

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

**June 8, 2017**

**7:00 P.M.**

**CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
  - i. Approval of minutes, May 25, 2017
4. OPEN FORUM
5. NEW BUSINESS
  - i. Appeal Hearing in cases:
    - a. T14-0527; Weinstein v. Baradat
    - b. L15-0061; 4CH, Inc. v. Tenants
    - c. T15-0698; Diaz v. Le
  - ii. Appreciation Plaque for Noah Frigault
6. SCHEDULING AND REPORTS
7. ADJOURNMENT

**Accessibility.** The meeting is held in a wheelchair accessible facility. Contact the office of the City Clerk, City Hall, One Frank Ogawa Plaza, or call (510) 238-3611 (voice) or (510) 839-6451 (TTY) to arrange for the following services: 1) Sign interpreters; 2) Phone ear hearing device for the hearing impaired; 3) Large print, Braille, or cassette tape text for the visually impaired. The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
MAY 32 PM 12:18

**Foreign language interpreters** may be available from the Equal Access Office (510) 239-2368. Contact them for availability. Please refrain from wearing **strongly scented products** to this meeting.

**Service Animals / Emotional Support Animals:** The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use services animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**Regular Meeting  
May 25, 2017  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**DRAFT MINUTES**

1. CALL TO ORDER

The HRRRB was called to order at 7:15 p.m. by Board Chair, Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ubaldo Fernandez	Tenant Alt	X		
Jessie Warner	Homeowner	X		
Kevin Blackburn	Homeowner Alt	X		
Ramona Chang	Property Owner			X
Debbie Mesaros	Tenant		X	
Karen Friedman	Property Owner	X		

Staff Present

Kent Qian, Deputy City Attorney  
Connie Taylor, Rent Adjustment Program Manager

3. CONSENT ITEMS

i. Approval of minutes, April 27, 2017

K. Friedman made a motion to approve minutes as amended. K. Blackburn seconded.  
The Board voted as follows:

Aye: U. Fernandez, K. Blackburn, K. Friedman, J. Warner

Nay: 0

Abstained: 0

The motion passed by consensus.

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4. OPEN FORUM  
James Vann

5. NEW BUSINESS

i. Report on Action Taken in Closed Session

No action was taken in Closed Session

ii. Appeal Hearing in consolidated cases:

a. Premji v. Tenant

Appearances: Tenant Appeal

Tenant Representative

Glen Navis

Landlord

Massey Premji

Rebuttal

Glen Navis  
Massey Premji  
Diego Erausquin

Board Discussion

After discussion and questions to both parties, U. Fernandez moved to affirm the Hearing Officer's decision based on substantial evidence. K. Friedman seconded. The Board voted as follows:

Aye: U. Fernandez, K. Friedman, K. Blackburn, J. Warner  
Nay: 0  
Abstained: 0

The motion passed by consensus.

b. T15-0648; Williams v. Mahal

Appearances: Property Owner Appeal

Landlord

Gurpal Mahal

Tenant

Dejada Williams

Rebuttal

Both parties offered rebuttal.

Board Discussion

After Board discussion and questions to both parties, K. Friedman made motion to affirm the Hearing Officer's decision because there was no good cause for non-appearance; notice was sent to the correct address. K. Blackburn seconded. The Board voted as follows:

Aye: J. Warner, K. Blackburn, U. Fernandez, K. Friedman

Nay: 0

Abstained: 0

The motion passed by consensus.

c. T16-0073; Ullman v. Tse

The appeal will be rescheduled.

d. Discussion on Reviewing Policy Standing Committee

The item will be moved to another regular Board meeting Agenda.

6. ADJOURNMENT

J. Warner made motion to adjourn. U. Fernandez seconded. The meeting was adjourned by consensus at 8:45 p.m.

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## CHRONOLOGICAL CASE REPORT

Case No.: T14-0527  
Case Name: Weinstein v. Baradat  
Property Address: 200 Fairmont Avenue, #312, Oakland, CA  
Parties: Marta Weinstein & Steve Weinstein (Tenants)  
Mark Baradat (Owner)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 4, 2014
Landlord Response filed	April 6, 2015
Hearing Decision issued	May 21, 2015
Tenant Appeal filed	June 9, 2015
Appeal Decision issued	June 16, 2016
Remand Decision issued	July 14, 2016
Tenant Appeal of Remand Decision filed:	August 3, 2016

000006

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 AUG -3 PM 4:00 <b>APPEAL</b>	
Appellant's Name Marta and Steve Weinstem		Landlord <input type="checkbox"/>	Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) 200 Fairmount Ave #312 Oakland, CA 94611			
Appellant's Mailing Address (For receipt of notices) 4096 Piedmont Ave #321 Oakland, CA 94611		Case Number T 14-0527	Date of Decision appealed July 8, 2016
Name of Representative (if any)	Representative's Mailing Address (For notices)		

I appeal the decision issued in the case and on the date written above on the following grounds:


(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.  $\$8,22,020$  - Elevator is a housing service.
- The decision is inconsistent with decisions issued by other hearing officers. You must identify the prior inconsistent decision and explain how the decision is inconsistent.
- The decision raises a new policy issue that has not been decided by the Board. You must provide a detailed statement of the issue and why the issue should be decided in your favor.
- The decision is not supported by substantial evidence. You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff. See attached
- I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. You must explain how you were denied a sufficient opportunity 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.
- The decision denies me a fair return on my investment. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7.  Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 3. Please number attached pages consecutively.

8. **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 August 3, 2016, 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:

<b><u>Name</u></b>	Phil Baradat
<b><u>Address</u></b>	4040 Civic Center Dr. Suite 200
<b><u>City, State Zip</u></b>	San Rafael, CA 94903
<b><u>Name</u></b>	Jon S. Heim, Harper & Heim
<b><u>Address</u></b>	4040 Civic Center Dr. Suite 200
<b><u>City, State Zip</u></b>	San Rafael, CA 94903

	8/2/2016
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**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.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- 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.



#### 4. The decision is not supported by substantial evidence.

Appeals Board instructed Hearing Officer Moroz to review her original and incorrect decision, to determine to what extent, if any, the elevator in the adjacent building provided a reasonable alternate accommodation for the loss of elevator service in the tenant's building and to the extent that the loss of service constituted a reduction in housing service, how much the tenant should be compensated.

Hearing Officer Munoz' new decision states "Because the owner *provided a reasonable alternative accommodation* for the *six week period while the first elevator was undergoing major repairs*, no loss of service occurred."

Hearing Officer Moroz ignored substantial evidence in the case record that the elevator in the other building *did not* provide a reasonable alternative accommodation.

The record shows:

- 1) That Apartment 312, which the Tenants leased, as well as all 32 apartments at 200 Fairmount Ave. can be reached directly from the garage by elevator without a single stair. This allows grocery carts, baby strollers, walkers, bicycles and all kinds of assistive wheeled devices to be used easily.
- 2) That use of the "alternate elevator" at 250 Fairmount Avenue, requires: Taking groceries and/or children and pets down several stairs through a gate, to a small landing, and down a few more stairs to the sidewalk, walking uphill one block to the second building, opening a locked gate, going into the lobby and up in the elevator, then walking down a half block-long hallway and down half a dozen stairs, to open the exterior door at the end of the hallway, walk down another half dozen stairs to the landing and locked exterior door, unlocking the door and walking down a half block-long hallway to apartment #312. 4/22/2015 Hearing Recording, Minutes 9:27-11:40
- 3) That one of the tenants was over 65, had recently had back surgery, that the tenants 50 lb. dog couldn't walk upstairs, and that they regularly cared for their four grandchildren under the age of three.

In both the original decision and the Decision on Remand, Hearing Officer Munoz incorrectly says that the "Tenants stated" that the use of the alternate elevator would have been "inconvenient". A review of the audio recording hearing proves that this is not only untrue but is an egregious mischaracterization of the evidence and testimony provided regarding the "alternate elevator" by both the Tenant and the Landlord.

The length of time of the loss of service is also an important factor in considering the reasonableness of any "alternative" solution and the loss of service to the Tenant. There was no evidence presented that "major repairs were being made for six weeks", as the Decision states. In fact, the Landlord submitted only one repair bill for this entire period, dated September 17, 2014 (\$875.00). The Landlord testified that he hired a new elevator company, in November 2014. The actual repair work in November only took a few days. There was no evidence presented to justify the six week delay.

In this case, the tenants testified and the landlord did not disagree, that the elevator had been undependable for years, breaking down intermittently. This six week outage was simply the straw that broke the camel's back. The Tenants had been suffering an increasing loss of service over several years as the elevator was more frequently out of service. Following the November repair, the elevator began breaking down again and was out of service completely or intermittently twenty-four days during February, March and April. At the April 22, 2015 Hearing, the Landlord reported that it was recently back in service.

The lack of elevator service was in fact a breach of the warranty of habitability and created a substantial loss of housing services.

8.22.020 - Definitions.

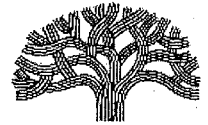
*"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, **elevator service**, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services."*

Hearing Officer Munoz cited Academy Spires, Inc. v. Brown (1970) 111 N.J.Super.477 The Academy Spires court held: "In a modern society one cannot be expected to live in a multi-storied apartment building without heat, hot water, garbage disposal or **elevator service**. Failure to supply such things is a breach of the implied covenant of habitability." The Court ruled a diminution in rent of 25% was fair.

## 7. Other

We do not believe we can receive a fair and impartial decision from Hearing Officer Munoz and request the assignment of a new hearing officer.

We also request that the Hearing Officer make a site inspection of the "alternate" elevator.



## CITY OF OAKLAND

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

Department of Housing and Community Development  
Rent Adjustment Program

TEL (510) 2383721

FAX(510)238-6181

TDD (510)238-3254

### HOUSING, RESIDENTIAL, RENT AND RELOCATION BOARD PANEL

#### APPEAL DECISION

**CASE NUMBER:** T14-0527 Weinstein v. Baradat

**APPEAL HEARING:** May 26, 2016

**PROPERTY ADDRESS:** 200 Fairmount Avenue, No. 320  
Oakland, CA

**APPEARANCES:** Steve Weinstein      Tenant Appellant  
John Heim, Esq.      Owner Appellee  
Representative

#### Procedural Background

A Hearing Decision was issued which denied the tenant petition for decreased housing services due to an elevator repair.

#### Grounds for Appeal

The tenant filed an appeal on June 9, 2015, on the grounds that the Hearing Decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board; that the decision is not supported by substantial evidence. He contends that the elevator was out of order for six weeks.

The owner representative objected to new evidence being submitted by the tenant; that the owner had a monthly contract for maintenance of the elevator; that they needed to install a new elevator; and during the repair there was a reasonable accommodation because the tenants could use an alternate elevator but chose not to.

Appeal Decision

After questions to the parties and Board discussion, E. Lai moved to remand the hearing decision for the limited purpose of identifying what the loss of services originally provided were, if any, and to apply the correct standard for a decreased housing service under the Rent Adjustment Ordinance. T. Singleton seconded.

N. Frigault offered a friendly amendment to strike the last paragraph of the hearing decision on Bate Stamped page 58, which states "While the living condition may not be ideal at times, under the Rent Adjustment Ordinance the rent can only be decreased for serious Code violations." E. Lai stated that if you strike that language then what the landlord did was reasonable accommodation. N. Frigault withdrew his amendment.

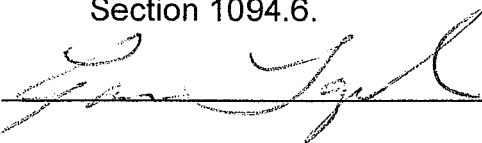
The Board voted as follows:

Aye: T. Singleton, N. Frigault, B. Williams, E. Lai, J. Warner, R. Chang  
Nay: 0  
Abstain: 0

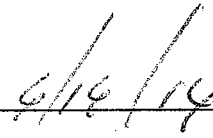
The motion was approved by consensus.

**NOTICE TO PARTIES**

Pursuant to Ordinance No (s). 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Code of Civil Procedure, Section 1094.6.



CONNIE TAYLOR  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD



DATE

# PROOF OF SERVICE

Case Number T14-0527

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, 5<sup>th</sup> Floor, Oakland, California 94612.

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

Marta Weinstein  
200 Fairmount Avenue  
#312  
Oakland, CA 94611

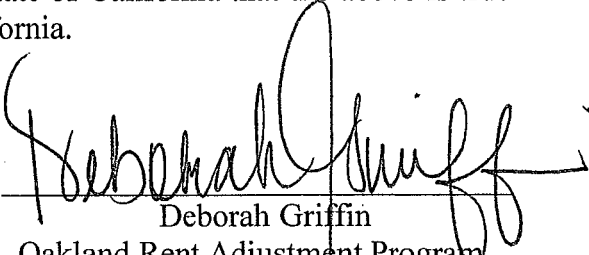
Steve Weinstein  
200 Fairmount Avenue #312  
Oakland, CA 94611

Phil Baradat  
4040 Civic Center Drive #200  
San Rafael, CA 94903

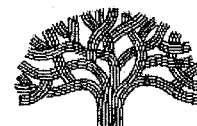
Jon S. Heim, Harper &  
Heim Lawyers  
4040 Civic Center Drive  
#200  
San Rafael, CA 94903

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 **June 16, 2016** in Oakland, California.

  
Deborah Griffin  
Oakland Rent Adjustment Program

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

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 ON REMAND**

**CASE NUMBER:** T14-0527, Weinstein v. Baradat

**PROPERTY ADDRESS:** 200 Fairmont Ave., Unit #312, Oakland, CA

### **BACKGROUND AND SUMMARY OF APPEAL DECISION**

A Hearing Decision in this case was issued on May 18, 2015, which denied the tenants' claim for decreased housing services. The tenants appealed. An Appeal hearing was conducted on May 26, 2016. The Board remanded the Hearing Decision back to the hearing officer for the limited purpose to identify what the loss of services originally provided were, if any, and to apply the correct standard for a decreased housing service under the Rent Adjustment Ordinance. The scope of this Remand Hearing Decision is limited to this issue.

### **SUMMARY OF DECISION**

The Hearing Decision which denied a claim for decreased housing services is affirmed.

### **EVIDENCE AND FINDINGS OF FACT**

#### **Standard for Decreased Housing Services**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>1</sup> and may be corrected by a rent adjustment.<sup>2</sup> However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. The tenant has the burden of proving decreased housing services by a preponderance of the evidence. The tenant also has

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<sup>1</sup> O.M.C. §8.22.070(F)

<sup>2</sup> O.M.C. §8.22.110(E)

the burden of proving notice to the owner about a complaint and the owner must be afforded a reasonable opportunity to respond to the complaint.

Did a Loss of Service Occur?

The subject unit is located in a residential complex, consisting of two buildings. The buildings are connected by a bridge. Each building has an elevator. When the tenants moved into the subject unit in 2011, there was a functioning elevator. In 2014, the elevator was out of service for a six-week period from mid-August through the end of October. Both elevators have regular monthly maintenance as required by state law. Major work was done on the subject elevator which was evidenced by the work orders, description and invoices submitted by the owner.

During the six-week period, the tenants could take the second elevator, which was fully functioning. The tenants confirmed that there was the second elevator but stated that they would have to walk down a long hallway to get to their apartment and that would have been inconvenient.

The tenants did not have to take the stairs to the third floor because they could take the second elevator and walk across the bridge to their apartment. Because the owner provided a reasonable alternative accommodation for the six-week period while the first elevator was undergoing major repairs, no loss of service occurred.

ORDER

1. The Hearing Decision regarding Tenant Petition T14-0527 is affirmed.
2. The claim for decreased housing services is denied.

Right to Appeal: **This decision is the final decision of the Rent Adjustment Program.** 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: July 8, 2016



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**Linda M. Moroz**  
Hearing Officer  
Rent Adjustment Program



**PROOF OF SERVICE**

**Case Number T14-0527**

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 on Remand 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:**

**Tenants**

Marta & Steve Weinstein  
4096 Piedmont Ave. #321  
Oakland, CA 94611

Marta Weinstein  
200 Fairmount Ave #312  
Oakland, CA 94611

Steve Weinstein  
200 Fairmount Ave #312  
Oakland, CA 94611

**Owner**

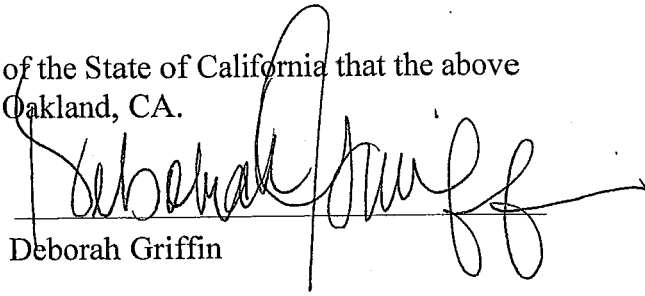
Phil Baradat  
4040 Civic Center Dr. Suite 200  
San Rafael, CA 94903

**Owner Representative**

Jon S. Heim, Harper & Heim, Lawyers  
4040 Civic Center Dr Suite 200  
San Rafael, CA 94903

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 July 14, 2016 in Oakland, CA.

  
Deborah Griffin

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**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

For filing stamp. CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2015 APR -6 PM 12:48

**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 14 - 0527 MS/LM**

**LANDLORD RESPONSE**

Your Name Phil Baradat	Complete Address (with zip code) 200 Fairmount Ave. Oakland, CA 94611	Phone: (415) 847-4501 Email: philbaradat@comcast.net
Your Representative's Name (if any) Jon Stanley Heim Harper & Heim, Lawyers	Complete Address (with zip code) 4040 Civic Center Dr., Ste. 200 San Rafael, CA 94903	Phone: (510) 725-7593 Fax: (510) 964-7661 Email: harperandheim@gmail.com
Tenant(s) name(s) Marta & Steve Weinstein	Complete Address (with zip code) 200 Fairmont Ave., Apt. 312 Oakland, CA 94611	

Have you paid for your Oakland Business License? Yes  No  Number \_\_\_\_\_

Have you paid the Rent Program Service Fee? (\$30 per unit) Yes  No

There are 32 residential units in the subject building. I acquired the building on \_\_\_/\_\_\_/\_\_\_.

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

**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 on the City of Oakland web site. 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 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"/>
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_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**II. RENTAL HISTORY** If you contest the Rental History stated on the Tenant Petition, state the correct information in this section.

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" to all of the petitioning tenants? Yes \_\_\_\_\_ No \_\_\_\_\_ I don't know \_\_\_\_\_

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

**Begin with the most recent rent and work backwards. If you need additional 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 NOTICE TO TENANTS 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
		\$ _____	\$ _____	<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. SEE ATTACHED PAGE AND SUPPORTING DOCUMENTS.

**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.**

\_\_\_\_\_ *Philip Daradot*

Landlord's Signature

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 cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received a copy of the petition filed by your tenant with this letter. Copies of **documents attached** to the petition form will not be provided to you. You may review these in the RAP office by appointment. For an appointment to review a file call (510) 238-3721.

**Mediation Program**

Your tenant may have offered to mediate his/her complaints. If the tenant signed the mediation section in the copy of the petition mailed to you, they requested mediation. 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 the needs of the parties involved. If you agree to mediation before an RAP staff member trained in mediation, a mediation session will be scheduled before the hearing begins.

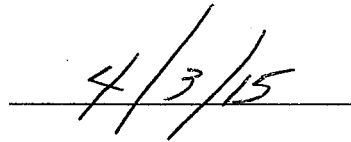
If you and the tenant agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

**It is required that both parties agree to mediation in order to have a case mediated. The tenant must have already signed the request for mediation on their petition so be sure to review their signature page of the copy that was provided within your notification package.**

**If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign and return this form along with your Landlord Response.** I agree to have my case mediated by a Rent Adjustment Program Staff member (no charge).



Landlord's Signature



Date

III. HEALTH SAFETY FIRE OR BUILDING CODE VIOLATIONS UNIT #312

The apartment complex has an underground parking garage that has an entrance/exit for vehicles only and a lobby attached to the garage with a separate people entrance/exit. The landlord was informed that the car entrance had working sensors. It was not until this petition was filed that the landlord was informed the sensors were triggered by vehicles, not by people. For safety purposes only, the landlord has ordered the installation of sensors that would be triggered by people. Although these safety sensors are being installed, this entrance is still not to be used by people as there is not enough room for a person to safely use this entrance with vehicles entering and exiting the premises. This must be stressed to petitioners.

IV. DECREASED HOUSING SERVICES

LANDLORD RESPONSE

Until October of 2014, Landlord had an elevator maintenance contract with Star Elevator, requiring monthly inspection and servicing. Recent monthly service bills are attached.

In July of 2014, Landlord received two preliminary orders requiring additional elevator work. Landlord asked Star Elevator to perform all required work and any further appropriate work. Star Elevator agreed to do so, but delayed doing so, to Landlord's frustration.

After multiple attempts to rush Star Elevator's repairs, Landlord discharged Star Elevator and retained Apple Elevator in October of 2014. Apple Elevator's repair and routine maintenance agreements are enclosed. Apple Elevator fully repaired the subject elevator and brought it into full compliance. Apple Elevator now performs regular routine maintenance of the subject elevator. Landlord spent \$8,405.89 on this work. Throughout this time, a second elevator on the premises functioned consistently and was available for all tenant's use.

000022

LM  
 T14-0527 MS/BC

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. <p style="text-align: center;"><b>RECEIVED</b></p> <p style="text-align: center;">NOV 4 2014</p> <p style="text-align: center;">OAKLAND RENT ADJUSTMENT</p>
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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.**

**TENANT PETITION**

**Please print legibly**

Your Name MARTA & STEVE WEINSTEIN	Rental Address (with zip code) 200 Fairmount Ave. Oakland, 94611	Telephone (510) 406-0600
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Phil Baradat	Mailing Address (with zip code) Rent Drop Box 200 Fairmount Ave.	Telephone

Number of units on the property: 32 Oakland, 94611

Type of unit you rent (circle one)	House	Condominium	<input checked="" type="radio"/> Apartment, Room, or Live-Work
Are you current on your rent? (circle one)	<input checked="" type="radio"/> Yes	<input type="radio"/> No	Legally Withholding Rent. You must attach an explanation and citation of code violation.

**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. **I (We) contest one or more rent increases on one or more of the following grounds:**

je 52

<input type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<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) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(g) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(h) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(i) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014).
<input type="checkbox"/>	(j) My rent has not been reduced after the expiration period of the rent increase based on capital improvements.
<input 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).

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

Date you moved into the Unit: JULY 1, 2011 Initial Rent: \$ 1,550 ~~1,771~~ /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: JULY 1, 2011. 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. You must check "Yes" next to each increase that you are challenging.

See Page #4

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
		\$	\$	<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
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 60 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 never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: \_\_\_\_\_

**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 service problems, 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, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying for the service(s); and 3) how you calculate the dollar value of lost problem(s) or service(s). Please attach documentary evidence if available.

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, CA 94612. Phone: (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.

[Handwritten Signature]  
Tenant's Signature

10/25/14  
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 Rent Adjustment Program Hearing Officer the same day.

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**

The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the Landlord's Response form. Copies of **documents attached** to the Response form will not be sent to you. However, you may review these in the Rent Program office by appointment. For an appointment to review a file call (510) 238-3721; please allow six weeks from the date of filing before scheduling a file 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
- Other (describe): Friend

**III. DESCRIPTION OF DECREASED HOUSING SERVICES**

**3rd FLOOR TENANTS**

Apartment #: 312

**1) LOST SERVICES ORIGINALLY PROVIDED BY OWNER:**

Elevator is out of service.

**2) DATE LOSSES BEGAN:**

Approximately September 15, 2014. The elevator is frequently out of service for days or weeks at a time. When I rented my apartment the elevator was working. The owner has not given me any rent reduction.

**3) ESTIMATED DOLLAR VALUE OF LOST SERVICES:**

**CURRENT MONTHLY RENT:** \$ 1,550.00 The market rental rate for a similar apartment without an elevator would be approximately 30% less per month.

**CHECK ALL THAT APPLY:**

I am over 65.

I am disabled.

I have physical conditions that make it difficult for me to use stairs (such as recent BACK surgery, weight, other.)

I have small children. (4 GRANDCHILDREN 2-3 YRS OLD WHO ARE OFTEN)

I would not have rented the apartment if it had not had an elevator.

I want to move due to the lack of elevator service but I can't afford to.

**III. DESCRIPTION OF DECREASED HOUSING SERVICES**

HEALTH SAFETY FIRE OR BUILDING CODE VIOLATIONS UNIT # \_\_\_\_\_

FILL IN BELOW:

- 1) GARAGE DOOR HAS NO SAFETY FEATURE TO KEEP IT FROM CLOSING ON SOMEONE AUTOMATICALLY.
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) \_\_\_\_\_
- 6) \_\_\_\_\_
- 7) \_\_\_\_\_
- 8) \_\_\_\_\_
- 9) \_\_\_\_\_
- 10) \_\_\_\_\_