

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

**September 21, 2017
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

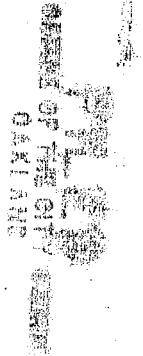
1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - i. Appeal Hearing in Cases:
 - a. T15-0631; Orozco v. Ali
 - b. T16-0188; Ali v. Morris
 - c. T16-0313; Novela v. Lee
5. ADJOURNMENT

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.

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 service animals or emotional support animals.

2017 SEP 13 PM 1:21



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.

CHRONOLOGICAL CASE REPORT

Case No.: T15-0631
Case Name: Orozco v. Ali
Property Address: 8511 Holly Street, Units 3 & 4, Oakland, CA
Parties: Carlos Orozco & Rafael Diaz (Tenants)
Adel Ali (Landlord)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 23, 2015
Landlord Response filed	January 7, 2016
Hearing Decision issued	August 25, 2016
Owner Appeal Filed	September 12, 2016

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

Date Appeal Form received

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

2016 SEP 12 PM 3:05

APPEAL

Date Additional info attach

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2016 SEP 12 PM 3:54

Appellant's Name
Adel Ali

Landlord Tenant

Property Address (Include Unit Number)
8511 Holly street #3

Appellant's Mailing Address (For receipt of notices)
515 Independent Rd.
Oakland CA 94621

Case Number T15-0631

Date of Decision appealed 8/24/15

Name of Representative (if any)

Representative's Mailing Address (For notices)

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

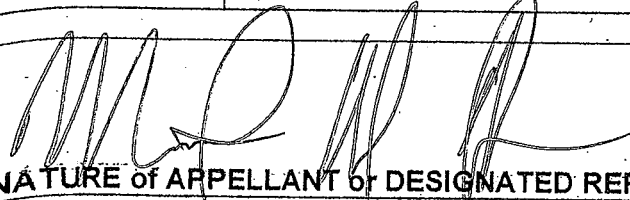
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.

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 Please number attached pages consecutively.

3. **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 ~~9/13~~ 9/13, 200-2016, 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:

Name	Carlos Orozco
Address	8511 Holly Street #3
City, State Zip	Oakland, CA. 94621
Name	
Address	
City, State Zip	

	DATE 9/13/16
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 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.

2016 SEP 13 PM 3: 54

There are several objects below that are concerning and should be utilized to support our appeal.

- 1) On Day 1:59-2:00 one second of tape was utilized from Alex Aviles' testimony, this is not an appropriate amount of time to determine the context of the statement
- 2) Page 13 Paragraph 4 tenant claims others installed the plywood, but there is no access as the stairs had been removed providing access to the deck.
- 3) Page 14 citation 28, Peppertree letters contain a phone number to contact a manager with any concerns
- 4) Jorge Chavero's testimony lacks professional credibility, his initial assessment contained language referring to the presence of termites. He intended to repair the deck as a handyman would, fixing only visible damages, after the engineer got involved, causality for the dry rot was placed on an improperly installed gutter system installed by the tenant.
- 5) As of June 2010 a letter indicating that Orozco pay his rent to Peppertree office, by the words of the RAP on page 21 paragraph 5

While the evidence is convincing that it was Muhammed who rented the unit to the tenant and not Adel Ali, it was certainly made clear to the tenant by as early as June of 2010, that the market was not a place for him to pay his rent, and that instead, his rent was due at the *Peppertree* office. There are no letters directing the tenant to direct his complaints to the *Peppertree* office. It certainly makes sense that once he was informed to pay his rent at *Peppertree*, the tenant should have known that he should make his complaints there as well. However, in the time period before the first letter in June of 2010, it was logical for the tenant to think that he could make complaints to the person who originally rented him the unit.

Based on the logic of this statement:

In a decreased housing services case a tenant must establish that he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to relief. Additionally, where the *RAP Notice* has been given, the tenant is only allowed relief for 60 days prior to the filing of the petition⁴⁴. However, where the *RAP Notice* has never been given the tenant can go back as far as three years, or to the beginning of the tenancy, whichever is later. Here, the tenant did not receive the *RAP Notice* at any time. Therefore, the tenant is entitled to bring forth claims for decreased services since September of 2013.

Appropriate notice had not been given for any work order requests after June of 2010, which is the established time that Mr. Orozco had been informed of the existence of a manager. Any claims after June of 2010 were made improperly and should be considered hearsay by the logic of the RAP's own findings.



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 NUMBERS: T15-0631, Orozco v. Ali
T15-0673, Diaz v. Ali

PROPERTY ADDRESS: 8511 Holly Street, Units 3 &4, Oakland, CA

DATES OF HEARING: June 8, 2016,
July 8, 2016

DATE OF DECISION: August 24, 2016

APPEARANCES: Carlos Orozco (Tenant Unit #3)
Rafael Diaz (Tenant Unit #4)
Laura Shoaps (Attorney for Tenant)
Jorge Chavara (Witness for Tenants)
Adel Ali (Owner)
Alex Aviles (Witness for Owner)
Miguel Aviles (Witness for Owner)
Marci Valdivieso, (Interpreter June 8, 2016)
Noemi Gonzalez (Interpreter July 8, 2016)

SUMMARY OF DECISION

The tenant petition of Rafael Diaz is dismissed. The tenant petition of Carlos Orozco is granted in part. The legal rent for the units is set forth in the Order below.

CONTENTIONS OF THE PARTIES

Tenant Diaz filed a petition (T15-0673) which alleges that a rent increase from \$950 to \$1,200 a month, effective January 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that no written notice of the Rent Program (*RAP Notice*) was given to him with the rent increase notice; and that his housing services have decreased. His list of decreased services include a problem with the drywall in the living room, a leak in the kitchen and broken building locks.

Tenant Carlos Orozco filed a petition which alleges that a rent increase from \$950 to \$1,200 a month, effective January 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that no *RAP Notice* was given to him with the rent increase notice; that his housing services have decreased and that at present there exists a health, safety, fire or building code violation in the unit. The tenant additionally contests an earlier rent increase from \$850-\$950 a month, given in July of 2013.

Tenant Orozco's decreased service claims include a roof leak; broken light switch; missing smoke detectors; leaking sinks in bathroom and kitchen; broken latch and doorknob on bedroom door; back patio damaged wood; heater often does not work; loose outlets in bedroom and bathroom; and, the windows in the bedrooms and living room don't close completely and one window is cracked.

The owner filed a timely response to both petitions in which he claimed that the units were exempt because they are "controlled, regulated or subsidized" units and as to Tenant Diaz, that the unit is in a building that was rehabilitated at a cost of 50% or more of the average basic cost of new construction and that tenant Orozco was not current on the rent when his petition was filed. The owner did not allege a justification for any of the rent increases.

THE ISSUES

- (1) Should Mr. Diaz' petition be dismissed, and if yes, what is the rent?
- (2) Can the Notice of Violation produced by tenant Orozco be admitted into evidence despite the fact that it was not produced prior to the evidence deadline?
- (3) Can the Owner's exhibits, which were produced on May 24, 2016, and June 30, 2016, be admitted into evidence?
- (4) Is Jorge Chavero's testimony admissible?
- (5) Was tenant Orozco current on his rent at the time he filed his petition?
- (6) Is tenant Orozco's unit exempt from the Ordinance because it is a "controlled, regulated or subsidized" unit?
- (7) When, if ever, was Tenant Orozco served with the *RAP Notice*?
- (8) As to tenant Orozco, is the 2013 rent increases valid? If not, what is the legal rent?
- (9) What is the impact of the owner's failure to provide a justification for the contested rent increase?
- (10) Have the tenant's housing services decreased?
- (11) What, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Rent History Tenant Diaz: Tenant Rafael Diaz testified that he moved into the rental unit at 8511 Holly Street, Unit 4, in 2011 at an initial rent of \$850 a month. He found out about the rental at a grocery store in Oakland, around the corner from the rental unit, through a man named Muhammed, who he now believes is the father of Adel Ali, the current owner. When he talked to this Muhammed about the rental he was with Tenant Orozco. He was not given the *RAP Notice* when he moved in.

The tenant was served a rent increase notice in October of 2015, purporting to increase his rent from \$950 to \$1,200 a month, effective January 1, 2016.¹ This document was not served with a *RAP Notice*.

The tenant's rent was raised to \$950 (from \$850) at some point although he does not remember exactly when. He has continued to pay \$950 in rent since he received the rent increase notice and will continue to do so until the Hearing Decision is issued.

At the Hearing, the owner withdrew the rent increase to \$1,200 a month.

Tenant Diaz Decreased Housing Services:

The tenant withdrew his claims of decreased services at the Hearing.

Rent History Tenant Orozco:

Tenant Orozco's testimony: Tenant Carlos Orozco testified that he moved into Unit 3, which is a two bedroom apartment, in the subject property in February of either 2010 or 2011. While he could not remember the year when he was testifying, his *Tenant Petition*, which was signed under penalty of perjury, states that he moved into the rental unit in February of 2010. His initial rent was \$850 a month.

Orozco testified that he made arrangements to rent the unit from a man he believed was named Muhammed Ali, who he now understands to be the father of Adel Ali, the current owner. Muhammed worked at a market near the rental unit in East Oakland called East Bay Market. The tenant regularly delivered his rent checks there as well when he first lived in the unit. For some period of time, he paid his rent by checks written out to "Muhammed Ali" by delivering the checks to the grocery store. These checks were cashed. At some point the tenant was informed to start having his checks written to Adel Ali.

Orozco testified that originally he was not shown the unit by anyone. He went into the unit himself, because he used to live next door, and there were no locks on the doors to the unit.

Orozco further testified that he has never been provided with a *RAP Notice*.

On cross-examination the tenant acknowledged getting letters from the owner of the unit informing him that he had to stop delivering his rental checks to the market. These letters were given to him about two and a half years ago.² These letters directed him to bring his checks to the office of *Peppertree Apartments*, which was in the same location as a glass company in Oakland.

¹ Exhibit 7

² See Exhibit 9

Orozco testified that in July of 2013 his rent was increased from \$850 to \$950 a month. Adel Ali informed him of this rent increase verbally. He was not served with any document when he was informed of this rent increase.

Tenant Orozco further testified that in October of 2015, he was served with a *60 Day Notice of Change in Rental Terms*.³ He found this notice on the door. He did not also get it in the mail. This notice purported to increase his rent from \$950 to \$1,200 a month, effective January 1, 2016.

Tenant Orozco has continued to pay rent of \$950 a month and will continue to do so until he gets a Hearing Decision in this matter.

The tenant produced rent checks showing payment of rent. There is a rent check dated November 5, 2015, for \$950 made payable to Adel Ali.⁴ Additionally, there is a rent check dated October 5, 2015, made payable to Adel Ali for the same amount.⁵ The backs of these checks both show that these were received by *East West Bank* in Pasadena, CA on November 6, 2015.

The tenant further testified that in July of 2013, his rent was increased from \$850 to \$950 a month. He learned of this rent increase verbally in a conversation with Adel Ali. The tenant produced a copy of a check he wrote to Adel Ali in July of 2013, showing a rental payment of \$950.⁶ His prior rental payments were \$850 a month.⁷

Testimony of Adel Ali and his employees: The owner of the property testified that in 2010 the tenant was living in a single family residence nearby the subject unit. Because of concerns that the tenant had about drug dealing on the owner's property, he asked the owner if he could move in to the subject unit and help him keep away the drug dealers. The owner allowed the tenant to move in, at a rent of \$850 a month. This was a rental rate that was significantly lower than the prior rental rate of \$1,250 a month (to a prior tenant), and was a concession in order to have the tenant help maintain the property.

Ali was asked "When you originally rented to him....did you serve him with a RAP Notice when he moved in originally? He responded "The RAP Notice is attached to the lease that he refused to sign."⁸ He further testified that there is no signed lease for Mr. Orozco.

Ali testified when asked if Orozco's rent was \$850 a month until July of 2013 "something like that."⁹ When asked "how did you increase the rent to \$950, how did

³ Exhibit 1. This exhibit, and all other exhibits referred to in this Hearing Decision, except Exhibit 9, were admitted into evidence without objection.

⁴ Exhibit 2, page 15

⁵ Exhibit 2, page 14

⁶ Exhibit 2, page 2

⁷ See Exhibit 2, page 1

⁸ Tape Recording July 8, 19:40-20:30

⁹ Tape Recording, day 2, 16:30-16:34

that communication occur?" he said "I think that at that time the manager just sent him a notice explaining to him, well when we do our rent increases we give a notice, a 30 day notice, a 60 day notice, telling him how much it is and a *RAP Notice* and send it to them."¹⁰

Ali further testified that the 2013 rent increase notice was served by the manager Carolyn or Yolanda.

Alex Aviles, an employee of *Peppertree*, testified that it was he who posted a rent increase notice on the tenant's door in 2013. He stated that he did not personally give the rent increase to the tenant. He also testified that he did not read the information in the rent increase notice and he does not know if a *RAP Notice* was present in the paperwork he served.

The owner did not provide any documentation of any *RAP Notice* served on this tenant.

The owner further testified that he never rented to tenant Orozco or tenant Diaz under Section 8. He did not provide any testimony that he rented to the tenant under any other subsidy program.

The owner acknowledged that his father's name is Muhammed, although not Muhammed Ali, and that he has two other employees whose names are Muhammed Ali. When asked "did your father engage in any conversation with him (the tenant) about renting the property" Ali replied "my father engaged with him and he does look after the store when he is here."¹¹ The store he was referring to was the retail grocery store around the corner from the subject rental unit.

The owner further testified that his legal name is Adel Muhammed Ali.

The owner testified that the tenant was not current on his rent at the time he filed his petition and that he regularly paid his rent late. Upon being shown the tenant's check dated November 5, 2015, the owner acknowledged that the tenant had paid rent for October 2015 and November 2015 rent prior to filing his petition on November 23, 2015. The owner did not produce a ledger for this tenant's rental payments.

The owner further testified that there has been an audit of the tenant's rent payments and the audit shows that he has not paid approximately 7 months' rent. This audit was not produced to the RAP.

The owner further testified that his family owns a grocery store on 85th and International, near the location of the subject rental unit. However, that is not a location where they accept rent for the many rental units they also own (through a company called *Peppertree Apartments*.) *Peppertree* shares an office with *East Bay Glass*, a glass

¹⁰ Tape Recording July 8, 2016, 18:00-19:00

¹¹ Tape Recording June 8, 2016, 1:36:30-1:37:02.

company on 6th Avenue in Oakland, which the family also owns. The tenants are expected to pay their rent at this office.

The owner testified that this tenant has been served many letters informing him to stop paying his rent at the grocery store and to pay it at the office of *Peppertree*.¹²

The owner testified that he has withdrawn the October 2015 rent increase notice.

On cross-examination Adel Ali was shown a check (#528) written by the tenant, dated April 8, 2011, to Muhammed Ali, for \$800 for rent for apartment three. The owner testified that it was not customary for his employees to accept rent checks made payable to themselves. The owner was also shown a written piece of paper acknowledging receipt of rent in the amount of \$550 from Carlos Orozco for February rent in apartment #3, 8511 Holly Street. This was signed by a Muhammed Ali.

Generally speaking the owner's testimony was inconsistent and combative. At first he testified that his father did "look after the store" when he was in the country, he later testified that his father never worked at the store and just brought sandwiches there for the workers. He interrupted the testimony and was argumentative and obstreperous.

Decreased Housing Services-Tenant Orozco:

Roof Leak: Orozco testified that a roof leak began in his bedroom in September of 2013. Depending on how hard it was raining, the leak caused water to enter the bedroom. At one point he hung a canvas below the ceiling to catch the water, put a hole in the canvas and then put a pail down to catch the water. When he moved into the unit, there were no stains on his bedroom ceiling.

When the roof first leaked, Orozco told the mother of the owner that there was a leak. This conversation occurred at East Bay Market on 85th Ave and E. 14th Street in Oakland. This is the same location where the tenant made the original rental agreement and it's a business he believed to be owned by the same family that owns the apartment where he lives. This is a location where he had regularly paid his rent in the past.

Orozco further testified that no action was taken after he complained about the roof leak.

Orozco again complained about the roof leak in January of 2015 and again in November of 2015 at the offices of Bay Glass in Oakland.¹³ When he complained in November of 2015, he also showed photographs he had taken of the ceiling and told the person to whom he complained that mold was beginning to form. These complaints were made to workers at the offices of Bay Glass (which shares office space with *Peppertree Apartments*). When the tenant made complaints about the roof leak, he was told that the information would be passed on.

¹² See Exhibit 9, pages 6-7, and pages 14-22. The first of these letters was dated June 8, 2010.

¹³ The owner later testified that the glass shop is actually *East Bay Glass* which shares office space with *Peppertree Apartments*.

No action was taken by the owner in response to his complaints.

The tenant provided photographs of the ceiling in his bedroom. He took the photographs in November of 2015.¹⁴ They show a ceiling with large brown stains.

The tenant further testified that his wife called the *City of Oakland* and an inspector came to inspect the property. A *Notice of Violation* was issued on March 3, 2016.¹⁵ The *Notice* states:

“water intrusion on the bedroom walls and ceiling. Causing surface mold on walls and ceiling. Repair leak source and repair walls and ceilings.”

The tenant testified that in April of 2016 he fixed the ceiling in the bedroom of his unit. He cleaned the ceiling and repainted. He does not know if the roof has been repaired. The last time there was water entry was in November of 2015.

On cross-examination the tenant confirmed that this leak occurred in 2013. Additionally, he stated that the reason he waited so long to call the inspector's office was because he did not know that there was a person in the City that he could call to come and inspect the unit. He kept waiting for the owner to fix the problems because he did not know he had other recourse.

The owner, Adel Ali, testified that when he rented the unit to the tenant there were no water stains on the ceiling in the bedroom. Over the years, the tenant complained more than once about the condition of the roof in his bedroom after *Peppertree* complained to the tenant about late rent payments. The first complaint from the tenant was in early 2014 and upon investigation, there was entry of water into his unit when it was raining.

In response to this complaint, the roof on that building was replaced in August of 2014. *Peppertree* did not paint the ceiling or repair the stain from the water entry. According to *Peppertree's* investigation there was nothing wrong with the structural integrity of the ceiling. Additionally, there was concern that the ceiling was made of asbestos, and they did not want to disturb it. While the unit has not been tested for asbestos, since this building was built prior to 1965, he believes that it likely contains asbestos.

Ali further testified that after the roof was replaced, the tenant continued to complain about the entry of water. His complaints continued to be tied to times when *Peppertree* complained to the tenant about underpaid or late paid rent. In response to this complaint, Alex, the maintenance manager, sealed a patch above the tenant's bedroom even though the area appeared to be dry.¹⁶ Ultimately, the tenant repaired the ceiling and walls himself.

¹⁴ Exhibit 3, page 1

¹⁵ The *Notice of Violation* was not produced prior to the Hearing because the deadline to produce evidence in this case was 7 days prior to the mediation which was held in March on 2016. (See below.)

¹⁶ Alex testified that this occurred in the beginning of 2015.

Ali and his employees further testified that the tenant has been challenging to deal with and has not let them in to do repairs or have substantially limited the number of hours that they could do their work. Alex Aviles, the maintenance manager, testified that generally speaking prior to receiving the *Notice of Violation* that *Peppertree* received about this property, he would not provide *24 Hour Notices to Enter* the Property prior to coming to do a repair. He has been posting the notices since the *Notice of Violation* was issued.

Miguel Aviles testified that within three weeks of receiving the *Notice of Violation* he had Alex begin to do work in the tenant's unit. Alex Aviles testified that he bought materials to prime and paint the ceiling and walls and left them in the tenant's unit at 2:00 p.m. on a day he was doing some work in the unit (for which he had given a *24 Hour Notice to Enter*). He was not able to start the project at that time of the day, because the tenant's wife does not let him stay when she has to leave the unit, and she usually leaves in the mid-afternoon to pick up the children. The owner's wife asked him when he would be back to complete the ceiling and Aviles told her he'd be back in a few days to do the job. Aviles further testified that he did not post another *24 Hour Notice to Enter* the unit the day before he came back, but he did come back to the unit three or four days later. At that point he found that the work had already been done.

Alex Aviles further testified that he saw no signs of mold in the tenant's bedroom, despite the *Notice of Violation* stating that there was surface mold present.

Light Switch: The tenant testified that the hallway light switch in his unit broke in June of 2014 and no longer functioned to turn on the light. When he moved in this switch was working. He complained to a worker who came to repair something in his unit around the time the switch broke and no action was taken until sometime in the Spring of 2016, when someone tried to fix it. At that point an employee of the owner representative changed the light fixture itself, but the switch still did not work. The tenant testified that he fixed the switch himself in April of 2016.

The tenant produced a photograph of the broken light switch.¹⁷

On cross-examination the owner asked the tenant whether he went to the property management office when the light switch broke to report the problem. The tenant replied he let Alex, the maintenance manager, know about the problem.

The owner, Adel Ali, testified that *Peppertree* never received a complaint from the tenant about this problem until receiving the tenant's petition in the subject case. At that point his employee Alex went to the unit in March or April of 2016 to repair the light switch. The first step was to isolate the problem and determine if the light fixture was broken or if the switch was broken so Alex installed a different light fixture. That did not solve the problem so the plan was to return the next day to install a new light switch. When Alex returned, the new light switch had been installed by the tenant.

¹⁷ Exhibit 3, page 6

Alex Aviles testified that he did not ask the tenant to install the light switch. He left the unit without installing the light switch at about 3:30 or 4:00 p.m. This was the same day that he left the paint in the unit. He had not been told to leave by anyone. When he came back to install the light switch (3-4 days later), it had already been installed by the tenant.

Smoke Detectors: The tenant testified that when he moved into the unit there were no smoke detectors or carbon monoxide detectors in the unit. He complained about it a long time ago (he did not know the exact time) to one of the workers, although he does not remember who.

The tenant further testified that Mr. Alex (the maintenance manager) installed smoke detectors in both bedrooms about three years ago. There is no smoke detector in the common area and a carbon monoxide detector has not been installed.

On cross-examination the tenant testified that he complained about the lack of smoke detectors in his unit in March of 2012 at the grocery store. He does not know the name of the person he complained to. He believes this was before he was informed that he should not pay his rent at the grocery store.

The owner, Adel Ali, testified that it is *Peppertree's* policy to confirm that smoke detectors and carbon monoxide detectors are installed in each unit before it is rented. They install the smoke detectors in each bedroom and then either in the kitchen or the hallway. He does not have personal knowledge of whether smoke detectors were installed in this particular unit. The company owns over 100 units and they have a punch lists of things to do prior to rental as well as a move in/move out checklist. Neither the move in/move out check list nor the punch list was provided at the Hearing.

Alex Aviles testified that sometime in 2015 he installed smoke detectors in the tenant's unit.

Adel Ali testified that he believes that Alex was inaccurate about when the smoke detectors were installed and that it was in 2016, not 2015. Ali further testified that the tenant never complained about the lack of a smoke detector to *Peppertree*. Miguel Aviles testified that there was never a complaint from the tenant that there were no smoke detectors in the unit.

Leaking Sink in Bathroom: The tenant testified that there was a crack in the bathroom sink basin, next to where the drain is, when he moved into the unit. This crack made it very difficult to use the sink at all because some of the water would go through the crack (rather than the drain) and go into the sink cabinet, rather than into the drain pipes. Over time, the crack got larger. The tenant used a pail underneath the sink to catch the water that was seeping through this hole and limited the usage of the sink.

The tenant further testified that at the time he moved in he talked to the owner's father (who at the time he believed to be the owner) in person about the problem. He was told

that the owner did not have the money to repair the sink at the time. The tenant later informed Mr. Alex about the problem in 2013, but no action was taken until after the mediation in this matter was held in March of 2016. The sink was replaced in March of 2016.

The owner, Adel Ali, testified that when the tenant moved into the unit he had a brand new bathroom and there was no hole in the bathroom sink.

Alex testified that when he installed the smoke detectors in 2015, he saw that there was a crack in the bathroom sink. The tenant did not complain. Alex saw it on his own. This crack in the sink caused dry rot in the vanity because water leaked into the vanity cabinet.

Adel Ali testified that Alex reported to the office that the tenant had completely destroyed the vanity. He does not know when that happened. They replaced the bathroom vanity. He believes this occurred in approximately December of 2015 after being notified by the Rent Board of the tenant's claims.¹⁸ Ali further testified that the tenant never complained about this to *Peppertree*.

Alex Aviles testified that when he came to fix the bathroom sink, he had no problems with access to the unit or getting the work done when he came to do it.

Kitchen Sink Leak: The tenant testified that the pipes beneath the kitchen sink were leaking from the time he moved into the subject unit. The tenant produced a photograph of the area under his sink showing the pipes with blue tape on them.¹⁹ His wife complained to him about the regular presence of water in the kitchen cabinet. The tenant informed the person he believed to be the owner (Muhammed) about the problem soon after he moved in but no action was taken.

The tenant but the blue tape around the pipe to try to stop the leak but this did not stop the problem.

The *Notice of Violation* states: "Plumbing leak under the kitchen sink."²⁰ The tenant testified that this was repaired by the owner in March of 2016.

The owner, Adel Ali, testified that *Peppertree* never received a complaint about this problem from the tenant (prior to the filing of his petition). This matter was repaired after they received the *Notice of Violation* in March of 2016.

Alex testified that the kitchen sink repair was done before the repair of the bathroom vanity but that they were done in the same week. Later he testified that the repair to the kitchen sink happened after the *Notice of Violation* was issued in March of 2016. He had

¹⁸ None of the owner representatives were able to say with any clarity when this actually occurred. The testimony of Adel Ali and Alex Aviles was contradictory and inconsistent. The statement that it was replaced in approximately December of 2015 was made after the question was asked multiple times and clear answers were not provided.

¹⁹ Exhibit 3, page 2

²⁰ Exhibit 4

to reskin the plywood under the kitchen cabinet after the repair was made to the plumbing. He had no problems with access to the unit or getting the work done when he came to do it.

Bedroom door latch and doorknob: The tenant testified that from the time he moved into the unit there was a broken door knob and latch on the door to the children's bedroom. The tenant provided a photograph taken in 2016 (Exhibit 3, page 5) which shows the door after it continued to flake and break down after he moved in. It did not look this bad when he moved in but got progressively worse over the years.

The tenant further testified that because of the broken door knob, the tenant's children were not able to open or close the door to their room. Soon after he moved in he informed Muhammed, the person he believed to be the owner, about the problems and no action was taken.

The *Notice of Violation* states: "Bedroom door is broken and missing door knob."

The tenant testified that this problem was repaired in March of 2016.

The owner, Adel Ali, testified that the tenant did not complain about this condition until after he filed his petition. He further stated that the unit would not have been rented with a hole in the door. He believes that a *Peppertree* employee discovered this problem himself when he went to check on the roof leak.

Alex Avilés testified that he believed that this door was abused by the tenant.

Back Patio: The tenant testified that there is a patio attached to his unit. There is a door in his kitchen that leads to this patio. The wood on the patio was damaged and rotten from when he moved into the unit. He complained to Muhammed, the person he believed to be the owner, about this problem when he moved in. No action was taken until after the *Notice of Violation* was sent to the owner.

The tenant has not used the back deck often because he has always been concerned about its condition and that it might fall.

The *Notice of Violation* states: "Unapproved hand and guard railing installed on rear patio deck."²¹

The tenant testified that the owner has started to do some work on the back patio but has discovered that the beams are rotting throughout the deck. The owner has blocked off his access to the back deck while the repairs are being made.

Jorge Chavero testified that he used to live in the subject building in Apartment A.²² He lived in the unit directly below the unit of tenant Orozco. His profession is plumbing and

²¹ Exhibit 4

remodeling and he has been in the business for 18 years. He also used to work for Mr. Adel Ali. He started working for him in 2011 and worked for him until 2013.

Chavero further testified that from his years of experience in the construction field he can identify rotten wood. Because his unit was under Mr. Orozco's he was able to see that the underside of the exterior patio was a potential hazard. He informed Orozco not to use it because he was concerned that it would collapse because the wood was rotten and had termites.

Chavero further testified that he informed Muhammed, the father of Adel Ali, about the damaged wood. Chavero offered to repair the patio, but Muhammed complained about the cost and said it was too expensive to fix. This conversation happened in 2011.

Chavero further testified that he also made a comment to Adel Ali about the problem with the patio. He said to him that he was going to have problems with this deck because it was a place that people walk. This conversation happened in 2013.

Chavero testified that he left his unit voluntarily and was not evicted. No Unlawful Detainer action was ever filed.²³ There were problems with humidity in his unit and he asked for repairs but the owner expected him to repair it himself. Chavero withheld rent for 3 months.

Chavero further testified that he stopped working for the owner sometime in 2012.

On cross-examination Chavero testified that he is not a licensed contractor, but is a handyman. He denied owing in excess of approximately \$7,000 in back rent (he only owed three months).

The owner's employee, Miguel Aviles, testified that in March of 2015, there was a tenant complaint from another tenant in the building that tenant Orozco had a dog living on his deck and that there was dog feces being sprayed off that deck and into his or her deck area (this person lived below tenant Orozco.) This resulted in an investigation of the deck. A report was generated by Aviles. The report states:

"Viewed tenant unit for Carlos Orozco and discovered stairs had been removed and a pallet was installed above to create a guardrail. We will have to contact an engineer to solve this issue."²⁴

Miguel Aviles further testified that there had been a staircase leading from the backyard to the deck which had been removed by the tenant. Additionally, the tenant had created some kind of gutter system for his deck that was not originally a part of the deck.

²² The owner objected to this testimony on the grounds that this prior tenant was biased because he was evicted from his apartment. See Findings of Fact below.

²³ The owner agreed with this testimony.

²⁴ Exhibit 9, page 1

Miguel Aviles further testified that after investigating the deck and generating the report in March of 2015, no further action was taken by *Peppertree* with respect to the deck until after the *Notice of Violation* was issued (in March of 2016). No one informed him of any dry rot.

Miguel Aviles testified that after the *Notice of Violation* they started to investigate the deck further and discovered that there was dry rot. Adel Ali and Aviles testified that they believe that the dry rot was created by the gutter system that was installed by the tenant and other alterations the tenant made to the patio area. These things, combined with the tenant spraying water on the deck to clean the dog feces, caused an accumulation of water that caused the dry rot to form.

Alex Aviles testified that when he went to investigate the deck there was plywood sheeting covering the 2' x 6' boards that the deck was constructed from. He does not know who installed that plywood, but believes it was the tenant. This plywood was mounted to the deck, it was not just sitting on top of the deck. With respect to the plastic sheeting at the bottom of the deck, the tenants living below Mr. Orozco installed it.²⁵ He knows this because it was done to protect themselves from the smell of the dog feces that was coming from the upstairs deck.

The tenant denied having installed the plywood and the gutter system and testified that the plywood and gutter system was already installed on the deck when he moved into the unit. Alex Aviles was asked by Adel Ali whether it appeared to him that the plywood on the deck, depicted in Exhibit 3, page 7, had weathered in the rain for 6 years (the length of time of the tenant's tenancy), Aviles testified that "It's hard to say...."²⁶

Adel Ali testified that he empathized with the tenant about removing the stairs to the patio because of safety concerns in the neighborhood. Ali denied ever being told by Chavero, his former employee and former tenant, that there was any problem with the condition of Orozco's deck. Ali additionally testified that the *Notice of Violation* only referred to the unapproved hand and guard rails on the deck. However, they had evidence of further problems with the deck so they conducted a deeper investigation which revealed the dry rot. The deck was completely removed in June of 2016. They are waiting on approval from the City of Oakland on how to proceed with rebuilding it. The owner provided photographs of the underside of the tenant's deck which shows a substantial amount of dry rot on the deck.²⁷

Heater: This complaint was withdrawn at the Hearing.

Outlets in bedroom/bathroom are loose: The tenant testified that there are 3 outlets in one bedroom and bathroom that were loose and were very old and did not work properly. He does not recall whether or not he has complained about this problem

²⁵ See Exhibit 11 #3

²⁶ Tape Recording Day 2, 1:59-2:00

²⁷ Exhibit 11, ##1 and 6-7

to the owner or any of his employees. The owner repaired one of the broken outlets in the bathroom and the tenant repaired the other.

Miguel Aviles testified he never had a complaint about this from the tenant. He further testified that there is a move in check list for this unit and that this problem was not on the list. This document was not offered into evidence or provided to the RAP.

Windows in the living room and bedroom: The tenant testified that from when he moved into the unit two of the windows did not close all the way (one in the living room and one in his bedroom) and one of the living room windows was broken. He complained to Mr. Muhammed soon after he moved in and was told that it would be repaired.

At the time of the first Hearing, the windows had not been repaired.

Adel Ali testified that the tenant never complained about the condition of the windows. Additionally, he testified that the broken living room window was broken from the inside, not the outside. These are double pane windows and only the interior pane is broken.

Alex Aviles testified that on some of the windows in the tenant's unit the perimeter trim was removed. The tenant informed him that the perimeter trim had come off. Additionally, the outside pane of the broken window was not cracked, only the interior pane.

Cross-examination of the tenant: On cross-examination the tenant testified that prior to living in the subject unit he lived in a single family residence near the subject property. The tenant denied ever having made a deal with the owner to rent the unit at a "reduced rent." He did not deal with Adel Ali at all when he moved into the unit, but with the man who he believes to be Ali's father.

The tenant further testified that when he complained to workers at the glass company (that shared space with *Peppertree*) about the conditions in his unit, the workers were supposed to let the owner know about his complaints. He complained to the people to whom he gave his rent, and his rent was accepted by them.

Additionally, the tenant acknowledged receipt of letters telling him where to pay his rent but did not recall ever having received letters telling him how to make complaints about problems in the unit.²⁸

Testimony of Adel Ali and his employees: Adel Ali further testified that *Peppertree Apartments* is a corporation. He has a father, whose name is Muhammed. Muhammed was never employed at East Bay Market. While Muhammed did not work in the store, he

²⁸ None of the letters produced by the owner provide any information about where or how to make complaints about conditions.

visited Adel while he was at the store. He would bring lunch to the employees, or run errands for Adel.²⁹ His father did not work for *Peppertree Apartments* either.

Ali further testified that he showed the apartment to tenant Orozco when he rented it to him. The initial rent was \$850 a month, reduced from \$1,300 monthly. While Orozco never paid \$1,300 monthly, that was the amount he charged the prior tenant.

Ali further testified that before *Peppertree* rents a unit, Alex, the maintenance manager, goes into the unit and does a survey to make sure the unit is in good condition. Before Carlos moved into the subject unit the condition of the unit was not good. So they installed new kitchen counters and cabinets; the bathroom was gutted and new granite and a new vanity was installed; new Pergo flooring was installed; and new vinyl windows were installed.

The owner, Adel Ali, and his employee Miguel Aviles, the Senior Property Manager for *Peppertree*, testified that there were no complaints by the tenant to *Peppertree* about any of the tenant's listed complaints, other than the roof leak into his bedroom. Miguel Aviles testified that he has been employed by *Peppertree* since 2010 in various capacities having to deal with managing the properties and has been the Senior Property Manager since 2011. *Peppertree* learned of these problems after it received the tenant's petition.

Miguel Aviles further testified that he knows the man named Muhammed (Adel Ali's father) and would recognize him but Muhammed never gave him direction about what work to do. His direct supervisor at work for this particular property is Adel Ali. He does not have any knowledge of whether or not the purported conversations between the tenant and Muhammed occurred.

Documents:

On June 8, 2016, the first day of Hearing in this matter, Adel Ali testified that he had filed certain documents with the *RAP*, at least 7 days prior the Hearing. Those documents were not in the file nor were they found within the office. Ali was informed to produce those documents at least 7 days prior to the second day of Hearing and a determination would be made as to whether there was good cause for the late filing of these documents.

On June 30, 2016, the owner filed with the *RAP* office a stamped copy of the documents previously filed on May 24, 2016. These 22 pages consisted of a variety of communications between the owner and the tenant about this property as well as the *Notice of Violation* and documents related to the deck on the property. The tenant objected to the admissibility of these documents on the grounds that they were filed later than the evidentiary deadline, which was 7 days prior to the mediation in the case, which was held in March of 2016.

²⁹ This is contradiction to his earlier testimony that his father engaged with the tenant and that he looks after the store. (See page 5)

Adel Ali testified that he understood that documents were due 7 days prior to the Hearing. He did not understand that documents were due 7 days prior to the mediation.

On June 30, 2016, the owner also produced color copies of photographs³⁰ relating to the deck in the subject unit as well as structural engineering designs relating to work done to repair the back deck.³¹ This work was performed after the mediation in the subject case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Should Mr. Diaz' Petition (T15-0673) be dismissed, and if yes, what is his rent?

The tenant had filed a claim contesting a rent increase from \$950 to \$1,200 a month in rent and claiming decreased housing services. The owner has withdrawn the rent increase. Additionally, the tenant has withdrawn his claims of decreased housing services.

Therefore, with respect to Mr. Diaz, there are no claims at issue. The tenant has continued to pay rent of \$950 a month. The rent remains \$950 a month.

As to Mr. Orozco, does good cause exist for the admittance of the Notice of Violation?

The *Notice of Mediation/Hearing* was sent to all parties on February 16, 2016. That notice specifies that all evidence must be produced to the RAP not less than 7 days prior to the mediation. The mediation was set for March 16, 2016. Therefore, all documents were required to be produced by March 9, 2016, in order to be admissible unless there was good cause for the failure to provide the document sooner.

At the Hearing, the *Notice of Violation* issued by the City of Oakland's Code Enforcement services was presented by the tenant. This document was not provided to the tenant until after the mediation in this matter. Therefore, there was good cause for the failure to provide this document 7 days prior to the mediation.

The *Notice of Violation* was admitted into evidence.

In Mr. Orozco's case, was there good cause for the failure of the owner to produce documents prior to the cutoff date of 7 days before the mediation?

The owner claimed to have produced a set of documents to the RAP on May 24, 2016. While those documents did not appear in the RAP file, the owner did provide a stamped

³⁰ Exhibit 11

³¹ Exhibit 10

copy of those documents showing that the documents were stamped on that date at the RAP office.

The tenant objected to the admission of these documents since they were not produced 7 days prior to the mediation in this case. The owner argued that he believed that the documents had to be filed by 7 days prior to the Hearing, as opposed to 7 days prior to the mediation.

As noted above, in the RAP file, there is a *Notice of Mediation/Hearing* which sets the evidence deadline as 7 days prior to the mediation. However, there is also a previous *Notice of Hearing* which was served on December 8, 2015, which states that the evidence deadline is 7 days prior to the Hearing. The owner was obviously confusing the two documents when he stated that the requirement was to produce the documents 7 days prior to the Hearing.

The owner's confusion about the evidence deadline was good cause for the failure to produce the documents prior to the mediation. Therefore, the documents produced by the owner on May 24, 2016 (Exhibit 9) were admitted into evidence at the Hearing.

Additionally, the owner produced two additional sets of documents on June 30, 2016, between the two dates the Hearing was held. These documents consisted of evidence and photographs that were not in existence prior to the mediation. Therefore, they were properly admitted at the Hearing.

Was tenant Orozco current on his rent at the time he filed his petition?

In order to file a petition, a tenant must be current on his or her rent or lawfully withholding rent.³² The owner has the burden of proof to establish that the tenant was not current on his rent. The tenant filed his Petition on November 23, 2015.

The tenant credibly testified that he had paid his November 2015 rent prior to filing his petition and that he was current on his rent. He provided a copy of check # 103, showing a payment of \$950 to Adel Ali, on November 5, 2015. The back of this check shows that it was received by *East West Bank* on November 6, 2015.³³

The owner testified that Orozco was not current on his rent at the time he filed his petition. At first he denied that he had received rent from him in the month of November of 2015, before his petition was filed. When shown Exhibit 2, page 15, he acknowledged that the tenant had indeed paid rent in November of 2015, for both October and November of that year. (Orozco's October 2015 rent was also deposited at *East West Bank* on November 6, 2015.)

The owner claimed that he had done an audit of the tenant's rental payments and had found that he was behind in rent by 7 months. The California Evidence Code states that:

³² O.M.C. & Regulations, § 8.22.090

³³ See Exhibit 2, page 15

“ If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.”³⁴

In light of the facts that the owner did not produce a ledger or a copy of this audit, and did not testify that any *3 Day Notices to Pay Rent or Quit* had ever been served on the tenant, the tenant’s testimony that he was current on his rent was more credible than the owner’s testimony that he was not.

Additionally, the Evidence Code further states that “The payment of earlier rent or installments is presumed from a receipt for later rent or installments.”³⁵ Since the tenant has established that he paid rent for October and November of 2015 which was accepted, it is presumed that he has paid earlier rent.

Therefore, the owner has not established that the tenant was not current on the rent. The tenant’s petition was properly before the RAP and he was current on his rent.

Is the testimony of Jorge Chavero admissible?

The owner sought to exclude the testimony of Jorge Chavero by claiming he was biased against the owner because he was a prior tenant who owed \$7,000 in rent at the time he left the unit. Chavero denied that he owed \$7,000 in rent, and testified that he only owed rent for three months. Adel Ali’s objection is not grounds for excluding the testimony of Mr. Chavero.

Whether or not an individual is biased against another individual goes to the weight that is given to the allegedly biased person’s testimony and not to the admissibility of the testimony. Mr. Chavero’s testimony was properly admitted.

Is tenant Orozco’s unit exempt from the Ordinance because it is a “controlled, regulated or subsidized” unit?

The owner claimed on his response to the tenant’s petition that the unit was exempt from rent control because it is a controlled, regulated or subsidized unit. There is no testimony by anyone that this unit was ever rented to this tenant as a subsidized unit.

While it is true that dwelling units whose “rents are controlled, regulated (other than by this Chapter), or subsidized by any governmental unit, agency or authority” are not covered units³⁶, this only applies to units that are currently controlled or regulated by an outside agency. This unit has never been rented to tenant Orozco as a subsidized rental.

³⁴ Evidence Code § 412

³⁵ Evidence Code § 636

³⁶ O.M.C. § 8.22.030

Therefore, the owner's claim that the unit is exempt is denied. This unit is subject to the control of the RAP.

When, if ever, was Tenant Orozco served with the RAP Notice?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy³⁷ and together with any notice of rent increase or change in the terms of a tenancy.³⁸ The tenant credibly denied receiving the *RAP Notice* when he moved into the unit or at any time since he has been residing in the unit. The owner claimed that a *RAP Notice* was served but did not provide any documentary evidence in support of his claim.

The owner has the burden of proving that the *RAP Notice* was served³⁹.

The owner testified that the *RAP Notice* is attached to all the *Peppertree* leases. However, he further testified that the tenant has never signed a lease for the unit. Additionally, there was no testimony that the tenant was ever shown the lease or the *RAP Notice*.

The testimony of the owner and tenant with regard to service of the *RAP Notice* is clearly in direct conflict. Since it is impossible to prove a negative, the tenant could do no more than deny receiving the notice. By contrast, the owner could have presented more convincing evidence by producing a copy of the notices that he claims were served upon the tenant. He failed to do so.

The owner testified that it is *Peppertree's* custom to serve *RAP Notices* with rent increase notices. There are two rent increases at issue. The one served in October of 2015 (Exhibit 1) was provided to the RAP program with no *RAP Notice* attached. As noted above, when a person who has access to better evidence does not provide it, the evidence offered should be viewed with distrust. If *Peppertree* manages hundreds of apartments, as stated by the owner, then it should have records showing that the *RAP Notice* was served with this rent increase and should have provided it.

Additionally, there was an earlier rent increase in 2013. The tenant testified credibly that he was told of that rent increase verbally, and no *RAP Notice* was served. Alex Aviles testified that he served a rent increase notice on the tenant in 2013, but never saw the documents in the envelope that was served and does not know if the *RAP Notice* was included.

Therefore, the owner has not met his burden of proof on the issue of service of the *RAP Notice*; and the issue is decided in favor of the tenant. No *RAP Notice* has been served on this tenant.

³⁷ O.M.C. § 8.22.060(A)

³⁸ O.M.C. § 8.22.070(H)(1)(A)

³⁹ Housing, Residential, Rent and Relocation Board Decision in *Thompson et al v. Peper*, T05-0317

Is the 2013 rent increase to Orozco valid? If not, what is the legal rent?

The rent increase given in 2013 is invalid for several reasons. First, as noted above, since the tenant was never served with the *RAP Notice*, the rent cannot be raised until six months after the *RAP Notice* is initially served.

Additionally, a rent increase notice must be served personally or by mail. California Civil Code § 827. Here there is a dispute in the testimony as to how the rent increase notice was served. The tenant states he was told of the rent increase verbally. This is not a valid way to increase the rent. The agent for the owner stated that he posted the notice and did not mail it. This is also not a valid way to increase the rent.⁴⁰ Therefore, for both these reasons (no *RAP Notice* and invalid service) the 2013 rent increase was invalid.

The base rent, at all times, was \$850 a month.

The owner contended at one point that the tenant’s rent was actually \$1,250 a month, and not \$850 a month because the tenant was given a rebate for agreeing to help keep the drug dealers in the neighborhood away from the unit. This testimony is not credible and does not impact the tenant’s base rent. There is no evidence that the tenant paid anything but \$850 a month during the first few years of his tenancy. There was no contract provided setting forth any job duties that the tenant had. While it may be true that the prior tenant in the unit paid \$1,250 a month in rent, the prior tenant’s rent has no impact on the tenant’s rent. Furthermore, this testimony is not credible because Mr. Diaz’ rent was also \$850 a month and he moved in at the same time.

What is the impact of the owner’s failure to provide a justification for the contested rent increase?

Another reason that the rent increases are not valid is that the owner did not provide a justification for the rent increases on his *Owner Response*. The owner’s only claim on his response was that the unit was exempt because it was “controlled, regulated or subsidized”. As noted above, this is not the case.

The owner failed to provide a justification for the 2013 rent increase. Therefore, this is another reason why the rent increase in 2013 is invalid.⁴¹

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⁴⁰ The tenant speaks Spanish and required a Spanish language interpreter at the Hearing. While he does speak some English, it is not clear whether or not he can read or write in English. This could explain the difference in testimony about whether or not a paper copy of the rent increase notice was served.

⁴¹ In fact, the *Owner Response* fails to mention the 2013 rent increase at all. The only rent increase listed on the *Owner Response* is a rent increase purportedly given in December of 2010 (to be effective on February 1, 2011) increasing the rent from \$850 to \$1,200 a month. No evidence of this alleged rent increase was provided, nor did anyone testify that it existed.

Have tenant Orozco's housing services decreased?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁴² and may be corrected by a rent adjustment.⁴³ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased housing services case a tenant must establish that he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to relief. Additionally, where the *RAP Notice* has been given, the tenant is only allowed relief for 60 days prior to the filing of the petition⁴⁴. However, where the *RAP Notice* has never been given the tenant can go back as far as three years, or to the beginning of the tenancy, whichever is later. Here, the tenant did not receive the *RAP Notice* at any time. Therefore, the tenant is entitled to bring forth claims for decreased services since September of 2013.

In this case there is a significant issue associated with to whom the tenant complained about some of his claims of decreased services. According to the tenant's testimony, he first rented his unit through a man named Muhammed, who he believed was the owner of the unit at the time the rental agreement was made. This evidence was corroborated by the testimony of Rafael Diaz, who also rented his unit through this Muhammed. Muhammed worked at a grocery store around the corner from the rental unit, at a place called *East Bay Market*. The unit was originally rented to the tenant in February of 2010. The tenant repeatedly testified that he informed this Muhammed of many of the problems in the rental unit.

The owner testified that it was he and not his father who rented the unit to the tenant and he contended that the tenant should not have been complaining to his father about the conditions. The owner produced multiple letters written by *Peppertree* in which the tenant was regularly informed that the grocery store was not an appropriate place for him to be delivering his rent. The first one of these letters was written in June of 2010.⁴⁵

While the evidence is convincing that it was Muhammed who rented the unit to the tenant and not Adel Ali, it was certainly made clear to the tenant by as early as June of 2010, that the market was not a place for him to pay his rent, and that instead, his rent was due at the *Peppertree* office. There are no letters directing the tenant to direct his complaints to the *Peppertree* office. It certainly makes sense that once he was informed to pay his rent at *Peppertree*, the tenant should have known that he should make his complaints there as well. However, in the time period before the first letter in June of 2010, it was logical for the tenant to think that he could make complaints to the person who originally rented him the unit.

⁴² O.M.C. § 8.22.070(F)

⁴³ O.M.C. § 8.22.110(E)

⁴⁴ Board Decision in Case No. T09-0086, *Lindsey v. Grimsley, et al.*

⁴⁵ Exhibit 9, page 22

Additionally, there are multiple places where the tenant's testimony was in contrast with the owner's testimony, particularly about the condition of the unit when it was rented to the tenant. As noted above, the owner was a combative and challenging witness throughout the proceedings. He interrupted the proceedings, did not follow directions and regularly challenged the authority of the Hearing Officer.

This is in contrast to the testimony of the tenant, Carlos Orozco. Throughout the testimony the tenant was calm, consistent and believable.

Evidence Code Section 780 states: [T]he court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- (a) His demeanor while testifying and the manner in which he testified.
- (b) The character of his testimony.
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testified.
- (d) The extent of his opportunity to perceive any matter about which he testifies.
- (e) His character for honesty or veracity or their opposites.
- (f) The existence or nonexistence of a bias, interest, or other motive. . .
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
- (i) The existence or nonexistence of any fact testified to by him.
- (j) His attitude toward the action in which he testifies . . .

These factors, as they relate to the testimony of Adel Ali, made his testimony about the condition of the unit when it was rented to the tenant, less believable than the tenant's testimony.

The tenant's claims of decreased services are discussed below:

Roof Leak: All parties agree that the tenant had a leak into his bedroom. The tenant testimony that this occurred in September of 2013 is credible. The tenant complained about this problem to the owner's mother in September of 2013 at the grocery store and at the *Peppertree* offices in November of 2015. The owner testified that he had heard complaints about this problem as far back as early 2014. A reasonable estimate of "early 2014" is that he knew by February of 2014.

The roof leak was repaired in the summer of 2014 when the owner replaced the roof on the apartment building, but the stains on the tenant's bedroom ceiling remained until April 2016 when the tenant painted the ceiling with paint supplies left by the owner's employees. Additionally, the evidence is clear that the owner's employee would have repaired the ceiling himself by April 2016 had the tenant not intervened at that point. These facts are further validated by the *Notice of Violation*.

Since this leak began after the tenant had already been informed multiple times not to pay his rent to the grocery store, his original complaint to the owner's mother was not sufficient notice to the owner. However, the owner testified that he knew by early 2014 about the problem. Therefore, the tenant is entitled to restitution of overpaid rent for this leak, from March of 2014 (giving the owner one month to repair the leak) until the leak was repaired in the summer of 2014. A reasonable estimate is that it was repaired by July of 2014. For this period of time, the tenant is entitled to restitution of 10% of the rent (See Chart below.)

Additionally, the tenant is entitled to a further reduction in rent for the failure of the owner to repair the damage to his bedroom ceiling after the leak was stopped. That condition was ongoing from March of 2014 through April of 2016. The tenant is entitled a 3% rent decrease for this condition during this time.

Light Switch: The tenant's testimony that the hallway light switch in his unit broke in June of 2014 and that he complained to a worker who came to repair something in his unit soon thereafter was credible.

Alex Aviles' testimony that he came to repair this problem in March or April of 2016 but that he left the unit without installing it (to come back to repair it a few days later) was credible. That the tenant did the work himself, rather than wait for the owner's employee to return, does not change the fact that the owner would have had it replaced had the tenant not acted. The tenant is entitled to a restitution of overpaid rent for having to wait from July of 2014 through April of 2016 for this repair. This should have been repaired within one month of the tenant's first complaint. The tenant is entitled to restitution of 1% of the rent for this broken light switch during this period of time.

Smoke Detectors: The tenant testified that Alex, the maintenance manager, installed smoke detectors in his unit about three years ago. Since the tenant is only entitled to restitution going back three years, if the smoke detectors were installed three years ago, the tenant has no claim for their absence in his unit prior to that time.

Additionally, another reason to deny this claim is that it was not listed on the *Notice of Violation*. This claim is denied.

Leaking Sink in Bathroom: The tenant's testimony that there was a crack in his sink when he moved into the unit was credible as was his testimony that he complained about this to Muhammed, the owner's father, right after he moved in. This is in stark contrast to the owner's testimony that the unit had been completely redone before the tenant moved in and that a move-in move out checklist would have been filled out to document this completely redone unit. As noted above, if the owner had evidence of a move in-move out checklist, he could have provided it. Therefore, the owner's testimony should be viewed with distrust. Furthermore, the owner would not have knowledge as to whether or not the tenant made the complaints to Muhammed, as the owner was not present when those complaints were made. The testimony of the tenant is credited and he has sustained his burden of proof.

Even though the tenant complained about this problem as far back as 2010, he is only entitled to restitution for three years. Since this problem was repaired in March of 2016, the tenant is entitled to restitution of overpaid rent for this condition from April of 2013-March of 2016. The severity of this condition, resulting in severe water damage to the underside of the vanity, and the resulting limitation of not being able to use the bathroom sink very often, means that the tenant is entitled to restitution of 5% of the rent.

Kitchen Sink Leak: The tenant's testimony about this ongoing leak and his complaint to Muhammed is credited. This issue was confirmed by the *Notice of Violation*. This was repaired in March of 2016.

Since restitution is limited to three years, the tenant is entitled to restitution of 1% of the rent, for this ongoing leak, from April 2013-March of 2016.

Bedroom door latch and doorknob: The failure to provide a useable door is a violation of the Oakland Housing Code. O.M.C. § 15.08.050. The tenant's testimony that the door was broken when he moved in was credible. While, as noted above, this is in contradiction to the owner's testimony, the owner did not provide the documentation to which he had access, to establish this claim and the owner's testimony was not as credible as the tenant.

The failure to have a useable door knob on the bedroom could result in possible damage if there was a fire or other emergency. The tenant is entitled to restitution of overpaid rent, of 2% of the rent for this condition, from April of 2013-March of 2016, when this matter was repaired.

Back Patio: The tenant's testimony about the condition of the back patio was corroborated by Jorge Chavero, who lived under the tenant in the past. Chavero's testimony that the wood was rotting back when he lived in the unit was credible. Additionally, the owner's testimony that the patio had been modified by the tenant was conjecture. No one testified that they saw the tenant make any modifications to this patio. The tenant was credible that the plywood and gutter system was in place when he moved into the unit.

The owner objected to the testimony of Chavero, claiming that he would be biased against him because he left owing rent. Chavero's testimony was even-keeled and clear. There was no sign of animosity or bias. Chavero was believable that he withheld rent for several months because of conditions in his unit. There was no reason to believe that because Chavero left owing money that he would not tell the truth about the conditions in the patio above him. Additionally, Chavero's experience as a handyman, made him particularly credible about the conditions of the underside of the patio.

In addition to being a tenant, Chavero worked for the owner and his family. The evidence was clear that Chavero complained to Muhammed, the owner's father, about the condition of the patio to Orozco's unit. Chavero had a particularly unique view of the patio, as he lived in the unit below the subject unit.

Furthermore, the owner's agent Miguel Aviles, testified that he had come to inspect the patio as far back as March of 2015. The investigation occurred because a different tenant living below Orozco had complained about a problem with the patio. While the conclusion of the report was that "we will have to contact an engineer to solve this issue" no work was done on the patio until after the *Notice of Violation* was issued.

The *Notice of Violation* had a preliminary finding that there were "unapproved hand and guard railing installed on rear patio deck." However, the testimony was convincing that when the owner began to work on the back deck, it was discovered that there was significant dry rot. (See photographs of back deck, Exhibit 11).

The tenant limited his access to this deck because of fear that the wood was damaged. This fear was proven accurate when the deck was disassembled. And since June of 2016, the tenant has had no access to the deck at all, as the owner had to remove it because of the damage. The tenant is entitled to an ongoing rent decrease of 5%, until the deck is replaced and the tenant has complete access to the deck. Additionally, the tenant is entitled to restitution for overpaid rent since September of 2013 (a limit of three years) for this ongoing unsafe condition.

Heater: This complaint was withdrawn at the Hearing.

Outlets in Bedroom/Bathroom are loose: The tenant testified that the outlets were loose, but he did not testify that he was unable to use them. Additionally, he did not recall whether or not he had complained about this problem. Therefore, this claim is denied.

Windows in the living room and bedroom: The tenant was convincing that one of the windows in his unit has been broken since he moved into the unit. Additionally, two of the windows do not close all the way. O.M.C. § 15.08.240 states that windows "shall be maintained unobstructed and in proper repair and good working order."

These windows have not been repaired. The tenant is entitled to an ongoing rent decrease of 3% until the broken window has been repaired and the windows in his unit can close completely. Additionally, the tenant is entitled to restitution of overpaid rent for this condition from September 2013-August of 2016.

The owner's agents were convincing that the window was broken from the inside and not the outside of the unit. However, since this has been an ongoing condition since the tenant moved in, it is the owner's responsibility to repair it. As noted above, the owner's testimony that these conditions did not exist at the time the unit was rented to the tenant, is not controlling. The owner had access to a move in move out checklist that he could have provided to establish the condition of the unit. Since it was not provided, his testimony is viewed with distrust.

///

What, if any, restitution is owed between the parties and how does it affect the rent?

Overpaid Rent: As noted above, the maximum rent at all times since the tenant has lived on the premises is \$850 a month. However, restitution is limited to three years. The tenant is entitled to restitution of overpaid rent, since September of 2013, for all payments he has made in excess of \$850. The tenant has overpaid \$3,600 in rent. (See below chart.)

Decreased Services: The below chart documents that the tenant is entitled to reimbursement of \$6,043.50 for overpayment of rent associated with the conditions of the unit.

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VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Roof Leak	1-Mar-14	31-Jul-14	\$850	10%	\$ 85.00	5	\$ 425.00
Ceiling Water Damage	1-Aug-14	15-Apr-16	\$850	3%	\$ 25.50	21	\$ 535.50
Light Switch	1-Jul-14	15-Apr-16	\$850	1%	\$ 8.50	22	\$ 187.00
Bathroom sink and vanity	15-Apr-13	30-Mar-16	\$850	5%	\$ 42.50	36	\$ 1,530.00
Kitchen Sink	1-Apr-13	30-Mar-16	\$850.00	1%	\$ 8.50	36	\$ 306.00
Broken bedroom door	1-Apr-13	30-Mar-16	\$850.00	2%	\$ 17.00	36	\$ 612.00
Back Patio	1-Sep-13	31-Aug-16	\$850.00	5%	\$ 42.50	36	\$ 1,530.00
Windows	1-Sep-13	31-Aug-16	\$850.00	3%	\$ 25.50	36	\$ 918.00
					\$ -		-
TOTAL LOST SERVICES							\$ 6,043.50

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Sep-13	31-Aug-16	\$950	\$850	\$100	36	\$ 3,600.00
TOTAL OVERPAID RENT						\$ 3,600.00

RESTITUTION

MONTHLY RENT		\$850
TOTAL TO BE REPAYED TO TENANT		\$ 9,643.50
TOTAL AS PERCENT OF MONTHLY RENT		1135%
AMORTIZED OVER	24 MO. BY REG. IS	\$ 401.81

The base rent for the unit is \$850 a month. As long as there is no back deck, the tenant is entitled to a continuing reduction in rent of 5%, or \$42.50 a month. Additionally, until the owner repairs the broken windows in the unit, he is entitled to a continued reduction in rent of 3%, or \$25.50 a month. Therefore, before considering rent overpayments, Orozco's ongoing monthly rent is \$782 (\$850-\$42.50-\$25.50).

Additionally, the tenant is owed restitution in the amount of \$9,643.50. While overpayments are usually paid out over 12 months; where the overpayment is 1135% of the rent, good cause exists to increase the period to 24 months. Therefore, the

overpayment is divided by 24; so the rent decrease is \$401.81 a month.⁴⁶ For now this \$401.81 a month is subtracted from the current legal rent of \$782 for a total of \$380.19 a month. However, once the owner repairs the deck and provides the necessary notice pursuant to Civil Code Section 827, the owner may increase the rent by \$42.50 a month. Additionally, once the owner repairs the windows and provides the necessary notice pursuant to Civil Code Section 827, the owner may increase the rent by \$25.50 a month.

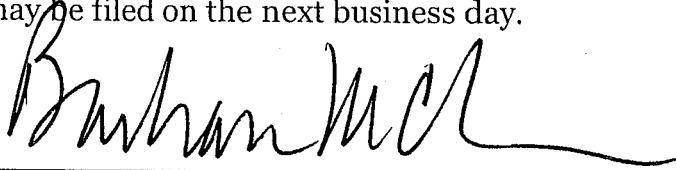
ORDER

1. Petition T15-0673, Diaz v. Ali, is dismissed. The rent remains \$850 a month.
2. Petition T15-0631, Orozco v. Ali is granted in part.
3. In Orozco v. Ali, the base rent is \$850 a month.
4. Due to ongoing decreases in housing services (removed back patio and broken windows), the tenant's rent is reduced by 8% (\$68.). The tenant's current legal rent, before consideration of restitution, is therefore \$782 a month.
5. Due to past decreased services and overpaid rent, the tenant is owed restitution in the amount of \$9,643.50. This overpayment is adjusted by a rent decrease for the next 24 months in the amount of \$401.81 a month.
6. The tenant's rent for the months of September 2016 through August of 2018 is \$380.19 per month. The rent reverts to \$782 a month in September of 2018 (if the repair to the back patio and the windows have not been made and/or rent increase notices have not been served).
7. If the owner wishes to, he can repay the restitution owed to the tenant at any time. If he does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
8. If the owner repairs the back patio, the owner can increase the tenant's rent by \$42.50 a month. If the owner repairs the broken windows, the owner can increase the tenant's rent by \$25.50 a month. **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**
9. Nothing in this Order prevents the owner from increasing the rent at any time 6 months after the tenant is first served with the *RAP Notice*, provided the rent increase notice is served pursuant to Civil Code § 827 and the Rent Adjustment Ordinance.
10. 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

⁴⁶ Regulations, § 8.22.110(F)

service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 24, 2016



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T15-0631

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

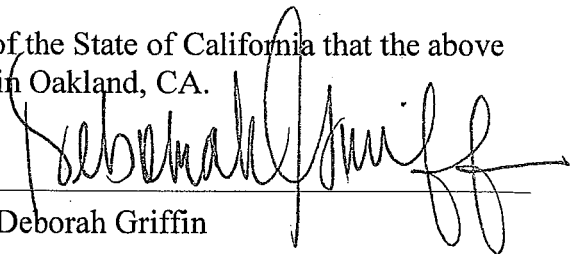
Carlos Orozco
8511 Holly St #3
Oakland, CA 94621

Owner

Adel Ali
515 Independent Rd
Oakland, CA 94621

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 25, 2016 in Oakland, CA.


Deborah Griffin

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.
 2016 JAN -7 PM 1:47

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 15-12631

OWNER RESPONSE

Please print legibly.

Your Name <i>Adel Ali</i>	Complete Address (with zip code) <i>515 Independent Rd. OAKLAND, CA 94621</i>	Phone: <i>510-590-1211</i> Email: <i>Adel@EASTBAYGLASS.COM</i>
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s)	Complete Address (with zip code)	

Have you paid for your Oakland Business License? Yes No Number _____
 (Provide proof of payment.)

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No
 (Provide proof of payment.)

There are 4 residential units in the subject building. I acquired the building on 4/1/2000

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 2-1-10.

The tenant's initial rent including all services provided was \$ 1200.00 / month. *with A Concession.*

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? SEVERAL TIMES DURING THE TENANCY

Is the tenant current on the rent? Yes No

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes ___ No ___ . If yes, on what date was the Enhanced Notice given? _____. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes ___ No ___ . Not applicable: there was no capital improvements increase. _____

NOT ENHANCED

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
12-1-10	2-1-11	\$ 850.-	\$ 1200.-	<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

II. JUSTIFICATION FOR RENT INCREASE

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

<u>Date of Increase</u>	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
_____	<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"/>
_____	<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"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

III. 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 on a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

IV. 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)? *NO*
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)? *NO*
3. Was the prior tenant evicted for cause? *NO*
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building? *NO*
5. Is the unit a single family dwelling or condominium that can be sold separately? *NO*
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? *NO*

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. *SECTION 8 IN THE PAST*

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

_____ On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** for less than 30 days. *NO*

_____ 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. *YES*

_____ 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. *NO*

_____ 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. ~~YES~~ *NO*

V. IMPORTANT INFORMATION

Time to File. This form **must be received** by the Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612-0243, within 35 days of the date that a copy of the Tenant Petition was mailed to you. (The date of mailing is shown on the Proof of Service attached to the Tenant Petition and other response documents mailed to you.) A postmark does not suffice. 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. If you wish to deliver your completed Owner Response to the Rent Adjustment Program office in person, go to the City of Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. **You cannot get an extension of time to file your Response by telephone.**

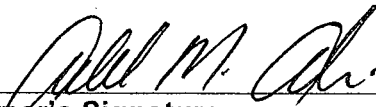
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

File Review. You should have received a copy of the petition (and claim of decreased services) filed by your tenant with this packet. Other documents provided by the tenant will not be mailed to you. You may review additional documents in the RAP office by appointment. For an appointment to review a file or to request a copy of documents in the file call (510) 238-3721.

VI. VERIFICATION

Owner must sign here:

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.



Owner's Signature

1/6/16
Date

VII. MEDIATION AVAILABLE

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. 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. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner 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).



Owner's Signature

1/6/16
Date

IV EXEMPTION

1 15 5001

- ① NO
- ② NO
- ③ NO
- ④ NONE CURRENTLY
- ⑤ NO
- ⑥ NO
- ⑦ NO
- ⑧

PLEASE PARDON THE HAND WRITTEN ANSWERS.

T15-0631 MS/SK

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. 2615 NOV 23 PM 1:35
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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 Carlos Orozco	Rental Address (with zip code) 8511 Holly Street, #03 Oakland, CA 94621	Telephone 510-904-2261
Your Representative's Name N/A	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Adel Ali	Mailing Address (with zip code) PepperTree Apartments 515 Independent Rd, Oakland, CA 94621 7757 HANSON DR. OAKLAND, CA 94605 (on file with Alameda County Assessor's office)	Telephone 510-834-2535

Number of units on the property: 4

Type of unit you rent (circle one)	House	Condominium	<u>Apartment, Room, or Live-Work</u>
Are you current on your rent? (circle one)	<u>Yes</u>	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:**

<input checked="" 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 checked="" 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 checked="" 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 checked="" 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: 2/15/2010 Initial Rent: \$ 850 /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: Never. 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.

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		
10/28/2015	1/1/2016	\$ 950	\$ 1200	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/2013	7/2013	\$ 850	\$ 950	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" 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, 2nd Floor, Oakland, CA 94612. Phone: (510) 238-3381

Tenant Petitioner
 Carlos Orozco
 8511 Holly Street, #03, Oakland, CA 94621

Addendum A-Decrease in Services


Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
1. Roof leaks when it rains, which has caused significant stains on ceiling	9/2013	9/2013 told landlord's mother in person 1/2015 told landlord's employee in person 11/4/15: showed pictures of damage to landlord's agent in person	n/a	10%
2. Light switch in the hall doesn't work—can't turn on light	6/2014	7/2014 told landlord's employee in person	n/a	3%
3. Missing smoke detectors in the kitchen and living room	Since moving in 2/2010	3/2012 told landlord's assistant in person	n/a	15%
4. Leaking sink in bathroom and kitchen	Since move in 2/2010	2/2010 told landlord's father in person 5/2011 told landlord in person	n/a	6%
5. Latch and doorknob on bedroom door broken	Since move in 2/2010	2/2010 told landlord's father, who managed the property at the time	n/a	2%
6. Back patio has damaged wood. It could collapse.	Since move in 2/2010	2/2010 told landlord's father, who managed the property at the time	n/a	5%
7. Heater often doesn't work. The apartment heats up, it turns off and won't turn on again, even once it gets cold again	12/2013	Tenant is notifying the landlord through this petition	n/a	15%

Tenant Petitioner
 Carlos Orozco
 8511 Holly Street, #03, Oakland, CA 94621

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
8. Outlets in the bedrooms and bathrooms are loose, so plugs fall out	Since move in 2/2010	2/2010 told landlord's father, who managed the property at the time	n/a	2%
9. Windows in bedrooms and living room don't close completely—they leave a gap. One window cracked in the living room.	Since move in 2/2010	2/2010 told landlord's father, who managed the property at the time	n/a	10%

IV. VERIFICATION: The tenant must sign:

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


Tenant's Signature

11-19-15
Date

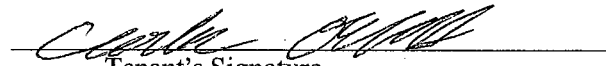
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

11-19-15
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): _____

CHRONOLOGICAL CASE REPORT

Case No.: T16-0188
Case Name: Ali v. Morris
Property Address: 5452 International Blvd, Apt. D, Oakland, CA
Parties: Shirley & Carlos Ali (Tenants)
Homer & Joyce Morris (Owners)

PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petitions filed	April 13, 2016
Owner Response filed	May 6, 2016
Hearing Decision issued	September 12, 2016
Owner Appeal filed	October 3, 2016

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 OCT -3 PM 3:13 APPEAL	
Appellant's Name HOMER & JOYCE MORRIS (Kim Bradley)		Landlord <input checked="" type="checkbox"/>	Tenant <input type="checkbox"/>
Property Address (Include Unit Number) 5452 INTL. BLVD. APT. 'D' OAKLAND, CA. 94601			
Appellant's Mailing Address (For receipt of notices) 3015 MODESTO AVE. OAKLAND, CA. 94619		Case Number T16-0188	Date of Decision appealed 9-12-2016 / APPEALED 10-03-2016
Name of Representative (if any) Kimberley Morris Bradley		Representative's Mailing Address (For notices) 4538 DEERFIELD AVE. ANTIOCH, CA 94531	

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

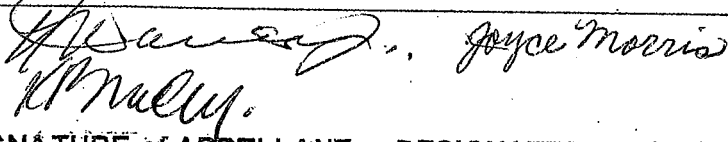
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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 . 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 10-03-2016, 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:

Name	CARLOS ALI AND SHIRLEY ALI.
Address	5452 INTL. BLVD. APT. 'D'
City, State Zip	OAKLAND, CA. 94601
Name	
Address	
City, State Zip	

 JOYCE MORRIS APPELLANT	10-03-2016 10-3-16
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 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.

Appellant's: Kimberly Bradley, Homer Morris, Joyce Morris/Landlord
5452 International Blvd Apt D Oakland, Ca. 94601/Property address
Case Number T16-0188, Ali vs Morris

2016 NOV -4 PM 12: 41

The decision is not supported by substantial evidence:

1. Hearing Officer stated that the hearing decision summary for restitution, was base on Mr Ali testimony which was corroborated by his wife and was more **credible and consistent throughout the hearing** than Mr Morris.

There were many discrepancies as well as inconsistencies with the testimony of Mr Ali and his wife that were not addressed in the summary report, by the hearing officer.

Case and point:

Page 11, under Light Fixture

During the testimony of Mr. Ali, he first informed the hearing officer that the fans worked, but the light fixtures never worked. He then changed his answer to state that the light fixtures had stopped working a *few years ago (contradicting his first statement). He then went on to state that they had stopped working seven years ago (by this point changing his answer 3 times). His wife indicated that the lights had stopped working 4 or 5 years ago. According to his deficiency list, he indicated that he reported the problem over six years ago and again on April 13, 2016 to the new owner. The letter that was presented and signed by Mr. Ali, (which was submitted by Mr Morris and myself) indicates that Mr. Ali shared his complaints with me on April 11, 2016 not April 13, 2016! **(INCONSISTENCY)**

*few- a small number of

Drawers in the kitchen

When Mr Ali was asked by the hearing officer when did he have issues with the drawers, Mr Ali asked his wife, and she stated she did not know. Mr Ali then stated 4 to 5 years ago, but his written list states it was first reported over 6 years ago and then again to the New Owners April 13, 2016. **(INCONSISTENCY)**

Tile in the Bathroom

During Mr Ali's verbal testimony he stated that he complained a little over a year ago about damaged tile in the bathroom. The hearing officer reiterated if the first report was a little over a year ago and he confirmed "yes" however on his deficiency list, Mr. Ali indicates it was reported over six years ago. Also during the hearing, when Mr. Morris himself asked Mr. Ali how long ago he first reported the problem to him, Mr Ali replied **"I cant say when I complained, but when you finished, it was more than a day or two and you left a board covering the tile that was repaired for 2 to 3 weeks."** When the Hearing officer ask Mr Ali did he address Mr Morris about the board, he stated he **did not** contact Mr Morris, but his written list stated he reported it over 6 years ago! **(INCONSISTENCY)**

Oven not working properly

Mr. Ali informed the hearing officer that 3 years ago the oven stopped working, but then when questioned further of how long it was without repair, he said 1 year. In his deficiency list it is indicated that it was replaced in 2014, contradicting the 1 year mark (which would have meant he complained in 2015). His wife stated that it was only a few days between the time that they reported it and the time it was replaced with a new stove. The hearing officer concluded that it was repaired within a fairly short amount of time (a week from the first complaint to the time the stove was replaced). His written deficiency list stated it was first reported over two months! Again replacements was in 2014, contradicting 2 months as well. **(INCONSISTENCY)**

Kitchen light fixture

Mr Ali informed the hearing officer that he complained recently about the light fixture, but after further questioning said he never complained, **"we just lived with it!"** The hearing officer asked why did he write over 6 years? he said **"he cant remember everything. Maybe he did or not!"** (INCONSISTENCY)

Overall, If he is openly admitting that he is unable to remember everything, in addition to his inconsistent dates, how can you allow credibility to his word against Mr. Morris'?

Roof Leak

Mr. Ali's testimony stated that the living room ceiling started dripping in one spot 3 years ago and he complained to Mr Morris. Mr. Morris looked at the area with Mr. Ali after it had rained. During the hearing, Mr. Ali stated that Mr. Morris did not see the bubble from the leak in the ceiling. Mr Ali also stated that there was no sign of water damage. Mr. Ali stated that there was a roof repair that took place 3 years ago, but the leak continued, and he did not complain about it again to Mr Morris. So how was Mr. Morris to know that the problem still existed or existed at all, if the tenant never informed him during the time it was occurring? Mrs Ali stated that during the last rain that occurred, Mr Morris came by to collect the rent and the ceiling was dripping, but she did not mention it when she had the opportunity. As indicated by Mr. Morris and Mr. Ali, there was no water damage notated, as they were in the presence of the questionable "leaky ceiling," however the hearing officer has indicated otherwise. The decision was made without the expertise, or professional opinion of contractor. Why was the leak not reported to Mr Morris at that very moment while it was actually dripping when he lives nearly 6 blocks away?) Mr Ali's written deficiency states 4 years ago the leak was reported, as oppose to 3 years stated in the hearing. (INCONSISTENCY)

What I also observed was when the hearing officer would ask Mr Ali questions about when he first reported his complaints, if he hesitated or gave a different date with his response, she would answer or remind him his original date that was written, by saying "your written statement says _ _ _!"

But when Mr Morris was asked by the hearing Office if Mrs. Smith, the original owner had ever said that Mr. Ali complained to her or if he complained to anyone about the bedroom light fixtures, Mr Morris stated no, but he had just stated before the comment, that he did speak with Mr Ali about the fixtures. Yet the Hearing officer never made the attempt to remind Mr Morris what he had said just a few minutes earlier.

I Kimberly Bradley also gave testimony in regards to Mr Ali's complaints, which for the most part corroborated and was consistent with my father Homer Morris' testimony. Was my testimony considered not credible?

As you can see there was INCONSISTENCY all through out this hearing, yet Mr Morris was the only one accused of not being credible or consistent.

Last but not least, the hearing officer mention towards the end of the hearing, about Mr. and Mrs. Morris being familiar with the process since they had been through this before. I assume that she refreshed her memory with their former case, before coming into this hearing? We assume the proper time to review the material was not taken for the paperwork we had submitted prior to the hearing, because she would have noticed the inconsistencies with Mr. Ali's dates of complaints and would not have argued with me about the dates that show the actual timeline that Mr Ali informed me of his complaints. The dates that showed when we started the repairs were before Mr. Ali filed his petition. This contradicts the dates that states we only began repairs after we knew he had filed, also the fact that he had his list of complaints on April 11, 2016, but waited until the last day to submit with added information that we were not prevy to, until it was too late. Isn't it a coincident that out 11 complaints for repairs, 5 of them all happen around the same time? (when he sign his rental agreement in 2010) 2 in 2012, 2 in 2014. Everything i assume happens in pairs.

It is clear to me that the hearing officer was bias. In favor of the tenants.

Based on all of this information, I do not believe that the decision support the SUBSTANTIAL evidence. If we are basing the decision on credibility and corroborated support, then as mentioned before, Mr. Ali has openly admitted that he is unable to remember everything, and his dates are inconsistent to his own deficiency list as well as inconsistent to his wife's testimony in various parts of the hearing. How does this corroborate?

You can find all of the information listed above in your recording that was done during the hearing on July 25, 2016.

I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim:

1. Petitioner submitted deficiency letter on July 13, 2016, which the hearing officer informed us, was the last day for submitting this document. The Owner letter was served by mail after the deadline. Therefore, we were not given the opportunity to properly submit any other sufficient and substantial evidence to support our case in regards to the petitioners list of needed repairs.

The only documents I had with me were pictures that were taken before repairs and after repairs, which was for my own records, but did release to the hearing officer. We also had Mr. Ali's rental agreement, which we were denied the opportunity to submit at that time.

Evidence that would have been presented:

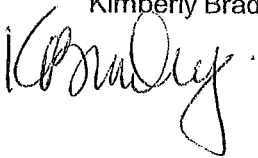
1. Inspection letter from Roofing company explaining what was found during inspecting of roof, after tenant informed me on April 11, 2016 of the leak in the living room.

2. Video of the ceiling seam in living room before and after repairs.

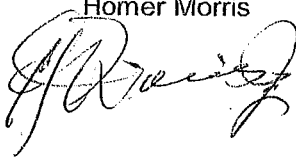
3. Copy of letter that was given to Mr Ali in January regarding police activity that took place with another tenant in the building, which included a copy of the RAP notice. Which will show that the tenant was misleading the facts in his testimony about receiving the RAP notice for the first time in March 1, 2016.

Thank You,

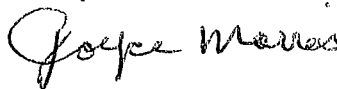
Kimberly Bradley



Homer Morris



Joyce Morris



Month-to-Month Rental Agreement

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2016 NOV -4 PM 12: 41

Clause 1. Identification of Landlord and Tenant

This agreement is entered into between CARLOS ALI [Tenant] and HOMER MORRIS (MANAGER) [Landlord]. Each Tenant is jointly and severally liable for the payment of rent and performance of all other terms of this Agreement.

Clause 2. Identification of Premises

Subject to the terms and conditions in this Agreement, Landlord rents to Tenant, and Tenant rents from Landlord, for residential purposes only, the premises located at 5452 INTERNATIONAL BLVD

APT 'D' together with the following furnishings and appliances:
STOVE AND REFRIGERATOR
Rental of the premises also includes _____

Clause 3. Limits on Use and Occupancy

The premises are to be used only as a private residence for Tenant(s) listed in Clause 1 of this Agreement, and their minor children. Occupancy by guests for more than TEN DAYS is prohibited without Landlord's written consent and will be considered a breach of this Agreement.

Clause 4. Term of the Tenancy

The rental will begin on FIRST DAY OF THE MONTH, and continue on a month-to-month basis. Landlord may terminate the tenancy or modify the terms of this Agreement by giving the Tenant 30 days' written notice. Tenant may terminate the tenancy by giving the Landlord 30 days' written notice.

Clause 5. Payment of Rent.

Regular month rent

Tenant will pay to Landlord a monthly rent of \$ 900.⁰⁰, payable in advance on the first day of each month, except when that day falls on a weekend or legal holiday, in which case rent is due on the next business day. Rent will be paid in the following manner unless Landlord designates otherwise:

Delivery of Payment.

Rent will be paid:

- by mail, to _____
 in person, at 5452 INTERNATIONAL BLVD APT 'D'

Form of payment.

Landlord will accept payment in these forms:

- personal check made payable to _____
 cashier's check made payable to _____
 credit card
 money order
 cash

000 53

cent areas in such a way as to: (1) violate any law or ordinance, including laws prohibiting the use, possession, or sale of illegal drugs; (2) commit waste (severe property damage); or (3) create a nuisance by annoying, disturbing, inconveniencing, or interfering with the quiet enjoyment and peace and quiet of any other tenant or nearby resident.

Clause 14. Pets

No animal, bird, or other pet will be kept on the premises, even temporarily, except properly trained service animals needed by blind, deaf, or disabled persons and _____ under the following conditions:

Clause 15. Landlord's Right to Access

Landlord or Landlord's agents may enter the premises in the event of an emergency, to make repairs or improvements, or to show the premises to prospective buyers or tenants. Landlord may also enter the premises to conduct an ^{BE} annual inspection to check for safety or maintenance problems. Except in cases of emergency, Tenant's abandonment of the premises, court order, or where it is impractical to do so, Landlord shall give Tenant 24 HOURS notice before entering.

Clause 16. Extended Absences by Tenant

Tenant will notify Landlord in advance if Tenant will be away from the premises for 10 or more consecutive days. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for needed repairs.

Clause 17. Possession of the Premises

a. Tenant's failure to take possession.

If, after signing this Agreement, Tenant fails to take possession of the premises, Tenant will still be responsible for paying rent and complying with all other terms of this Agreement.

b. Landlord's failure to deliver possession.

If Landlord is unable to deliver possession of the premises to Tenant for any reason not within Landlord's control, including, but not limited to, partial or complete destruction of the premises, Tenant will have the right to terminate this Agreement upon proper notice as required by law. In such event, Landlord's liability to Tenant will be limited to the return of all sums previously paid by Tenant to Landlord.

Clause 18. Tenant Rules and Regulations

Tenant acknowledges receipt of, and has read a copy of, tenant rules and regulations, which are attached to and incorporated into this Agreement by this reference.

Clause 19. Payment of Court Costs and Attorney Fees in a Lawsuit

In any action or legal proceeding to enforce any part of this Agreement, the prevailing party

shall not / shall recover reasonable attorney fees and court costs.

Clause 20. Disclosures

Tenant acknowledges that Landlord has made the following disclosures regarding the premises:

Disclosure of Information on Lead-Based Paint and or Lead-Based Paint Hazards

Other disclosures:

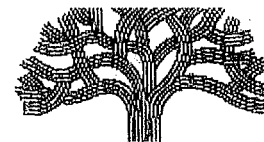
Clause 21. Authority to Receive Legal Papers

000 54

The Landlord, any person managing the premises, and anyone designated by the Landlord are authorized to accept service of process and receive other notices and demands, which may be delivered to:

CITY OF OAKLAND

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



Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing.
- If there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office (250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612) or online at <http://www.oaklandnet.com/government/hcd/rentboard/tenant.html>
- If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has **not** been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

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

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

TENANTS' SMOKING POLICY DISCLOSURE

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

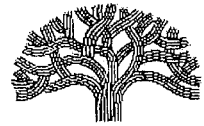
I received a copy of this notice on _____

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

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

Baun Thoang Baun quyean löi cuua ngöðöi thea trong Oakland naøy cuong cou baeng tieang Vieät. Nea cou moät baun sao, xin goii (510) 238-3721.

000 56



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

Housing and Community Development Department
Rent Adjustment Program

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

November 10, 2016

Carlos N. Ali
2999 N. Texas, Apt. 111
Fairfield, CA 94533

Re. Transmittal of Landlord Appeal in Oakland Rent Adjustment Case T16-0188

Dear Mr. Ali:

Enclosed per your request is a copy of the Landlord Appeal in the above-referenced case, filed with the Rent Adjustment Program (RAP) on October 3, 2016.

If you have further questions or concerns regarding this matter you may contact me at (510) 238-7387.

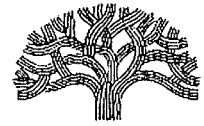
Sincerely,

A handwritten signature in cursive script that reads "Margaret Sullivan".

Margaret Sullivan, Program Analyst
Residential Rent Adjustment Program

Enclosures:

Copy of Landlord Appeal (2 pages) in RAP case T14-0188
Proof of Service



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: T16-0188, Ali v. Morris
PROPERTY ADDRESS: 5452 International Blvd, Apt. D, Oakland, CA
DATE OF HEARING: July 25, 2016
DATE OF DECISION: September 12, 2016
APPEARANCES: Shirley Ali, Tenant
Carlos Ali, Tenant
Kimberley Bradley, Owner Representative
Homer Morris, Owner
Joyce Morris, Owner

SUMMARY OF DECISION

The tenant's petition is granted in part. The legal rent for the unit is set forth in the Order below.

CONTENTIONS OF THE PARTIES

The tenant, Carlos Ali, filed a petition which alleges that a rent increase from \$900 to \$1,360, effective May 1, 2016, exceeds the CPI Rent Adjustment and is unjustified or is greater than 10%; that no written notice of the Rent Program (*RAP Notice*) was given to him at least six months before the effective date of the rent increase; and that the proposed rent increase would exceed an overall increase of 30% in 5 years.

Additionally, the tenant claimed that there were serious problems with the condition of his unit with respect to the light fixtures in the bedroom; drawers in the kitchen; tile in the bathroom; oven not working properly; kitchen light fixture; roof leak; kitchen electrical outlet; mildew in bathroom; bathroom faucet; fan in bathroom; the ceiling in living room and hallway; disturbed drywall with lead paint and asbestos; replaced

bathroom faucet; bathroom with mildew; no prop 65 disclosure despite presence of asbestos; dropped paint chips behind sofa; electrical outlet not proper hook-up; and cigarette smoke from neighbor's apartment.

The owners filed a timely response to the tenant petition in which they claimed that the rent increase was justified by banking, increased housing service costs and fair return. Additionally, the owner claimed that the *RAP Notice* was served on the tenant in September of 2010.

PROCEDURAL HISTORY

Official Notice is taken of the file in this case. On the tenant's original *Tenant Petition* on the front page there is no check box in the sections regarding decreased housing services (box f1 and f2.) On page 2 of the *Tenant Petition*, the tenant checked the "yes" box next to the question: "Are you claiming any serious problem(s) with the condition of your rental unit." The tenant did not provide a list of problems with his *Tenant Petition*.

The tenant was sent a deficiency letter on June 25, 2016, regarding the failure to provide this list of problems. On July 13, 2016, the tenant responded with a two page list of problems.¹ The owners were served with this list of problems on July 14, 2016.

THE ISSUES

1. When, if ever, was the *RAP Notice* first served on the tenant?
2. Was the rent increase notice valid?
3. Have the owner's justified the rent increase based on fair return, banking or increased housing service costs?
4. What is the base rent?
5. Has the tenant adequately alleged a decrease in housing services?
6. Can the tenant raise new issues at the Hearing that were not on the lists provided by the tenant?
7. Are the owner's photographs admissible into evidence?
8. Have the tenant's housing services decreased and if yes, in what amount?
9. What is the proper remedy if the tenant is moving out of the unit?

EVIDENCE

Rental History: The tenant moved into the subject unit in September of 2007 at an initial rent of \$900 a month. He was not given a *RAP Notice* when he moved in. The first time he received a *RAP Notice* was with a rent increase he received in March of 2016. That notice purported to increase his rent to \$1,360 a month, effective May 1, 2016.² The tenant has continued to pay \$900 a month in rent.

¹ Exhibit 2. This Exhibit, and all exhibits referred to in this Hearing Decision except for Exhibit 6, were admitted into evidence without objection.

² Exhibit 1. This Exhibit had handwritten notations on it. Only the typed portion of the Exhibit and the signatures were taken into evidence. The handwritten notes were disregarded.

When the tenant moved into the unit, the building was owned by Sara Smith and Mr. Morris was the manager. Mr. Morris became the owner of the unit in January of 2016.

The tenant further testified that he intends to move out of the unit in August 2016.

The owner, Homer Morris, testified that prior to becoming the owner of the property he was the caretaker of the property off and on for 8-9 years. Mrs. Smith, the prior owner, died, and his wife, Joyce Morris was the trustee of the property. Morris was not present when Ali originally signed the lease for this property.

Morris further testified that in 2010 he gave Mr. Ali a copy of the *RAP Notice* because he could not find the tenant's prior lease and had him sign new documents. Morris testified that he provided two copies of the *RAP Notice* to the *RAP* in his evidence. Exhibit 5, page 5, is the copy of the *RAP Notice* that was given to Ali with a letter that was written on May 4, 2016 and Exhibit 5, page 7 is a copy of the *RAP Notice* that was given to the tenant with a letter that was written on May 5, 2016. The copy of the *RAP Notice* that was given to the tenant in 2010 was not provided for the Hearing.³

Mr. Ali testified that he remembers meeting with Morris in 2010 to sign a new lease but does not remember received a *RAP Notice* at that time.

Morris withdrew his fair return and increased housing service costs justifications for the rent increase at the Hearing. He is relying only on banked rent increases.

Kimberly Bradley testified that in June of 2015 she started helping her parents (Joyce and Homer Morris) manage the subject unit. She lived in the unit many years ago, but the first time she was in the unit after the tenant rented it was in April of 2016.

Decreased Housing Services:

Light fixtures: Tenant Carlos Ali testified that when he moved into the unit each bedroom had a ceiling fan/light fixture in the room that were operable. After a few years, the light fixture stopped working. The tenant complained to Mr. Morris, who at the time was the manager of the property, about 4-5 years ago. Morris came by one time some years ago to change the switches, but did not complete the repair. Ultimately, these fixtures were repaired after the tenant filed his *Tenant Petition*. The repair was completed in April of 2016.

On cross-examination, the tenant testified that he complained to the owner about both bedroom light fixtures and no action was taken to repair them.

³ At first Mr. Morris testified that Exhibit 5, page 5, was a copy of the *RAP Notice* that was provided to the tenant in 2010. This testimony was corrected after his daughter, Kimberly Bradley, testified that she provided these *RAP Notices* with the letters she wrote on May 4, 2016 and May 5, 2016.

Mr. Morris testified that he never heard a complaint from the tenant (or from Mrs. Smith) about the light fixtures in the tenant's apartment.

Kimberly Bradley testified that after they had served the rent increase notice on the tenant she called him to see if he was going to pay the increased rent or leave the property. At that point (April of 2016) the tenant gave her a list of problems with the unit. She wrote the tenant a letter on May 4, 2016, in which she outlined the list of problems. She went to see the tenant the day after the verbal complaint to discuss the problems. She then followed up. With respect to the light fixtures, she had the light fixtures replaced in both bedrooms with brand new fixtures.⁴

Drawers in the kitchen: The tenant and his wife Shirley Ali testified that about 4-5 years ago three drawers in the kitchen started falling out. They were working fine when they moved into the kitchen. They complained to Mr. Morris and no action was taken. After he filed his petition, the drawers were repaired.

Morris and Bradley testified that they first they heard a complaint about the drawers in the kitchen was after the rent increase notice was sent to the tenant and when Bradley called the tenant. The drawers in the kitchen were repaired in April of 2016.

Tile in the bathroom: The tenant and his wife testified that when they moved into the unit the tiles in the bathroom were flush to the floor. After a few years of living there, some of the tiles cracked and one was missing a piece of tile and one was loose and kept sliding. Mr. Ali complained to Mr. Morris over a year ago. About six months ago, Mr. Morris repaired the bathroom floor.

On cross-examination the tenant testified that he complained about the tiles to Morris on one occasion. Morris came to repair the floor and pulled up the tiles and laid down a board over the missing tiles. He then said he'd be back the next day but did not return for about a month. At that point he replaced the tiles but put the board back down so that the tiles could set properly. He did not return to remove the board for another two to three weeks. Ali believed that this board was a tripping hazard because it was not even with the floor.

Morris testified that in February of 2016, he was informed by Ali that there was a problem with the tiles in the bathroom. He repaired the tiles in February or March of 2016, several weeks after the first complaint. He further testified that he had previously known that there was a problem with the bathroom tiles in December 2015 or January 2016 when the tenant complained about the problem. At that point he tried to repair the tiles, rather than replace them. The repair was unsuccessful.

Oven not working properly: The tenant and his wife testified that the oven was working properly when they moved into the unit. Sometime in 2014, both the elements in the oven stopped working, so they couldn't use it at all, and the burners on the stove didn't function properly, so they were only able to get a low flame on the burners. After

⁴ See Exhibit 5, page 2-4. See also photographs of the new light fixtures. Exhibit 6, page 13-15

they complained to Mr. Morris in 2014, he tried to repair it, but was not successful. He then provided them with a new oven/stove within a week from when he first complained.

Morris testified that he was informed about the oven not working in 2014 when Mr. Ali contacted him about the problem. A new stove was replaced and installed within several days.

Kitchen light fixture: The tenant and his wife testified that some time after they moved into the unit the kitchen light fixture, which had a fan attached, would wobble in a way that felt unsafe to them. Then at some point the fan only would turn in one direction. They complained about this in April of 2016. The owners replaced the entire unit with a light fixture only, so they lost access to a ceiling fan in the kitchen. This was done in April of 2016.

Morris testified that Ali complained to him about the kitchen light fixture wobbling back in 2015 at least twice. He explained to Ali that the fan/light fixture was supposed to work that way. The light fixture was replaced in April 2016 (after conversation with the tenant about the problems) with a light fixture without a fan, because it seemed that the tenant was unhappy with the fan.

Roof leak: The tenant and his wife testified that there was a leak from the roof above the living room about three years ago. Water was dripping from the ceiling into the living room and a bubble appeared on the ceiling. There was only water entering the unit in one particular spot from the ceiling, right over their sofa. They put a towel on the sofa to protect it during rainstorms. They complained to Mr. Morris at the time but he didn't acknowledge that there was a problem. When Morris came to look there was no obvious water damage as it was not actively dripping at the time. The tenants produced photographs showing the condition of the living room ceiling as of April of 2016 which show water damage on the living room ceiling.⁵

Tenant Carlos Ali testified that he believes that some work was done on the roof but then there was a wind storm and some pieces of shingle from the roof were blown off.

In addition to the leak and the bubble caused by the leak, the tenant complained about visible seams in the living room ceiling. These were present when he moved into the unit.

After the tenant filed his petition Morris repaired the bubble in the living room, but did not repair the obvious seams in the ceiling.

On cross-examination the tenant testified that this leak continued over the three years after he complained whenever it would rain.

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⁵ Exhibit 3, ##4-11

Morris and Bradley testified that they did not hear any complaints from the tenant about any water intrusion into his unit from a roof leak until after the rent increase letter was received by the tenant in March of 2016. Morris testified that the damage shown in the tenant's photographs is not from water entry, but is damage from a seam in the ceiling. Morris could not explain why seams would be as close together as they appear to be in Exhibit 6, #2, a photograph produced by the owner. He did repair the obviously damaged seam in April of 2016.⁶ When he did the repair he saw no water damage.

Kitchen electrical outlet: Tenant Carlos Ali testified that there was an electrical outlet in the kitchen that was not wired correctly. In 2016, PG&E had come to the unit to replace their refrigerator but could not do so because of the incorrectly wired electrical outlet. He complained to Morris about this.

Additionally, there was another outlet across the kitchen that stopped working. He told Mr. Morris about the problem about 4 years ago, and Morris tried to fix it, but he was not able to make the repair.

Ali further testified that both these outlets were repaired in April 2016, after his petition was filed.

Morris testified that in approximately 2014, Ali informed him that the GFI outlet on the outside wall was not working properly. He replaced the outlet twice. Then in April of 2016, after the tenant complained about the conditions, he had the electrician come to the unit and fix the two electrical outlets that he had complained about. The outlets were repaired.

Mildew in bathroom: Tenant Carlos Ali testified that there was a problem with mildew in the bathroom that began in 2014. There were stains all over the walls and ceiling. Cleaning with Clorox and water would provide a temporary fix but it would return. There is a fan in the bathroom that they would use to try to decrease the mildew. When he moved in the bathroom was in good condition. He complained about this to Morris in 2014, and he came by to take pictures of the problem, but he did not do anything about the problem until 2015, when he repainted the bathroom, and fixed the bathroom fan.

On cross-examination the tenant Carlos Ali testified that Morris informed him to use the fan and open the bathroom window when they were showering, to help prevent the mildew.

Morris testified that when he was in the unit looking at the bathroom tile, he noticed the mildew in the tenant's bathroom. The tenant never complained to him about it. He decided to paint the bathroom based just on what he saw.

⁶ See photographs of the ceiling, Exhibit 6 ## 1-5. There was an objection to these photographs being admitted into evidence. See section on admissibility of the photographs, in Findings of Fact and Conclusions of Law, below.

Bathroom faucet: Tenant Carlos Ali testified that in 2015 there was very low pressure in the bathroom faucet and it took 5 minutes of running the water before any hot water would appear. He complained to Morris, who after a couple of weeks ultimately replaced the bathroom faucet. Then the replaced faucet got clogged up after three months from rust. Morris then fixed that faucet. Ultimately the faucet was repaired, but there is still low pressure for the hot water.

Morris testified that the tenant complained to him in 2013 about the low flow of hot water pressure in the bathroom faucet. He came to repair it about within two days of the complaint. He replaced the seals inside the faucet. About ten months later, Ali complained again about low flow of hot water. At that point Morris took the faucet apart and took the flexible hose off and put it back together again. Then it was working properly for some time.

Morris further testified that in December 2015 or early 2016, Ali again complained about the bathroom faucet. At that point the faucet was replaced.

Fan in bathroom: Tenant Carlos Ali testified that the fan in the bathroom was inoperable. This was fixed when Morris came to resolve the mildew problem in the bathroom. It was fixed the same day that Morris discovered the problem.

Morris testified that Ali never complained to him about this problem. He repaired the fan when he noticed himself that the grill was very dirty. He cleaned the grill and the fan seemed to work.

Ceiling in living room and hallway: The tenant testified that when he moved into the unit there were seams in the ceiling but they were not very obvious. Over time, these seams became more apparent. He did not complain about this problem until the roof leak. The owner did not repair the seams in the ceiling when he repaired the damage to the ceiling from the roof leak.

Disturbed drywall with lead paint and asbestos: The tenant testified that when the owner did repairs to the ceiling he assumes that asbestos and lead paint were disturbed because the building is old. He did not have any testing done to determine if this is true.

The owner testified that he doesn't have any reason to believe that there is lead or asbestos in the unit. Even if there was lead paint from many years back, the unit has been painted many times and the lead paint would be covered up.

Replaced bathroom faucet: This complaint was discussed above.

Bathroom with mildew: This complaint was discussed above.

No prop 65 disclosure despite presence of asbestos: The tenant Carlos Ali testified that he was not given a prop 65 disclosure. He does not know if one was required.

Dropped paint chips behind sofa: Carlos Ali testified that when the owner fixed the ceiling, he dropped paint chips behind the sofa and did not clean up. The tenant feels that this caused a dangerous condition. He provided photos of the area where the owner failed to clean after himself.⁷

Morris testified that he cleaned up after himself and left nothing on the tenant's floor after doing the repair to the ceiling. He used a dust pan and broom to clean up.

Electrical outlet not proper hook-up: This was discussed above.

Cigarette smoke from neighbor's apartment: The tenant Carlos Ali testified that their neighbors smoke cigarettes which gets into their house and they smell it. He did not complain to the owner about this problem, but he did complain to the smoking co-tenant.

Hot water heater: At the Hearing the tenant sought to complain about the hot water heater. This was not on his list of decreased services. (See below.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When, if ever, was the RAP Notice first served on the tenant?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁸ and together with any notice of rent increase or change in the terms of a tenancy.⁹ Mr. Ali denies receiving the *RAP Notice* when he moved into the unit. His testimony was credible.

However, there is a direct conflict in the testimony regarding whether or not the tenant was served with a *RAP Notice* in 2010. Mr. Morris states that he was. The tenant denies ever receiving a *RAP Notice* prior to the March 2016 rent increase. Since it is impossible to prove a negative, the tenant could do no more than deny receiving such notice. The owner has the burden of proving that the *RAP Notice* was served¹⁰.

In his petition, signed under penalty of perjury, the tenant states that he was not given the *RAP Notice* until March of 2016. Therefore, the owners had reason to know that this would be an issue in this case. At the hearing, the owner testified that he provided the required notice in 2010. However, aside from his own statement, the owner provided no other proof. For example, he did not provide a copy of the *RAP Notice* that he allegedly served.

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⁷ Exhibit 3, ##17-18

⁸ O.M.C. § 8.22.060(A)

⁹ O.M.C. § 8.22.070(H)(1)(A)

¹⁰ Housing, Residential, Rent and Relocation Board Decision in *Thompson et al v. Peper*, T05-0317

“If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.”¹¹

Since the testimony of the parties was otherwise equally credible, the owner has not met the burden of proof on the issue of service of the RAP notice, and the issue is decided in favor of the tenant. It is found that the first time the tenant received the *RAP Notice* was March 1, 2016.

Was the rent increase notice valid?

Since the tenant was not served with a *RAP Notice* when he moved into the unit, he cannot be given a rent increase until 6 months after he was first served with the *RAP Notice*. As noted above, it is found that the tenant first received the *RAP Notice* on March 1, 2016. Therefore, no rent increase can be served on this tenant with an effective date before September 1, 2016. The rent increase notice served on March 1, 2016 is invalid.

Have the owner’s justified the rent increase based on banking, fair return or increased housing service costs?

Since the rent increase notice is not valid, there is no reason to discuss these issues.

What is the base rent?

The tenant’s base rent at all relevant times, was \$900 a month.

Has the tenant adequately alleged a decrease in housing services?

The tenant failed to check the box on the first page of the petition claiming that his housing services have decreased. However, the tenant did check the box on page 2 in which he stated “yes” to the question “are you claiming any serious problems with the condition of your rental unit.”

Additionally, the tenant did not include a list of the problems in his unit with his *Petition*. He was sent a deficiency letter, and he timely responded with a list of his concerns about the unit. This list was sent to the owner.

In reviewing the *Tenant Petition* as a whole, it is clear from the document that the tenant was claiming that there were problems with his unit. Any ambiguity about whether or not he was making this claim was clarified when the tenant responded to the deficiency letter with a list of the problems in his unit. The owners’ due process rights to know all claims being made against them was satisfied when this list was mailed to the owners.

¹¹ Evidence Code § 412

Therefore, the tenant's claims of decreased services were adequately alleged.

Can the tenant raise new issues at the Hearing that were not on the lists provided by the tenant?

At the Hearing the tenant sought to raise a claim regarding the hot water heater in his unit. This was not on his list of decreased services. In order to bring a claim of decreased housing services, the tenant is required to provide a list or a description of his claims. O.M.C. § 8.22.070 (F). Since the hot water heater was not on the list the tenant provided, this issue was not considered at the Hearing.

Are the owners' photographs admissible into evidence?

The owners brought photographs to the Hearing that had not been provided to the *RAP* office 7 days prior to the Hearing. The Hearing Notice states that

"Order to Produce Evidence: All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing.... Proposed evidence presented later may be excluded from consideration..."

The tenant objected to the admission of these photographs on the grounds that they were not produced to the *RAP* in a timely fashion. However, the owner did not get notified about the specifics of the tenant's decreased services claim until the list of claims was provided to the owner. The *RAP* file shows that the list was sent to the owner on July 14, 2016. Since the Hearing was held on July 25, 2016, the owner did not have time to get these photographs taken and printed and deliver to the *RAP* offices prior to the Hearing.

Therefore, the owner had good cause for not providing these photographs sooner, and they were admitted into evidence.

Have the tenant's housing services decreased and if yes, in what amount?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹² and may be corrected by a rent adjustment. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives written notice of the existence and scope of *RAP Notice*, whichever is later.¹³ However, where no *RAP* notice was given within 60 days before the tenant petition was filed, the tenant can seek restitution for up to three years. Here, since no *RAP Notice* was given until March 1, 2016, the tenant is entitled to restitution for three years prior to filing his

¹² O.M.C. § 8.22.070(F)

¹³ O.M.C. § 8.22.090(A)(2)

petition. The tenant petition was filed on April 13, 2016. Therefore, the tenant is entitled to restitution for decreased services as far back as April of 2013.

Additionally, the tenant must give the owner notice of the problems and the opportunity to repair before he is entitled to relief.

The tenant's claims of decreased services are discussed below:

Light fixtures: The tenant established that the bedroom light fixtures had stopped working and he complained about them to Mr. Morris about 4-5 years ago. While Mr. Morris denied knowing about this, his testimony was not as credible as the tenant's testimony because Mr. Ali's testimony was corroborated by his wife and was consistent throughout the Hearing. The light fixtures were repaired in April of 2016, after Ms. Bradley started helping her parents with caring for the property. The tenant is entitled to restitution of overpaid rent, amounting to 3% of the base rent, from May of 2013-April of 2016. (See chart below.)

Drawers in the kitchen: The tenant and his wife established that three of the drawers in the kitchen were not working properly started about 4-5 years ago and that they complained to Mr. Morris about it. Again, while Mr. Morris denies being told, Mr. Ali and his wife's testimony was more credible and consistent. This was repaired in April of 2016. The tenant is entitled to restitution of overpaid rent, amounting to 2% of the base rent, from May of 2013-April of 2016. (See chart below.)

Tile in the bathroom: The tenants' testimony regarding the bathroom tile was that they complained about this problem and it was ultimately repaired within six months of their complaint. Their testimony was more credible than the owner's testimony that the repair occurred within a month. Morris' testimony was less credible because he made several inconsistent statements regarding when he first heard about this problem and when he repaired it.

A reasonable owner would have repaired this problem within a one month time frame. Therefore, the tenants are entitled to restitution of overpaid rent, amounting to 2% of the base rent, for this period of time. A reasonable estimate based on the testimony is that the tenants complained about this in September of 2015 and it should have been repaired by October of 2015. It was repaired in March of 2016. (See chart below.)

Oven not working properly: The testimony was clear that this problem was repaired within several days. This is reasonable and this claim is denied.

Kitchen light fixture: The tenants complained about this problem in April of 2016 and it was repaired within a month. The owner acted reasonably and this claim is denied. Additionally, it made sense that the owner replaced the light/fan fixture with a light fixture only since the tenant was expressing serious concerns about the fan. This claim is denied.

Roof leak: The tenants' testimony that there was water entry into the living room was consistent and believable. It makes more sense that the ceiling damage was from water entry rather than a seam in the ceiling, because there is another seam very close to the water damage and it does not make sense that two seams would be so close together. The tenants' testimony that they informed the owner about the problem three years ago was also believable. Additionally, the photographs produced by the tenants show what appears to be water damage. The ceiling repair was made in April of 2016.

The tenants are entitled to restitution for overpaid rent of 2% for this problem starting in December of 2013-April of 2016.¹⁴ (See chart below.)

Kitchen electrical outlet: The evidence shows that the owner took action to repair these outlets when he was informed of the problem. This claim is denied.

Mildew in bathroom: It is unclear from the testimony what caused the mildew in the tenants' bathroom. Since there was both a fan and a window in the bathroom, and there was no evidence of any water leak, there is no evidence that the mildew was caused by any act or lack of action by the owner. Therefore, this claim is denied.

Bathroom faucet: The tenants' testimony that they complained about low water pressure and rust in the bathroom sink in 2015 was believable but the evidence also showed that the owner took several actions to repair the faucet. The owner's actions were reasonable and this claim is denied.

Fan in bathroom: This problem was repaired within a day after the owner was informed of the problem. This claim is denied.

Ceiling in living room and hallway: This is discussed above under "roof leak." Any additional problem associated with seams in the ceiling not related to water entry is denied.

Disturbed drywall with lead paint and asbestos: The tenant had no evidence of either lead or asbestos exposure. This claim is denied.

Replaced bathroom faucet: This complaint was discussed above.

Bathroom with mildew: This complaint was discussed above.

No prop 65 disclosure despite presence of asbestos: The tenant provided no evidence that the owner was required to provide a Proposition 65 disclosure to the tenant. Additionally, even if a Proposition 65 disclosure was required, the *RAP* does not have jurisdiction over the failure to provide a Proposition 65 disclosure. This claim is denied.

¹⁴ The tenants were not clear exactly when this started but did say it was associated with the rains. Since it generally does not rain in the summer in the Bay Area, it is likely that this did not begin until late fall or early winter of 2013. November of 2013 is a reasonable estimate of when it began and it should have been repaired within a month.

Dropped paint chips behind sofa: While there was a dispute in the testimony about whether or not paint chips were left on the tenants' living room floor, this was a minimal problem that could be easily resolved by sweeping or vacuuming. This claim is denied.

Electrical outlet not proper hook-up: This was discussed above.

Cigarette smoke from neighbor's apartment: The tenant never complained to the owner about this problem. Therefore, this claim is denied.

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Light fixtures	1-May-13	1-Apr-16	\$900	3%	\$ 27.00	36	\$ 972.00
Kitchen Drawers	1-May-13	1-Apr-16	\$900	2%	\$ 18.00	36	\$ 648.00
Bathroom Tile	1-Oct-15	1-Mar-16	\$900	2%	\$ 18.00	6	\$ 108.00
Roof Leak	1-Dec-13	1-Apr-16	\$900	2%	\$ 18.00	29	\$ 522.00
TOTAL LOST SERVICES							\$ 2,250.00

RESTITUTION

MONTHLY RENT	\$900
TOTAL TO BE REPAID TO TENANT	\$ 2,250.00
TOTAL AS PERCENT OF MONTHLY RENT	250%
AMORTIZED OVER 12 MO. BY REG. IS	\$ 187.50

What is the proper remedy if the tenant is moving out of the unit?

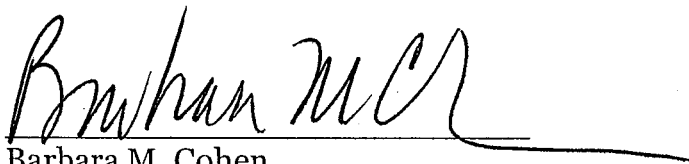
The jurisdiction of the RAP limits the authority of the Hearing Officers to set forth the legal rent for the unit; no orders of direct restitution may be made. The tenants testified at the Hearing that they were moving out of the unit in August, 2016. Therefore, an order adjusting the rent is of no value. If the tenants did move and they wish to seek further orders in this matter they need to file a claim in a court of competent jurisdiction.

If the tenants did not move out of the unit, they are entitled to a rent credit in the amount of \$2,250. Rent overpayments of this kind are adjusted over a 12 month period; therefore, they are entitled to a rent reduction of \$187.50 a month. Their rent for the months of October 2016-September of 2017 is therefore \$712.50 a month. Their rent returns to the base rent of \$900 a month on October 1, 2017.

ORDER

1. Petition T16-0188 is granted in part.
2. The base rent for this unit at all relevant times is \$900 per month.
3. The tenant was first served with the *RAP Notice* on March 1, 2016.
4. The tenant's claims for decreased services amount to \$2,250.
5. If the tenant did not move out of the unit, he is entitled to a rent decrease of \$187.50 a month for 12 months. The tenant's rent for the months of October 2016-September 2017 is \$712.50. His rent returns to the base rent of \$900 on October 1, 2017.
6. If the tenant still lives in the unit the owner may otherwise be entitled to a rent increase with an effective date at least 6 months after the tenant was first served with the *RAP Notice*.
7. If the tenant no longer resides in the unit the RAP has no further authority to enforce this order.
8. **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 12, 2016


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0188

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

Carlos N. Ali
5452 International Blvd. #D
Oakland,, CA 94601

Owner

Homer Morris Jr.
3015 Modesto Ave
Oakland, CA 94619

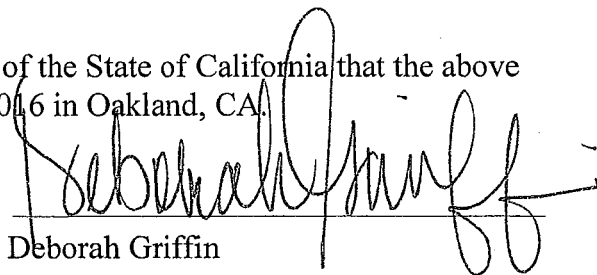
Joyce Morris
3015 Modesto Ave
Oakland, CA 94619

Owner Representative

Kimberly Bradley
4538 Deerfield Drive
Antioch, CA 94531

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, 2016 in Oakland, CA.


Deborah Griffin

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.

2016 MAY -6 PM 3:05

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/6-0188

OWNER RESPONSE

Please print legibly.

Your Name <i>HOMER & JOYCE MORRIS</i>	Complete Address (with zip code) <i>3015 MODESTO AVE. OAKLAND, CA. 94619</i>	Phone: <i>(510) 532-8174</i> Email: _____
Your Representative's Name (if any) <i>Kimberly BRADLEY</i>	Complete Address (with zip code) <i>4538 Deerfield Drive Antioch, Ca. 94531</i>	Phone: <i>925-565-2508</i> Fax: _____ Email: <i>KBradley247@SBCglobal.net</i>
Tenant(s) name(s) <i>CARLOS ALI</i>	Complete Address (with zip code) <i>5452 INTL. BLVD. OAKLAND, CA. 94601</i>	

Have you paid for your Oakland Business License? Yes No Number *28090070*
752134
(Provide proof of payment.)

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No
(Provide proof of payment.)

There are 4 residential units in the subject building. I acquired the building on 11/1/16.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 2007.

The tenant's initial rent including all services provided was \$ 900.00 / 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? 9-28-2010

Is the tenant current on the rent? Yes No

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes _____ No . If yes, on what date was the Enhanced Notice given? _____. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes _____ No . Not applicable: there was no capital improvements increase. _____

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase? <input type="checkbox"/> Yes <input type="checkbox"/> No
		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

II. JUSTIFICATION FOR RENT INCREASE

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

<u>Date of Increase</u>	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
5-01-2016	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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"/>	<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"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

III. 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 on a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

IV. 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** for 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.

V. IMPORTANT INFORMATION

Time to File. This form **must be received** by the Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612-0243, within 35 days of the date that a copy of the Tenant Petition was mailed to you. (The date of mailing is shown on the Proof of Service attached to the Tenant Petition and other response documents mailed to you.) A postmark does not suffice. 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. If you wish to deliver your completed Owner Response to the Rent Adjustment Program office in person, go to the City of Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. **You cannot get an extension of time to file your Response by telephone.**

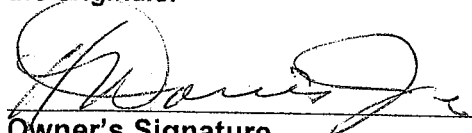
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

File Review. You should have received a copy of the petition (and claim of decreased services) filed by your tenant with this packet. Other documents provided by the tenant will not be mailed to you. You may review additional documents in the RAP office by appointment. For an appointment to review a file or to request a copy of documents in the file call (510) 238-3721.

VI. VERIFICATION

Owner must sign here:

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.



Owner's Signature

5-06-2016
Date

VII. MEDIATION AVAILABLE

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. 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. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner 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).

Owner's Signature

Date

Tile 0188 MS/BC

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp 2016 APR 13 PM 12:50
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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 CARLOS N. ALI	Rental Address (with zip code) 5452 International Blvd #D Oak, Ca 94601	Telephone (510) 842-8161
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Homer Morris Jr. and Joyce Morris	Mailing Address (with zip code) 3015 Modesto Ave. Oak, Ca. 94619	Telephone (510) 532-8174

Number of units on the property: 4

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	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 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 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 checked="" 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 type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(f2) 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"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input checked="" type="checkbox"/>	(j) 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 type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: 9/13/07 Initial Rent: \$ 900⁰⁰ / XX /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: 3/1/16. 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. You must check "Yes" next to each increase that you are challenging.

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		
<u>3/1/16</u>	<u>5/1/16</u>	<u>\$900⁰⁰</u>	<u>\$1360</u>	<input checked="" type="checkbox"/> Yes <input 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
		\$	\$	<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, 2nd 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

4-13-16
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): _____

CHRONOLOGICAL CASE REPORT

Case No.: T16-0313
Case Name: Novela v. Lee
Property Address: 2363 – 100th Avenue, Oakland, CA
Parties: Manuel Novela (Tenant)
Won Chul Lee (Landlord)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petitions filed	June 14, 2016
Owner Response filed	July 14, 2016
Hearing Decision issued	October 7, 2016
Tenant Appeal filed	October 29, 2016
Owner Appeal filed	October 26, 2016
Corrected Hearing Decision issued (with new appeal period)	October 28, 2016
Tenant Appeal filed	November 14, 2016

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2016 NOV 14 PM 1:56 APPEAL
Appellant's Name Manuel Novela	Landlord <input type="checkbox"/> Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) 2363 100th Ave. Oakland, CA 94603	
Appellant's Mailing Address (For receipt of notices) 2363 100th Ave. Oakland, CA 94603	Case Number T16-0313 Date of Decision appealed October 20, 2016
Name of Representative (if any) Martina Cucullu Lim Centro Legal de la Raza	Representative's Mailing Address (For notices) 3400 E. 12th Street Oakland, CA 94601

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.)

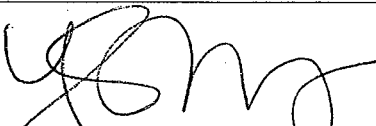
1. **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*
2. **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*
3. **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.*
4. **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.*
5. **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.*
6. **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.*

700 NOV 14 PM 1:56
1

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 1. 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 November 14, 20016, 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>	Won Chul Lee	
<u>Address</u>	931 Autumn Oak Cr	1210 26th Street
<u>City, State Zip</u>	Concord, CA 94521	Oakland, CA 94607
<u>Name</u>	John So, Green Oaks Realty	
<u>Address</u>	2345 Waverly Street	
<u>City, State Zip</u>	Oakland, CA 94612	

 SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	11/14/16 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 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.

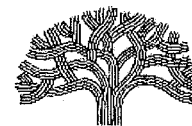
RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2016 NOV 14 PM 1:56

Manuel Novela Attachment to Appeal

Case No. T16-0313

- The calculation of the rent reduction has not been adjusted based on the corrected total overpayment. As you know, the previous version calculated the overpayment at \$1900; the correct amount is \$2150. However, the corrected decision still states that the rent reduction will be \$158.33 per month ($\$1900/12$). In other words, the corrected decision does not correct the miscalculation of the rent reduction from the original decision. The reduction should be \$179.17 ($\$2150/12$).
- There is a typo on p. 4, in the "Base Rent" section under findings of fact: it says that hte tenant overpayed from August-October 2016. However, he actually overpayed from June-October 2016. This is correctly noted in the "Conclusion" section but the discrepancy does create ambiguity as to the tenant's rights and landlord's liability.



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

CORRECTED HEARING DECISION

CASE NUMBER: T16-0313, Novela v. Lee

PROPERTY ADDRESS: 2363 - 100th Ave., Oakland, CA

DATE OF HEARING: September 20, 2016

DATE OF DECISION: October 24, 2016

APPEARANCES: Manuel Novela (Tenant)
Martina Cuccullo-Lim (Attorney for Tenant)
Shane Crary-Ross (Tenant Representative)
Won Chul Lee (Owner)
John So (Owner Representative)
Sergio Chavarin (Interpreter)

INTRODUCTION

A Hearing Decision was issued in this case on October 6, 2016. This Decision was served by mail upon all proper parties and their representatives. However, that Decision omitted a portion of the tenant's rent overpayments. This Corrected Hearing Decision is being issued to correct this error.

This is an entirely new Hearing Decision, for which there is a new Appeal period, as stated below.

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a proposed rent increase from \$650 to \$700 per month, effective June 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that he has never received the form Notice to Tenants (RAP Notice); that at present there exists a health, safety, fire or building code violation in his unit; and that his housing services have been decreased.

The tenant's decreased housing services claims are: smoke detectors do not work; no carbon monoxide detector; fan above stove does not work; front door does not close completely; bathtub faucet leaks; mold on the bedroom walls; payment for water for the store located in the building in which he lives; and loss of basement storage space.

The owner filed a response to the petition, which alleges that there is no rent increase: the owner states that he is merely enforcing the contract between the tenant and the prior owner. The owner's response also denies that the tenant's housing services have decreased, and states that he does not know if the tenant was ever given the RAP Notice.

THE ISSUES

- (1) If the owner had not paid the Oakland Business License or the Rent Program Service fee at the time he filed his petition, but paid these fees before the start of the Hearing, is the owner's response considered to have been "filed"?
- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Has the owner sought to increase the tenant's rent?
- (4) What is the tenant's Base Rent?
- (5) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Owner's Response: The owner's sworn response states that he had not paid either the Business License Tax or the Rent Adjustment Program Service fee. Next to the printed questions concerning these fees, the owner wrote, "Acquired property 4/26/16." At the Hearing, the owner provided receipts showing that both of these fees had been paid. The tenant's attorney objected to the owner testifying or presenting any evidence since the fees had not been paid when the owner filed his response.

RAP Notice: At the Hearing, the tenant testified that he has never received the RAP Notice. The owner did not have any information to the contrary.

Base Rent: The tenant testified that when he moved into his unit in or about 2011, the rent was \$650 per month. On December 20, 2015, the tenant and the prior owner signed a Residential Lease which states a rent of \$700 per month.¹ This lease further states that the tenant will pay

¹ Exhibit No. 1. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

one-half of the water and sewer bill. The tenant further testified that he did not read the lease before he signed it, and that the prior owner told him the rent would remain \$650 per month. He trusted the word of the prior owner. After signing the lease, the tenant continued to pay \$650 per month, and the prior owner never objected.

In response to a question, the owner testified that he never asked the tenant to sign an estoppel certificate. Such certificates, in which a tenant states the current rent, are very common in the sale of rental property.

Rent History: The parties agreed that the tenant paid rent of \$650 per month until June 2016, when the current owner asked him to pay \$700 per month. The tenant paid \$700 in the months of June through September 2016, and stated at the Hearing that he would pay the same amount in October.

Decreased Housing Services: At the Hearing, the tenant dismissed all claims of decreased housing services except for his claims regarding the kitchen fan, payments on the water bill, and loss of basement storage space.

Kitchen Fan: The tenant testified that the exhaust fan over the kitchen stove is not strong enough to effectively clear smoke out of the kitchen. He further testified that the fan has never worked well.

Water Bill: At the Hearing, the parties stipulated that the tenant shares a water meter with at least one other tenant in the subject building. The tenant testified that from the time he moved in until November 2014, he did not pay for water. In November 2014, the water for his unit was cut off. When the tenant investigated the situation, he was told that the water meter for his unit also serviced a store in the same building. The water bill was in the name of the store owner, who told the prior building owner that he had not paid the bill.

In order to get water for his unit, in December 2014, the tenant changed the water service to his name, and it has remained in his name since that time. The tenant submitted 3 bills from EBMUD for 2-month periods in the years 2015 and 2016, in the amounts of \$207, \$375 (covering 4 months), and \$194.² The tenant testified that the bills average \$190 to \$200 every two months, and that he has paid every bill since December 2014.

Storage Space: The tenant testified that when he moved into his unit, he had no access to the basement of the building. Then, in the year 2013, with the permission of the prior owner, he began using the basement to connect his washing machine and for storing items such as a bicycle and exercise machine. At the same time, the tenant began to improve a portion of the basement so that it could be used by his children as a playroom.

The tenant replaced old, worn basement exterior and interior doors with new doors; replaced a small, decrepit window with a new, larger window on which he installed a curtain rod and curtain; and covered the unfinished ceiling with new drywall, which he painted. All of this work was done with the permission of the prior owner. The owner complimented his work, and said

² Exhibit Nos. 2 through 4.

that the tenant should use this area. The extent of the work was supported by photographs of the areas noted above.³ As of the date of the Hearing, the tenant was still using the basement for all purposes.

The owner submitted an unsworn letter signed by the prior owner, dated August 30, 2016.⁴ The return address on this letter is in Moraga, CA. This letter states, in part: "I gave Novela and my other tenant Gordon permission to have their children play in the basement because it was vacant and I was concerned with the safety of the tenants' children playing on the streets. But I did not grant them permission to improve basement area and use it for living quarters and storage space for themselves."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Owner's Response: The Rent Adjustment Ordinance states: "In order for an owner to file a response to a tenant petition . . . the owner must provide the following: a. Evidence of possession of a current city business license; b. Evidence of payment of the Rent Adjustment Program Service Fee."⁵ The purpose of this requirement is to ensure that owners pay the business license tax and the RAP fee. The owner, who was unsure whether he should pay these charges since he had just purchased the building, did make the payments, although belatedly. The owner substantially complied with the Ordinance. Therefore, the owner could fully participate in the Hearing.

RAP Notice: It is found that the tenant has never received the RAP Notice.

Base Rent: Although the lease does state a monthly rent of \$700, the tenant never paid this amount to the prior owner, and the prior owner never objected when the tenant continued to pay \$650 per month. Further, the aforementioned letter signed by the former owner makes no reference to the rent amount. It is unknown why the prior owner asked the tenant to sign the lease in question. However, it is clear that the prior owner waived the lease provision regarding the rent. Further, since the tenant never received the RAP Notice, such a rent increase would be illegal.

Parties cannot agree to an illegal rent increase. Therefore, the Base Rent for the unit is \$650 per month. The tenant paid rent of \$700 in the months of August through October 2016. This is a total rent overpayment of \$250.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁶ and may be corrected by a rent adjustment.⁷ However, in order to justify a decrease in rent, a decrease in housing services must be either the

³ Exhibit Nos. 5A through 5E.

⁴ Exhibit No. 6. The tenant objected to the admission of this document into evidence on the ground that it is not signed under penalty of perjury. This objection was overruled, and the letter was admitted into evidence.

⁵ O.M.C. Section 8.22.090(B)(1)

⁶ O.M.C. Section 8.22.070(F)

⁷ O.M.C. Section 8.22.110(E)

elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.⁸ Where the RAP Notice has never been given, as in the present case, a tenant can be granted restitution for rent overpayments due to decreased housing services for a maximum of 3 years.⁹

Kitchen Fan: The tenant testified that the fan has never worked well. A kitchen exhaust fan is not a Code requirement, and the tenant's housing services have not been decreased. The claim is denied.

Water Bill: Regulation 10.1.10 of the Rent Adjustment Ordinance states: "When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. . . The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent."

Payments made by the tenant towards the utility bills were violations of the Rent Adjustment Ordinance. The tenant's testimony was credible, and supported by several bills from EBMUD. It is found that the tenant paid to EBMUD an average of \$95 per month from February 2015 through September 2016, a period of 20 months. The tenant therefore overpaid \$1,900.

Storage Space: As of the date of the Hearing, the tenant has continued to use the basement area that he improved. A mere threat is not a decrease in housing services, and the claim must be denied. However, it is noted that the tenant substantially improved the basement and that the owner must have been aware of the work that the tenant performed. Further, the unsworn letter from a person who lives near Oakland is far less convincing than personal testimony, which would give the tenant's representatives an opportunity to question him, as well as allowing the Hearing Officer to judge his demeanor while testifying.

State law is instructive: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."¹⁰

Conclusion: The rent is \$650 per month. Because the tenant paid for water, he overpaid rent in the amount of \$1,900. Further, by paying rent of \$700 in the months of June through October 2016, he additionally overpaid rent of \$250. The total rent overpayment is \$2,150. The overpayment is ordered repaid over a period of 12 months.¹¹ The rent is temporarily reduced by

⁸ O.M.C. Section 8.22.090(A)(2)

⁹ Appeal Decision in Case No. T06-0051, Barajas/Avalos v. Chu

¹⁰ Evidence Code, Section 412


¹¹ Regulations, Section 8.22.110(F)

\$179.17 per month, to \$470.83 per month, beginning with the rent payment in November 2016 and ending with the rent payment in October 2017.

ORDER

1. Petition T16-0313 is partly granted.
2. The Base Rent is \$650 per month.
3. The tenant has overpaid rent in the amount of \$2,150. This overpayment is adjusted over a period of 12 months.
4. The rent is temporarily reduced by \$158.33 per month, to \$491.67 per month, beginning with the rent payment in November 2016 and ending with the rent payment in October 2017.
5. In November 2017, the rent will increase to \$650 per month.
6. The owner may not require the tenant to pay any portion of a bill for water for his unit.
7. The owner may otherwise be eligible for a rent increase. Any notice of rent increase must have an effective date of at least six months after the tenant first receives notice of the existence and scope of the Rent Adjustment Program.
8. 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: October 24, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0313

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 Corrected 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

Manuel Novela
2363 100th Ave
Oakland, CA 94603

Owner

Won Chul Lee
931 Autumn Oak Cr
Concord, CA 94521

Won Chul Lee
1210 26th St
Oakland, CA 94607

Tenant Representative

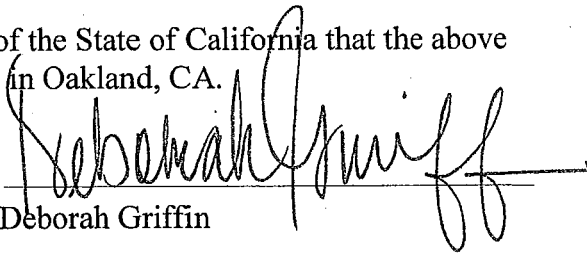
Laura Shoaps
3400 East 12th St
Oakland, CA 94601

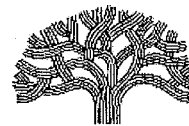
Owner Representative

John So; Green Oaks Realty
2345 Waverly St
Oakland, CA 94612

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 October 28, 2016 in Oakland, CA.


Deborah Griffin



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: T16-0313, Novela v. Lee

PROPERTY ADDRESS: 2363 - 100th Ave., Oakland, CA

DATE OF HEARING: September 20, 2016

DATE OF DECISION: October 6, 2016

APPEARANCES: Manuel Novela (Tenant)
Martina Cuecullo-Lim (Attorney for Tenant)
Shane Crary-Ross (Tenant Representative)
Won Chul Lee (Owner)
John So (Owner Representative)
Sergio Chavarin (Interpreter)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a proposed rent increase from \$650 to \$700 per month, effective June 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that he has never received the form Notice to Tenants (RAP Notice); that at present there exists a health, safety, fire or building code violation in his unit; and that his housing services have been decreased.

The tenant's decreased housing services claims are: smoke detectors do not work; no carbon monoxide detector; fan above stove does not work; front door does not close completely; bathtub

faucet leaks; mold on the bedroom walls; payment for water for the store located in the building in which he lives; and loss of basement storage space.

The owner filed a response to the petition, which alleges that there is no rent increase: the owner states that he is merely enforcing the contract between the tenant and the prior owner. The owner's response also denies that the tenant's housing services have decreased, and states that he does not know if the tenant was ever given the RAP Notice.

THE ISSUES

- (1) If the owner had not paid the Oakland Business License or the Rent Program Service fee at the time he filed his petition, but paid these fees before the start of the Hearing, is the owner's response considered to have been "filed"?
- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Has the owner sought to increase the tenant's rent?
- (4) What is the tenant's Base Rent?
- (5) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Owner's Response: The owner's sworn response states that he had not paid either the Business License Tax or the Rent Adjustment Program Service fee. Next to the printed questions concerning these fees, the owner wrote, "Acquired property 4/26/16." At the Hearing, the owner provided receipts showing that both of these fees had been paid. The tenant's attorney objected to the owner testifying or presenting any evidence since the fees had not been paid when the owner filed his response.

RAP Notice: At the Hearing, the tenant testified that he has never received the RAP Notice. The owner did not have any information to the contrary.

Base Rent: The tenant testified that when he moved into his unit in or about 2011, the rent was \$650 per month. On December 20, 2015, the tenant and the prior owner signed a Residential Lease which states a rent of \$700 per month.¹ This lease further states that the tenant will pay one-half of the water and sewer bill. The tenant further testified that he did not read the lease before he signed it, and that the prior owner told him the rent would remain \$650 per month. He trusted the word of the prior owner. After signing the lease, the tenant continued to pay \$650 per month, and the prior owner never objected.

In response to a question, the owner testified that he never asked the tenant to sign an estoppel certificate. Such certificates, in which a tenant states the current rent, are very common in the sale of rental property.

¹ Exhibit No. 1. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

Rent History: The parties agreed that the tenant paid rent of \$650 per month until June 2016, when the current owner asked him to pay \$700 per month. The tenant paid \$700 in the months of June through September 2016, and stated at the Hearing that he would pay the same amount in October.

Decreased Housing Services: At the Hearing, the tenant dismissed all claims of decreased housing services except for his claims regarding the kitchen fan, payments on the water bill, and loss of basement storage space.

Kitchen Fan: The tenant testified that the exhaust fan over the kitchen stove is not strong enough to effectively clear smoke out of the kitchen. He further testified that the fan has never worked well.

Water Bill: At the Hearing, the parties stipulated that the tenant shares a water meter with at least one other tenant in the subject building. The tenant testified that from the time he moved in until November 2014, he did not pay for water. In November 2014, the water for his unit was cut off. When the tenant investigated the situation, he was told that the water meter for his unit also serviced a store in the same building. The water bill was in the name of the store owner, who told the prior building owner that he had not paid the bill.

In order to get water for his unit, in December 2014, the tenant changed the water service to his name, and it has remained in his name since that time. The tenant submitted 3 bills from EBMUD for 2-month periods in the years 2015 and 2016, in the amounts of \$207, \$375 (covering 4 months), and \$194.² The tenant testified that the bills average \$190 to \$200 every two months, and that he has paid every bill since December 2014.

Storage Space: The tenant testified that when he moved into his unit, he had no access to the basement of the building. Then, in the year 2013, with the permission of the prior owner, he began using the basement to connect his washing machine and for storing items such as a bicycle and exercise machine. At the same time, the tenant began to improve a portion of the basement so that it could be used by his children as a playroom.

The tenant replaced old, worn basement exterior and interior doors with new doors; replaced a small, decrepit window with a new, larger window on which he installed a curtain rod and curtain; and covered the unfinished ceiling with new drywall, which he painted. All of this work was done with the permission of the prior owner. The owner complimented his work, and said that the tenant should use this area. The extent of the work was supported by photographs of the areas noted above.³ As of the date of the Hearing, the tenant was still using the basement for all purposes.

The owner submitted an unsworn letter signed by the prior owner, dated August 30, 2016.⁴ The return address on this letter is in Moraga, CA. This letter states, in part: "I gave Novela and my other tenant Gordon permission to have their children play in the basement because it was vacant

² Exhibit Nos. 2 through 4.

³ Exhibit Nos. 5A through 5E.

⁴ Exhibit No. 6. The tenant objected to the admission of this document into evidence on the ground that it is not signed under penalty of perjury. This objection was overruled, and the letter was admitted into evidence.

and I was concerned with the safety of the tenants' children playing on the streets. But I did not grant them permission to improve basement area and use it for living quarters and storage space for themselves."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Owner's Response: The Rent Adjustment Ordinance states: "In order for an owner to file a response to a tenant petition . . . the owner must provide the following: a. Evidence of possession of a current city business license; b. Evidence of payment of the Rent Adjustment Program Service Fee."⁵ The purpose of this requirement is to ensure that owners pay the business license tax and the RAP fee. The owner, who was unsure whether he should pay these charges since he had just purchased the building, did make the payments, although belatedly. The owner substantially complied with the Ordinance. Therefore, the owner could fully participate in the Hearing.

RAP Notice: It is found that the tenant has never received the RAP Notice.

Base Rent: Although the lease does state a monthly rent of \$700, the tenant never paid this amount to the prior owner, and the prior owner never objected when the tenant continued to pay \$650 per month. Further, the aforementioned letter signed by the former owner makes no reference to the rent amount. It is unknown why the prior owner asked the tenant to sign the lease in question. However, it is clear that the prior owner waived the lease provision regarding the rent. Further, since the tenant never received the RAP Notice, such a rent increase would be illegal. Parties cannot agree to an illegal rent increase. Therefore, the Base Rent for the unit is \$650 per month.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁶ and may be corrected by a rent adjustment.⁷ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.⁸ Where the RAP Notice has never been given, as in the present case, a tenant can be granted restitution for rent overpayments due to decreased housing services for a maximum of 3 years.⁹

⁵ O.M.C. Section 8.22.090(B)(1)

⁶ O.M.C. Section 8.22.070(F)

⁷ O.M.C. Section 8.22.110(E)

⁸ O.M.C. Section 8.22.090(A)(2)

⁹ Appeal Decision in Case No. T06-0051, Barajas/Avalos v. Chu

Kitchen Fan: The tenant testified that the fan has never worked well. A kitchen exhaust fan is not a Code requirement, and the tenant's housing services have not been decreased. The claim is denied.

Water Bill: Regulation 10.1.10 of the Rent Adjustment Ordinance states: "When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. . . The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent."

Payments made by the tenant towards the utility bills were violations of the Rent Adjustment Ordinance. The tenant's testimony was credible, and supported by several bills from EBMUD. It is found that the tenant paid to EBMUD an average of \$95 per month from February 2015 through September 2016, a period of 20 months. The tenant therefore overpaid \$1,900.

Storage Space: As of the date of the Hearing, the tenant has continued to use the basement area that he improved. A mere threat is not a decrease in housing services, and the claim must be denied. However, it is noted that the tenant substantially improved the basement and that the owner must have been aware of the work that the tenant performed. Further, the unsworn letter from a person who lives near Oakland is far less convincing than personal testimony, which would give the tenant's representatives an opportunity to question him, as well as allowing the Hearing Officer to judge his demeanor while testifying.

State law is instructive: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."¹⁰

Conclusion: The rent is \$650 per month. The tenant has overpaid rent in the amount of \$1,900. The overpayment is ordered repaid over a period of 12 months.¹¹ The rent is temporarily reduced by \$158.33 per month, to \$491.67 per month, beginning with the rent payment in November 2016 and ending with the rent payment in October 2017.

ORDER

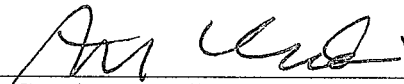
1. Petition T16-0313 is partly granted.
2. The Base Rent is \$650 per month.
3. The tenant has overpaid rent in the amount of \$1,900. This overpayment is adjusted over a period of 12 months.
4. The rent is temporarily reduced by \$158.33 per month, to \$491.67 per month, beginning with the rent payment in November 2016 and ending with the rent payment in October 2017.

¹⁰ Evidence Code, Section 412

¹¹ Regulations, Section 8.22.110(F)

5. In November 2017, the rent will increase to \$650 per month.
6. The owner may not require the tenant to pay any portion of a bill for water for his unit.
7. The owner may otherwise be eligible for a rent increase. Any notice of rent increase must have an effective date of at least six months after the tenant first receives notice of the existence and scope of the Rent Adjustment Program.
8. 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: October 6, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0313

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

Manuel Novela
2363 100th Ave
Oakland, CA 94603

Owner

Won Chul Lee
931 Autumn Oak Cr
Concord, CA 94521

Won Chul Lee
1210 26th St
Oakland, CA 94607

Tenant Representative

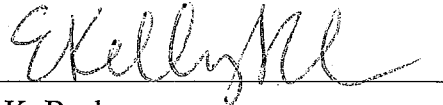
Laura Shoaps
3400 East 12th St
Oakland, CA 94601

Owner Representative

John So; Green Oaks Realty
2345 Waverly St
Oakland, CA 94612

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 October 07, 2016 in Oakland, CA.



Esther K. Rush

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. <div style="text-align: center;"> RECEIVED JUL 14 2016 <small>© OAKLAND RENT ADJUSTMENT</small> </div>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T/6-313

OWNER RESPONSE

Please print legibly.

Your Name <i>WON CHUL LEE</i>	Complete Address (with zip code) <i>931 AUTUMN OAK CIR. CONCORD, CA 94521</i>	Phone: <i>510-414-8790</i> Email: <i>woncclee@hotmail.com</i>
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s)	Complete Address (with zip code)	

Have you paid for your Oakland Business License? Yes No Number _____
(Provide proof of payment.)

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No
(Provide proof of payment.)

There are _____ residential units in the subject building. I acquired the building on ___/___/___.

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

I. RENTAL HISTORY *Don't know, (I purchased on April 26, 2016)*

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 ___

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes ____ No ____ . If yes, on what date was the Enhanced Notice given? _____. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes ____ No ____ . Not applicable: there was no capital improvements increase. _____

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase? <input type="checkbox"/> Yes <input type="checkbox"/> No
		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

II. JUSTIFICATION FOR RENT INCREASE

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

<u>Date of Increase</u>	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
_____	<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"/>
_____	<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"/>
_____	<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"/>

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

III. 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 on a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

IV. 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** for 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.

V. IMPORTANT INFORMATION

Time to File. This form **must be received** by the Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612-0243, within 35 days of the date that a copy of the Tenant Petition was mailed to you. (The date of mailing is shown on the Proof of Service attached to the Tenant Petition and other response documents mailed to you.) A postmark does not suffice. 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. If you wish to deliver your completed Owner Response to the Rent Adjustment Program office in person, go to the City of Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. **You cannot get an extension of time to file your Response by telephone.**

NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

File Review. You should have received a copy of the petition (and claim of decreased services) filed by your tenant with this packet. Other documents provided by the tenant will not be mailed to you. You may review additional documents in the RAP office by appointment. For an appointment to review a file or to request a copy of documents in the file call (510) 238-3721.

VI. VERIFICATION

Owner must sign here:

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.

Jim Del Valle
Owner's Signature

7/13/16
Date

VII. MEDIATION AVAILABLE

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. 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. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner 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).

Owner's Signature

Date

Tenant Petitioner
 Manuel Novela
 2363 100th Ave
 Oakland, CA 94603

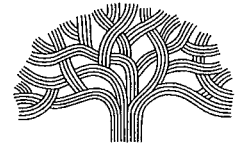
Addendum A- Decrease in Services

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
<i>installed new one</i> 1. Smoke detectors do not work	Summer 2013	Notified owner in a letter in June 2016	NA	5%
<i>installed new one</i> 2. No carbon monoxide detector	Since move in	Landlord has an affirmative duty to provide carbon monoxide detectors.	NA	5%
<i>installed new one</i> 3. The fan above the stove does not work because the ventilation is not connected	Since move in	Landlord knows that this is a problem because he told us about it May 2016	NA	10%
<i>new frame and door</i> 4. The front door does not close completely.	Since move in	Notified owner in a letter in June 2016	NA	10%
<i>Fixed</i> 5. The bathtub faucet leaks	February 2016	Notified owner in a letter in June 2016	NA	3%
<i>Installed New wall and paint</i> 6. Mold appears on the bedroom walls every time it rains.	Since move in	Notified owner in a letter in June 2016	NA	5%

Addendum B- Lost Services and New Charges Previously Paid by Owner

1. When I first moved in I was not being charged for water. I had to switch the water bill to my name in approximately December 2015. Since then, I have had to pay the water for my unit and also the store that is connected to our building as well.
2. In around 2013, the owner gave me permission to use the basement as storage and I have been using it since then. I received a letter from the new owner in May 2016 stating that I can no longer use the basement storage.

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • P.O. BOX 70243 • OAKLAND, CA 94612-2034

Housing and Community Development Department
Rent Adjustment Program
July 21, 2010
<http://www2.oaklandnet.com/Government/o/hcd/o/Rent Adjustment>

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

Won Chul Lee
931 Autumn Oak Circle
Oakland, CA 94521

Re: Case # T16-0313 Novela v. Lee

Dear Mr. Lee:

The Rent Adjustment Program received your Landlord Response for case # T16-0313. The following deficiencies have been identified:

1. You did not answer to the question whether you have paid the City of Oakland's Business License fee in your client's response.
2. You did not answer to the question "Have you paid the Rent Program Service Fee?" **Please submit proof of payment for both items along with your written response to this deficiency letter.**
3. You did not complete Section I Rental History for your tenant
4. You did not complete Section II Justification for Rent Increase

We have included Pages 1 and 2 for your reference to the needed information.

The requested information must be submitted to this office within ten (10) calendar days from the date of this letter in order to consider your response. If you have any further questions, contact me at (510) 238-2079. Please refer to the Case Number above when you call us.

Sincerely,

Roberto F. Costa
Rent Adjustment Program
Program Analyst II

000103

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.

RECEIVED
 JUL 14 2016
 RECEIVED
 OAKLAND RENT ADJUSTMENT PROGRAM
 JUL 01 2016

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/6-313

OWNER RESPONSE

Please print legibly.

Your Name <i>WON CHUL LEE</i>	Complete Address (with zip code) <i>931 AUTUMN OAK CIR. CONCORD, CA 94521</i>	Phone: <i>510-444-8790</i> Email: <i>woncclee@hotmail.com</i>
Your Representative's Name (if any) <i>John So (Realtor)</i>	Complete Address (with zip code) <i>Green Oaks - Investment Consulting Realty 2345 Waverly St., Oakland, CA 94612</i>	Phone: <i>650-291-0274</i> Fax: <i>510-465-1471</i> Email: <i>realtorjohnso@yahoo.com</i>
Tenant(s) name(s) <i>Manuel Novela</i>	Complete Address (with zip code) <i>2365 100th Ave Oakland, CA 94605</i>	

Have you paid for your Oakland Business License? ~~Yes~~ No Number _____ (Acquired 04/26/16 property)

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No (Acquired 04/26/16 property)

There are 2 residential units in the subject building. I acquired the building on 04/26/16.

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

I. RENTAL HISTORY *I don't know. (I purchased on April 26, 2016.)*
 The tenant moved into the rental unit on *I don't know. Previous owner knows. I bought property April 2016. Please refer to letter of explanation.*

The tenant's initial rent including all services provided was \$ 700.00 / month. (In the contract I acquired)

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 *on May 2016, Novela only paid \$650.00*

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes _____ No X . If yes, on what date was the Enhanced Notice given? _____. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes _____ No _____. Not applicable: there was no capital improvements increase. X

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

** Not applicable*

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
<i>None</i>	<i>None</i>	\$ <i>None</i>	\$ <i>None</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>Not applicable</i>
		\$	\$	<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

No rent increase. I am enforcing the contract I acquired from purchase.

II. JUSTIFICATION FOR RENT INCREASE

RECEIVED

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

** Not applicable*

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
<i>Not applicable</i>	<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"/>
	<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"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I did not increase any rent. I am simply enforcing the contract that Novela signed with the previous owner.

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

T16-0313 RC/SK

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp. 2015 JUN 14 PM 12:56</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 Manuel Novela	Rental Address (with zip code) 2363 100th Ave Oakland, CA 94603	Telephone (510) 499-5408
Your Representative's Name N/A	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Won Chul Lee	Mailing Address (with zip code) 1210 26th Street Oakland, CA 94607	Telephone

Number of units on the property: 2

Type of unit you rent (circle one)	House	Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (circle one)	<input checked="" type="checkbox"/> Yes	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 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

X	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
X	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
X	(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.
X	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
X	(f2) 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>
	(g) The contested increase is the second rent increase in a 12-month period.
	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
	(j) 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).
	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: approx 2011 Initial Rent: \$ 650 /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: Never. 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.

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		
6/1/2016	6/1/2016	\$ 650	\$ 700	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" 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, 2nd 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.

Manuel Novela v.
Tenant's Signature

6/9/16
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): _____

Tenant Petitioner
 Manuel Novela
 2363 100th Ave
 Oakland, CA 94603

Addendum A-Decrease in Services

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
1. Smoke detectors do not work	Summer 2013	Notified owner in a letter in June 2016	NA	5%
2. No carbon monoxide detector	Since move in	Landlord has an affirmative duty to provide carbon monoxide detectors.	NA	5%
3. The fan above the stove does not work because the ventilation is not connected	Since move in	Landlord knows that this is a problem because he told us about it May 2016	NA	10%
4. The front door does not close completely.	Since move in	Notified owner in a letter in June 2016	NA	10%
5. The bathtub faucet leaks	February 2016	Notified owner in a letter in June 2016	NA	3%
6. Mold appears on the bedroom walls every time it rains.	Since move in	Notified owner in a letter in June 2016	NA	5%

Addendum B- Lost Services and New Charges Previously Paid by Owner

1. When I first moved in I was not being charged for water. I had to switch the water bill to my name in approximately December 2015. Since then, I have had to pay the water for my unit and also the store that is connected to our building as well.
2. In around 2013, the owner gave me permission to use the basement as storage and I have been using it since then. I received a letter from the new owner in May 2016 stating that I can no longer use the basement storage.