

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

Date you moved into the Unit: 7/10/08 Initial Rent: \$ 895.00 /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: No later than If never provided, enter "Never."

2014-2015 or thereafter

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		
On or about	12/1/17	\$ 908.67	\$ 2095.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9/6/17		\$	\$	<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:

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.

Ground
Tenant's Signature

11/29/17
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

File Review

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

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



Printed form provided by the owner

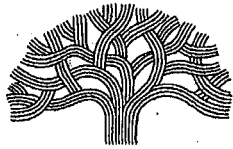
Pamphlet distributed by the Rent Adjustment Program

____ Legal services or community organization

____ Sign on bus or bus shelter

____ Rent Adjustment Program web site

____ Other (describe): _____



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp, RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2010 APR -2 PM 4:04

**PROPERTY OWNER
RESPONSE**

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

CASE NUMBER T 18-0018

Your Name Lucky Stewart Ursula Morales Alma Apartments, LP	Complete Address (with zip code) 1717 Powell St. #300 San Francisco, CA 94133	Telephone: _____ Email: _____
Your Representative's Name (if any) Gregory McConnell JR McConnell The McConnell Group	Complete Address (with zip code) 300 Frank Ogawa Plaza #460 Oakland, CA 94607	Telephone: _____ Email: _____
Tenant(s) Name(s) Jessica Sund	Complete Address (with zip code) 633 Alma Ave. #5 Oakland, CA 94610	
Property Address (If the property has more than one address, list all addresses) 633 Alma Ave., Oakland, CA 94610		Total number of units on property 18

Have you paid for your Oakland Business License? Yes ☒ No ☐ Lic. Number: 00197907
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.**

**** Documentation will be submitted prior to hearing**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes ☒ No ☐ APN: 23-467-5
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.**

**** Documentation will be submitted prior to hearing**

Date on which you acquired the building: 06/ / 17.

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

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

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

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
12/1/17	** <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**** Costa - Hawkins. Please see attachment**

If you are justifying additional contested increases, please attach a separate sheet.

II. RENT HISTORY If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on _____.

The tenant's initial rent including all services provided was: \$ _____ / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?

Yes _____ No _____ I don't know _____

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

Is the tenant current on the rent? Yes _____ No _____

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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

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

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

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

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

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

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

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

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

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

4/2/18

Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

File Review

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

Mediation Program

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

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

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

Property Owner's Signature

Date

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

T18-0018 Sund v. Vernon St. Apartments (Alma Apartments, LP)

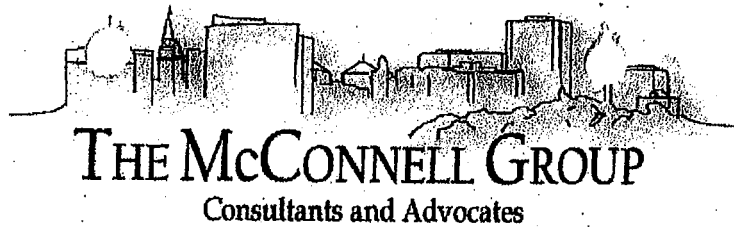
Attachment A

The owner contests the tenant petition and respectfully responds by saying that the tenant is entitled to no relief under the petition.

This is a Costa-Hawkins rent increase. The original occupant no longer maintains this unit as their primary place of residence.

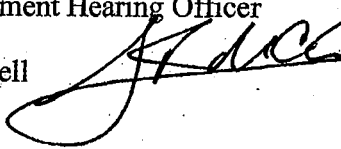
Owner denies all allegations in the petition and Owner reserves the right to supplement this response with testimony at hearing and evidentiary documentation prior to hearing, per RAP regulations.

RECEIVED
2018 APR -2 PM 4:04



2018 MAY 22 PM 1:03

Memorandum

To: Rent Adjustment Hearing Officer
From: JR McConnell 
Date: 5/22/2018
Subject: Additional documentation re: T18-0018

Please find the following additional evidentiary documentation in support of Owner position:

Item	Page #
1. Investigator's Report - Jessica Sund	1
2. Investigator's Report - Cory Hamrick	53
3. Declaration of Onsite Manager	64
4. Notice of Increase - 11/6/17	65
5. Lease	68
6. Estoppel	86
7. Estoppel -amended	87
8. Correspondence with Tennant	
i) Letter to Sund - 8/22/17	89
ii) Email from Sund	90
iii) Voicemail from Sund	91
iv) Letter to Sund - 8/28/17	92
9. Proofs of Payment	
i) Business License	93
ii) RAP fee	94

Thank you.

May 20, 2018

Re: Sund, Jessica Maggie - 633 Alma #5

DATA SEARCHES RE: JESSICA MAGGIE SUND

DOB:

SSN. XXX issued in California in 1985.

CONCLUSIONS:

It is known to the landlord, and not contested in this matter, that Tenant, Jessica M. Sund had a child in late 2017 with her partner, Cory Hamrick. Evidence of this fact is also found in the findings of this report. In light of this uncontested fact and the findings contained in this report, a preponderance of the evidence supports a conclusion that Jessica Sund's permanent place of residence is not the subject property, 633 Alma Avenue, Apt. 5, Oakland, CA, but rather is 3024 California Street, Oakland, CA 94602. Specific evidence supporting this conclusion includes the following:

- 1) A review of findings in three Address History databases for Ms. Sund identified 3024 California Street, Oakland, CA 94602 as Ms. Sund's only current address. California St. is reported as recently as 5/18/2018, while the most recent reporting date for Alma Avenue in any of the databases is 12/5/2017. Further, the August, 2017 initial reporting date for California Street is much more recent than the 8/28/2008 initial reporting date for Alma Avenue indicating Ms. Sund's residency at California St. is a much more recent development, and therefore more likely her current residence (Pages 9-15).
- 2) A baby registry - the bump.com - identified Ms. Sund as expecting a child with a due date of Oct 25, 2017, location - Oakland, CA. . A link at the page, present in December, 2017, but no longer present - - jgt/gifts/baby-girl-hamrick - associated the child with Cory Hamrick. The due date of Ms. Sund's and Mr. Hamrick's child is consistent with the September/October initial reporting dates for Ms. Sund at 3024 California Street, Oakland, CA in Address History databases (Pages 35-36).
- 3) A Residence History Database for 3024 California Street, Oakland, CA 94602 reported Cory T. Hamrick, reported dates of 05/04/1999-12/05/2017 and Jessica M. Sund, reported dates of 07/01/2017-07/01/2017 as current tenants (Pages 51-53).
- 4) That Jessica Sund's partner, and the father of her child, Mr. Cory T. Hamrick's current principle place of residence 3024 California Street, Oakland, CA 94602 is evidenced by the following: Address History Databases identify 3024 California Street, Oakland, CA 94602 as Mr. Hamrick's sole current address, with reporting dates 4/1999 - 3/27/2018; Cory Hamrick is the current owner of the property, a Homestead Exemption is on file and the Tax Assessor's mailing address of record is the same as the property address - 3024 California St., Oakland, CA 94602; Mr. Hamrick is currently registered to vote at 3024 California St., Oakland, CA 94602 (see attached Cory Hamrick Datasearches Report).

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SUMMARY:

ADDRESS HISTORY

Address History Databases identify 3024 California Street, Oakland, CA 94602 as Ms. Sund's current address. Three different Address Databases were reviewed on 12/5/2017 and again on 5/18/2018. Findings on the two dates were as follows:

Database #1:

12/5/2017: Two current addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/25/2011 and 10/2/2005 -11/03/2017; and a second address – 3024 California Street, Oakland, CA 94602, reporting dates - 08/31/2017-12/05/2017.

5/18/18: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 10/2005-5/182018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, were 10/2/2005 -11/03/2017. NOTE: The sudden appearance of an identical initial reporting date of 10/2005 for both addresses in the 5/18/18 datasearch indicates that this 10/2005 initial reporting date for both properties is due to a database error, and the original initial reporting dates identified on 12/5/2017 of 9/25/2011 for 633 Alma Avenue and 08/31/2017 for 3024 California Street are the more reliable dates.

Database #2:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017.

5/18/18: Two addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017 and a second address – 3024 California Street, Oakland, CA 94602, reporting dates, 9/2017

Database #3:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 8/28/2008 – 12/5/2017.

5/18/2018: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 8/31/2017-5/19/2018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, remained the same as on 15/5/2017 – 8/28/2008 – 12/5/2017.

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The following findings from the above database records indicate Ms. Sund has transitioned from her residency at the subject address to a current residence at 3024 California Street, Oakland, CA 94602:

- **Initial Reporting Dates** - The initial reporting dates for 3024 California Street, Oakland, CA 94602 are August and September, 2017, while initial reporting dates for the subject property date back to 8/28/2008. The much more recent initial reporting dates for 3024 California Street, Oakland, CA 94602 document Ms. Sund's residency at the address as a much more recent development, and therefore more likely her current residence. NOTE: See above discussion of the multiple initial reporting dates for both properties in Database #1.

- **Current Reporting Dates** - Two of the three databases report 3024 California Street, Oakland, CA 94602 as recently as 5/18/2018, while the most recent reporting date for 633 Alma Avenue, Apt. 5, Oakland, CA in any of the databases is 12/5/2017.

- **The reporting of 3024 California Street, Oakland, CA 94602** in only one database during the initial searches of 12/5/2017 and the subsequent reporting of the address in all three databases during the searches of 5/18/2018 is also consistent with the appearance of new addresses in the Address History Databases. The databases are derived in chief from the three major credit bureaus (Equifax, Experian and TransUnion). New or updated address information is received by the clients of the bureaus - credit granting businesses, who in turn report periodically to the bureaus. Reporting periods vary between business from as little as 30 days to upwards of six months. Thus there is always a lag time in the reporting between the initial gathering of the information by the client companies and their periodic reporting to the bureaus. The gradual appearance of the California St. address in only one database in December, 2017 and subsequent in all three bureaus in May, 2018 is consistent with the appearance of newly reported addresses in this process.

(See pages 9-15)

TELEPHONE NUMBER DATABASES

Online contact of the Directory Assistance (411) on December 7, 2017 identified no listings under Jessica Sund in Oakland, CA.

On 12/5/2017 a cell number - (510) 206-5436, was identified in an undated database record as associated with Jessica Sund at the 6138 Park Avenue, Richmond, CA, 633 Alma Avenue, Apt. 5, Oakland, CA and 886 Cleveland Street, Apt. 11, Oakland, CA address (Phones Plus 1 -3). An online search of the 411 Directory Assistance found no information available for that number.

(See pages 15-16)

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UTILITIES

Utilities databases identified no account associated with Jessica Sund.

REAL PROPERTY OWNERSHIP RECORDS

A search of California real property ownership records statewide, and jurisdictions available on-line nationwide, identified no records of property ownership associated with Jessica Sund. On March 27, 2018, a telephone contact of the Alameda County Assessor's office identified Cory Hamrick as the property owner of 3024 California Street, Oakland, CA (see also Cory Hamrick Datasearch Report). The Assessor found no property records were found under Jessica Sund.

ALAMEDA COUNTY RECORDER INDEXES:

A search of Alameda County Recorder's indexes, identified no recordings under Jessica Sund.

CALIFORNIA DMV RECORDS:

A search of California Department of Motor Vehicle driving records identified a current California license for Jessica Maggie Sund, issued 01/03/2013, expiration – 01/06/2023. One violation was noted, a 10/12/2016 - Driving while using wireless telephone. The citation was issued while driving vehicle license plate - 3JBL110 (Record #1).

An inquiry of California DMV vehicle registration records keyed to the subject address identified a 1994 Toyota – license plate 3JBL110 registered to Jessica Sund at 633 Alma Avenue, Oakland, CA (Record #2). A record keyed to 3024 California Street, Oakland, CA identified no vehicle registered to Jessica Sund (Record #3). NOTE: The current registration expiration date for Ms. Sund's 1994 Toyota is 6/2/2108, indicating that the vehicle was renewed on 6/2/2017.

(See pages 16-18)

VEHICLE SIGHTINGS:

A nationwide search of the license plates keyed to abovementioned license plate numbers identified eight sightings of license plate 3JBL110 between February 28, 2011 and October 18, 2015. One sighting was in El Sobrante, CA on October 18, 2015 (Record #1); one sighting was in Alameda, CA on August 1, 2013 (Record #4); three sightings were in Oakland, CA between February 28, 2012 and October 31, 2013 (Records #3, 6 & 8); and the remaining three sightings were in the immediate vicinity of 633 Alma

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Avenue, Oakland, CA between March 11, 2013 and March 20, 2014. The sightings were between the hours of 10:31pm and 12:21 am (Records #2, 5 & 7).

(See pages 18-23)

VOTER REGISTRATION:

On December 7, 2017, an online search of Alameda Voter Registration records keyed to Date of Birth: 01/XX/1976 and Last 4 SSN: XXXX; identified no records (Record #1).

On December 7, 2017, an online search of Contra Costa County Voter Registration records keyed to First Name: Jessica; Last Name: Sund and Date of Birth: 01/XX/1976; identified no record (Record #2).

Archived database records identified two voter registrations for Jessica Sund: At 633 Alma Avenue, Apt. 5, Oakland, CA. Date of registration was 10/01/2008 and (Record #3) At 6138 Park Avenue, Richmond, CA. No date of registration was available, however the address is reported in Address History databases for Ms. Sund from 2005 to 2011. (Record #4).

(See pages 24-27)

BUSINESS ENTITIES/EMPLOYMENT RECORDS:

A search of California Secretary of State Corporation, LLC, and Limited Partnership records, California Fictitious Business Name (FBN) Records, California Board of Equalization Records, Employment and Corporate Affiliation Databases, California Department of Consumer Affairs Professional License Records – including the State Contractors Licensing Board and Uniform Commercial Code (UCC) identified two Employment Association records: 1) An undated record associating Ms. Sund with Stem2Bloom, 633 Alma Ave., Apt 5, Oakland, CA 94610; and 7/31/2012 record associating Ms. s/und with Prudential Penfed Realty, Clarkesville, TN.

(See pages 27-28)

LIENS & JUDGMENTS:

No record of any judgments or liens recorded against Jessica Sund were identified in liens and judgment databases.

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CALIFORNIA SUPERIOR COURT CIVIL RECORDS:

A search of California Superior Court Civil indexes, available on-line, including Jessica Sund's known counties of residence Alameda County and Contra Costa County identified one record in Alameda County – Case Number: RG16842109, Title: Sund v City of Oakland, Filing Date: 12/12/2016. A PI/PD/WD claim that is continuing as status is "Hearing Reset to Civil Pre-Trial Settlement Conference 01/24/2019 09:00 AM"

(See pages 28-33)

CALIFORNIA SUPERIOR COURT CRIMINAL RECORDS:

A search of California Superior Court Criminal indexes, available on-line identified no records. NOTE: Alameda County and Contra Costa Criminal Court filings are not available online.

ARIZONA SUPERIOR COURT CIVIL & CRIMINAL RECORDS:

A search of Arizona Superior Court Civil & Criminal indexes, available on-line, including Jessica Sund's known county of residence – Maricopa County, identified no records.

NATIONWIDE FEDERAL BANKRUPTCY, CIVIL AND CRIMINAL COURT RECORDS:

A search of on-line Federal Bankruptcy, Civil, and Criminal court records nationwide identified one record under Jessica Sund. The record was eliminated through non-matching social security number, spouse, address, other identifier or as having been filed in a jurisdiction remote from Jessica Sund's known address history.

INTERNET SEARCHES:

Online search engine inquiries and searches of social and professional networking websites identified the following records re: Jessica Sund:

Record #1: A baby registry – the bump.com - for Jessica Sund identified a due date: Oct 25, 2017 and the location as Oakland, CA. A link at the page, present in December of 2017, but no longer present associated the child with Cory Hamrick – jgt/gifts/baby-girl-hamrick. The link is highlighted in the below record. **Record #1:** A baby registry – the bump.com - for Jessica Sund identified a due date: Oct 25, 2017 and the location as Oakland, CA. A link at the page, present in December of 2017, but no longer present associated the child with Cory Hamrick – jgt/gifts/baby-girl-hamrick. The link is highlighted in the below record.

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Record #2: An undated Nuwber website listing identifying a number for Jessica M. Sund – (510) 306-5436 with an address of 633 Alma Avenue, Oakland, CA. The site identifies Ms. Sund's previous location as Richmond, CA 94801.

Record #3: A LinkedIn page for Jessica Sund which identified herself as an Intervention Specialist at American Indian Model School in Oakland, CA from July 2016 – Present. The Experience section also identifies here as "Owner & Founder, STEM2Bloom.com, Dec 2015 – Present...San Francisco Bay Area".

Record #4 & 4A: The website for Stem2Bloom for which Ms. Sund is "Owner & Founder" per her LinkedIn page. The site promotes a Preschool through 3rd grade curriculum developed by Ms. Sund. In a bio page at the site Ms. Sund "I have developed and taught science and nutrition curriculum for the University of CA Agriculture and Natural Resource Division in conjunction with Oakland Unified School District State Preschools and Child Development Centers for their Sustainable Nutrition Urban Garden Program as well as for De Colores Head Start... I've taught middle and high school students in math, helping them reach their goals and move beyond limitations. ... I also integrate my extensive classical training from Oakland Ballet into my lessons as a way to inspire children to build somatic connections to the subject matter, using creative movement as a catalyst..." No residence information is referenced. A Google site map at the website has a pin placement for the business location at 2640 College Ave., Berkeley, CA 94704, the location of the Berkeley Playhouse.

Record #5: The website for American Indian Model Schools. Ms. Sund's LinkedIn page states that she is an "Intervention Specialist at American Indian Model School in Oakland, CA from July 2016 – Present". A search of the Staff page at the site found no reference to Ms. Sund. The entity is addressed at 171 12th St., Oakland, CA 94607.

(See pages 34-43)

RESIDENT HISTORY FOR 633 ALMA AVENUE, #5, OAKLAND, CA 94610:

A search keyed to 633 Alma Avenue, #5, Oakland, CA 94610 identified three residents currently associated with the address.

John S. Schonborn with reported dates of 08/1986-12/05/2017
Therese Karlsson with reported dates of 02/13/2007-12/05/2017
Jessica Sund with reported dates of 10/2005-12/05/2017
Irma Lee Fink with reported dates of 12/1996-12/2017

(See pages 44-49)

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RESIDENT HISTORY FOR 3024 CALIFORNIA STREET, OAKLAND, CA 94602:

A search keyed to 3024 California Street, Oakland, CA identified three residents currently associated with the address:

Cory T. Hamrick with reported dates of 05/04/1999-12/05/2017

Erica Winn with reported dates of 11/05/2012-11/28/2017

Jessica M. Sund with reported dates of 07/01/2017-07/01/2017

No evidence a relationship, or bearing on the nature of an association, between Cory T. Hamrick, DOB 1/7/1967, and Ms. Sund was identified in social media, or other sources.

(See pages 50-52)

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SUBJECT INFO:

Name: Jessica Maggie Sund

DOB: 01/XX/1976

SSN: 556-83-XXXX issued in California in 1985.

ADDRESS HISTORY

Address History Databases identify 3024 California Street, Oakland, CA 94602 as Ms. Sund's current address. Three different Address Databases were reviewed on 12/5/2017 and again on 5/18/2018. Findings on the two dates were as follows:

Database #1:

12/5/2017: Two current addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/25/2011 and 10/2/2005 -11/03/2017; and a second address – 3024 California Street, Oakland, CA 94602, reporting dates - 08/31/2017-12/05/2017.

5/18/18: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 10/2005-5/182018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, were 10/2/2005 -11/03/2017. NOTE: The sudden appearance of an identical initial reporting date of 10/2005 for both addresses in the 5/18/18 datasearch indicates that this 10/2005 initial reporting date for both properties is due to a database error, and the original initial reporting dates identified on 12/5/2017 of 9/25/2011 for 633 Alma Avenue and 08/31/2017 for 3024 California Street are the more reliable dates.

Database #2:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017.

5/18/18: Two addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017 and a second address – 3024 California Street, Oakland, CA 94602, reporting dates, 9/2017

Database #3:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 8/28/2008 – 12/5/2017.

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5/18/2018: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 8/31/2017-5/19/2018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, remained the same as on 15/5/2017 – 8/28/2008 – 12/5/2017.

The following findings from the above database records indicate Ms. Sund has transitioned from her residency at the subject address to a current residence at 3024 California Street, Oakland, CA 94602:

- Initial Reporting Dates - The initial reporting dates for 3024 California Street, Oakland, CA 94602 are August and September, 2017, while initial reporting dates for the subject property date back to 8/28/2008. The much more recent initial reporting dates for 3024 California Street, Oakland, CA 94602 document Ms. Sund's residency at the address as a much more recent development, and therefore more likely her current residence. NOTE: See above discussion of the multiple initial reporting dates for both properties in Database #1.

- Current Reporting Dates – Two of the three databases report 3024 California Street, Oakland, CA 94602 as recently as 5/18/2018, while the most recent reporting date for 633 Alma Avenue, Apt. 5, Oakland, CA in any of the databases is 12/5/2017.

- The reporting of 3024 California Street, Oakland, CA 94602 in only one database during the initial searches of 12/5/2017 and the subsequent reporting of the address in all three databases during the searches of 5/18/2018 is also consistent with the appearance of new addresses in the Address History Databases. The databases are derived in chief from the three major credit bureaus (Equifax, Experian and TransUnion). New or updated address information is received by the clients of the bureaus – credit granting businesses, who in turn report periodically to the bureaus. Reporting periods vary between business from as little as 30 days to upwards of six months. Thus there is always a lag time in the reporting between the initial gathering of the information by the client companies and their periodic reporting to the bureaus. The gradual appearance of the California St. address in only one database in December, 2017 and t subsequent in all three bureaus in May, 2018 is consistent with the appearance of newly reported addresses in this process.

DECEMBER 5, 2017 DATABASE SEARCHES:

Database #1

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857 (ALAMEDA COUNTY) (10/2005 to 11/03/2017)
633 ALMA AVE, OAKLAND, CA 94610-3853 (ALAMEDA COUNTY) (09/25/2011 to 09/25/2011)
3024 CALIFORNIA ST, OAKLAND, CA 94602-3908 (ALAMEDA COUNTY) (08/31/2017 to 12/05/2017)

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6138 PARK AVE # 11, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/09/2005 to 10/2011)
 6138 PARK AVE, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/10/2005 to 10/2005)
 PO BOX 11634, OAKLAND, CA 94611-0634 (ALAMEDA COUNTY) (06/2008 to 08/06/2008)
 822 59TH ST # 11, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (02/2004 to 06/2005)
 822 59TH ST, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (01/23/2004 to 05/10/2005)
 886 CLEVELAND ST APT 11, OAKLAND, CA 94606-1536 (ALAMEDA COUNTY) (12/15/1998 to 12/2003)
 886 CLEVELAND ST, OAKLAND, CA 94606-1568 (ALAMEDA COUNTY) (02/1999 to 01/23/2003)
 PO BOX 9045, OAKLAND, CA 94613-0001 (ALAMEDA COUNTY) (11/14/1997 to 01/23/2003)
 3445 PIERSON ST, OAKLAND, CA 94619-3425 (ALAMEDA COUNTY) (08/1991 to 01/23/2003)
 20022 N 31ST AVE, PHOENIX, AZ 85027-3900 (MARICOPA COUNTY) (03/13/2000 to 03/13/2000)
 5000 MACARTHUR BLVD, OAKLAND, CA 94613-1301 (ALAMEDA COUNTY) (10/15/1997 to 10/15/1997)

Database #2

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857, ALAMEDA COUNTY (Sep 2017)
 6138 PARK AVE, RICHMOND, CA 94805-1229, CONTRA COSTA COUNTY (Mar 2005 - May 2005)
 822 59TH ST, EMERYVILLE, CA 94608-1408, ALAMEDA COUNTY (Feb 2004 - May 2005)
 PO BOX 9045, OAKLAND, CA 94613-0045, ALAMEDA COUNTY (Mar 1998 - Sep 2001)
 886 CLEVELAND ST, OAKLAND, CA 94606-1568, ALAMEDA COUNTY (Feb 1999)
 3445 PIERSON ST, OAKLAND, CA 94619-3425, ALAMEDA COUNTY (Aug 1991 - Mar 1993)

Database #3

Name	Address	SSN / DOB	Phone
SUND JESSICA M	4x 633 ALMA AVE 5 OAKLAND, CA 94610-3857 Reported: 08/28/2008 - 12/05/2017 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Cell: (510)206-5436 Cell: (510)306-5436 Landline: (510)836-0705
SUND JESSICA M	4x PO BOX 11634 OAKLAND CA 94611-0634 Reported: 06/20/2008 - 09/12/2008 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	

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SUND JESSICA M AKA: SUND, J M	7x6138 PARK AV RICHMOND CA 94805-1229 Reported: 03/01/2005 - 06/19/2008 County: CONTRA COSTA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M AKA: SUND, J M	4x822 59TH ST OAKLAND CA 94608-1408 Reported: 01/27/2004 - 04/01/2005 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Landline: (510)420-1595 Landline: (510)834-9440
SUND JESSICA M	4x822 59TH ST EMERYVILLE CA 94608-1408 Reported: 04/25/2004 - 09/01/2004 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Landline: (510)420-1595
SUND JESSICA M	10x886 CLEVELAND ST OAKLAND CA 94606-1568 Reported: 12/15/1998 - 07/01/2003 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Landline: (510)834-9440
SUND JESSICA M	7x3445 PIERSON ST OAKLAND CA 94619-3425 Reported: 06/01/1994 - 11/13/2000 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	1x3445 PEARSON ST OAKLAND CA 94619 Reported: 11/13/2000 - 11/13/2000 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA	
SUND JESSICA M	1x PO BOX OAKLAND CA 94613 Reported: 11/14/1997 - 01/31/1999 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	1x CARDINAL RIDGE AP OAKLAND CA 94613 Reported: 10/01/1998 - 10/01/1998 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	6x POB 9045 OAKLAND CA 94613-0045 Reported: 03/01/1998 - 03/01/1998 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	2x5000 MACARTHUR BLVD OAKLAND CA 94613-1301	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953

	Reported: 10/15/1997 - 10/15/1997 County: ALAMEDA		
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MAY 18, 2018 DATABASE SEARCHES:

Database #1:

3024 CALIFORNIA ST, OAKLAND, CA 94602-3908 (ALAMEDA COUNTY) (10/2005 to 05/18/2018)

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857 (ALAMEDA COUNTY) (10/2005 to 11/03/2017)

633 ALMA AVE, OAKLAND, CA 94610-3853 (ALAMEDA COUNTY) (09/25/2011 to 09/25/2011)

6138 PARK AVE # 11, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/09/2005 to 10/2011)

6138 PARK AVE, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/10/2005 to 05/24/2005)

3707 MALVERN RD, KINGSFORD HEIGHTS, IN 46346-3355 (LA PORTE COUNTY) (10/2008 to 10/2008)

PO BOX 11634, OAKLAND, CA 94611-0634 (ALAMEDA COUNTY) (06/2008 to 08/06/2008)

822 59TH ST # 11, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (02/2004 to 06/2005)

822 59TH ST, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (01/23/2004 to 05/10/2005)

886 CLEVELAND ST APT 11, OAKLAND, CA 94606-1536 (ALAMEDA COUNTY) (12/15/1998 to 12/2003)

886 CLEVELAND ST, OAKLAND, CA 94606-1568 (ALAMEDA COUNTY) (02/1999 to 01/23/2003)

PO BOX 9045, OAKLAND, CA 94613-0001 (ALAMEDA COUNTY) (11/14/1997 to 01/23/2003)

3445 PIERSON ST, OAKLAND, CA 94619-3425 (ALAMEDA COUNTY) (08/1991 to 01/23/2003)

20022 N 31ST AVE, PHOENIX, AZ 85027-3900 (MARICOPA COUNTY) (03/13/2000 to 03/13/2000)

5000 MACARTHUR BLVD, OAKLAND, CA 94613-1301 (ALAMEDA COUNTY) (10/15/1997 to 10/15/1997)

Database #2:

3024 CALIFORNIA ST, OAKLAND, CA 94602-3908, ALAMEDA COUNTY (Sep 2017)

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857, ALAMEDA COUNTY (Sep 2017)

6138 PARK AVE, RICHMOND, CA 94805-1229, CONTRA COSTA COUNTY (Mar 2005 - May 2005)

822 59TH ST, EMERYVILLE, CA 94608-1408, ALAMEDA COUNTY (Feb 2004 - May 2005)

PO BOX 9045, OAKLAND, CA 94613-0045, ALAMEDA COUNTY (Mar 1998 - Sep 2001)

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953



CITY OF OAKLAND

250 FRANK OGAWA PLAZA, SUITE 5313, 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: T18-0018 Sund v. Vernon Street Apartments, LP

PROPERTY ADDRESS: 633 Alma Avenue, Unit 5, Oakland, CA

HEARING DATE: May 30, 2018
June 4, 2018

SITE INSPECTION : June 4, 2018

DECISION DATE: December 20, 2018

APPEARANCES:	Jessica Sund	Petitioner
	Paul Kranz	Attorney for Petitioner
	Kim Rohrbach	Paralegal for Petitioner
	Greg McConnell	Owner Representative
	JR. McConnell	Owner Representative
	Don MacRitchie	Witness for Owner
	Ursula Morales	Property Manager
	Jessica Vernaglia	Property Supervisor
	Dave Wasserman	Owner Representative
	Lucky Stewart	Agent for Owner

SUMMARY OF DECISION

The petitioner's petition is DENIED.

INTRODUCTION

Petitioner Jessica Sund filed a tenant petition on November 29, 2017, which contests a proposed monthly rent increase from \$908.67 to \$2,095.00 effective December 1, 2017 on the following grounds:

1. The increase exceeds the CPI Adjustment and is unjustified or is greater than 10%;
2. The proposed rent increase would exceed an overall increase of 30% in 5 years; and
3. I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.

The owner filed a timely response to the petition and contends that the contested rent increase is a Costa Hawkins rent increase. The petitioner, who was the original occupant, no longer resides at the subject property as her primary place of residence.

ISSUES PRESENTED

1. Is the contested rent increase limited by the Rent Adjustment Ordinance?

EVIDENCE

Petitioner's Status as a Tenant

Testimony of Jessica Sund - Petitioner

The petitioner testified that she moved into the subject unit in July 2008, at an initial monthly rent of \$895.00. She testified that on September 6, 2017, she was served a rent increase notice proposing to increase her rent from \$908.67 to \$2,095.00 monthly.¹ She further testified that she is currently paying \$908.67 in rent monthly and has continued to pay that amount since the effective date of the rent increase.

Ms. Sund testified that on August 24, 2017, she emailed the property supervisor at the time, Thomas Preston, to notify him that her boyfriend, Cory Hamrick, would be moving in with her the following weekend, and that they were expecting a baby in October of 2017.² In response to her email, she received a letter from Thomas Preston, dated August 28, 2017, stating that her lease had a "no subletting/no assignment clause", and a "use/occupancy" provision, therefore, her request to sublet the unit to her boyfriend was denied.³ The letter also stated that if her boyfriend did move in, her lease and tenancy would be terminated for unlawful subletting. She testified that she received this letter in early September, around the same time as the rent increase notice dated September 6, 2017.

¹ Exhibit 1

² Exhibit 2

³ Exhibit 3

Ms. Sund testified that because the property manager refused to allow her boyfriend to move in with her, and instead issued an exorbitant rent increase, she decided to stay with her boyfriend temporarily, who resides at 3024 California Street in Oakland, California. She moved to the California street address in early October, 2017, right before the birth of her daughter on October 24, 2017.⁴ She testified that she moved because she believed that if she continued to reside at the Alma street apartment, she would have to pay the rent increase, and she could not afford it. She also moved because she wanted the support of her boyfriend to care for her newborn child, who had medical issues requiring full time care. She also did not want to deal with the stress of being in an adversarial relationship with her landlord. Ms. Sund testified that as of the date of the hearing, she was still residing primarily at the California street address. She testified that she visits the Alma street apartment once or twice a week to check on her plants, and the apartment generally, but is staying at the California street address with her boyfriend and baby for now.

On cross examination, Ms. Sund testified that she has not moved back into the Alma street apartment because of excessive construction noise that began in November of 2017 and is still ongoing. She submitted copies of construction notices issued by the property manager.⁵ She further testified that her carpet was damaged when the property manager replaced her refrigerator and the dirty carpet is another reason she has not moved back into the Alma street unit. Finally, she testified that she has been receiving mail at the California street address since October of 2017.

Testimony of Lucky Stewart – Agent for Owner

Lucky Stewart is an agent for the owner. He testified that he is employed by an ownership group that acquires different properties in the bay area and he acts as an asset manager for the ownership group. He is tasked with managing the takeover of properties and overseeing general operations. He testified that he acquired the subject property, 633 Alma Street, in June of 2017.

Shortly after he acquired the subject property, he received reports from other tenants in the building that the petitioner was subletting her unit. Specifically, he was told that there were strangers going in and out of the petitioner's unit freely and had possession of keys to the unit but the petitioner was no longer there. He also personally observed an international couple, with luggage, coming out of the petitioner's unit, sometime in early August. Both individuals were tall, blonde, and speaking a foreign language, and when he attempted to speak to them, they ignored him. Based on the reports from other tenants, and his own observations, he decided to investigate the petitioner's whereabouts. He did an internet search and asked his attorney, Dave

⁴ Exhibit 4

⁵ Exhibit 5

Wasserman, to do a LexisNexis search to see if the petitioner was still living in the Alma street apartment. His own internet search revealed a baby registry under the petitioner and her boyfriend Cory Hamrick's name, as well as couch surfing listings placed by Cory Hamrick, the petitioner's boyfriend, advertising an unspecified unit as available for rent. Mr. Stewart testified that he was advised by his attorney that the LexisNexis search revealed two addresses linked to the petitioner, the 633 Alma street address and the 3024 California street address, and that the petitioner was likely no longer living at the 633 Alma street address.

Based on his findings, he issued a warning letter to the petitioner on August 22, 2017, which was posted on the door of the petitioner's unit and mailed to the petitioner.⁶ In the letter, he informed her that he had "received complaints regarding an overwhelming amount of random visitors coming and going from unit 5 at 633 Alma street. The visitors seem to have access and keys to come and go freely, yet you are not around. What is also troubling is that some of them have been disturbing your neighbors and this is their home."⁷ The letter went on to warn the petitioner that the lease was in her name only and that her lease did not allow for her to sublet or assign any part of the premises. A copy of the lease with the provision prohibiting subletting and assignment was received into evidence.⁸ The petitioner denied ever receiving the August 22, 2017, letter.

After he issued the warning letter, on August 24, 2017, the property supervisor at the time, Thomas Preston, received the email from the petitioner announcing that she was pregnant and that her boyfriend would be moving in the next day. Mr. Stewart testified that he viewed the petitioner's email as a demand and not a request to sublet. He also believed that the petitioner was using the request to sublet to her boyfriend as ruse so she could continue renting out the unit to short-term tenants. He testified that he directed the property supervisor to respond by issuing the letter dated August 28, 2017, which denied the petitioner's request to sublet to her boyfriend and informed her that if her boyfriend did move in her lease and tenancy would be terminated for unlawful subletting. The letter further stated that "if the petitioner had made a reasonable and proper request well in advance of the move-in date, instead of unilaterally stating that her boyfriend was moving in, the landlord would have been amendable to accommodating her request...and... if the tenant wished to revisit this issue down the road in a more appropriate fashion, then management may be more receptive".⁹ This letter was posted on the petitioner's door and mailed on August 28, 2017. Mr. Stewart testified that the petitioner never followed up her request to sublet to her boyfriend, and to his knowledge, Cory Hamrick, the petitioner's boyfriend, never moved into the Alma street unit.

⁶ Exhibit 12

⁷ Exhibit 12

⁸ Exhibit 11

⁹ Exhibit 2

After this letter was sent, the tenants in unit 1 reported that strangers were still coming and going from the petitioner's unit. This prompted the property management to issue a Costa Hawkins rent increase. On September 6, 2017, the property management issued a notice of rent increase to Jessica Sund and all subtenants in possession of the subject unit, stating that the original occupant, Jessica Sund, was no longer permanently residing in the unit and the rent was being increased pursuant to California Civil Code Section 1954.50, *et seq.* (Costa Hawkins Rental Housing Act).¹⁰ Finally, Mr. Stewart testified that since the Costa Hawkins rent increase, he has not received reports of anyone entering or leaving the petitioner's unit.

Testimony of Property Manager – Ursula Morales

Ursula Morales is the onsite property manager for 633 Alma Street. She has held that position since October 1, 2017. She testified that she knows all the tenants in the building and she has never met or seen the petitioner before. She testified that she lives in unit 11, which is directly above the petitioner's unit and she has never heard a baby cry in the petitioner's unit. She further testified that sometime in November or December of 2017, she received a complaint about strangers coming in and out of the petitioner's unit as well as noise and smoke coming from the petitioner's unit. She testified that these complaints were made by the tenant in unit 6, Marissa Williams. Ms. Williams is the tenant in the unit directly across from the petitioner's unit. In response to these complaints, she went to the hallway downstairs to check on the petitioner's unit. She heard some noise, but nothing out of the ordinary, just the sound of television. Finally, she testified that she has never personally observed anyone, including the petitioner, coming in and out of the petitioner's unit.

Testimony of Don MacRitchie - Private Investigator

Don MacRitchie testified that he was retained to investigate the tenancy of the petitioner. He is a licensed private investigator who is licensed to gather this type of information for administrative proceedings and the data he obtains originates with the original consumer. His investigation encompassed searches of various address history databases, social media outlets, voter registration records and other public records. He has performed this type of investigation thousands of times and has been qualified to testify as an expert in court proceedings regarding false testimony about where people live and has testified as an expert in over seventy matters before the San Francisco Rent Board. He has also testified as an expert in prior proceedings before the Rent Adjustment Program.¹¹

Mr. MacRitchie testified that during his investigation, he completed two database searches, one in December of 2017, and one in May of 2018. He

¹⁰ Exhibit 1

¹¹ T16-0707 *Brown v. Wasserman*

prepared two Investigator Reports based on his findings, one for the petitioner, Jessica Sund, and one for her boyfriend, Cory Hamrick.¹²

His investigation of the petitioner, Jessica Sund, indicated that she first reported 633 Alma Street, Unit 5, as her current address on August 28, 2008. The database searches show that she subsequently reported 3024 California Street as her current address for the first time on July 1, 2017, and again in August of 2017. The California street address continued to be reported as her current address as recently as May 2018. On the other hand, the most recent reporting date for the Alma street address in any of the databases was December 5, 2017.

His investigation of Cory Hamrick indicated that Mr. Hamrick's current place of residence is 3024 California Street. Mr. Hamrick first reported the California street address as his address in April of 1999. The California street address continued to be reported as his sole current address as recently as March 27, 2018. Mr. Hamrick is the current owner of the California street property. The property is a two bedroom, one bathroom, single family home. Mr. Hamrick also claims a Homestead Exemption for the property. Mr. MacRitchie testified that a Homestead Exemption applies if the property is the owner's principal place of residence, and it allows the owner to claim a property tax deduction. The Tax Assessor's office also confirmed that the mailing address of record for the property is the California street address. His investigation also indicates that Mr. Hamrick is currently registered to vote at 3024 California Street. Finally, the database searches did not show any reports of the Alma street address as being associated with Mr. Hamrick.

In addition to the database searches, Mr. MacRitchie testified that he also interviewed other tenants at 633 Alma street. He interviewed the tenants after the first day of hearing in this case, and prior to the second day of hearing. He testified that he spoke to four tenants, three of them were current tenants, and one was a former tenant. The current tenants were the tenants in unit 3, 4, and 6 who all believed the petitioner had lived elsewhere for quite a while. The former tenant was also the former property manager, Kathy Espinoza, who also believed the petitioner had been living elsewhere for quite some time.

Based on his investigation Mr. MacRitchie opined that a preponderance of the evidence supports a conclusion that Jessica Sund's permanent place of residence is not the subject property, 633 Alma Street, Unit 5, but rather 3024 California Street.

Site Inspection

The Hearing Officer conducted a site inspection on June 4, 2018. She noted that the unit was a studio apartment, consisting of one large room, a

¹² Exhibits 7 and 8

kitchen, bathroom, and a closet. There was one queen size bed in the unit and a portable rock and play. There was no crib in the unit. The Hearing Officer did not observe any toys in the unit. There were two diapers, one baby lotion bottle, and a onesie laid out on a counter. The refrigerator and closets were empty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner's Status as a Tenant

The owner has established by a preponderance of the evidence that the petitioner no longer permanently resides at 633 Alma street, Unit 5, in Oakland but rather, 3024 California street.

The agent of the owner, Lucky Stewart, testified credibly that shortly after acquiring the Alma street property in June of 2017, he received multiple complaints from tenants about strangers going in and out of the petitioner's unit freely, with keys to the unit, while the petitioner herself was nowhere to be seen. He also personally observed a blonde couple exiting the petitioner's unit with luggage, speaking a foreign language, and ignoring his attempts to communicate. Based on this information, he did an internet search that revealed a baby registry for the petitioner and her boyfriend, Cory Hamrick, as well as listings by Mr. Hamrick, purporting to rent out an unspecified unit on couch surfing sites. He testified that this search further fueled his suspicions that the petitioner did not reside in the subject unit and that instead, the petitioner was unlawfully subletting her unit to short-term tenants. This testimony is corroborated by the investigator, Don MacRitchie, who testified that records show the tenant first began listing the California street address as her current address on July 1, 2017. Based on this evidence, it is more likely than not that the petitioner was no longer permanently residing at the Alma street address since at least July 1, 2017.

The petitioner's testimony that she temporarily moved from the Alma street address to the California street address in October of 2017, after her request to have her boyfriend move into her unit was denied, is simply not credible. The Hearing Officer finds it implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the petitioner's studio apartment, especially considering that the couple was expecting a baby in October of 2017. Choosing to move in together into a small studio apartment in anticipation of a newborn baby when the option of a two-bedroom house was readily available does not seem reasonable.

The tenant herself testified that she has been staying at the California street address since October of 2017, and has no immediate plans to move back into the Alma street apartment. She further testified that she only visits the Alma street apartment once or twice a week, to water the plants and check on the

apartment, but she does not carry out daily living activities in the Alma street unit. She does not sleep there, or cook there on a regular basis. Although it is undisputed that the petitioner has been paying her rent for the Alma street apartment, paying rent alone is not sufficient to establish that the unit is being occupied as a permanent residence.

The owner argued that the petitioner has no intention of occupying the unit as her primary residence. She is holding on to the unit at a below market rate so she can rent it out to short-term tenants. He further argued that the petitioner's boyfriend never intended to move into the Alma street address and instead the request by the petitioner to have her boyfriend move in was merely a ruse to allow her to continue renting out her unit to short-term tenants for her own financial advantage. The Hearing Officer finds this argument persuasive.

Additionally, the testimony of Don MacRitchie, the investigator, is substantial evidence of the fact that the petitioner has not occupied 633 Alma Street, Unit 5, as her permanent place of residence since July 1, 2017.

Finally, the Hearing Officer's onsite inspection of the Alma street apartment indicates that the petitioner does not live there. The apartment was sparse and the closet and refrigerator were empty. In addition, the apartment did not have any evidence of a child residing in the unit, aside from the rock and play and some diapers strategically laid out on a counter. The apartment did not have toys or any other children's furniture.

Based on the evidence and testimony, it is more likely than not that the petitioner has not occupied the subject unit as her primary residence since at least July 1, 2017.

Costa-Hawkins

California Civil Code Section 1954.53(d) states in part:

(2) If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.

(3) This subdivision does not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit....

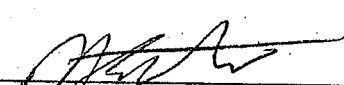
The testimony and documentary evidence constitute substantial evidence that the petitioner no longer permanently resides in the subject unit and therefore lacks standing to file this petition.

ORDER

1. The petitioner lacks standing to file this petition because she no longer resides at 633 Alma Street, Unit 5, Oakland, California, and has not resided at this address since July of 2017.
2. Petition T18-0018 is DENIED.

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 this decision. The date of service is shown on the attached Proof of Service. If the last date to file is a weekend or holiday, the appeal may be filed on the next business day.

Dated: December 20, 2018



MAIMOONA SAHI AHMAD
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T18-0018

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

Manager

Thomas Preston
633 Alma Avenue
Oakland, CA 94619

Manager

Ursula Morales
633 Alma Avenue
Oakland, CA 94619

Owner

Vernon Street Apartments, LP aka Flynn Family Holdings, LLC
1717 Powell Street #300 c/o Russell B. Flynn
San Francisco, CA 94133

Owner Representative

Gregory McConnell, The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, CA 94607

Owner Representative

JR McConnell, The McConnell Group
300 Frank Ogawa Plaza Suite #460
Oakland, CA 94607

Tenant

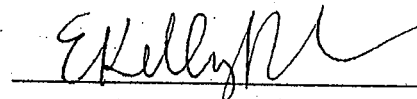
Jessica Sund
633 Alma Avenue #5
Oakland, CA 94610

000042

Tenant Representative
Paul Kranz
639 San Gabriel Avenue
Albany, CA 94706

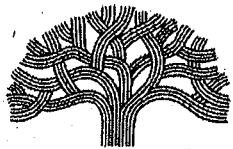
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 December 20, 2018 in Oakland, CA.

A handwritten signature in black ink, appearing to read 'EKelly', is written over a horizontal line.

Esther K. Rush

Oakland Rent Adjustment Program



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

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

For dates only

RECEIVED

JAN 09 2019

RENT ADJUSTMENT PROGRAM
OAKLAND APPEAL

Appellant's Name Jessica Sund		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 633 Alma Avenue # 5 Oakland, California 94610			
Appellant's Mailing Address (For receipt of notices) 633 Alma Avenue # 5 Oakland, California 94610		Case Number T18-0018	
		Date of Decision appealed 12/20/2018	
Name of Representative (if any) Paul Kranz, Esq.		Representative's Mailing Address (For notices) 639 San Gabriel Avenue Albany, California 94706	

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: _____. Please see attachments

- 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 _____, 20____, 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: Please see Proof of Service separately enclosed

<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

Paul L. Kutz	01/09/2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

ATTACHMENT 1

Petitioner will further submit a brief not to exceed twenty-five (25) pages.

Petitioner also does not waive her right to contest the time lines for her appeal on the ground that the date indicated on the proof of service (December 20, 2018) attached to the subject Hearing Decision is inaccurate. The dates stamped by the postage meter on each of the envelopes in which the Hearing Decision was separately and respectively mailed to Petitioner and to her attorney show that postage was affixed on December 26, 2018—not six days earlier, on December 20, 2018, as declared on the proof of service. Copies of the envelope received by Petitioner and of the envelope received by her attorney are attached as Attachment 2.

ATTACHMENT 2

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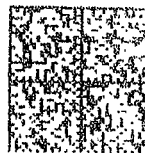
CITY OF OAKLAND



HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT
RENT ADJUSTMENT PROGRAM
250 FRANK H. OGAWA PLAZA
SUITE 5313
OAKLAND, CA 94612-0234

Paul Kranz
639 San Gabriel Avenue
Albany, CA 94706

PRESORTED
FIRST CLASS

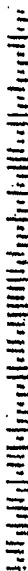


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PROOF OF SERVICE
Case Number T18-0018

I, the undersigned, certify and attest as follows:

I am over the age of eighteen years and am not a party to the cause within. My business address is 639 San Gabriel Avenue, Albany, California 94706.

On January 9, 2019, I caused the within:

CITY OF OAKLAND RENT ADJUSTMENT-APPEAL

to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

c/o Russell B. Flynn
Vernon Street Apartments, LP, aka Flynn Family Holdings, LLC
1717 Powell Street # 300
San Francisco, California 94133

Gregory McConnell
The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, California 94607

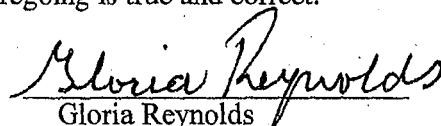
JR McConnell, The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, California 94607

Thomas Preston
633 Alma Avenue
Oakland, California 94619

Ursula Morales
633 Alma Avenue
Oakland, California 94619

Executed Albany, California on January 9, 2019.

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


Gloria Reynolds

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LAW OFFICES
Paul L. Kranz
639 San Gabriel Avenue
Albany, California 94706
Telephone (510) 549-5900

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JUL 12 2019

**RENT ADJUSTMENT PROGRAM
OAKLAND**

July 5, 2019

Ms. Barbara Kong-Brown
Senior Hearing Officer
Rent Adjustment Program
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612

Re: *Sund v. Vernon Street Apartments LP, et al*
Case No. T18-0018

Dear Ms. Barbara Kong-Brown

Thank you for your response about the correct ordinance on which the 25 page limit is based. However, the subsection immediately following that subsection states that the 25 page limit may be modified or waived for good cause. I already stated to you that our brief is only 14 pages, if you exclude exhibits. I am at a loss to understand your failure to acknowledge this subsection permitting submissions longer than 25 pages, as well as to apply that provision to our appeal, since the exhibits consist only of either documents submitted as evidence at the hearing, thus already in the program files, or verbatim descriptions of sworn testimony presented at the hearing. Review of the hearing officer's decision shows the extent to which that decision purports to rely on testimony from the hearing. Therefore, the transcribed testimony is essential for a fair adjudication of the appeal. There clearly is good cause for the length of our submission. All of this was explained in my previous letter to you. I also note that the program's on-line appeal cites a wrong or non-existent ordinance in support of a 25 page limit. And it also fails to state that permission for a submission longer than 25 pages may be granted.

Your rules also state that a program goal is for appeal^hhearings to be heard within 30 days of being filed. Our appeal form was filed on January 9, 2019 and our appeal still has not been heard. Our brief was filed on January 24, 2019. A Notice of Errata was filed on January 29, 2019. However, the hearing was not scheduled because the program claimed the appeal had not been served on the other party even though a proof of service was attached to the appeal. Then after a hearing was scheduled, it was delayed when the opposing party asked for more time to respond to the appeal. But as of this date, the opposing party has not provided any response to the appeal. Also, the original petition was filed in November 2017. The hearing on the petition was not held until May 30 and June 4, 2018.

The programs's time delays and failures to provide accurate information has substantially prejudiced our client. In general, these failures prejudice tenants far more than property owners because the majority of tenants represent themselves since they do not have the resources to afford to pay an attorney.

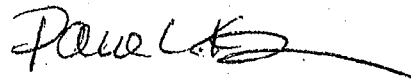
I look forward to hearing from you about these matters.

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Ms. Barbara Kong-Brown
Senior Hearing Officer
Rent Adjustment Program
July 5, 2019
Page 2

Thank you for your consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul L. Kranz", with a long horizontal flourish extending to the right.

Paul L. Kranz

PLK:gr

000052

Kong-Brown, Barbara

From: Kong-Brown, Barbara
Sent: Monday, July 15, 2019 4:01 PM
To: Paul Kranz
Subject: Response to your letter dated July 5, 2019

Mr. Krantz: In response to your letter received July 12, 2019, as stated in my previous communication, you appeal submission is limited to 25 pages, and there is no good cause for you to submit an additional 49 pages of hearing transcript.

The goal of the Rent Adjustment Program is to hear appeals within 30 days and there has been a substantial appeals backlog. We have made substantial progress in reducing the backlog from approximately 75 cases to 30 and continue to work towards further reduction in the backlog.

The goal of the Rent Adjustment Program is to hear a petition within 60 days of the original petition filing date. Due to staffing issues there has been a delay in scheduling cases for hearing and we hope to reduce this backlog by 2020.

BARBARA KONG-BROWN
SENIOR HEARING OFFICER
RENT ADJUSTMENT PROGRAM
250 FRANK OGAWA PLAZA, 5TH FLOOR
OAKLAND, CA 94612
T. 510-238-3721
F. 510-238-6181

Jessica Sund v. Vernon Street
Apartments, LP

T18-0018
633 Alma Street
#5

Petitioner Jessica Sund appeals from the decision of Hearing Officer Maimoona Sah Ahmad. Petitioner notes for the record that her petition was filed on November 29, 2018. The hearing commenced six months later, on May 30, 2018, and concluded on June 4, 2018. The decision was not issued for more than six months, on December 20, 2018. According to the proof of service, it was mailed on December 20, 2018, but the envelope containing has a December 26, 2018 postmark.

Petitioner also notes for the record that the attachments hereto (other than the attachments which are excerpts from the witnesses' testimony on May 30th and June 4th, 2018) were submitted at the hearing, either by her counsel or Respondent's counsel or both, but have been renumbered for expediency's sake. As for the excerpts from the witnesses' testimony are concerned, these are marked according to where each begins and ends in the audio recording of the initial day of testimony, May 30th.

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CITY OF OAKLAND
RENT ARBITRATION PROGRAM

INTRODUCTION

Petitioner Jessica Sund brought the petition because, within days of notifying her landlord that she was pregnant and that her boyfriend and father of her child would begin to stay in the unit, her landlord served her with notice that her rent was being more than doubled. Unable to pay the increased rent, and after consulting with an attorney, she filed this petition and then began to stay in her boyfriend's residence.

Because Ms. Sund's newborn daughter had serious health conditions requiring 24-hour monitoring, it was necessary for her and the baby's father's to live together; moreover, the necessity for monitoring was ongoing. It was absolutely unreasonable for Ms. Sund to consider residing in her apartment under these conditions. Ms. Sund testified on the first day of the hearing that she did and does not know whether the relationship with her daughter's father would be permanent. For this reason, staying with at her boyfriend's home with their child has been intended as "temporary".

The landlord did not present any evidence to contradict these facts. The landlord contrived the story that Ms. Sund was residing with her boyfriend because she was subletting her unit in order to take advantage of its below-market rent and make a profit. But the landlord did not present an iota of credible and competent evidence to support its claim. With the exception of a single claimed sighting by the landlord's "asset manager"—who claimed he once saw a

Petitioner's Brief in Support of Appeal

000054

tall, blonde couple speaking German exiting her unit with luggage—the landlord had no other evidence to support subletting. Indeed, the decision relies heavily on this purported sighting by the asset manager, Lucky Stewart. But Mr. Stewart also testified that this alleged one-time sighting was not the cause of the attempted rent increase. He said it was later sightings, observed by property managers he never identified, and by certain tenants, none of whom testified. Nonetheless, the tenants reported nobody coming and going from Ms. Sund's unit, according to testimony of the landlord's private investigator who had interviewed them. And the only property manager who testified—the landlord's own 24/7 on site property manager—stated that she *never* saw any other persons using Ms. Sund's unit and knew of no evidence of subletting. Finally, the private investigator, who the landlord (and the hearing officer) characterized as a qualified "expert" on such matters, opined that Ms. Sund was *not* subletting; i.e., that there was not evidence to support his client's contention.

That a hearing officer could find that Ms. Sund's pregnancy, and her request for her baby and her baby's father to be able to stay in her unit, was "merely a ruse to allow her to continue renting¹ out her unit to short-term rentals for her own financial advantage", is simply incredulous and offensive, and in blatant disregard of the evidence.

STATEMENT OF FACTS

Jessica Sund is a 41-year old single woman. She has lived at the subject premises, 663 Alma Street #5, since 2008. She has worked as an elementary and middle school science teacher, and is currently earning a graduate degree in water resource management. On Friday, August 24, 2017, she notified her landlord by written email that she was expecting a baby in October and that her boyfriend and father of her expected newborn, as well as the newborn, would be staying in her unit. (See Attachment 1.) In a letter dated August 28, 2017, which Ms. Sund actually received about a week later (it was postmarked September 7), property manager Thomas Preston rejected her request because it had been "couched as a "demand". (See Attachment 2.) Per Mr. Preston, any request had to be made "well in advance of the requested move-in date, and thereafter providing necessary information to and documentation to

¹The landlord's "asset manager", Lucky Stewart, testified that the [alleged] subletting stopped shortly after Ms. Sund received the rent increase notice in early September, 2017

management.” (*Ibid.*) On that same day and on the following day, August 29, 2017, Ms. Sund called Preston three times to further discuss her request. (See Attachment 5, pp. 1–2.) Neither Preston or anyone else on behalf of the landlord responded; Preston did not return her phone messages; he did not respond by email or by letter. (See *ibid.*) Instead, the next communication Ms. Sund received from the landlord was on or about September 6, 2017, when the landlord personally served Ms. Sund with a Notice of Change Terms of Tenancy-Rent Increase Notice [Costa-Hawkins], increasing her rent from \$908.67 to \$2,095, and stating that “Jessica Maggie Sund no longer resides at the Premises and that all current occupants are subsequent occupants and subleases” (See Attachment 3; Attachment 5, p. 3.) In fact, there were no other current or subsequent occupants and subleases (Ms. Sund testimony cite) at the subject premises and Ms. Sund still resided there by herself (See Attachment 5, p. 2.)

Ms. Sund’s reaction to the notice was “fear” because she could not afford that rent and was about to have a baby. (See Exhibit 5, p. 4.) Around that time, she began staying with her boyfriend. (See Exhibit 5, pp. 7, 11–12.) She believed that if she continued to stay at the subject premises, she would have to pay the increased rent, and she also wanted the support of her boyfriend and father of her expected newborn. (See Exhibit 5, pp. 4, 6, 7.) She was 41 years old and this was going to be her first birth. She also retained counsel and the subject petition was filed.

Ms. Sund also continued to stay with her boyfriend after the baby was born because of medical issues the baby suffered that required 24-hour monitoring. (See Exhibit 5, P. 4.) These were serious medical problems; potentially life-threatening. (See *ibid.*)

The Hearing Officer’s Decision and Findings

The hearing officer’s decision relies on testimony from the landlord’s “asset manager” Lucky Stewart stating that: the subject property was acquired by his employer in June 2017; that shortly thereafter, he received reports from tenants that Ms. Sund was subletting and strangers with keys to her unit were entering the unit and the Ms. Sund was no longer there²; that he personally observed a tall blond couple with luggage coming out of the unit, speaking a foreign

²See Exhibit 6, pp. 1–2

language, who ignored him when he tried to speak to them³; that, based on this information, he had counsel conduct an investigation involving LexisNexis, which identified a second address (the California Street address) "linked to" Ms. Sund and which prompted his attorney to say, "Yeah, she's no longer living there."⁴ He also testified this led to an internet search and to him locating a baby registry connected to Ms. Sund and Cory Hamrich, her boyfriend⁵; as well as to him locating on-line "couchsurfing[.com]" listings "from them renting out apartments in, under her or Cory's name."⁶ And that, based on this information, he issued a letter dated August 22, 2017, warning her not to sublet.

In the August 22 letter, signed "The Management," Mr. Stewart claimed that property managers had noticed and received complaints of an "overwhelming amount of random visitors coming and going from [her] unit, and with keys to the unit." (See Attachment 4.) Ms. Sund testified that she never received the letter. (See Attachment 5, p. 10.) With the exception of Lucky Stewart's testimony that he had personally observed what he believed to be an "international" couple (tall, blonder, speaking a foreign language), nothing else he testified to was supported by admissible evidence. There was no admissible evidence of any internet search conducted by him or the landlord's attorney; no evidence of "managers" noticing any suspected sublessees⁷; no evidence of an "overwhelming amount of random visitors." (Cite basically all attachments consisting of the owner's testimony.) As for the "couchsurfing"⁸ posts, Stewart later

³See Attachment 6, p. 2

⁴See Attachment 6, pp. 2-3

⁵See Attachment 6, pp. 3, 24,

⁶See Attachment 6, p. 3; see also pp. 10-11, 7-8

⁷Lucky Stewart was the only "manager" who claimed to have seen any potential sublessees, and he only claimed to have seen on one occasion the German or "international" couple. Moreover, the landlord called the on-site property manager, who testified that she is on site about "24/7", and had never seen *any* such sublessees connected to Ms. Sund's unit.

⁸A couchsurfing profile for Cory Hamrich remains available at <https://www.couchsurfing.com/people/coryhamrick> . It indicates Mr. Hamrick has not even logged into his account for about three years; i.e., since around 2016.

changed his testimony, saying that he didn't recall or see any reference to any specific address; that the listings don't typically refer to any specific address. (See Attachment 6, pp. 8–10.) He further testified that he saw no couchsurfing listing pertaining to Ms. Sund. (See Attachment 6, pp. 7–8.) The couchsurfing testimony was also hearsay.

Stewart characterized the August 22nd letter, sent after his claimed "international" couple sighting, as a "warning". (See Exhibit 6, pp. 4, 7.) Stewart went on to explain, "Then when we saw that it [subletting and/or assignment] was still continuing, and it was observed that there were still people coming and going and not the tenant, we resorted to serving the Costa-Hawkins." (See *id.*, p. 4.) Not only were there no documents or declarations or notes (including the landlord's private investigator's reports) to support any subletting (persons "coming and going" from Ms. Sund's unit) after August 22 or at any time, but there were *no firsthand accounts of any person(s) coming and going whatsoever*, other than the "international" couple Mr. Stewart claimed he'd seen. (See Attachments 6–7, inclusive.) The only property manager who testified—the landlord's 24/7 on-site property manager Ursula Morales—stated that *she never saw anyone coming and going from Ms. Sund's unit, either*. (See Attachment 7, p. 7.) Yet, the lack of evidence of anybody coming and going is nowhere cited or acknowledged in the hearing officer's decision.

Also, after initially testifying that she'd been informed of "strangers coming in and out of" Ms. Sund's unit, Ms. Morales later testified that she'd received just one such complaint from a single tenant, in around November or December 2017. (See Attachment 7, inclusive.) The complaining tenant had reported "smoke and noise," apparently attributed to Ms. Sund's unit. (See Attachment *id.*, p. 2.) When Ms. Morales went downstairs to investigate, she found "nothing out of the ordinary" and just some TV noise. (See Attachment *id.*, p. 3.) The purported single-tenant complaint is inadmissible; it's hearsay. Although Morales testified that it was sent to her by email (See Attachment *id.*, p. 5), no email was offered as evidence. And on cross-examination, Morales testified that the complaint was "more about" noise than anything else. (See Attachment 7, p. 5.) Finally, when asked by the hearing officer if it amounted to "just that one complaint over the holidays about the smoke and noise, Ms. Morales replied, "M-hm" (See *id.*, p. 6.). None of these inconsistencies or lapses in the testimony are cited or acknowledged in the hearing officer's decision.

Thus, between the time that the August 22 "warning" letter was purportedly sent and September 6, when the Costa-Hawkins rent increase notice issued, *nothing new had happened—except that, on August 24th, the owner was notified by Ms. Sund that she was pregnant, and that Mr. Hamrick, the baby's father, would be moving in.*

Here it should also be noted that the hearing officer in her decision incorrectly quotes the landlord's responsive letter dated August 28th as stating: "[I]f [you] had made a reasonable and proper request well in advance of the move-in date, instead of unilaterally stating that [your] boyfriend was moving in, the landlord would have been amenable to accommodating [your] request...and...if the [you wish] to revisit this issue down the road in a more appropriate fashion, then management may be more receptive". The letter does not say that. (See Attachment 4.) It says that the landlord is *typically* "amenable" and that "down the road...management *may* be more receptive" [emphasis added]. Hardly reassuring to a soon-to-be new mother expecting a baby in the 4-6 weeks, whose phone calls to further discuss the issue are ignored, and who then receives a rent increase she cannot afford.

/ / /

Returning to Mr. Stewart's testimony, it should be noted that there are surveillance cameras at the property. According to Stewart's testimony, at the time of the hearing there were about five cameras total. (See Attachment 6, p. 18.) These included a camera at the back of the first floor, where Ms. Sund's unit is located, near an emergency exit. (See *ibid.*) Also, there were multiple cameras in front of the building. (See *ibid.*) Mr. Stewart further testified that he never checked any cameras for recordings of the people he'd claimed have keys to Ms. Sund's apartment. (See Attachment 6, pp. 21-21.) When asked why, his incredible answer was, "If I thought it was an important issue, I would have produced the footage." (See *id.*, p. 21.) The hearing officer omits in her decision *any reference to the fact that there were cameras, and to the fact that no footage was produced at all.*

Apart from the hearing officer's misplaced reliance on Mr. Stewart's testimony, she also relied on the testimony Don MacRitchie, the private investigator hired by the owner through counsel. Her summary of this testimony concludes, "MacRitchie opined that a preponderance of the evidence supports a conclusion that Ms. Sund's permanent place of residence is not the

subject property . . [.]”⁴ (See Hearing Decision ("Decision"), p. 6.)

“Permanent place of residence” in the context of Costa-Hawkins is a legal issue, and an expert is prohibited from testifying as to a legal conclusion. “There are limits to expert testimony, not the least of which is the prohibition against admission of an expert's opinion on a question of law. This limitation was recognized by this court in *Ferreira v. Workmen's Comp. Appeals Bd.* (1974) 38 Cal.App.3d 120 [112 Cal. Rptr. 232].” (*Summers v. A.L. Gilbert Co.* (1999) Cal. App. 4th 1155, 1178.) What the hearing officer's decision failed to cite or even mention is that the *landlord's expert, MacRitchie—who'd conducted extensive data-base searches in the course of investigating Ms. Sund's status— testified that he was unable to identify a single individual who'd ever sublet Ms. Sund's unit. (27: 13-). And he admitted that he knew of no evidence that she was subletting. Therefore, his opinion was Ms. Sund was not subletting.*

After the first day of testimony, MacRitchie was asked to interview four tenants from the subject premises. (The first day of testimony was Friday, May 30th.) He did so. None of them knowledge of any other persons associated with Ms. Sund's unit, according to his testimony as follows:

MR. KRANZ: DID ANY OF THEM TELL YOU THAT PERSONS OTHER THAN MS. SUND WERE STAYING THERE?

MACRITCHIE: THEY DIDN'T. THEY THOUGHT IT POSSIBLE.

MR. KRANZ: OKAY. AND WHICH PERSONS TOLD YOU THEY THOUGHT IT POSSIBLE?

MACRITCHIE: ALL DIDN'T HAVE DEFINITE KNOWLEDGE, AND THEY ALL WERE AWARE THAT THERE WERE PEOPLE THAT WERE THERE IN THE BUILDING THAT WEREN'T ASSOCIATED WITH APARTMENTS, AND THEY DIDN'T KNOW FOR CERTAIN WHICH APARTMENT THEY WERE ASSOCIATED WITH. SO THEY THOUGHT THEY WERE SOME TYPE OF SUBTENANTS, BUT THEY COULD NOT DEFINITELY ASSOCIATE WITH MS. SUND'S APARTMENT.

⁴This opinion was offered in Mr. MacRitchie's investigative report on Ms. Sund, rather than during testimony.

MR. KRANZ: AND DID YOU ASK THEM FOR — IF THEY HAD ANY INFORMATION ABOUT THESE ALLEGED SUBTENANTS ?

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

ARGUMENT

I. There Was Not Substantial Evidence To Support the Decision.

Substantial evidence means more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (See *Richardson v. Perales* (1971) 402 U.S. 389, 401; *Gebhart v. SEC*, 595 F.3d 1034, 1043 (9th Cir. 2010); *Howard ex rel. Wolff v. Barnhart* (Howard) (9th Cir. 2003) 341 F. 3d 1006, 1011.) The records as a whole must be considered, weighing both the evidence that supports and the evidence that detracts from the agency's decision. (See *Mayes v. Massanari* (9th Cir. 2001) 276 F.3d 453, 459; see also *Int'l Union of Painter & Allied Trades v. J & R Flooring, Inc.* (9th Cir. 2011) 656 F.3d 860, 865; *Hawaii Stevedores, Inc. v. Ogawa*, (9th Cir. 2010) 608 F.3d 642, 652 ("The ALJ is expected to consider the record as a whole, including all witness testimony and each medical report, before entering findings"). The court must affirm where there is such relevant evidence as reasonable minds might accept as adequate to support a conclusion, even if it is possible to draw contrary conclusions from the evidence. (See *Howard*, 341 F.3d at 1011.)

When the record as a whole is reviewed, reasonable minds cannot find that there was adequate evidence to support the conclusions of the hearing officer. Reasonable minds could not differ as to whether the conclusions drawn by the hearing officer were justified by the evidence, because they were not. The decision was not supported by substantial evidence.

II. The Decision Constitutes An Abuse of Discretion.

An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found. (*Rabkin v. Oregon Health Sciences Univ.* (9th Cir. 2003) 350 F.3d 967, 977 (citation and internal quotation marks omitted); see also *In re Korean Air Lines Co., Ltd.* (9th Cir. 2011) 642 F.3d 685, 698 n.11.)

Under the abuse of discretion standard, a reviewing court cannot reverse absent a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of relevant factors. (See *McCullough v. Johnson, Rodenburg & Lauinger, LLC* (9th Cir. 2011) 637 F.3d 939, 953; *Valdivia v. Schwarzenegger* (9th Cir. 2010) 599 F.3d 984, 988 (citing *SEC v. Coldicutt* (9th Cir. 2001) 258 F.3d 939, 941.

The hearing officer's exercise of discretion reflects judgement that was clearly against the logic and effect of the facts. Her selective use of evidence, mischaracterization and misstatement of other of evidence, and patent lack of objectivity, as evinced in her decision, demonstrates a judgement inconsistent with logic and the facts. She consistently relies on evidence that was inadmissible, while at the same entirely ignoring other evidence (much of which was submitted by the Respondent).

The decision thus reflects an abuse of discretion, all of which in Respondent's favor, and demonstrates a lack of objectivity and a prejudice towards Petitioner.

III. In Disregard of the Evidence, the Hearing Officer Arrived at the Unwarranted Conclusion, "The Petitioner's Testimony that She Temporarily Moved from the Alma Street Address to the California Street Address in October of 2017, After Her Request to Have Her Boyfriend Move Into Her Unit Was Denied, is Simply Not Credible"

This conclusion was at best misguided, as was her ancillary conclusion, "It is implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the Ms. Sund's one-bedroom apartment." (See Decision (Statement of Facts and Conclusions) at p. 7.)

Ms. Sund testified that she and her boyfriend had been together just two years; that were not married and that she did not know if the relationship would be permanent. (KR note 36.) For these reasons, she was not certain about where she would continue to live. She also testified that her baby was born with and still suffered from a serious, even potentially life-threatening condition that required around-the-clock monitoring, a circumstance that required her to live with her boyfriend.

This evidence was, further, undisputed.

The phenomena of single women choosing to have children is commonplace in our society, and hardly novel. This is reflected in the fact that it is now illegal to discriminate based

on familial status. In addition, the phenomena of children splitting their time between parents who live in different locations is ubiquitous in our society. Therefore, the hearing officer's above conclusions are unsupported by evidence, tone-deaf to contemporary realities, and inconsistent with the evidence that was submitted. Each was altogether unwarranted.

IV. Under CACI No. 203, The "Evidence" Respondent's Submitted and Cited in the Decision the Decision Deserved To Be Viewed With Distrust and Rejected.

CACI No. 203, entitled *Party Having Power to Produce Better Evidence*, provides as follows:

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

Examples of Respondent's failure to provide stronger evidence when it could have or ostensibly could have produced stronger evidences are numerous and have been recounted above. They include Respondent's failure to produce employees claimed to have relevant information, and failure to produce declarations, documents, video footage, etc.. Indeed, testimony from Respondent's own witnesses was sufficient to defeat, and should have defeated, its claims. Respondent called three witnesses. Each offered significant evidence contradicting or inconsistent with Respondent's claims.

Its asset manager testified that the siting of the "international" couple was *not* itself the cause of the rent increase.

Respondent's 24/7 on-site property manager testified that she never saw a possible a sublessee and in effect had no evidence that Respondent ever sublet. And Respondent's private investigator, who Respondent and the hearing officer insisted was an expert, found no evidence of subletting.

Also, Respondent offered no explanation for why it never responded the emails and phone calls Ms. Sund made to discuss her boyfriend and their baby staying in her unit. Moreover, Respondent never explained why its August 28th letter stated that it would be "amenable" to considering Ms. Sund's request when it allegedly already believed and was allegedly already investigating—and had received information that—Ms. Sund was subletting in

violation of her lease. Either the August 28th letter was disingenuous, or the landlord did not believe that Petitioner was subletting—if not *both*.

Ms. Sund testified on the first day of the hearing that she never received an August 22nd letter warning her about subletting. The letter was anonymously signed, "The Management." And why didn't Stewart, who said he wrote the letter, testify that *he* posted and mailed it? (KR note 48.) Also, given the weight Respondent places on that letter, why didn't its private investigator interview Mr. Stewart about the details it contained? Why wasn't a declaration from Mr. Stewart presented, at least by the second day of the hearing, five days later?

V. The Residential Rental Adjustment Program and Appeals Board Are Authorized Under Costa-Hawkins to Regulate or Monitor the Grounds for Eviction.

In August 1995, California enacted Civil Code sections 1954.50 through 1954.535, the Costa-Hawkins Rental Housing Act (Costa-Hawkins), which established "what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.'" (*DeZerega v. Meggs* (2000) 83 Cal. App. 4th 28, 41, 99 Cal. Rptr. 2d 366; see Civ.Code § 1954.53, subd. (a).) The effect of this provision was to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351, 119 Cal. Rptr. 2d 741.) However, the Legislature was well aware, however, that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal. App. 4th 488, 492, 130 Cal. Rptr. 2d 819). Accordingly, the Costa Hawkins statute expressly preserved the authority of local governments "to regulate or monitor the grounds for eviction." (Civ.Code § 1954.53, subd. (e).)

A. The Evidence Establishes a Case of Constructive Eviction.

The evidence here establishes a constructive eviction of Ms. Sund because the rent increase Respondent sought meant that Ms. Sund would no longer be able to reside in her unit. She testified she cannot afford a more than doubling of her rent. The rent board cannot meaningfully monitor or regulate the grounds of this eviction without examining the reasons for

it. Petitioner contends that the reason was her request that her boyfriend and baby's father, and later their child, be able to reside in her unit.

Ms. Sund had a right to have the father of her expected child and their daughter move in with her. This right accrued when she notified the landlord of as much. It was improper and offensive for the landlord to insist that Ms. Sund had to wait to "revisit this issue down the road," and it violated her rights. Further, her immediate subsequent phone calls to do just that were ignored by the landlord, until the landlord served her with the Notice of Change of Terms-Rent Increase.

It is illegal to discriminate in housing based on pregnancy or family status, under both state (FEHA, DFEH) and federal (FHA, HUD) law and agency regulations. The landlord cannot impose conditions on Petitioner's exercise of that right. That Respondent ignored the phone calls Petitioner made in an effort to exercise that right was unreasonable—especially after it had stated that it would consider her request, i.e., that it would "revisit this issue". The landlord never responded except by way of a notice of rent increase. This was despite the fact that it had already independently verified that Petitioner was pregnant and who the father was. (KR note 53.) Respondent never asked for any additional information. This evidence establishes an attempted illegal eviction.

B. The Evidence Establishes a Case of Retaliation.

It was within days of Petitioner's request that the Respondent served her with a notice of rent increase. That this occurred within days after Petitioner sought to exercise certain rights provided to her by law. This is undeniable. The *only* response or communication Petitioner *ever* received after seeking to exercise these rights was the notice of rent increase. This was retaliation. Therefore, the rent increase being sought is impermissible.

C. The City of Oakland's Prohibition Against Discrimination and Harassment, as Embodied in OMC Chapter 8.22, Provided the Hearing Officer With the Authority to Consider the Evident Discrimination and Harassment in This Case.

The laws of the State of California and the Housing Element of the General Plan of the City of Oakland prohibit arbitrary discrimination by landlords." (OMC § 8.22.300.) Basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without

good, just, non-arbitrary, non-discriminatory reasons. (*Ibid.*) The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior, including:

[R]epeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy

(See OMC § 8.22.610E, .8.22.640A(15).)

In other short, the purposes of Chapter 8.22 plainly include preventing discrimination and harassment. It is *impossible* to fulfill these purposes without considering evidence of either discrimination or of harassment when there is such evidence. Yet, the hearing officer made it clear during the initial May 30 hearing in this matter that she would not consider evidence of discrimination. Petitioner did not seek to have this evidence considered for the purpose of monetary damages or other affirmative relief. It was offered as a defense to the respondent's attempt to increase her rent [and to thereby effectively evict her]. The hearing officer's refusal to consider this evidence was error.

VII. Petitioner's Unit Is Not Exempt Under Costa Hawkins Since the Vacancy De-Control is Inapplicable Here.

The effect of section 1954.53, subdivision (a)⁵ of Costa-Hawkins is to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (See *Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal. App. 4th 345, 351.) Section 1954.53, subdivision (d)(2) further provides,

⁵Subdivision (a) in relevant part provides that an owner of residential real property may establish the initial rental rate for a dwelling or unit.

If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section *to a lawful sublessee or assignee* [emphasis added].

That Ms. Sund is the original occupant in lawful possession of the subject unit is in uncontested. There is no claim that at any time she notified the owner any intent to vacate or terminate her tenancy.⁶ The dispute here revolves whether or not Ms. Sund has continued to permanently reside in her unit.

The word "permanently" is undefined in Costa-Hawkins *except* with reference to subletting and assignment. (See *ibid*; see also §1954.51.) Yet, implicit in the statutory language is that a rent increase is unwarranted absent the creation of a new tenancy. (See § 1954.53 subd. (a) & (d)(2).)

Here, there was no new tenancy: Contrary to the owner's theory of this case and the hearing officer's decision, there is no substantial or admissible evidence that Ms. Sund sublet or assigned the unit at any time since the inception of her tenancy in July, 2008. For the above reasons, subdivision (d)(2) is inapplicable.

/ / /

Submitted 1/24/19 Paul Kranz
Paul Kranz,
Esq

⁶ Indeed, as she testified on May 30th and as was earlier stated, she continues to retain personal possessions at 633 Alma Street, receive certain items of mail there, use the shower, occasionally eat, take care of her plants, and so forth.

Attachment 1



Jessica Sund

Update

1 message

Thu, Aug 24, 2017 at 10:10 AM

to: 8124m@comcast.com

August 24, 2017

Jessica Sund
833 Alton Ave. #9
Oakland, CA 94610
jessica.sund@gmail.com

Thomas Preston, Property Supervisor
Jamar Apartments, LP
833 Alton Ave.
Oakland, CA 94610
(510) 775-1001
t.preston@jamarlp.com

Dear Mr. Preston,

Please accept this email as written notice that my significant other will be moving into my apartment at 833 Alton Ave. #9, Oakland, CA 94610 this weekend, on August 25th or 26th, 2017. Also, I am pregnant and my baby is expected in October 2017. I am sending this email to you because I do not have a mailing address for you.

Thank you

Sincerely,
Jessica Sund

8/24/17 T. Preston sent email (above) no reply

8/28/17 T. Preston left message re: did you receive email sent 8/24/17? no reply

8/29/17 T. Preston left message: "

no reply

-000069

Attachment 2

000070

Alma Apartments LP

633 Alma
Oakland, CA

Jessica Sund
633 Alma # 5
Oakland, Ca

August 28, 2017

RE: 633 Alma #5 demand.

Dear Ms. Sund:

Thank you for your email and voicemail.

The fundamental problem with your "request" is that it has been couched as a demand. As you know, the operating lease has a "no subletting/no assignment" clause and a "use/occupancy" provision. Nevertheless, this landlord is typically amenable to accommodate tenants who, in good faith, approach the landlord with a particular need which may justify a relaxation or suspension of a lease covenant. However, you did everything but make a reasonable and proper request. Rather, instead of making a request well in advance of the requested move-in date, and thereafter providing necessary information and documentation to management, you unilaterally stated that your significant other will be moving in the next day.

Please be advised that if he does move in, or has already moved in, your lease and tenancy will be terminated for unlawful subletting. If you would like to resolve this issue down the road to a more appropriate request, then management may be more receptive. Additionally, however, the "no subletting" clause in the lease will not be waived and shall be strictly enforced.

This is written confirmation that your request has been denied. Should you have any further questions, please review the lease in which you signed and abide by it in its entirety.

Sincerely,



Thomas Preston

Property Supervisor

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OAKLAND CA 946

07 SEP 2017 PM 7:1

Jessica Mayra Sured
All City Company
633 Alameda Street
Oakland, CA 94610

000072

Attachment 3

THIS NOTICE TO CHANGE TERMS OF TENANCY HEREBY SUPERSEDES AND REPLACES ANY OTHER NOTICE TO CHANGE TERMS OF TENANCY AND/OR ANY OTHER RENT INCREASE NOTICE(S) PREVIOUSLY SERVED UPON YOU.

NOTICE TO CHANGE TERMS OF TENANCY
-RENT INCREASE NOTICE-

To **Jessica Maggie Sund (original occupant), AND ALL SUBTENANTS IN POSSESSION, name(s) unknown**, as well as any other occupant(s) claiming the right to possession of the following residential rental premises:

633 Alma Street, Unit Number 5
City of Oakland, County of Alameda, State of California 94610
--including all associated housing privileges-- (the "Premises")

You are hereby notified that, effective **December 1, 2017**, not less than sixty (60) days after service of this notice is completed upon you, the terms of your tenancy of the Premises will be changed as follows:

The monthly rental thereof will be changed from \$908.67 per month to two thousand ninety five dollars (\$2,095) per month, payable in the advance of the first day each and every month you continue to hold possession of the Premises.

All other terms of the tenancy will remain unchanged.

You are further notified that a negative credit report reflecting on your credit history may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.

You are hereby notified that, pursuant to California Civil Code Section 1954.50, *et seq.* (Costa-Hawkins Rental Housing Act), the Premises and/or your tenancy therein are not subject to the City of Oakland's Rent Adjustment Program (Chapter 8.22 of the Oakland Municipal Code) for purposes of this rent increase. The landlord and owner of the Premises contends that the last original occupant, Jessica Maggie Sund, no longer permanently resides at the Premises, and that all current occupants are subsequent occupants and sublessees who commenced occupancy of the Premises on or after January 1, 1996.

Pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.), please note as follows:

Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment:

(A) Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. However, such a rent increase shall not be permitted while:

(i) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster; and,

(ii) The citation was issued at least 60 days prior to the date of the vacancy; and,

(iii) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(B) This provision shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.

(C) Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

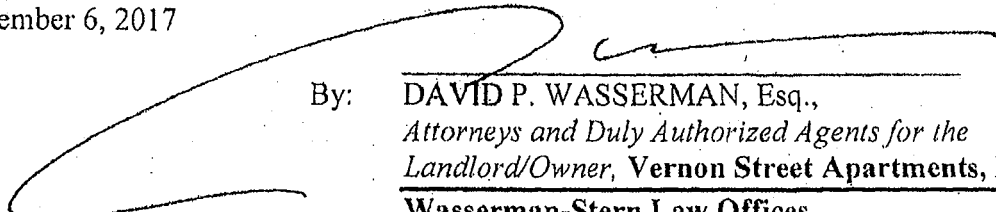
Information regarding this NOTICE may be obtained from the City of Oakland's Rent Adjustment Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612, 510.238.3721, website: www.oaklandnet.com. Please refer to the attached City of Oakland Rent Adjustment Program *Notice to Tenants of Residential Rent Adjustment Program*.

Rent increases imposed pursuant to the Costa-Hawkins Rental Housing Act are effective upon the expiration of the notice period prescribed by California Civil Code section 827 and are not governed by the Rent Adjustment Program.

Questions about this NOTICE may be directed to the undersigned, who is the agent for the landlord and owner.

WASSERMAN-STERN

Dated: September 6, 2017

By:  **DAVID P. WASSERMAN, Esq.,**
Attorneys and Duly Authorized Agents for the
Landlord/Owner, Vernon Street Apartments, LP

Wasserman-Stern Law Offices

2960 Van Ness Avenue

San Francisco, CA 94109

Tel. No.: (415) 567-9600

Fax. No.: (415) 567-9696

Email: dwasserman@wassermanstern.com

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase ("CPI increase") or allowed "banked" rent increases. These include capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed 10%. You have a right to contest the proposed rent increase by responding to the owner's petition. You do not have to file your own petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center: 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at:
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)
- The owner ____ is ____ is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was _____.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____, the unit you intend 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 tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____.

I received a copy of this notice on _____

(Date)

(Tenant's signature)

此份屋寄(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.

DAVID P. WASSERMAN, ESQ. (171923)

(415) 567-9600

WASSERMAN-STERN LAW OFFICES

2960 Van Ness Avenue, Suite B

San Francisco, California 94109

Attorneys for: 633 ALMA STREET

Ref. No. Or File No.

W2683460

Insert name of court, judicial district and branch court, if any:

Plaintiff:

633 ALMA STREET

Defendant:

JESSICA MAGGIE SUND (original occupant)

POS BY MAIL

Hearing Date:

Time:

Dept/Div:

Case Number:

At the time of service I was at least 18 years of age and not a party to this action.

On September 6, 2017, I served the within:

NOTICE TO CHANGE TERMS OF TENANCY - RENT INCREASE NOTICE; NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

on the defendant in the within action by placing a true copy in a sealed envelope with postage fully prepaid for first class in the United States mail at San Francisco, California, addressed as follows:

JESSICA MAGGIE SUND (original occupant); ANY/ALL UNNAMED OCCUPANTS
633 Alma Avenue, Unit 5
Oakland, CA 94610

Person serving:

Scott Lane

Wheels of Justice, Inc.

52 Second Street, Third Floor

San Francisco, California 94105

Phone: (415) 546-6000

a. Fee for service:

d. Registered California Process Server

(1) Employee or independent contractor

(2) Registration No.: 1126

(3) County: San Francisco

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

Date: September 6, 2017

Signature: _____

Scott Lane



Printed on recycled paper

Judicial Council form, rule 982(a) (23)

000077

Attachment 4

Alma Apartments
633 Alma Ave.
Oakland, CA 94610

August 22, 2017

Jessica Sund
633 Alma Apt. 5
Oakland, CA 94610

Dear Jessica Sund,

In the short time that we have taken over the management and ownership of the building, our managers have noticed and received complaints regarding an overabundance of visitors coming and going from unit 5. These visitors seem to be coming and going at all hours of the day, go freely, yet you are not around. What is also troubling is that some of these visitors are disturbing your neighbors and this is their home.

Your neighbors and your landlord require cooperation and consideration. This lease is in your name only. Your lease does not allow for subletting of the premise.

Please review section 11. USE/OCCUPANCY and SUBLETTING in your lease as we believe this is a violation of the days.

Thank you in advance
Sincerely yours,

Management

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PROOF OF SERVICE
Case Number T18-0018

I, the undersigned, certify and attest as follows:

I am over the age of eighteen years and am not a party to the cause within. My business address is 639 San Gabriel Avenue, Albany, California 94706.

On January 24, 2019, I caused the within:

RESIDENTIAL RENT ADJUSTMENT PROGRAM—
PETITIONER JESSICA SUND'S BRIEF IN SUPPORT OF APPEAL;
ATTACHMENTS TO APPEAL

to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

c/o Russell B. Flynn
Vernon Street Apartments, LP, aka Flynn Family Holdings, LLC
1717 Powell Street # 300
San Francisco, California 94133

Gregory McConnell
The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland , California 94607

Executed in Albany in the County of Alameda, California, on January 24, 2019.

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

Gloria Reynolds
Gloria Reynolds

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

**Notice Of Errata and Amended Submission In Support
Of Appeal of Hearing Officer's Decision**

CASE NO. T18-0018

JESSICA SUND,
Petitioner and Tenant

v.

**VERNON STREET APARTMENTS, LP, AKA FLYNN FAMILY HOLDINGS,
LLC.,**
Owner and Respondent.

LAW OFFICES OF PAUL L. KRANZ
PAUL L. KRANZ (BAR NO. 114999)
639 SAN GABRIEL AVENUE
ALBANY CA 94706
(510) 549-5900
kranzlaw@sbcglobal.net

ATTORNEYS FOR PETITIONER
JESSICA SUND

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2019 JAN 29 AM 11:25

NOTICE OF ERRATA

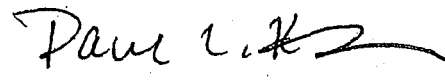
Petitioner submits this Notice of Errata and the attached amended submission in support of her appeal in case no. T18-0018. The attached submission is substantially the same as her submission filed on January 24, 2019, and primarily differs from the submission filed on January 24, 2019 by containing certain format changes, correction of typographical errors, and the inclusion of certain limited additional portions of the testimony at the subject hearing.

For the following reasons, Petitioner also asserts that this submission should be considered and that it should not be considered late. First, as stated in and evidenced by Petitioner's previous filings, the hearing officer's decision was not served by mail until December 26, 2018, as evidenced by the postmarks on the envelopes in which the hearing officer's decision was mailed and received by both Petitioner and her attorney. An appellant is permitted 35 days from the date of mail service to file a notice of appeal and any submissions in support of the appeal (20 days to file the notice of appeal and 15 days thereafter to file submissions). Thirty five days from the date the decision was mailed is January 30, 2019.

Therefore, this submission should be considered timely. Second, Petitioner's attorney Paul L. Kranz has been out of his office and out of state because of the recent very serious illness of an immediate family member. For this reason, he was out of his office, from December 21, 2018 to January 6, 2019 and again from January 21, 2019 to January 25, 2019. Therefore, Petitioner's attorney's very limited availability during this period when the appeal had to be prepared and finalized constitutes good cause to permit this amended submission.

Dated: January 28, 2019

Respectfully submitted,

By: 
Paul L. Kranz

000082

Petitioner Jessica Sund appeals from the decision of Hearing Officer Maimoona Sah Ahmad. Petitioner notes for the record that her petition was filed on November 29, 2018. The hearing commenced six months later, on May 30, 2018, and concluded on June 4, 2018. The decision did not issue for more than six months, on December 20, 2018. According to the proof of service attached to it, it was mailed on December 20, 2018, but the envelopes in which it was contained were postmarked December 26, 2018.

Petitioner also notes for the record that the attachments hereto (other than the attachments which are excerpts from the witnesses' testimony on May 30th and June 4th, 2018) were submitted at the hearing, either by her counsel or Respondent's counsel or both, but have been renumbered for expediency's sake. As for witnesses' testimony, they are marked according to where each excerpt begins and ends in the audio recordings of each day of testimony.

INTRODUCTION

Petitioner Jessica Sund brought the petition because, within days of notifying her landlord that she was pregnant and that her boyfriend and father of her child would begin to stay with her in her apartment, her landlord served her with notice that her rent was being more than doubled. Unable to pay the increased rent, and after consulting with an attorney, she filed this petition and then began to stay in her boyfriend's residence.

Because Ms. Sund's newborn daughter had serious health conditions requiring 24-hour monitoring, it was necessary for her and the baby's father's to live together; moreover, the necessity for monitoring was ongoing. It was absolutely unreasonable for Ms. Sund to consider residing in her apartment under these conditions. Ms. Sund testified on the first day of the hearing that she did and does not know whether the relationship with her daughter's father would be permanent. For this reason, staying with at her boyfriend's home with their child has been intended as "temporary".

The landlord did not present any evidence to contradict these facts. Instead, the landlord contrived the story that Ms. Sund was residing with her boyfriend because she was subletting her unit in order to take advantage of its below-market rent and make a profit. But the landlord did not present an iota of credible and competent evidence to support its claim. With the exception

Of a single claimed sighting by the landlord's "asset manager"—who claimed he once saw a tall, blonde couple speaking German exiting her unit with a luggage—the landlord had no other evidence to support subletting. Indeed, the hearing officer's decision relies heavily on this purported sighting by the asset manager, Lucky Stewart. But Mr. Stewart also testified that this alleged one-time sighting was not the cause of the attempted rent increase. He said it was later sightings, observed by property managers, but who he never identified, and by certain tenants, none of whom testified at the hearing. Nonetheless, the tenants reported nobody coming and going from Ms. Sund's unit, according to testimony of the landlord's private investigator, based on having interviewed them. And the only property manager who did testify—the landlord's own 24/7 on site property manager—stated that she *never* saw any other persons using Ms. Sund's unit and knew of no evidence of subletting. Finally, the private investigator, who the landlord (and the hearing officer) characterized as a qualified "expert" on such matters, opined that Ms. Sund was *not* subletting; i.e., that there was not evidence to support his client's contention.

In light of the evidence, that the hearing officer could find that Ms. Sund's pregnancy, and her request for her baby and her baby's father to be able to stay in her unit, was "merely a ruse to allow her to continue renting¹ out her unit to short-term rentals for her own financial advantage," is simply incredulous..

STATEMENT OF FACTS

Jessica Sund is a 41-year old single woman. She has lived at the subject premises, 663 Alma Street #5, since 2008. She has worked as an elementary and middle school science teacher, and is currently earning a graduate degree in water resource management. On Friday, August 24, 2017, she notified her landlord by written email that she was expecting a baby in October and that her boyfriend and father of her expected newborn, as well as the newborn, would be staying in her unit. (See Attachment 1; Attachment 5 at 1.) In a letter dated August 28, 2017, which Ms. Sund actually received about a week later (it was postmarked September 7), property manager Thomas Preston rejected her request because it had been "couched as a "demand". (See

¹The landlord's "asset manager", Lucky Stewart, testified that the [alleged] subletting stopped shortly after Ms. Sund received the rent increase notice in early September, 2017

Attachment 2.) Per Mr. Preston, any request had to be made "well in advance of the requested move-in date, and thereafter providing necessary information and documentation to management." (*Ibid.*) On the same day Ms. Sund made her request, and on the following day, August 29, 2017, Ms. Sund called Preston three times to further discuss her request. (See Attachment 5 at 1-2; Attachment 1.) Neither Preston nor anyone else responded on behalf of the landlord; Preston did not return her phone messages; and, he did not respond by email or by letter. (See *ibid.*) Instead, the very next communication Ms. Sund received from the landlord was on or about September 6, 2017, when the landlord personally served Ms. Sund with a Notice of Change Terms of Tenancy-Rent Increase Notice [Costa-Hawkins], increasing her rent from \$908.67 to \$2,095, and stating that "Jessica Maggie Sund no longer resides at the Premises and that all current occupants are subsequent occupants and subleases" (See Attachment 3; Attachment 5 at 3.) In fact, there were no other current or subsequent occupants and subleases at the subject premises and Ms. Sund still resided there by herself (See Attachment 5 at 2.)

Ms. Sund's reaction to the rent increase was "fear" because she could not afford more than twice the rent and was about to have a baby. (See Attachment 5 at 4.) Around that time, she began staying with her boyfriend. (See Attachment 5 at 7, 11-12.) She believed that if she continued to stay at the subject premises, including with her boyfriend and then her baby, she would have to pay the increased rent, and she needed the support of her boyfriend, the father of her expected newborn. (See Attachment 5 at 4, 6, 7.) Ms. Sund was 41 years old and this was going to be her first child. She retained counsel and the subject petition was filed.

Ms. Sund also continued to stay with her boyfriend after the baby was born because of medical issues the baby suffered that required 24-hour monitoring. (See Attachment 5 at 4-6.) These were serious medical problems; potentially life-threatening for her newborn daughter. (See *id.* at 6.)

The Hearing Officer's Decision and Findings

The hearing officer's decision relies on testimony from the landlord's "asset manager" Lucky Stewart stating that the subject property was acquired by his employer in June 2017; that shortly thereafter, he received reports from tenants that Ms. Sund was subletting and that there

were strangers with keys to her unit and that Ms. Sund was no longer there²; that he personally observed a tall blond couple with luggage coming out of the unit speaking a foreign language, who ignored him when he tried to speak to them³; and that, based on this information, he had attorney conduct an investigation involving LexisNexis, which identified a second address (the California Street address) "linked to" Ms. Sund and which prompted his attorney to say, "Yeah, she's no longer living there."⁴ He also testified this led him to conduct an internet search in which he located a baby registry connected to Ms. Sund and her boyfriend, Cory Hamrich⁵; and that he also located on-line "couchsurfing[.com]" listings "from them renting out apartments in, under her or Cory's name."⁶ And that, based on this information, he issued a letter dated August 22, 2017, warning Ms. Sund not to sublet.

The August 22 warning letter, signed "The Management," stated that property managers had noticed and received complaints of an "overwhelming amount of random visitors coming and going from [her] unit, and with keys to the unit." (See Attachment 4.) Ms. Sund testified that she never received the letter. (See Attachment 5 at 10.) With the exception of Lucky Stewart's testimony that he had personally observed what he believed to be an "international" couple (tall, blonder, speaking a foreign language), nothing else he testified to was supported by admissible evidence. There was no evidence of any internet search conducted by him or by the landlord's attorney; no evidence of "managers" noticing any suspected sublessees⁷; no evidence of an "overwhelming amount of random visitors." (See Attachments 6-8, inclusive.) As for the

²See Attachment 6 at 1-2

³See Attachment 6 at 2, 15

⁴See Attachment 6 at 2-3

⁵See Attachment 6 at 3, 24,

⁶See Attachment 6 at 3; see also *id.* at 10-11, 7-8

⁷Lucky Stewart was the only "manager" who claimed to have seen any potential sublessees, and he only claimed to have seen on one occasion the German or "international" couple. Moreover, the landlord called the on-site property manager, who testified that she is on site about "24/7", and had never seen *any* such sublessees connected to Ms. Sund's unit.

"couchsurfing"⁸ posts (unsupported by any evidence), Stewart later changed his testimony, saying that he didn't recall or see any reference to any specific address. (See Attachment 6 at 9–10.) He also changed his testimony and said that he did not couchsurfing listing pertaining to Ms. Sund. (See Attachment 6 at 7–8.) The couchsurfing testimony was also hearsay.

Stewart characterized the August 22nd letter, sent after his claimed "international" couple sighting, as a "warning". (See Attachment 6 at 4, 7.) Stewart went on to explain, "Then when we saw that it [subletting] was still continuing, and it was observed that there were still people coming and going and not the tenant, we resorted to serving the Costa-Hawkins [rent increase]." (See *id.* at 4.) Not only were there no documents or declarations or notes to support *any* subletting (persons "coming and going" from Ms. Sund's unit) after August 22 or at *any* time, but there were *no firsthand accounts whatsoever of any person(s) coming and going*, other than the "international" couple Mr. Stewart claimed he'd seen. (See Attachments 6–8.) The only property manager who testified—the landlord's 24/7 on-site property manager Ursula Morales—stated that *she never saw anyone coming and going from Ms. Sund's unit, either*. (See Attachment 7 at 7.) Yet, the lack of evidence of anybody coming and going is nowhere cited or acknowledge in the hearing officer's decision.

Also, after initially testifying that she'd been informed of "strangers coming in and out of" Ms. Sund's unit, Ms. Morales later testified that she'd received just *one* such complaint from a single tenant, in around November or December 2017. (See Attachment 7, inclusive.) The complaining tenant had reported "smoke and noise," apparently attributed to Ms. Sund's unit. (See *id.* at 2.) When Ms. Morales went downstairs to investigate, she found "nothing out of the ordinary" and just some TV noise. (See Attachment *id.* at 3.) The purported complaint was also inadmissible; plainly hearsay. Although Morales testified that this complaint was sent to her by email (See *id.* at p. 5), no email was offered as evidence. And on cross-examination, Morales testified that the complaint was "more about" noise than anything else. (See Attachment 7 at 6.) Finally, when asked by the hearing officer if the extent of the complaint was limited to smoke

⁸A couchsurfing profile for Cory Hamrick remains available at <https://www.couchsurfing.com/people/coryhamrick>. It indicates Mr. Hamrick has not even logged into his account for about three years; i.e., since around 2016.

and noise, Ms. Morales replied, "M-hm" (See *id.* at 7.). However, none of these obvious inconsistencies or lapses in testimony are cited or acknowledged in the hearing officer's decision.

Thus, the evidence demonstrated that between the time that the August 22 "warning" letter was purportedly sent and September 6, when the Costa-Hawkins rent increase notice issued, *nothing new had happened—except that, on August 24th, the owner was notified by Ms. Sund that she was pregnant, and that Mr. Hamrick, the baby's father, would be moving in.*

It should also be noted that the decision incorrectly quotes the landlord's responsive letter dated August 28th as stating that the landlord was agreeable to Ms. Sund's boyfriend and then later their child staying in Ms. Sund's unit: The decision quotes from the letter as follows "[I]f [you] had made a reasonable and proper request well in advance of the move-in date, instead of unilaterally stating that [your] boyfriend was moving in, the landlord *would have been* amenable to accommodating [your] request...and...if the [you wish] to revisit this issue down the road in a more appropriate fashion, then management may be more receptive". (Emphasis added.) The letter does not say that. (See Attachment 4.) It says that the landlord is *typically* "amenable" and that "down the road...management *may be* more receptive" [emphasis added]. Hardly reassuring to a soon-to-be new mother expecting a baby in the 4–6 weeks, whose phone calls and texts to further discuss the issue are ignored, and who then receives a rent increase she cannot afford.

There were also surveillance cameras at the property. According to Stewart's testimony, at the time of the hearing there were about five cameras total. (See Attachment 6 at 18.) These included a camera at the back of the first floor, where Ms. Sund's unit is located. (See *ibid.*) There were also multiple cameras in front of the building. (See *ibid.*) Mr. Stewart testified that he never checked any cameras for recordings of people coming in and out of Ms. Sund's apartment. (See Attachment 6 at 20–21.) When asked why, his incredible answer was, "If I thought it ["whether she's subletting"] was an important issue, I would have presented the footage. We didn't produce the footage.." (See *id.* at 21.) Yet, the decision contains *no reference to the landlord's failure to produce any footage, despite the fact that there were multiple recording cameras on the property.*

Apart from the hearing officer's misplaced reliance on Mr. Stewart's testimony, she also

relied on the testimony of Don MacRitchie, a private investigator hired by the owner. The hearing officer's summary of this testimony concludes, "MacRitchie opined that a preponderance of the evidence supports a conclusion that Ms. Sund's permanent place of residence is not the subject property . . . [.]".⁴ (See Hearing Decision ("Decision") at 6.)

"Permanent place of residence" in the context of Costa-Hawkins is a legal issue, and an expert is prohibited from testifying as to a legal conclusion. "There are limits to expert testimony, not the least of which is the prohibition against admission of an expert's opinion on a question of law. (*Ferreira v. Workmen's Comp. Appeals Bd.* (1974) 38 Cal.App.3d 120; *Summers v. A.L. Gilbert Co.* (1999) Cal. App. 4th 1155, 1178.)

More importantly, the landlord's expert, MacRitchie—after testifying that he'd conducted extensive data-base searches in the course of investigating Ms. Sund's status—testified that he was unable to identify a single individual who'd ever sublet Ms. Sund's unit. (See Attachment 8 at 1.) And he stated that *he had not been able to find any evidence that Ms. Sund was subletting.* (See Attachment 8, inclusive.) *Therefore, his opinion was Ms. Sund was not subletting.* Once again, reference to this testimony is omitted from the decision.

Further, after the first day of testimony, at which he was present throughout, MacRitchie was asked to interview four tenants from the subject premises. (The first day of testimony was Friday, May 30th; the second was June 4th.) He did so. And none of them had knowledge of any other persons associated with Ms. Sund's unit, according to his testimony as follows:

MR. KRANZ: DID ANY OF THEM TELL YOU THAT PERSONS OTHER THAN MS. SUND WERE STAYING THERE?

MACRITCHIE: THEY DIDN'T, THEY THOUGHT IT POSSIBLE.

MR. KRANZ: OKAY. AND WHICH PERSONS TOLD YOU THEY THOUGHT IT POSSIBLE?

MACRITCHIE: ALL DIDN'T HAVE DEFINITE KNOWLEDGE, AND THEY ALL WERE AWARE THAT THERE WERE PEOPLE THAT WERE IN THE BUILDING THAT WEREN'T ASSOCIATED WITH APARTMENTS, AND THEY DIDN'T KNOW FOR

⁴This opinion was offered in Mr. MacRitchie's investigative report on Ms. Sund, rather than during testimony.

CERTAIN WHAT APARTMENT THEY WERE ASSOCIATED WITH. SO THEY THOUGHT THEY WERE SOME TYPE OF SUBTENANTS, BUT THEY COULD NOT DEFINITELY ASSOCIATE WITH MS. SUND'S APARTMENT.

MR. KRANZ: AND DID YOU ASK THEM FOR — IF THEY HAD ANY INFORMATION ABOUT THESE ALLEGED SUBTENANTS ?

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

(See *id.* at 1.)

ARGUMENT

I. There Was Not Substantial Evidence To Support the Decision.

Substantial evidence means more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (See *Richardson v. Perales* (1971) 402 U.S. 389, 401; *Gebhart v. SEC*, 595 F.3d 1034, 1043 (9th Cir. 2010); *Howard ex rel. Wolff v. Barnhart* (Howard) (9th Cir. 2003) 341 F. 3d 1006, 1011.) The records as a whole must be considered, weighing both the evidence that supports and the evidence that detracts from the agency's decision. (See *Mayes v. Massanari* (9th Cir. 2001) 276 F.3d 453, 459; see also *Int'l Union of Painter & Allied Trades v. J & R Flooring, Inc.* (9th Cir. 2011) 656 F.3d 860, 865; *Hawaii Stevedores, Inc. v. Ogawa*, (9th Cir. 2010) 608 F.3d 642, 652 ("The ALJ is expected to consider the record as a whole, including all witness testimony and each medical report, before entering findings"). The court must affirm where there is such relevant evidence as reasonable minds might accept as adequate to support a conclusion, even if it is possible to draw contrary conclusions from the evidence. (See *Howard*, *supra*, at 1011.)

When the record as a whole is reviewed in this case, reasonable minds cannot find that there was adequate evidence to support the conclusions of the hearing officer. Reasonable minds could not differ as to whether the conclusions drawn by the hearing officer were justified by the evidence. Therefore, the decision was not supported by substantial evidence.

II. The Decision Constitutes An Abuse of Discretion.

An abuse of discretion is a plain error, discretion exercised to an end not justified by the

evidence, a judgment that is clearly against the logic and effect of the facts as are found. (*Rabkin v. Oregon Health Sciences Univ.* (9th Cir. 2003) 350 F.3d 967, 977; *In re Korean Air Lines Co., Ltd.* (9th Cir. 2011) 642 F.3d 685, 698 n.11.)

Under the abuse of discretion standard, a reviewing court cannot reverse absent a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of relevant factors. (See *McCullough v. Johnson, Rodenburg & Lauinger, LLC* (9th Cir. 2011) 637 F.3d 939, 953; *Valdivia v. Schwarzenegger* (9th Cir. 2010) 599 F.3d 984, 988 (citing *SEC v. Coldicutt* (9th Cir. 2001) 258 F.3d 939, 941).

The hearing officer's exercise of discretion reflects judgement that was clearly against the logic and effect of the facts. The selective use of evidence, the mischaracterizations and misstatements of other of evidence, and the plain lack of objectivity, as evinced by the decision, demonstrates a judgement inconsistent with logic and the facts. The decision consistently relied on evidence that was inadmissible, while at the same entirely ignoring other material; evidence, much of which was submitted on behalf of the Respondent.

The decision thus reflects an abuse of discretion, demonstrates a lack of objectivity and a prejudice towards Petitioner.

III. In Disregard of the Evidence, the Hearing Officer Arrived at the Unwarranted Conclusion That "The Petitioner's Testimony that She Temporarily Moved from the Alma Street Address to the California Street Address in October of 2017, After Her Request to Have Her Boyfriend Move Into Her Unit Was Denied, is Simply Not Credible"

This conclusion was at best misguided, as was her ancillary conclusion, "It is implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the Ms. Sund's one-bedroom apartment." (See Decision (Statement of Facts and Conclusions) at p. 7.)

Ms. Sund testified that she and her boyfriend had been together just two years; that they were not married; that she did not know if the relationship would be permanent. (See Attachment 5 at 13.) For these reasons, she was not certain about where she would live. She also testified that her baby was born with and still suffered from a serious, even potentially life-threatening condition that required around-the-clock monitoring, a circumstance that required her

to live with her boyfriend. (See Attachment 5 at 5.) This evidence was, further, undisputed.

The phenomena of single women choosing to have children is commonplace in our society, and hardly novel. This is reflected in, for example, the fact that it is now illegal to discriminate based on marital or familial status. In addition, the phenomena of children splitting their time between parents who live in different locations is ubiquitous in our society. Therefore, the hearing officer's above conclusions are unsupported by evidence, are tone-deaf to contemporary realities, and are inconsistent with the evidence that was submitted. Each conclusion was altogether unwarranted.

IV. Under CACI No. 203, The "Evidence" Respondent's Submitted and Cited in the Decision Deserved To Be Viewed With Distrust and Rejected.

California Civil Jury Instruction (CACI) No. 203, entitled *Party Having Power to Produce Better Evidence*, provides as follows:

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

Examples of Respondent's failures to provide stronger evidence when it could have produced stronger evidence are numerous and have been recounted above. They included, but are not limited to, Respondent's failure to produce employee witnesses claimed to have relevant information; its failure to produce documents, video footage, etc. Indeed, testimony from Respondent's *own* witnesses was sufficient to defeat, and should have defeated, its claims. Respondent called three witnesses. Each offered significant evidence contradicting or inconsistent with Respondent's claims. Some examples are:

Respondent's asset manager testified that the sighting of the "international" couple was *not* itself the cause of the rent increase. Respondent's 24/7 on-site property manager testified that she never saw a possible a sublessee and in effect had no evidence that Respondent ever sublet. And Respondent's private investigator, who Respondent and the hearing officer insisted was an expert, could not find any evidence of subletting.

Also, Respondent offered no explanation for why it never responded to the emails and phone calls Ms. Sund made to discuss her boyfriend and their baby staying in her unit.

Moreover, Respondent never explained why its August 28th letter stated that it would be "amenable" to considering Ms. Sund's request when it allegedly already believed that she was subletting and was allegedly already investigating as much. Either the August 28th letter was disingenuous, or the landlord did not believe that Petitioner was subletting—if not *both*.

Ms. Sund testified on the first day of the hearing that she never received an August 22nd letter warning her about subletting. The letter was anonymously signed, "The Management." And why didn't Stewart, who said he wrote the letter, testify that *he* posted and mailed it? (See Attachment 5 at 3.) Also, given the weight Respondent places on that letter, why didn't its private investigator interview Mr. Stewart about the details it contained? Why wasn't a declaration from Mr. Stewart presented, at least by the second day of the hearing, five days later?

V. The Residential Rental Adjustment Program and Appeals Board Are Authorized Under Costa-Hawkins to Regulate or Monitor the Grounds for Eviction.

In August 1995, California enacted Civil Code sections 1954.50 through 1954.535, the Costa-Hawkins Rental Housing Act (Costa-Hawkins), which established "what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.'" (*DeZerega v. Meggs* (2000) 83 Cal. App. 4th 28, 41; Civ.Code § 1954.53, subd. (a).) The effect of this provision was to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351.) However, the Legislature was well aware that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal. App. 4th 488, 492). Accordingly, the Costa Hawkins statute expressly preserved the authority of local governments "to regulate or monitor the grounds for eviction." (Civ.Code § 1954.53, subd. (e).)

A. The Evidence Establishes a Case of Constructive Eviction.

The evidence here establishes a constructive eviction of Ms. Sund because the rent increase Respondent sought meant that Ms. Sund would no longer be able to reside in her unit.

She testified she cannot afford a more than doubling of her rent. The Rent Board cannot meaningfully monitor or regulate the grounds of this eviction without examining the reasons for it. Petitioner contends that the reason was her request that her boyfriend and baby's father, and later their child, be able to reside in her unit.

Ms. Sund had a right to have the father of her expected child and their daughter move in with her. This right accrued when she notified the landlord of as much. It was improper and offensive for the landlord to insist that Ms. Sund had to wait to "revisit this issue down the road," and it violated her rights. Further, her immediate subsequent phone calls to do just that were ignored by the landlord, until the landlord served her with the Notice of Change of Terms-Rent Increase.

It is illegal to discriminate in housing based on pregnancy or family status, under both state (FEHA, DFEH) and federal (FHA, HUD) law and agency regulations. The landlord cannot impose conditions on Petitioner's exercise of that right. That Respondent ignored the phone calls Petitioner made in an effort to exercise that right was unreasonable—especially after it had stated that it would consider her request, i.e., that it would "revisit this issue". The landlord never responded except by way of a notice of rent increase. This was despite the fact that it had already independently verified that Petitioner was pregnant and who the father was. (See Attachment 5 at 6.) Respondent never asked for any additional information. This evidence establishes an attempted illegal eviction.

B. The Evidence Establishes a Case of Retaliation.

It was within days of Petitioner's request that the Respondent served her with a notice of rent increase. That this occurred within days after Petitioner sought to exercise certain rights provided to her by law. This is undeniable. The *only* response or communication Petitioner *ever* received after seeking to exercise these rights was the notice of rent increase. This was retaliation. Therefore, the rent increase being sought is impermissible.

C. The City of Oakland's Prohibition Against Discrimination and Harassment, as Embodied in OMC Chapter 8.22, Provided the Hearing Officer With the Authority to Consider the Evident Discrimination and Harassment in This Case.

The laws of the State of California and the Housing Element of the General Plan of the City of Oakland prohibit arbitrary discrimination by landlords." (OMC § 8.22.300.) Basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without good, just, non-arbitrary, non-discriminatory reasons. (*Ibid.*) The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior, including:

[R]epeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy

(See OMC § 8.22.610E, .8.22.640A(15).)

In sum, the purposes of Chapter 8.22 plainly include preventing discrimination and harassment. It is *impossible* to fulfill these purposes without considering evidence of either discrimination or of harassment when there is such evidence. Yet, the hearing officer made it clear during the initial May 30 hearing in this matter that she would not consider evidence of discrimination. Petitioner did not seek to have this evidence considered for the purpose of monetary damages or other affirmative relief. It was offered as a defense to the respondent's attempt to increase her rent and to thereby effectively evict her. The hearing officer's refusal to consider this evidence was error.

VII. Petitioner's Unit Is Not Exempt Under Costa Hawkins Since the Vacancy De-Control is Inapplicable Here.

The effect of section 1954.53, subdivision (a)⁵ of Costa-Hawkins is to permit landlords

⁵Subdivision (a) in relevant part provides that an owner of residential real property may establish the initial rental rate for a dwelling or unit.

"to impose whatever rent they choose at the commencement of a tenancy." (See *Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal. App. 4th 345, 351.) Section 1954.53, subdivision (d)(2) further provides,

If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section *to a lawful sublessee or assignee* [emphasis added].

That Ms. Sund is the original occupant in lawful possession of the subject unit is in uncontested. There is no claim that at any time she notified the owner any intent to vacate or terminate her tenancy.⁶ The dispute here revolves whether or not Ms. Sund has continued to permanently reside in her unit.

The word "permanently" is undefined in Costa-Hawkins *except* with reference to subletting and assignment. (See *ibid*; see also §1954.51.) Yet, implicit in the statutory language is that a rent increase is unwarranted absent the creation of a new tenancy. (See § 1954.53 subd. (a) & (d)(2).)

Here, there was no new tenancy: Contrary to the owner's theory of this case and the hearing officer's decision, there is no substantial or admissible evidence that Ms. Sund sublet or assigned the unit at any time since the inception of her tenancy in July, 2008. For the above reasons, subdivision (d)(2) is inapplicable.

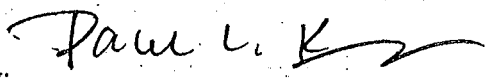
CONCLUSION

For the foregoing reasons, this appeal should be granted.

Dated: January 28, 2019

Respectfully submitted,

LAW OFFICES OF PAUL L. KRANZ

By: 
Paul L. Kranz

⁶ Indeed, as she testified on May 30th and as was earlier stated, she continues to retain personal possessions at 633 Alma Street, receive certain items of mail there, use the shower, occasionally eat, take care of her plants, and so forth.

PROOF OF SERVICE

(Case Number T18-0018)

I, the undersigned, certify and attest as follows:

I am over the age of eighteen years and am not a party to the cause within. My business address is 639 San Gabriel Avenue, Albany, California 94706.

On January 29, 2019, I caused the within:

**NOTICE OF ERRATA AND AMENDED SUBMISSION IN SUPPORT
OF APPEAL OF HEARING OFFICER'S DECISION**

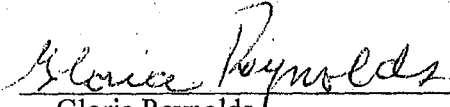
to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

c/o Russell B. Flynn
Vernon Street Apartments, LP, aka Flynn Family Holdings, LLC
1717 Powell Street # 300
San Francisco, California 94133

Gregory McConnell
The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland , California

Executed Albany, California on January 29, 2019.

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


Gloria Reynolds

000097

Attachment 1

THE JURY HAS REACHED A VERDICT

[REDACTED]

THE COURT HAS READ THE VERDICT TO THE JURY AND THE JURY HAS RETURNED A VERDICT OF GUILTY TO THE CHARGE OF FIRST DEGREE MURDER. THE COURT HAS ENTERED A JUDGMENT OF GUILTY AND A SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

[REDACTED]

Attachment 2

Alma Apartments LP

1234 Ave
Oakland, CA

Alma Apartments
1234 Ave
Oakland, CA

RE: 1234 Ave. 12/1/10

Dear Mr. Smith:

Thank you for your letter of 12/1/10.

We are sorry to hear that you are having trouble with your car.

We will try to help you in any way we can.

Please let us know if you need any more help.

We will be happy to assist you.

Thank you for your patience.

We will be in touch with you again.

We will be in touch with you again.

We will be in touch with you again.

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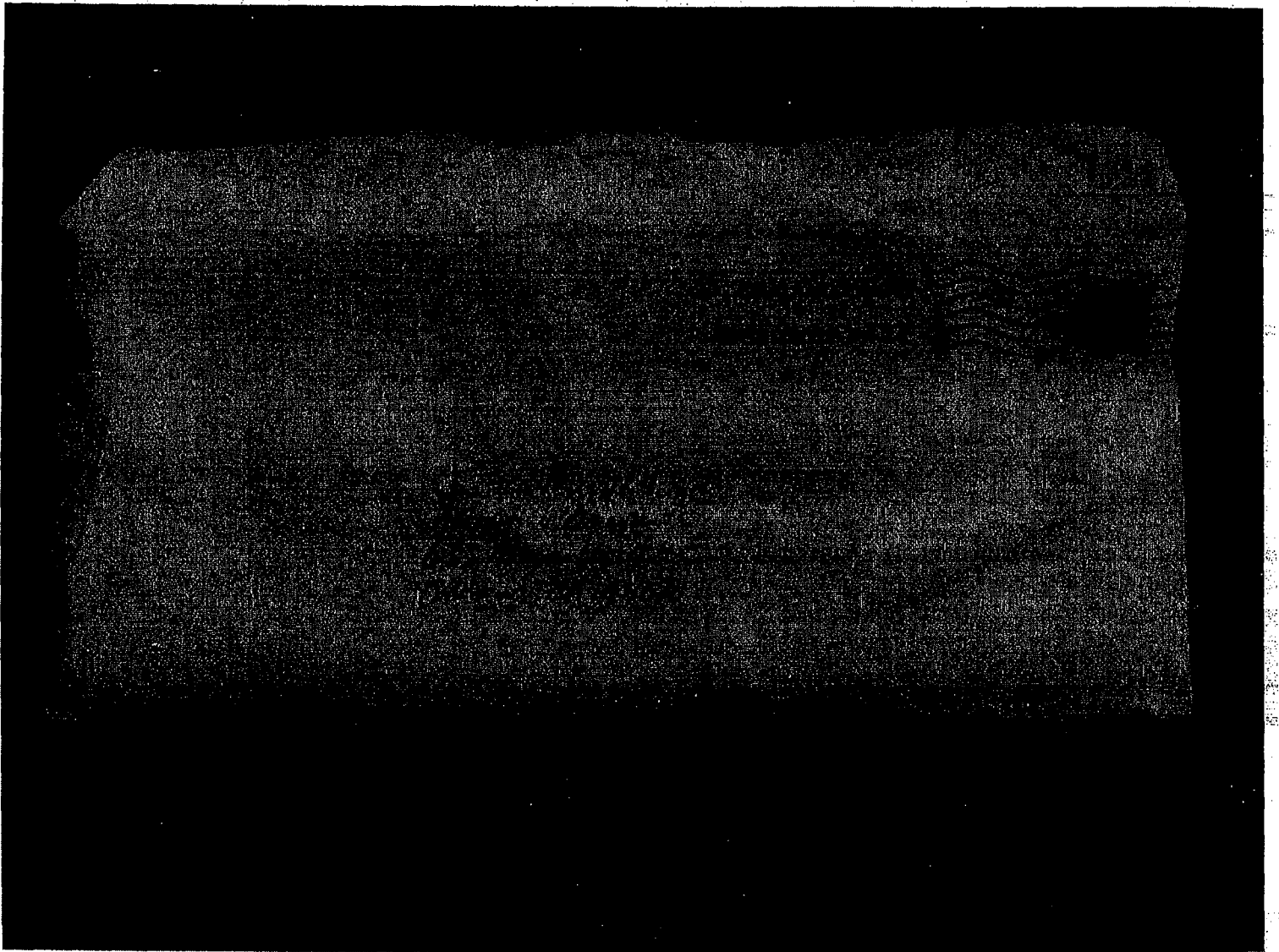
Sincerely,



Thomas Friedman

Property Supervisor

000101



Attachment 3

THIS NOTICE TO CHANGE TERMS OF TENANCY HEREBY SUPERSEDES AND REPLACES ANY OTHER NOTICE TO CHANGE TERMS OF TENANCY AND/OR ANY OTHER RENT INCREASE NOTICE(S) PREVIOUSLY SERVED UPON YOU.

NOTICE TO CHANGE TERMS OF TENANCY
- RENT INCREASE NOTICE -

To Jessica Maggie Sund (original occupant), AND ALL SUBTENANTS IN POSSESSION, name(s) unknown, as well as any other occupant(s) claiming the right to possession of the following residential rental premises:

633 Alma Street, Unit Number 5
City of Oakland, County of Alameda, State of California 94610
--including all associated housing privileges-- (the "Premises")

You are hereby notified that, effective December 1, 2017, not less than sixty (60) days after service of this notice is completed upon you, the terms of your tenancy of the Premises will be changed as follows:

The monthly rental thereof will be changed from \$908.67 per month to two thousand ninety five dollars (\$2,095) per month, payable in the advance of the first day each and every month you continue to hold possession of the Premises.

All other terms of the tenancy will remain unchanged.

You are further notified that a negative credit report reflecting on your credit history may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

You are hereby notified that, pursuant to California Civil Code Section 1954.50, *et seq.* (Costa-Hawkins Rental Housing Act), the Premises and/or your tenancy therein are not subject to the City of Oakland's Rent Adjustment Program (Chapter 8.22 of the Oakland Municipal Code) for purposes of this rent increase. The landlord and owner of the Premises contends that the last original occupant, Jessica Maggie Sund, no longer permanently resides at the Premises, and that all current occupants are subsequent occupants and sublessees who commenced occupancy of the Premises on or after January 1, 1996.

Pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, *et seq.*), please note as follows:

Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment:

(A) Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. However, such a rent increase shall not be permitted while:

(i) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster; and,

(ii) The citation was issued at least 60 days prior to the date of the vacancy; and,

(iii) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(B) This provision shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.

(C) Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

Information regarding this NOTICE may be obtained from the City of Oakland's Rent Adjustment Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612, 510.238.3721, website www.oaklandnet.com. Please refer to the attached City of Oakland Rent Adjustment Program Notice to Tenants of Residential Rent Adjustment Program.

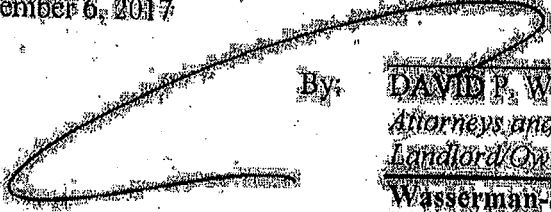
Rent increases imposed pursuant to the Costa-Hawkins Rental Housing Act are effective upon the expiration of the notice period prescribed by California Civil Code section 827 and are not governed by the Rent Adjustment Program.

Questions about this NOTICE may be directed to the undersigned, who is the agent for the landlord and owner.

Dated: September 6, 2017

WASSERMAN-STERN

By:


DAVID P. WASSERMAN, Esq.
Attorneys and Duly Authorized Agents for the
Landlord/Owner, Vernon Street Apartments, LP
Wasserman-Stern Law Offices
2960 Van Ness Avenue
San Francisco, CA 94109
Tel. No.: (415) 567-9600
Fax No.: (415) 567-9696
Email: dwasserman@wassermanstern.com

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3264

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase ("CPI" increase) or allowed "banked" rent increases. These include capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed 10%. You have a right to contest the proposed rent increase by responding to the owner's petition. You do not have to file your own petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at <http://www2.oaklandnet.com/Government/6thFloor/RentAdjustment>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600), (City Council Ordinance No. 13265 C.M.S.)
- The owner is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was _____.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____, the unit you intend 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 tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. If it is located at _____.

I received a copy of this notice on _____

(Date)

(Tenant's signature)

此份屋券(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.

Attorney or Party Without Attorney (Name and Address) DAVID P. WASSERMAN, ESQ. (171-23) WASSERMAN STERN LAW OFFICES 2960 Van Ness Avenue, Suite B San Francisco, California 94109 Telephone: _____		FOR COURT USE ONLY RETURN OF FILING W2683460
Attorney for: 633 ALMA STREET Insert name of court, judicial district and branch court, if any: _____		
Plaintiff: 633 ALMA STREET		
Defendant: JESSICA MAGGIE SUND (original occupant)		
Method of Service: POS BY MAIL	Hearing Date: _____	Date Filed: _____

At the time of service, I was at least 18 years of age and not a party to this action.
 On September 6, 2017, I served the within:

NOTICE TO CHANGE TERMS OF TENANCY - RENT INCREASE NOTICE; NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

on the defendant in the within action by placing a true copy in a sealed envelope with postage fully prepaid for first class in the United States mail at San Francisco, California, addressed as follows:

JESSICA MAGGIE SUND (original occupant); ANY/ALL UNNAMED OCCUPANTS
633 Alma Avenue, Unit 5
Oakland, CA 94610

Person serving:
 Scott Lane
 Wheels of Justice, Inc.
 52 Second Street, Third Floor
 San Francisco, California 94105
 Phone: (415) 546-6000

a. Fee for service:
 d. Registered California Process Server
 (1) Employee or independent contractor
 (2) Registration No. 1126
 (3) County: San Francisco

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

Date: September 6, 2017

Signature: _____
 Scott Lane



Printed on recycled paper

Judicial Council form, GLE 982(a) (23)

000107

CHRONOLOGICAL CASE REPORT

Case No.: T17-0221

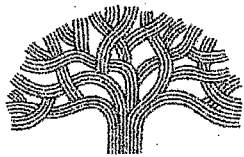
Case Name: Kaufman v. Nguyen

Property Address: 4016 Kansas St., Apt. 'D', Oakland, CA

Parties: Michael Kaufman (Tenant)
Jennifer Nguyen (Owner)
James E. Vann (Tenant Representative)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	March 30, 2017
Owner Response filed	May 25, 2017
Hearing Decision issued	September 12, 2017
1 st Tenant Appeal filed	September 29, 2017
Tenant submitted Appeal Summary	June 5, 2018
Remand Hearing Decision issued	January 16, 2019
2 nd Tenant Appeal filed	February 5, 2019



CITY OF OAKLAND

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

2017 MAR 30 PM 4:40

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

T17-0221 RC/SK

Your Name Michael Kaufman	Rental Address (with zip code) 4016 Kansas St Apt D Oakland, CA 94619	Telephone: _____ E-mail: _____
Your Representative's Name James Vann	Mailing Address (with zip code) 251 Wayne Ave Oakland, CA 94606	Telephone: 510-763-0142 Email: _____
Property Owner(s) name(s) Jennifer Nguyen	Mailing Address (with zip code) 88 Eureka Sq Pacifica, CA 94044	Telephone: _____ Email: _____
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: _____ Email: _____

Number of units on the property: 4

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 Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked

Rev. 2/10/17

For more information phone (510) 238-3721.

1

000109

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

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

Date you moved into the Unit: 7-23-2013 Initial Rent: \$ 1,250.00 /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: 7-24-16 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		
2-9-17	4-1-17	\$1250.00	\$1273.75	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2-9-17	4-1-17	\$1273.75	\$1295.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2-9-17	4-1-17	\$1250.00	\$1275.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* 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:

T16-0482

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.

Michael Kaufman
Tenant's Signature

3-30-17
Date

Rent increase notice of 2-9-17 attached.

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): _____



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

For date stamp.
RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2017 MAY 25 PM 2:25
PROPERTY OWNER
RESPONSE

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

CASE NUMBER T - T17 - 0221

Your Name <i>Jennifer Nguyen</i>	Complete Address (with zip code) <i>3718 Green Acre Rd Oakland CA 94619</i>	Telephone: <i>510-555-1234</i>
Your Representative's Name (if any) <i>Michael Kaufman</i>	Complete Address (with zip code) <i>4016 Kansas St APT. D Oakland CA 94619</i>	Telephone: <i>510-555-1234</i>
Tenant(s) Name(s)	Complete Address (with zip code)	
Property Address (If the property has more than one address, list all addresses)		Total number of units on property

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

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

Date on which you acquired the building: 1/1/94

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

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

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

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are justifying additional contested increases, please attach a separate sheet.

II. RENT HISTORY If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on 7/23/2013

The tenant's initial rent including all services provided was: \$ 1,250 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?
Yes ☒ No ☐ I don't know ☐

If yes, on what date was the Notice first given? 7/24/2016

Is the tenant current on the rent? Yes ☒ No ☐

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
<u>2.9.17</u>	<u>4.4.17</u>	\$ <u>1250</u>	\$ <u>1320.82</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

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.

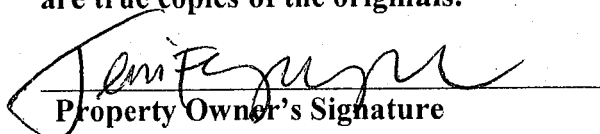
☐ The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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

5.9.17
Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

File Review

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

Mediation Program

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

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

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

Property Owner's Signature

Date

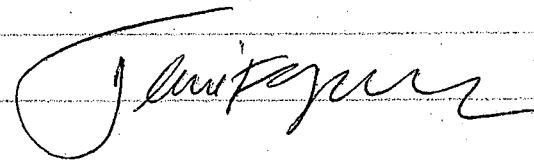
Dear Hearing Officer:

My Tenant Michael Kaufman
has been paying \$1,273.75 since
April 1, 2017.

Please adjust my increase
accordingly through your
decision. I am due \$1,320
through banking justification

RECEIVED
CITY OF OAKLAND
DHCD/ON

2017 MAY 25 PM 2:30



5-26-17

000117

Rent Increase Notice

(60 DAY NOTICE)

Date: February 9, 2017

From: Jennifer Nguyen

Tenant's Name: Michael Kaufman

4016 Kansas Street Oakland Ca. 94619 APT #D

This notice is to inform you that there will be an increase of 5.6% from \$1,250 to \$1,320. This will take effect on April 1, 2017.

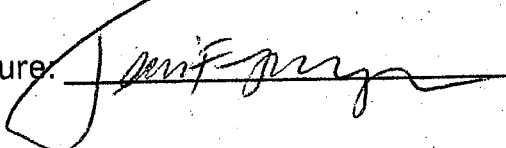
Justification for rent increase:

You moved into 4016 Kansas St Apt. D on 7/23/2013. I am using banked rent increases for the following anniversaries:

- **(7/23/14 @ 1.9%), (7/23/2015 @ 1.7%) and (7/23/16 @ 2.0%) as allowed by the Rent Adjustment Program. I am also including the notice of the Residential Rent Adjustment Program to this notice.**

If you have any questions regarding this matter, please contact me

Tenants Name: Michael Kaufman

Landlord's Signature: 

Date: 2-9-17

000118

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. It does not apply to subsidized units, most single family dwellings, condominiums and some other types of units. For more information on which units are covered, contact the RAP office.
- 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 ("CPI increase"). An owner can increase rent more than the CPI rate, but with limits, for: capital improvements, operating expense increases, and deferred annual rent increases ("banking"). No annual rent increase may exceed 10%. The owner 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 the owner decreases your housing services, this may be an increase in your rent. Decreased housing services include substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP within sixty (60) days of whichever is later: (1) the date the owner served the rent increase notice; or (2) the date you first received this Notice To Tenants. Information and the petition forms are available from the RAP office: 250 Frank H. Ogawa Plaza, 6th Fl., Oakland, CA 94612 or: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. After your petition is filed, if the rent increase notice separately states the amount of the CPI rate, you have to pay your rent plus the CPI increase. If the CPI rate has not been stated separately, you may pay the rent you were paying before the rent increase notice. If the increase is approved and you did not pay it you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Your payment for the annual fee is not part of the rent. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____, the unit you intend 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 tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____

I received a copy of this notice on 2.9.17
(Date)

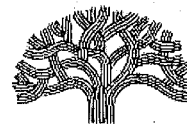
Michael Kaufman
(Tenant's signature)

此份屋寄(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.

Bản Thông Báo quyền lợi của người thuê trong Oakland ngày càng có bằng tiếng Việt. Nếu có mặt bản sao, xin gọi (510) 238-3721.

000119



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0221, Kaufman v. Nguyen
PROPERTY ADDRESS: 4016 Kansas St., #D, Oakland, CA
DATE OF HEARING: August 18, 2017
DATE OF DECISION: September 8, 2017
APPEARANCES: Michael Kaufman (Tenant)
Jennifer Nguyen (Owner)
James E. Vann (Tenant Representative)

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on March 30, 2017, which alleges that proposed rent increases from \$1,250 to \$1,273.75 and from \$1,273.75 to \$1,295 per month, effective April 1, 2017, exceed the CPI Adjustment and are unjustified or are greater than 10%; that the CPI or banked rent increase was calculated incorrectly; and that he did not receive the form Notice to Tenants (RAP Notice) together with either contested rent increase.

The owner filed a response to the petition, which alleges that the tenant was given a rent increase notice from \$1,250 to \$1,320.82, effective April 1, 2017; that the tenant was given a RAP Notice together with this rent increase notice; and that the proposed rent increase is justified by Banking.

000120

THE ISSUES

- (1) What is the amount of the proposed rent increase?
- (2) Did the tenant receive the RAP Notice together with the subject rent increase notice?
- (3) Is a rent increase based upon Banking justified and, if so in what amount?

EVIDENCE

The Proposed Rent Increase: At the Hearing, the parties agreed that the tenant was given a rent increase notice which states that the rent would be increased from \$1,250 to \$1,320 per month, effective April 1, 2017.¹

RAP Notice: The tenant testified that he received the RAP Notice in July 2016 and together with the rent increase notice described in the prior paragraph.

Rent History: Both the petition and response state that the tenant moved into the subject rental unit on July 23, 2013, at a rent of \$1,250 per month. The tenant testified that he paid rent of \$1,275 per month since April 2017, and that he would continue to pay this amount until he receives a Hearing Decision in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Proposed Rent Increase: It is found that the rent increase at issue in this case is from \$1,250 to \$1,320 per month, effective April 1, 2017.

RAP Notice: It is found that the tenant received the RAP Notice in the year 2016 and also together with the contested rent increase notice.

Banking: An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.² The parties agree on the dates and rent amounts entered into the Banking calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.³ Therefore, as set forth in this Table, the maximum rent for the tenant's unit is \$1,321.31 per month, effective April 1, 2017. This is slightly more than the amount stated in the rent increase notice. Since a rent increase cannot be more than what is stated in a notice of rent increase, the rent is \$1,320 per month, effective April 1, 2017.

Rent Underpayments: The tenant paid rent of \$1,275 per month for the 6 months from April through September 2017. This is an underpayment of \$45 per month, a total of \$270. The underpayment is ordered repaid over a period of 3 months.⁴ The rent is temporarily increased by \$90 per month, to \$1,410 per month, beginning with the rent payment in October 2017 and ending with the rent payment in December 2017.

¹ Exhibit No. 1, which was admitted into evidence without objection.

² O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

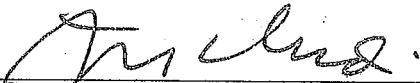
³ Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III et al. The Board has designated this decision to be a Precedent Decision.

⁴ Regulations, Section 8.22.110(F)

ORDER

1. Petition T17-0221 is denied.
2. The rent, before a temporary increase due to underpaid rent, is \$1,320 per month, effective April 1, 2017. However, the tenant has underpaid rent in the total amount of \$270. This underpayment is adjusted over a period of 3 months.
3. The rent is temporarily increased by \$90 per month, to \$1,410 per month, beginning with the rent payment in October 2017 and ending with the rent payment in December 2017.
4. In January 2018, the rent will return to \$1,320 per month.
5. The Anniversary Date for future rent increases is April 1.
6. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: September 8, 2017



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

P.O. Box 70243
Oakland, CA 94612
(510) 238-3721

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	23-Jul-2013	MUST FILL IN D9, D10, D11 and D14	Case No.:	T17-0221	CHANGE YELLOW CELLS ONLY
Effective date of increase	1-Apr-2017		Unit:		
Current rent (before increase and without prior cap. improve pass-through)	\$1,250				
Prior cap. imp. pass-through					
Date calculation begins	23-Jul-2013	If the planned increase includes other than banking put an X in the box→			
Base rent when calc.begins	\$1,250				

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
7/23/2016				2.0%	\$ 25.91	\$ 1,321.31
7/23/2015				1.7%	\$ 21.65	\$ 1,295.40
7/23/2014				1.9%	\$ 23.75	\$ 1,273.75
7/23/2013				-	-	\$1,250

Calculation of Limit on Increase

Prior base rent	\$1,250.00
Banking limit this year (3 x current CPI and not more than 10%)	6.0%
Banking available this year	\$ 71.31
Banking this year + base rent	\$ 1,321.31
Prior capital improvements recovery	\$ -
Rent ceiling w/o other new increases	\$ 1,321.31

PROOF OF SERVICE

Case Number T17-0221

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 Hearing Decision 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:

Tenant

Michael Kaufman
4016 Kansas St #D
Oakland, CA 94619

Owner

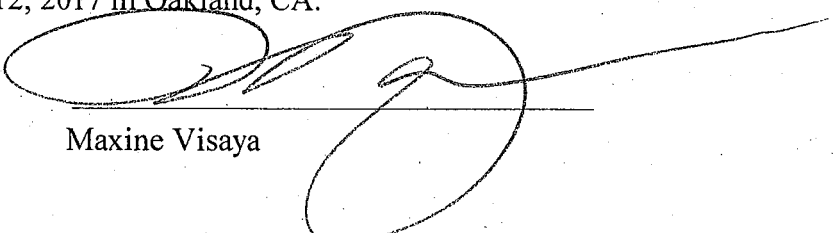
Jennifer Nguyen
88 Eureka Sq
Pacifica, CA 94044

Tenant Representative

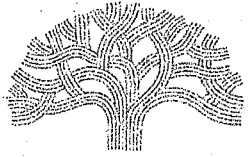
James Vann
251 Wayne Ave
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 12, 2017 in Oakland, CA.


Maxine Visaya

000124



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp

2017 SEP 29 PM 2:45

APPEAL

Appellant's Name Michael Kaufman		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 4016 Kansas St Apt D, Oakland, CA 94619			
Appellant's Mailing Address (For receipt of notices) 4016 Kansas St Apt D, Oakland, CA 94619		Case Number T17-0221	
		Date of Decision appealed September 8, 2017	
Name of Representative (if any) James Vann		Representative's Mailing Address (For notices) 251 Wayne Ave, Oakland, CA 94606	

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 are limited to 25 pages from each party. Please number attached pages consecutively.
Number of pages attached: _____.

You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.

I declare under penalty of perjury under the laws of the State of California that on
September 29, 2017, 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>	Jennifer Nguyen
<u>Address</u>	88 Eureka Sq
<u>City, State Zip</u>	Pacifica, CA 94044
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

Michael Kaufman	9-29-17
-----------------	---------

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 of the information required or your appeal cannot be processed and may be dismissed.
- Any supporting argument or documentation to be considered by the Board must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal.
- 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 as to jurisdiction, 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.

For more information phone (510) 238-3721.

Appeal of Decision of RAP Case T17-0221 heard on 8/18/17 by Hearing Officer Stephen Kasdin and decided on 9/8/17 with date of service of 9/12/17. This Appeal is filed on 9/29/17

Background for this Appeal

This case is a re-litigation of RAP Case No. T16-0482, heard on 12/8/16 by Hearing Officer Barbara Kong Brown, Esq., and decided in favor of the Tenant, Michael Kaufman, on 12/28/16.

That older case involved the Property Owner demanding banking to increase the rent from a previously signed 2014 lease, and also demanding continuing rent increases for 2015 and a new increase in 2016.

The result of that case was that, since I, the Tenant, had not been given a timely "Notice to Tenants of the RAP", the rent increase demands going back to 2014 were not proper and the Tenant's rent, my rent, should revert to the amount, \$1,250.00, listed in the signed lease.

Now, for this case, T17-0221, the Property Owner is again demanding an increase based on the same banking rejected in case T16-0482, this time for years, 2014 and 2015. The rent increase demanded is \$70 dollars or a 5.6% increase.

I have already, in April 2017, voluntarily increased my rent by the then allowed CPI of 2%. I am now paying \$1,275 per month. I do not want to pay the unfair and previously litigated and rejected rent increase to \$1,320.

Reasons for Appeal

A. Section "Contentions of the Parties" is wrongly stated.

A.1. I did not contend that "Tenant did not receive RAP Notice together with either contest rent increase."

A.2. I did contend (see attached note delivered to Hearing Officers and parties dated 8/18/17) that the Rap Notice, only first received in July 2016, did not and could not cover the years 2014-2015 and 2015-2016. These are the years that are now being referenced for banking.

A.3. I did contend that I did not dispute the 2017 2% rent increase and was paying that increase, but this contention was not listed in the "Contentions of the Parties."

A.4. I did contend that the decision of Case T16-0482, heard on 12/8/16 by hearing officer Barbara Kong Brown, Esq. determined that the RAP Notice's date of July 2016, did not allow increases of rent based on banking 2014 or 2015, but this contention was not listed in the "Contentions of the Parties."

This last contention, and any reference to prior Case T16-0482 is completely absent from the "Contentions of the Parties" section of the current Case T17-0221 being appealed. That prior case's decision was specifically referenced in both my 8/18/17 note delivered at the hearing and in my original petition, filed 3/30/17.

B. Section "The Issues" is partly stated wrongly.

B.1. The issue is not "What is the amount of the proposed rent increase?" This issue should be which of the three proposed rent increases are valid:

- (1) the one labeled in the rent increase notice as 7/23/14 for 1.9%,
- (2) the one labeled in the rent increase notice as 7/23/15 for 1.7%,
- (3) the one labeled in the rent increase notice as 7/23/16 for 2.0%,

B.2. The issue is not "Did the tenant receive the RAP Notice together with the subject rent increase notice?" The issue is whether the RAP notice was delivered in a timely manner with respect to years 2014 & 2015. The last issue, "Is a rent increase based upon Banking justified and, if so in what amount?", is the correct issue.

C. Section "Evidence" is wrongly stated.

"The Proposed Rent Increase" only states the sum of three rent increases. The hearing dealt extensively with the three rent increases, not just the sum. The tenant emphasized that the sum must be broken down into the three separate rent increases, all demanded at the same time. This is left out of this "Evidence" section.

D. Section "Findings of Fact and Conclusions of Law" is wrongly stated.

D.1. "The Proposed Rent Increase" should not be found as one sum, but based on evidence from

- (1) the Owner's Rent Increase Notices, and
- (2) the tenant's filed petition, and
- (3) the tenant's argument at the hearing (see 8/18/17 note)

it should be found that there are three rent increases in one, and that two of them are being protested and appealed.

D.2. The "Banking" finding in this decision references O.M.C Section 8.22.070(C). But this finding does not take into account O.M.C. Section 8.22.070 (H.3) or the finding of the prior Case T16-0482.

D.3. Prior Case T16-0482 found that banked rent increases for 7/23/14 and 7/23/15 were invalid due to violation of O.M.C. 8.22.060 (A), 8.22.070(H.1) and 8.22.060(C).

D.4. Current Case T17-0221 should also find that banking is invalid for those prior years based on O.M.C. 8.22.070(H.3) since no RAP Notice was delivered in those years. This O.M.C section states:

O.M.C. 8.22.070 Rent adjustments for occupied covered units

...

H. Notice Required to Increase Rent or Change Other Terms of Tenancy.

...

3. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required by this section invalidates the rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision. If the owner fails to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment, as required by Subsection 8.22.070H.1.c., the amount of the rent increase in excess of the CPI Rent Adjustment is invalid.

For these reasons I appeal this case. Michael Kaufman *M Kaufman* Date: 9-29-17

Remarks of Michael Kaufman to be given at a hearing on 8/18/17 of RAP Case No. T17-0221 filed on 5/25/17.

This case is a re-litigation of RAP Case No. T16-0482, heard on 12/8/16 by hearing officer Barbara Kong Brown, Esq., and decided in favor of the Tenant, Michael Kaufman, on 12/28/16.

That older case involved the Property Owner demanding banking to increase the rent from a previously signed 2014 lease, and also demanding continuing rent increases for 2015 and a new increase in 2016.

The Property Owner provided a "Notice to Tenants of the RAP" for the first time only on July 24th, 2016, the same day the Property Owner demanded the increase in rent from prior years, thus prompting the Tenant's petition which resulted in RAP Case T16-0482

The result of that case was that, since I, the Tenant, had not been given a timely "Notice to Tenants of the RAP", the rent increase demands going back to 2014 were not proper and the Tenant's rent, my rent, should revert to the amount, \$1,250.00, listed in the signed lease.

Now, for this case, T17-0221, the Property Owner is again demanding an increase based on the same banking rejected in case T16-0482, this time for years, 2014, 2015 and 2016. The rent increase demanded is \$70 dollars or a 5.6% increase.

I have already, in April 2017, voluntarily increased my 2017 rent by the allowed CPI of 2%. I am now paying \$1,275 per month. I do not want to pay the unfair and previously litigated and rejected rent increase to \$1,320.

Sincerely,
Michael Kaufman
323-632-2980

Michael Kaufman

Summary of Tenant's Appeal of Case T17-0221 - 6/05/18

Appeal of Case T17-0221; Date of Hearing: 8/18/17; Date of Decision: 9/8/17; Date of Appeal Hearing: 6/21/18

This appeal is based on the fact that I, Michael Kaufman (the tenant), only received a RAP notice in July 24, 2016, but the owner is demanding banking for 2014, 2015 and 2016. This appeal is also based on the fact that Hearing Officer Kasdin ignored my previous case, T16-0482, held on the exact same issues. That case was decided in my favor on 12/28/16 by Hearing Officer Kong Brown. I have included that decision in my submissions.

Therefore Mr. Kasdin's 2017 decision should be overturned and the 2016 decision of Ms. Kong Brown should be re-instated.

That 2016 case involved the owner demanding banking to increase the rent from a previously signed 2014 lease, and also demanding continuing rent increases for 2015 and a new increase in 2016.

I signed a lease with the owner in 2014. I only received a RAP notice in July 2016, but the owner demanded banking for 2014, 2015 and 2016.

The date of the RAP notice and the denials of the owner's demands were found to be correct in Ms. Kong Brown's decision of case T16-0482.

My appeal statement in this current case, T17-0221, states in detail each of Mr. Kasdin's mistakes:

- the four mistakes Mr. Kasdin made in the "Contention of the Parties" section of his decision,
- the two mistakes Mr. Kasdin made in "The Issues" section of his decision,
- the major mistake Mr. Kasdin made in the "Evidence" section of his decision
- the four mistakes Mr. Kasdin made in the "Findings of Fact and Conclusions of Law" section of his decision

Each of these eleven mistakes is detailed in my appeal statement. Mr. Kasdin decision in T17-0221 did not follow the Oakland Municipal Code law which states in O.M.C. 8.22.070 (H3):

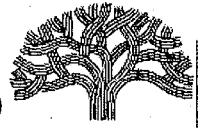
"H. Notice Required to Increase Rent or Change Other Terms of Tenancy ...

"H3. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required by this section invalidates the rent increase or change of terms of tenancy."

The owner provided a "Notice to Tenants of the RAP" for the first time only on July 24th, 2016, the same day the that the owner demanded the increase in rent from prior years, thus prompting my petition which resulted in RAP Case T16-0482, which was decided in my favor.

The result of that case was that, since I, the tenant, had not been given a timely "Notice to Tenants of the RAP", the rent increase demands going back to 2014 were not proper and the tenant's rent, my rent, should revert to the amount, \$1,250.00, listed in the signed lease.

Now, in this case, T17-0221, the owner is again demanding an increase based on the same banking rejected in case T16-0482, this time for years, 2014, 2015 and 2016. The rent increase demanded is \$70 dollars or a 5.6% increase. Mr. Kasdin not only decided incorrectly to allow this increase, but also decided that I should pay back rent of \$270, thus temporarily increasing my rent by \$90. In April 2017 I voluntarily increased my 2017 rent by the allowed CPI of 2%. I am now paying \$1,275 per month. The decision of Mr. Kasdin is wrong for the numerous reasons stated in my appeal statement. The decision of Ms. Kong Brown should be reinstated.



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

Department of Housing and Community Development
Rent Adjustment Program

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

REMAND DECISION

CASE NUMBER: T17-0221, Kaufman v. Nguyen
PROPERTY ADDRESS: 4016 Kansas St., #D, Oakland, CA
APPEARANCES: Michael Kaufman (Tenant)
Jennifer Nguyen (Owner)
James E. Vann (Tenant Representative)
DATE OF HEARING: August 18, 2017
DATE OF HEARING:
DECISION: September 8, 2017

PROCEDURAL HISTORY

A Hearing in this case was held on August 18, 2017. A Hearing Decision was issued on September 8, 2017. The Decision denied the tenant's challenge to a rent increase that was based upon Banking. The tenant filed an Appeal, and on June 21, 2018, the Board remanded the case to the Hearing Officer "with direction to determine specifically the issue of law as to whether a properly served RAP Notice cures the defect of prior improperly served notices or failure to serve RAP Notice such as that the landlord may then claim banking of rent increases that were not taken in the past."

SUMMARY OF DECISION

The tenant petition is denied.

THE ISSUE

May an owner be granted a full Banking increase if rent increases in prior years were improperly served or served without a RAP Notice?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

If an owner chooses to increase rents less than the annual CPI Adjustment permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) months periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent increase notice.¹ In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.²

Facts needed to calculate banked increases are: (1) The date of the start of tenancy or eleven years before the effective date of the increase at issue, whichever is later; (2) the lawful base rent in effect on said date; (3) The lawful rent in effect immediately before the effective date of the current proposed rent increase; and (4) the date(s) and amount(s) of any intervening changes to the base rent between dates (1) and (3). This calculation applies in all banking cases, unless the tenant proves that the owner did not have the right to take a rent increase in a particular year – by contract, waiver, or other reason.³

The Rent Adjustment Ordinance states: If an owner chooses to increase rents less than the annual CPI Adjustment permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) months periods.⁴ The literal language seems to imply that rent increases in each prior year must be considered. However, such an approach would almost inevitably lead to problems of proof. People often do not recall whether rent was raised in particular years in the 11-year period, or the amount of the rent increases.

Therefore, the Board decided that the most reasonable, consistent approach to Banking is to make a calculation considering only the Base Rent in the appropriate year, any existing capital improvement pass-through, and the current rent. Under this approach, it does not matter if the rent was raised in a particular year, or the amount of any past rent increase. The only exception is if the base rent was changed during the years considered in the calculation. A Table was developed using this approach (Attached as Attachment "A"). The method of calculation on this Table has been approved by the Board,⁵ and has been used for many years.

There is no mention in the Ordinance regarding the legality of rent increases in prior years. One cannot assume that this was an oversight by City Council.

¹ Regulations Appendix, Section 10.5.1

² Regulations Appendix, Section 10.5.3

³ Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III, et al. The Board has designated this decision to be a Precedent Decision.

⁴ Regulations Appendix, Section 10.5.1

⁵ Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III, et al. The Board has designated this decision to be a Precedent Decision.

The Ordinance contains several references to the RAP Notice:

- (1) The Rent Adjustment Ordinance requires an owner to serve a RAP Notice at the start of a tenancy⁶ and together with any notice of rent increase or change in any term of the tenancy.⁷ An owner may cure the failure to give notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of increase is less than six months after a tenant first receives the required RAP notice.⁸ This is the only penalty under the Ordinance for failure to provide a RAP Notice.
- (2) If an owner does not give the RAP Notice together with a notice of rent increase, the notice of rent increase or change of terms of tenancy is invalid.⁹ However, the Ordinance is silent regarding whether an owner may bank the CPI Annual Adjustment. Presumably, if City Council wanted to prohibit Banking for years in which the RAP Notice was not given, such wording would have been added to the Ordinance.

Another section of the Ordinance states: “[O]wners may increase rents only for increases based on the CPI Rent Adjustment or Banking.”¹⁰ An owner must otherwise file a petition seeking approval for a rent increase. Again, there is no mention of any limitation on Banking based upon failure to provide a RAP Notice in the past.

There is no language in the Ordinance that would allow consideration of whether RAP Notices were given to tenants in prior years. The only penalty for failure to provide the Notice is a 6-month delay in imposing a rent increase.

It is therefore found that an owner’s failure to have given the RAP Notice in past years does not affect the owner’s right to a full Banking increase.

DECISION

1. An owner’s failure to have given the RAP Notice in past years does not affect the owner’s right to a full Banking increase.

2. 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 this decision. The date of service is shown on the attached Proof of Service. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day.

⁶ O.M.C. Section 8.22.060(A)

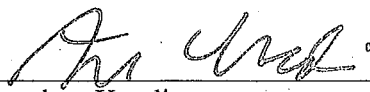
⁷ O.M.C. Section 8.22.070(H)(1)(A)

⁸ O.M.C. Section 8.22.060(C)

⁹ O.M.C. Section 8.22.070(H)(3)

¹⁰ O.M.C. Section 8.22.965

Dated: January 11, 2019



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

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

Initial move-in date		MUST FILL IN D9, D10, D11 and D14	Case No.:		CHANGE YELLOW CELLS ONLY
Effective date of increase			Unit:		
Current rent (before increase and without prior cap. improve pass-through)					
Prior cap. imp. pass-through					
Date calculation begins					
Base rent when calc. begins					

[illegible]

Prior base rent	D9 needs a value
Banking limit this year (3 x current CPI and not more than 10%)	#N/A
Banking available this year	\$ -
Banking this year + base rent	\$ -
Prior capital improvements recovery	\$ -
Rent ceiling w/o other new increases	\$ -

1. **You cannot use banked rent increases after 10 years.**
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

ATTACIMENTO000436

PROOF OF SERVICE
Case Number T17-0221

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
Remand Decision

Owner
Jennifer Nguyen
88 Eureka Sq
Pacifica, CA 94044

Tenant
Michael Kaufman
4016 Kansas St #D
Oakland, CA 94619

Tenant Representative
James Vann
251 Wayne Ave
Oakland, CA 94606

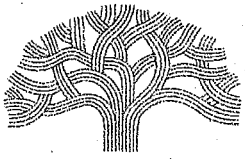
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
Executed on **January 16, 2019** in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

000137

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp 2019 FEB -5 PM 4:08
	<u>APPEAL</u>	

Appellant's Name Michael Kaufman		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 4016 Kansas St, Apt. D, Oakland CA 94619			
Appellant's Mailing Address (For receipt of notices) Same		Case Number T17-0221	Date of Decision appealed 1-16-19
Name of Representative (if any) James E. Vann		Representative's Mailing Address (For notices) 251 Wayne Ave, Oakland CA 94606	

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: 1.

- 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 Feb 5, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Jennifer Nguyen
Address	88 Eureka Sq.
City, State Zip	Pacifica CA 94044
Name	
Address	
City, State Zip	

<u>Michael Kaufman</u>	<u>Feb 5, 2019</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

Summary of Tenant's Appeal of Remand Decision in Case T17-0221 –2/05/19

Appeal of Case T17-0221; Date of Hearing: 8/18/17; Date of Decision: 9/8/17; Date of Appeal Hearing: 6/21/18,
Date of Appeal Hearing Remand Decision: 1/16/19

This appeal is based on the fact that I, Michael Kaufman (the tenant), only received a RAP notice in July 24, 2016, but the owner is demanding banking for 2014, 2015 and 2016. This appeal is also based on the fact that Hearing Officer Kasdin ignored my previous case, T16-0482, held on the exact same issues. That case was decided in my favor on 12/28/16 by Hearing Officer Kong Brown.

Therefore Mr. Kasdin's 2017 decision should be overturned and the 2016 decision of Ms. Kong Brown should be re-instated.

That 2016 case involved the owner demanding banking to increase the rent from a previously signed 2014 lease, and also demanding continuing rent increases for 2015 and a new increase in 2016.

I signed a lease with the owner in 2014. I only received a RAP notice in July 2016, but the owner demanded banking for 2014, 2015 and 2016.

The date of the RAP notice and the denials of the owner's demands were found to be correct in Ms. Kong Brown's decision of case T16-0482.

My appeal of Hearing Officer Kasdin remand decision emphasized each of the mistakes made in his decision. But that decision did not reference or correct any of those mistakes. Therefore it should be reversed.

My appeal of Hearing Officer Kasdin remand decision did not reference or counter Hearing Officer Kong Brown's decision in T16-0482.

The fact that my rent is being increase is based on banking for years prior to receipt of the RAP notice is not consistent with the RAP law and should be reversed and the decision of Ms. Kong Brown should be reinstated.

CHRONOLOGICAL CASE REPORT

Case No.: T19-0196

Case Name: Yoquelet v. Oaktown Properties

Property Address: 216 Makin Road, Oakland, CA 94603

Parties: Corey Yoquelet (Tenant)
Dima Tsenter (Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 20, 2019
Owner Response filed	August 2, 2019
Hearing Decision mailed	January 6, 2020
Tenant Appeal filed	January 27, 2020

T19-0196 RC/MA

RECEIVED

FEB 20 2019

City of Oakland Rent Adjustment Program

Tenant Petition

RENT ADJUSTMENT PROGRAM
OAKLAND

Case **Petition: 10330**
Property Address **216 MAKIN RD**

Party	Name	Address	Mailing Address
Representative	Corey Yoquelet (415) 724-5109 yoquelet@gmail.com	216 Makin Road Oakland, CA 94603	216 Makin Road Oakland, 94603
Tenant	Corey Yoquelet (415) 724-5109 yoquelet@gmail.com	216 Makin Road Oakland, CA 94603	216 Makin Road Oakland, 94603
Owner	Dima Tsenter Oaktown Properties (510) 214-3704 oaktownleasing@gmail.com	360 Grand Ave 54 Oakland, CA 94610	360 Grand Ave 54 Oakland, 94610

Rental Property Information

Number of Units

Type of unit you rent

House

Are you current on your rent?

Yes

Grounds for Petition

Rent Increase Exceeds CPI or more than 10%
No Pre Approval of Increase
No Concurrent RAP Notice
No RAP Notice at Inception or 6 Months Prior

Rental History

When did you move into the unit?

4/1/2016

Initial monthly rent

2350

When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?

Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?

No

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?

No

Have you ever filed a petition for your rental unit?

No

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6/19/2019

City of Oakland

1 / 2

City of Oakland Rent Adjustment Program

Tenant Petition

Case **Petition: 10330**

Property Address **216 MAKIN RD**

Rent increases that you want to challenge.

Did you receive a RAP Notice with the notice of rent increase?	Date RAP notice served	Date increase goes into effect	Monthly Rent Increase From	Monthly Rent Increase To	Are you contesting this increase in this petition?
No	1/29/2019	3/1/2019	2350	2502.75	Yes

Description of Decreased or Inadequate Housing Services

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

Are you being charged for services originally paid by the owner? No

Have you lost services originally provided by the owner or have the conditions changed? No

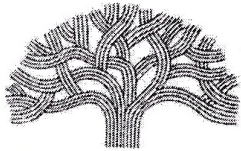
Are you claiming any serious problem(s) with the condition of your rental unit? No

Mediation

Mediation Requested Yes

City of Oakland

2 / 2



CITY OF OAKLAND

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

For date stamp
RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2019 AUG -2 PM 1:20
PROPERTY OWNER
RESPONSE

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

CASE NUMBER T - T19-0196

Your Name Dima Tsenter	Complete Address (with zip code) 360 Grand Ave #54 Oakland CA 94610	Telephone: 510.677.0557
		Email: dima@oaktownproperties.com
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone:
		Email:
Tenant(s) Name(s)	Complete Address (with zip code)	
Property Address (If the property has more than one address, list all addresses) 216 Makin Rd. Oakland CA 94601		Total number of units on property 1

Have you paid for your Oakland Business License? Yes ☒ No ☐ Lic. Number: 00146007
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: 44-5064-4
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Date on which you acquired the building: 10/30/2009

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

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

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

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are justifying additional contested increases, please attach a separate sheet.

II. RENT HISTORY If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on _____.

The tenant's initial rent including all services provided was: \$_____ / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?

Yes _____ No _____ I don't know _____

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

Is the tenant current on the rent? Yes _____ No _____

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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



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

- NO 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?
- YES 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? 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

8/1/2019

Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

File Review

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

Mediation Program

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

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

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



8/1/2019

Property Owner's Signature

Date



CITY OF OAKLAND - 2019 Rent Adjustment Program (RAP)

Renew & Pay Online @ [HTTPS://LTSS.OAKLANDNET.COM/](https://ltss.oaklandnet.com/)

DELINQUENT IF PAID OR POSTMARKED AFTER MARCH 1, 2019

SECTION I - OWNER INFORMATION

1. ACCOUNT NUMBER: 00146008

2. Mailing Address:

OAKTOWN PROPERTIES
360 GRAND AVE UNIT 54
OAKLAND, CA 94610-4840

3. Owner Name: Dima Tsenter

4. Rental Location: 216 MAKIN RD
OAKLAND, CA 94603-1056

5. Total Number of Units per Alameda County Records : 1



SECTION II - CLOSE ACCOUNT

THE RENTAL PROPERTY IN OAKLAND WAS SOLD OR DISCONTINUED ON : ____/____/____

Rental properties that have sold or discontinued after January 1, 2019 are required to pay the business tax in full by filling out Section III & IV.

SECTION III - EXEMPTIONS CLAIMED FOR 2019

Claim all that apply (see reverse side for explanation):

A. Owner-Occupied Unit

B. Off the Rental Housing Market (attach explanation)

C. Motel, Hotel or Rooming House

D. Hospital, Convent or Monastery

E. Newly Constructed

A. _____

B. _____

C. _____

D. _____

E. _____

6. _____

6. TOTAL NUMBER OF EXEMPT UNITS CLAIMED (add Lines A-E):

SECTION IV - NET CHARGEABLE UNITS

7. NET CHARGEABLE UNITS:

(deduct Line 6 from the total units pre-printed on Line 5)

7. 1

8. FEE DUE

(multiply Line 7 by):\$68.00

8. \$ 68.00

9. PENALTY DUE

(if paying after March 1, 2019 see box to the right)

9. \$ -

10. INTEREST DUE

(if paying after March 1, 2019 see box to the right)

10. \$ -

11. PRIOR AMOUNT DUE

11. \$ -

12. TOTAL DUE (add Lines 8-11)

12. \$ 68.00

If paying after March 1, 2019

PENALTY DUE (on tax):

3/2/2019 - 4/1/2019 add 10%

4/2/2019 - 5/1/2019 add 25%

5/2/2019 - until paid add 50%

INTEREST DUE (on tax + penalty):

3/2/2019 - until paid add 1% per
calendar monthPayment Options: ☒ ONLINE: [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com/) Pay by VISA, MasterCard, Discover or eCheck

Enter account number: 00146008 and PIN: 853222

☒ BY MAIL: Send one check per account made payable to "City of Oakland - RAP" DO NOT SEND CASH

WALK IN: Cash, Check, VISA, MasterCard or Discover (see reverse for hours and holidays)

SECTION V - SIGNATURE

I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct.

Print Name	Signature	Date	Phone Number
Dima Tsenter		1/7/19	510.677.0357

CITY OF OAKLAND, 250 FRANK H. OGAWA PLAZA, SUITE 1320, OAKLAND, CA 94612

☎ 510-238-3704

000150

CITY OF OAKLAND

BUSINESS TAX CERTIFICATE

ACCOUNT
NUMBER

00159902

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 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

DBA

TSENER DIMA

BUSINESS LOCATION

3538 69TH AVE
OAKLAND, CA 94605-2506

BUSINESS TYPE

M Rental- Residential



OAKTOWN PROPERTIES
360 GRAND AVE STE 54
OAKLAND, CA 94610-4840



EXPIRATION DATE

12/31/2019

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

THIS DOCUMENT IS ALTERATION PROTECTED AND REFLECTS FLUORESCENT FIBERS UNDER UV LIGHT

THIS DOCUMENT HAS A "VERIFY FIRST" TRUE WATERMARK AND VISIBLE FIBERS DISCERNIBLE FROM BOTH SIDES

CITY OF OAKLAND

BUSINESS TAX CERTIFICATE

ACCOUNT
NUMBER

00146007

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 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

DBA

DIMA TSENER

BUSINESS LOCATION

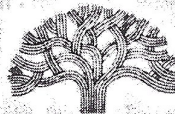
216 MAKIN RD
OAKLAND, CA 94603-1056

BUSINESS TYPE

M Rental- Residential



OAKTOWN PROPERTIES
360 GRAND AVE UNIT 54
OAKLAND, CA 94610-4840



EXPIRATION DATE

12/31/2019

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
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CITY OF OAKLAND

BUSINESS TAX CERTIFICATE

ACCOUNT
NUMBER

00148383

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 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

DBA

TSENER DIMA

BUSINESS LOCATION

680 AILEEN ST
OAKLAND, CA 94609-1610

BUSINESS TYPE

M



TSENER DIMA
DIMA TSENER
360 GRAND AVE # 54
OAKLAND, CA 94610-4840



EXPIRATION DATE

12/31/2019

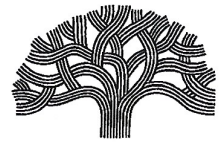
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ABOVE THIS LINE TO BE
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000151



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND,

Housing and Community Development
Department Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T19-0196 Yoquelet v. Oaktown Properties

PROPERTY ADDRESS: 216 Makin Road, Oakland, CA

DATE OF HEARING: October 7, 2019

DATE OF DECISION: December 31, 2019

APPEARANCES: Corey Yoquelet, Tenant
Daryn Lafferty, Tenant
Dima Tsenter, Owner

SUMMARY OF DECISION

The Tenant Petition is denied. The subject property is exempt from the Rent Adjustment Program as a single-family house.

CONTENTIONS OF THE PARTIES

On February 20, 2019, the tenant filed a Tenant Petition contesting a rent increase from \$2,350.00 to \$2,502.75 effective March 1, 2019, and alleging the following:

- The increase exceeds the CPI Adjustment and is unjustified or is greater than 10%.
- I received the rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.
- No written notice of Rent Program was given to me together with the notice of increase I am contesting or at the inception of the tenancy.

The owner filed a timely response, alleging that the subject unit is exempt from the Rent Adjustment Program (RAP) as a single-family house.

ISSUES

- (1) Is the subject unit exempt from the jurisdiction of the Rent Adjustment Program?
- (2) If not exempt, is the rent increase valid?

EVIDENCE

At the hearing, the tenant testified that he moved into the subject property in April of 2016. The owner stated on his petition and testified at the hearing that the prior tenant vacated the subject property in March of 2016, just before the current tenants moved into the property. The owner testified that the prior tenant was not given a notice to quit, did not leave after being given a notice of rent increase, and was not evicted for cause. The tenant disagreed, testifying that he believes the prior tenant was evicted, but he did not submit any evidence to support this claim.

The owner further testified that the subject property is a single-family residence that may be sold separately. He testified that there were no outstanding building, safety, fire or health code violations prior to the start of the current tenancy for the subject unit. The owner submitted a copy of the Grant Deed (admitted into evidence as Exhibit 3), recorded on October 30, 2009, showing the owner, Dima Tsenter, as the grantee of the subject property. The Grant Deed shows a legal description for the property and the Assessor's Parcel No. 044-5064-004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts single family residences and/or condominiums pursuant to the Costa-Hawkins Act, California Civil Code §1954.52, except under certain circumstances¹:

The exceptions include the following:

- The current tenancy began before January 1, 1996;
- The prior tenant was evicted for no cause;
- The prior tenant vacated after being given a notice to quit;
- The prior tenant vacated after being given a notice of rent increase;
- There were serious health, safety, fire, or building code violations for which the owner was cited in a report by a governmental agency, and which were not corrected for six months before the start of the current tenancy.

Mr. Yoquelet's tenancy began in 2016, well after January 1, 1996. The owner testified credibly that the prior tenant was not given a notice to quit, did not leave after being given a notice of rent increase, and was not evicted for cause. Although Mr. Yoquelet believes the prior tenant was evicted from the subject property, he did not submit any evidence to support this claim.

¹ O.M.C. §8.22.030(A)(7)

There were no prior building, safety, health, or fire code violations cited by a governmental agency which is a requirement for exception from exemption pursuant to the Costa-Hawkins Act.

Therefore, the owner has met the requirements of the Rent Ordinance and the Costa-Hawkins Act, and the subject unit is exempt from the Rent Ordinance.


Because the Rent Adjustment Program has no jurisdiction over the subject unit, it cannot consider and address the other issues in this case.

ORDER

1. The Tenant Petition T19-0196 is denied.
2. The subject property is exempt from the City of Oakland Rent Adjustment Ordinance as a single-family residence.
3. A Certificate of Exemption shall be issued upon expiration of the appeal period. The subject unit is not exempt from the RAP fee.

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: December 31, 2019



Maimoona Sahi Ahmad, Hearing Officer
City of Oakland Rent Adjustment Program

PROOF OF SERVICE
Case Number T19-0196

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

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

Documents Included
Hearing Decision

Owner

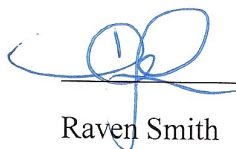
Dima Tsenter, Oaktown Properties
360 Grand Ave Unit 54
Oakland, CA 94610

Tenant

Corey Yoquelet
216 Makin Road
Oakland, CA 94603

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 **January 06, 2020** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

000155

PC/MV

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

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.

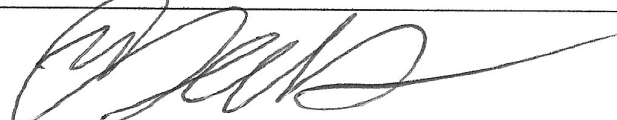
- 1

- 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: 5.

- 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 1/27/2020 ^(CA)
 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>	Dimz Tcenter, Oaktown Properties
<u>Address</u>	360 Grand Ave, Unit 54
<u>City, State Zip</u>	Oakland, CA 94610
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	1/27/2020
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

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.

For more information phone (510) 238-3721.

**APPEAL
T19-0196
Yoquelet v. Oaktown Properties**

1/26/2020

I appeal the Decision issued in T19-0196 Yoquelet v. Oaktown Properties because I was denied sufficient opportunity to present my claim and the Decision is inconsistent with OMC Chapter 8.22 and Rent Board regulations and is not supported by substantial evidence.

The Hearing Officer denied my attempt to introduce written documentary exhibits and testimony regarding the termination of prior tenancies and prior and current code violations. The case hinges on these very matters. Additionally, the suppressed evidence bears on the credibility and character of the Landlord. On the other hand, the Hearing Officer permitted the Landlord to introduce various exhibits concerning various other matters on which the decision is based despite the fact that he failed to submit those documents with his response or before the hearing as required. Since the Landlord had not submitted the exhibits and relevant claims in his petition, I was denied to the opportunity to exercise discovery rights and to anticipate what evidence would be required for rebuttal and in what form. OMC 8.22.030 (B.1.b) places the burden of proof on a Landlord claiming exemption, and I arrived at the hearing with the understanding that that Landlord did not and would not produce supporting documentation or exhibits.

My rights to introduce exhibits, to impeach the witness and rebut evidence against me were violated. Additionally, I was denied the right to call witnesses and to examine the alleged refund check the Landlord claimed to produce and review during the hearing upon which he made statements regarding the prior tenancy. However, the

The Evidence and Findings of Fact on which the Decision was based state:

1) *[The owner] testified that there were no outstanding building, safety, fire or health code violations prior to the start of the current tenancy for the subject unit.*

2) *The owner stated on his petition and testified at the hearing that the prior tenant vacated the subject property in March of 2016, just before the current tenants moved into the property. The owner testified that the prior tenant was not given a notice to quit, did not leave after being given a notice of rent increase, and was not evicted for cause. The tenant disagreed, testifying that he believes the prior tenant was evicted, but he did not submit any evidence to support this claim.*

The owner testified credibly that the prior tenant was not given a notice to quit, did not leave after being given a notice of rent increase, and was not evicted for cause. Although Mr. Yoquelet believes the prior tenant was evicted from the subject property, he did not submit any evidence to support this claim.

000159

I was denied the right to rebut such claims and the right to introduce exhibits contradicting this testimony. I object to his testimony as he testified that he had no knowledge of the details of the prior tenancy and had not reviewed records in preparation and was speculating on how the prior tenancy terminated; he produced no evidence and testified under oath that he could not even just identify who the prior tenants were. Moreover, this testimony as affirmed as support for the Decision is an erroneous gross mischaracterization of the proceedings, and is directly contradicted by evidence I was specifically denied the opportunity to present.

There were in fact outstanding building, safety, fire or health code violations. I was denied the opportunity to introduce exhibits in which the Landlord himself acknowledges several such violations in writing, records of citation and prior tenants written statements on the matter. I was denied the opportunity to call the prior tenants to testify or to testify about their communication with me regarding violations and the circumstances of termination of tenancy.

The prior tenants' testimony, written communications from prior tenants and the Landlord himself and citation records, and hearsay evidence in the form of my testimony about these all directly contradict the Landlord's testimony. I was denied the opportunity to have any of this substantial evidence considered.

The Rent Adjustment Program Regulations (8.22.110 E4) state:

Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

California Government Code §11513 (d) specifically allows for hearsay evidence for supplement, explanation and even direct support of findings of fact unless there is a timely objection. A fortiori, written records involving third party may be admitted as evidence. Further, neither the California Administrative Procedure Act nor Oakland Municipal code or regulations require in person witness testimony rather than by phone. Indeed, various Rent Adjustment Program materials indicate that parties may participate in hearings by phone.

During the hearing, I did in fact introduce hearsay evidence in the form of my testimony regarding what several neighbors and prior tenants, as well as the Landlord himself, reported orally and in writing to me and Daryn Lafferty, who was physically present at the hearing to corroborate. No objection to this hearsay evidence was made. Nevertheless, this hearsay evidence is simply ignored inexplicably in the Hearing Officer's Decision.

During the hearing, I attempted also to introduce written records from prior tenants and ask that they be called as witnesses by telephone. The Hearing Officer refused to admit the written evidence and to allow witnesses to testify by phone or to continue the hearing to allow them to appear in person.

I had already submitted many of the exhibits I had prepared along with my petition and submission is in fact recorded in the online petition portal. Additionally, I submitted further material to the assigned analyst Roberto Costa by email on 8/17/2019 asking that the material be included (Exhibit B). Roberto Costa confirmed receipt by voicemail 8/19/19. This material

explicitly refers to code violations and circumstances of the termination of prior tenancy and various exhibits of supporting documentation. Nevertheless, the Hearing Officer claimed I had not included such claims and did not submit documentation, and she would not allow me to introduce such evidence at the hearing.

The Hearing officer indicated that she would not hear anything on code violations as she said I had not included the issue on my petition (it was in fact included in at least supporting documents I submitted). However, she allowed the Landlord to testify on the matter as evidence against my petition. The refusal to consider evidence and testimony on the matter denied any opportunity to rebut such evidence against me and to impeach the witness.

The Hearing Officer refused to consider written records involving the previous tenants because she said testimony can be admitted only under oath (or affirmation). This decision was in error. The exhibits were not oral testimony, the only category OMC Chapter 8.22 code and regulation and California Administrative Procedures Act require be given under oath or affirmation; these additionally allow testimony under oath or affirmation by phone, a rather common practice in administrative hearings as well as civil hearings in various jurisdictions. In fact, Rule 3.670 of the California Rules of Court provides for general telephone appearance in civil cases and provides for continuance if personal appearance is determined to be necessary. It simply was not possible for me to anticipate that personal appearance would be necessary to rebut claims and evidence the Landlord simply did not make prior to the hearing especially in light of the explicit provision for appearance by telephone in Rent Adjustment Program materials.

Of the many exhibits I had prepared, the Hearing Officer admitted only a copy of the purported 30 Day Notice (which does not in fact provide 30 days notice among other defects) for the contested rent increase which we received by mail on 2/19/19 and promptly filed the petition.

I observed that I had already submitted a copy with my petition. The Hearing Officer falsely denied this fact regarding that exhibit and others. I had also included records of communication from the Landlord directly referring to code violations and hazards and citations, and had prepared additional exhibits for the hearing. On the other hand, the Hearing Officer permitted the Landlord to introduce various exhibits concerning various other matters on which the decision is based despite the fact that he failed to submit those documents with his response or before the hearing as required.

I was denied sufficient opportunity to present my claim as well as my rights to introduce exhibits, to impeach the witness, to rebut evidence against me were violated, to call witnesses and to examine purported evidence. The Landlord claimed that he was reviewing on his phone the security deposit check he sent to the previous tenant and basing his speculation on the prior tenancy on it. He did not allow the Hearing Office or me to view the alleged document, yet his tentative statements and speculation on it were admitted by the Hearing Officer and affirmed as decisive evidence in support of the Decision.

This violation of OMC Chapter 8.22 and Rent Board regulations as well as discovery and cross-examination rights, and the decision is not supported by substantial evidence.

The purported Evidence and Findings of Fact of the Decision are dubious if not demonstrably false even without consideration of the suppressed evidence.

For example, the Evidence whereon the decision was made falsely states: "The owner stated on his petition and testified at the hearing that the prior tenant vacated the subject property in March of 2016, just before the current tenants moved into the property."

This is simply untrue, and represents a crucial error not based on the records or proceedings. In fact, the owner made no such statement at all in his [response] to the petition: There is no statement in the response whatsoever regarding when the prior tenant vacated or when we moved in; in fact, those dates are incorrect as suppressed exhibits of communication between me and the Landlord demonstrate. The house was already vacant when we viewed it earlier (and waltzed in the bedroom), but it was not available to lease for 3 weeks, and we did not move in until June. This demonstrable discrepancy undermines credibility, and there remain other errors.

Similarly, the owner did not testify at the hearing that the previous tenant moved out in March, just prior to us moving in. In fact, he testified under oath that he did not know and was not prepared to make any claims on the matter. He suggested that he look up the dates. He then thumbed at his phone while looking in the opposite direction at the table. He testified that he was looking at what he claimed to be the security deposit refund check for the prior tenant -- while still gazing down to the right. He testified that he was speculating that they must have moved out 21 days prior to the date on the check, and, thus, he guesses that they moved out just before we moved in. He later testified that he did not know who the previous tenant was and could not give a name because he did not have access to documents to testify on the matter.

His testimony is not at all credible. He testified under oath that he looked up on his phone and found the refund check he wrote for the previous tenant nearly 4 years prior, and then testified that he did not know who the previous tenant was and could not give their name because he did not have access to documents. Both of these lines of testimony simply cannot be true. Either he could identify the tenant whose name would have been on a refund check, or he could not. Either he had access to such records or he did not. The Landlord lied under oath.

Even if his testimony were not contradictory and explicitly speculative and not affirmed as fact, it is dubious that he could recall the circumstances of the prior tenancy termination nearly 4 years prior at one of his 26 properties, many of which are multiunit, especially in light of his testimony that he could not even identify who the tenant was without reviewing documents he claimed he didn't have access to and had not reviewed in preparation for the hearing. Moreover, every prior tenant of the subject property and his others with whom I have spoken have indicated that he has refused to return security deposits.

As observed by me and acknowledged by the Hearing officer during the hearing, the Landlord was non-forthcoming, equivocal and evasive. He was a hostile witness and prima facie perjured himself. His treatment of prior tenants, his harassment us personally and violation of tenant rights, dozens of code citations at this and his other properties, and his unlawful retaliatory UD suit against me are testaments to his character and compliance with law. This property alone has at least 6 citations going back to when he became owner and his blight has resulted in murder at the property and local and ATF arms and drug organized crime ring sting.

000162

His testimony at the hearing was not credible prima facie, and his testimony was explicitly presented as speculation. He produced no evidence whatsoever regarding these claims.

OMC 8.22.030 (B.1.b) dictates unequivocally that:

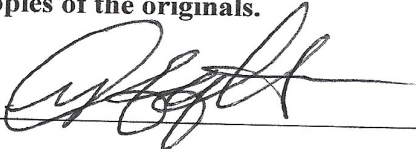
For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner.

In light of the Landlord's perjury and sworn testimony that he has no knowledge of the facts of the prior tenancy and can only speculate, the hearsay evidence I did testify to represents the only evidence on the subject and thus the preponderance of the evidence -- to say nothing of the suppressed exhibits and testimony I was denied the opportunity to present.

The Hearing Officer's Decision is not supported by any substantial evidence, and is contrary to code, regulation, law and standards. The Hearing Officer placed the burden of proof on the tenant, prevented me from submitting evidence and discounted admissible testimony unprompted by objection, stating repeatedly falsely and fallaciously that I did not submit evidence, and based the decision on a grossly distorted summary of non-credible self-contradictory speculation from the Landlord. This is a violation of the implied presumption of non-exemption, burden of proof on the landlord and evidentiary standards.

The Decision issued in T19-0196 because I was denied sufficient opportunity to present my claim and because the decision is inconsistent with OMC Chapter 8.22 and Rent Board regulations and is not supported by substantial evidence.

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



Corey Yoquelet, tenant petitioner



Date

CITY OF OAKLAND
Rent Adjustment Program



MEMORANDUM

Date: October 1, 2020
To: Members of the Housing, Residential & Relocation Board (HRRRB)
From: Staff
Re: Appeal Summary in T18-0018
Sund v. Vernon Street Apartment LP aka Flynn Family Holdings LLC
Appeal Hearing Date: October 8, 2020

Property Address: 633 Alma Avenue, No. 5, Oakland, CA
Appellant/Tenant: Jessica Sund
Respondent/Owner: Vernon Street Apartments LP aka Flynn Family Holdings LLC

PROCEDURAL BACKGROUND

On November 29, 2017, the tenant filed a petition, contesting a proposed monthly rent increase from \$908.67 to \$2,095.00, effective December 1, 2017, on the following grounds:

- The increase exceeds the CPI Adjustment and is unjustified or greater than 10%.
- The proposed rent increase would exceed an overall increase of 30% in 5 years.
- She wishes to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.

The owner filed a timely response on April 2, 2018, stating that the rent increase is based on the Costa-Hawkins Act and that the original tenant no longer maintains this unit as her primary place of residence.

RULING ON THE CASE

On December 20, 2018, the Hearing Officer issued a decision denying the petition on the grounds that (1) the tenant no longer permanently resides at 633 Alma Street, Unit 5, in Oakland, California, at least since July 1, 2017; (2) that she permanently resides at 3024 California Street, in Oakland, California, and therefore lacks standing to file this petition. She found that (1) the owner's agent testified credibly

that he had received multiple complaints about strangers going in and out of the petitioner's unit with keys to the unit while the petitioner was nowhere to be seen; (2) an internet search by the owner's agent showed listings by the petitioner's boyfriend, purporting to rent out an unspecified unit on couch surfing sites as well as a baby registry for the petitioner and her boyfriend, and (3) the investigator's records indicated that the petitioner was no longer permanently residing at the Alma Street address since July 1, 2017.

GROUND FOR APPEAL

The tenant appealed the hearing decision on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.
- The decision is inconsistent with decisions issued by other Hearing Officers.
- The decision raises a new policy issue that has not been decided by the Board.
- The decision violates federal, state or local law.
- The decision is not supported by substantial evidence.
- The tenant was denied a sufficient opportunity to present her claim or respond to the petitioner's claim.

Specifically, the petitioner contends that the hearing decision constitutes an abuse of discretion, that the selective use of evidence, the mischaracterization and misstatements of other evidence, and lack of plain objectivity, as evidenced by the decision, demonstrates a judgment inconsistent with logic and the facts. The decision consistently relied on evidence that was inadmissible, while ignoring other material. The decision demonstrates a lack of objectivity and a prejudice toward the tenant petitioner.

The petitioner further contends that the Hearing Officer arrived at the unwarranted conclusion that the petitioner's testimony that she temporarily moved from the Alma Street address to the California Street address in October 2017 after her request to have her boyfriend move into her unit was denied, is simply "Not credible." The petitioner contends that this constitutes a constructive eviction because the rent increase sought means she would no longer be able to reside in her unit, and that she had a right to have the father of her expected child move in with her.

The petitioner also contends that the evidence submitted by the Respondent is to be viewed with distrust and rejected because it failed to produce employee witnesses claimed to have relevant information, video footage, etc. The Respondent's three witnesses each offered contradicting or inconsistent evidence regarding its claims.

Finally, the petitioner contends that the owner failed to produce sufficient evidence that she was renting out her unit for short term rentals. The rent increase constitutes constructive eviction because she would no longer be able to reside in her unit, and discrimination because it is illegal to discriminate in housing based on pregnancy or family status, under both state and federal law and agency regulation. The notice of rent increase is retaliation because the owner served the rent increase within days after the tenant sought to exercise certain rights provided to her by law.

The owner did not file a response to the petitioner's appeal.

ISSUES

1. Is there substantial evidence to support the Hearing Officer's finding that the petitioner, Jessica Sund, lacks standing to file the petition because she no longer permanently resides in the subject unit?
2. Did the Hearing Officer apply the correct legal standard to find that the petitioner no longer permanently resided in the subject unit?

APPLICABLE LAW AND BOARD DECISIONS

1. Applicable Law

a. Standing to File Petition Under the Rent Adjustment Ordinance

To have standing to file a petition, the petitioner must be a Tenant in a covered unit when the petition is filed. O.M.C. 8.22.090. A.1. The Ordinance defines "Tenant" as "a person entitled, by written or oral agreement to the use or occupancy of any covered unit." O.M.C. 8.22.020

b. Costa-Hawkins Rent Increase: Permanent Residence of Original Occupant

California Civil Code section 1954.53 (d)(2) of the Costa Hawkins Rental Housing act provides in relevant part:

"If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sub lessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996."

For the rent increase to be valid, the original occupant must no longer permanently reside in the unit on the date of the rent increase was served on September 6, 2017.

2. Board Decisions

a. Standing to File Petition Under Rent Adjustment Ordinance

T06-0284, O'Hara v. Sansui

Board affirmed dismissal of petition where tenancy was terminated by a Superior Court judgment prior to filing of the petition. To have standing to file a petition, a tenant must be a tenant in a covered unit at the time the petition is filed. OMC, §8.22.090. A.1, 8.22.020.

T03-0306, Raymond v. Horizon Mgt. Group

Board affirmed decision ruling that the tenant who moved from the property has no standing to challenge a rent increase.

T07-0021, Goldfarb v. Small

Tenant moved to San Diego and his brother moved into the unit. The tenant continued to pay the rent and the owner asked the brother to move out several times. The Board affirmed the hearing decision ruling that the brother lacked standing due to lack of owner consent to the tenancy.

b. Costa-Hawkins Rent Increase: Permanent Residence of Original Occupant

The Board has never determined whether a tenant may be temporarily absent from a unit while still permanently residing in the unit or whether “permanently reside” has the same meaning as maintaining the unit as a principal place of residence.

3. Other Issues on Appeal

The tenant's contentions regarding constructive eviction, discrimination in housing based on pregnancy or family status, and retaliation are beyond the jurisdiction of the Rent Adjustment Program.

CITY OF OAKLAND
Rent Adjustment Program



MEMORANDUM

Date: October 1, 2020
To: Members of the Housing, Residential Rent & Relocation Board (HRRRB)
From: Staff
Re: Appeal Summary in T17-0221
Kaufman v. Nguyen

Appeal Hearing Date: October 8, 2020

Property Address: 4016 Kansas Street, Oakland, CA
Appellant/Tenant: Michael Kaufman
Respondent/Owner: Jennifer Nguyen

BACKGROUND

Tenant Michael Kaufman filed a petition on March 20, 2017, contesting the following rent increases:

- From \$1,250 to \$1,275, effective April 1, 2017.
- From \$1,273.75 to \$1,295, effective April 1, 2017
- From \$1,273.75 to \$1,295, effective April 1, 2017.

The tenant alleged the following grounds:

- The CPI and/or banked increase notice was calculated incorrectly.
- The increase exceeds the CPI Adjustment and is unjustified or greater than 10%.
- He received a rent increase notice before the property owner received approval from the RAP for such an increase and the rent increase exceeds the CPI Adjustment and available banked increase.

The owner, Jennifer Nguyen, filed a timely response, stating that the increase based on Banking, was from \$1,250.00 to \$1,320.82.

RULING ON THE CASE

The hearing officer found that the banked rent was 6% of \$1,250.00, in the sum of \$71.31, which increased the monthly rent to \$1,321.31. However, the rent increase may not exceed the amount stated in the rent increase notice, and a banked amount of \$70.00 was granted, increasing the tenant's monthly rent to \$1,320.00, effective April 1, 2017.

The tenant filed an appeal, because (1) the decision is inconsistent with O.M.C. Chapter 8.22, Rent Board Regulations or prior Board decisions; (2) the decision is inconsistent with decisions issued by other hearing officers; and (3) the decision is not supported by substantial evidence.

This appeal was heard by a Board Panel on June 21, 2018. The Board panel remanded the hearing decision to the hearing officer to determine the issue of law as to whether a properly served RAP Notice cures a defect or a prior improperly served notice or failure to serve RAP Notice so that the owner may then claim Banking of rent increases that were not taken in the past.

The Hearing Decision on Remand stated that there is no mention of any limitation on Banking in the Ordinance based on a failure to provide a RAP Notice in the past, and found that an owner's failure to have given a RAP Notice in past years does not affect the owner's right to a full Banking increase.

GROUND FOR APPEAL

The tenant filed an appeal on February 5, 2019, on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.
- The decision is inconsistent with decisions issued by other Hearing Officers.
- The decision raises a new policy issue that has not been decided by the Board.

Specifically, the tenant contends that in Case No. T16-0482, Kaufman v. Nguyen, the hearing officer ignored the hearing decision which involved the same exact issues and was decided in her favor. The tenant signed a lease in 2014 and did not receive the RAP notice until July 2016. Rent increases based on Banking prior to receipt of the RAP notice is not consistent with RAP law and should be reversed.

ISSUE

1. Is an owner entitled to a full Banking increase if a tenant was not served with a RAP notice in prior years?

APPLICABLE LAW AND PAST BOARD DECISIONS

Banking

Banking is defined in O.M.C. §8.22.020 as any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations

If the landlord chooses to increase rents less than the annual CPI Adjustment (formerly Annual Permissible Increase) permitted by the Ordinance, any remaining CPI Rent adjustment may be carried over to succeeding twelve (12) month periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent Increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent adjustment on the effective date of the Rent Increase notice.¹

In no event, may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.² There is no language contained in the Rent Adjustment Ordinance and Regulations stating that Banking for a year is discounted if the tenant did not receive a RAP notice.

The only penalty for failure to provide a 6-month RAP notice is a six-month forfeiture in imposing a rent increase.³ The failure to provide the notice at the beginning of the tenancy may be cured if the owner provides a notice at least six months prior to serving the rent increase notice on the tenant.⁴

Board Decisions

None.

Prepared by Barbara Kong-Brown, Esq.
Senior Hearing Officer

¹ Rent Adjustment Board Regulations, Appendix a, §10.5.1

² Rent Adjustment Board Regulations, Appendix a, §10.5.3

³ O.M.C §8.22.060 (C)

⁴ O.M.C. §8.22.060(C)



MEMORANDUM

Date: October 1, 2020

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

From: Staff

Re: Appeal Summary in T19-0196
Yoquelet v. Oaktown Properties

Appeal Hearing Date: October 8, 2020

Property Address: 216 Makin Road Oakland, CA

Appellant/Tenant: Corey Yoquelet

Respondent/Owner: Dima Tsenter
Oaktown Properties

PROCEDURAL BACKGROUND

On February 20, 2019, tenant Corey Youquelet filed a petition contesting a rent increase from \$2,305.00 to \$2,502.75. The owner filed a timely response to the petition, claiming that the subject unit was exempt from the Rent Adjustment Ordinance because it is a single-family residence.

RULING ON THE CASE

The Hearing Officer issued a Hearing Decision on January 6, 2020, finding that the subject unit is exempt from the Rent Adjustment Ordinance as a single-family residence.

GROUND FOR APPEAL

The tenant appealed the Hearing Decision on the following grounds:

- The Decision is inconsistent with the Oakland Municipal Code, RAP Regulations or prior decisions of the RAP Board;
- The decision is inconsistent with decisions issued by other hearing officers;
- The decision violates federal, state or local law;
- The decision is not supported by substantial evidence.

Specifically, the tenant contends that (1) he was denied the opportunity to introduce written documentary exhibits and testimony regarding the termination of prior tenancies and prior and current code violations; (2) the owner was allowed to introduce exhibits which were not submitted with his response or prior to the hearing; (3) the tenant was denied the opportunity to exercise discovery rights and to anticipate what evidence would be required for rebuttal and in what form; (4) it is the owner's burden of proof regarding an exemption claim and the tenant arrived at the hearing with the understanding that the owner did not and would not produce supporting documentation or exhibits; (5) the tenant's right to impeach witnesses, introduce evidence, and rebut evidence was violated; (6) the tenant was denied the right to call witnesses and to examine the alleged refund check produced by the owner.

Additionally, the tenant contends that he introduced hearsay testimony which the Hearing Officer ignored. The Hearing Officer also refused to admit written evidence and to allow witnesses to testify by phone or to continue the hearing, or to allow them to appear in person.

The tenant further contends that he submitted several written documents on August 18, 2019, including documents pertaining to code violations and the circumstances regarding termination of a prior tenancy, and the Hearing Officer claimed he did not include these claims and did not submit documentation, and she refused to admit this evidence at the hearing.

The tenant also contends that the evidence and findings of fact in the hearing decision are dubious, the owner was non-forthcoming, equivocal and evasive, hostile and committed perjury, as well as harassing him personally and violating tenant rights, and pursued an unlawful retaliatory unlawful detainer suit against him.

ISSUE

1. Is the Hearing Decision granting the exemption from the Rent Adjustment Program, of the subject unit as a single-family residence, pursuant to the Costa-Hawkins Act, supported by substantial evidence?

APPLICABLE LAW AND PAST BOARD DECISIONS

1. Applicable Law

Costa-Hawkins Act §1954.53

O.M.C. § 8.22.030 (A 7) states that "Types of Dwelling Units Exempt" includes "Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code §1954.52)¹." The exemption applies to single family residence

¹ O.M.C. § 8.22.030.A(7)

Exclusion of Evidence by the Hearing Officer

Government Code §11513

In administrative proceedings, “Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.”

California Evidence Code §210

Relevant evidence is evidence that has a “tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.”

2. Past Board Decisions

a. Single Family Residence Exemption from the Rent Adjustment Ordinance

There are multiple decisions holding that single-family residences are exempt from the Rent Adjustment Ordinance.

T01-0472, Williams v. Prince

T02, 0190, Hill v. Brown

T09-0206, Bliss v. Dove

T14-0004, Kram v. Taylor

b. Acceptance or Rejection of Evidence

T05-0110, Peacock et al. v. Vulcan

The hearing officer has the authority to call witnesses and accept or reject evidence by either party, and this does not constitute bias.

Prepared by Barbara Kong-Brown, Esq.
Senior Hearing Officer