

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

December 7, 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 Hearings in cases:
 - a. T16-0104; Meyer v. Harris
 - b. T16-0423; Habarek v. Vaughn
5. ADJOURNMENT

2017 NOV 29 PM 3:47

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 services animals or emotional support animals.

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

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

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

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0104
Case Name: Meyer v. Harris
Property Address: 2509 109th Ave., #D, Oakland, CA
Parties: Simone Meyer (Tenant)
Fareed Traylor (Tenant)
Rob Harris (Property Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 16, 2016
Owner Response filed	--
Hearing Decision issued	September 28, 2016
Owner Appeal filed	October 14, 2016
Tenant Response to Owner Appeal	November 1, 2017

000003

2016 OCT 14 PM 12:26

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		APPEAL	
Appellant's Name Roderick Harris, Jr.		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 2509 109th AVE #D Oakland, CA 94603		(510) 593-9094	
Appellant's Mailing Address (For receipt of notices) 1953 102nd AVE Oakland, CA 94603		Case Number T16-0104	
		Date of Decision appealed September 28, 2016	
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.)


- 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.
- The decision is inconsistent with decisions issued by other hearing officers. You must identify the prior inconsistent decision and explain how the decision is inconsistent.
- The decision raises a new policy issue that has not been decided by the Board. You must provide a detailed statement of the issue and why the issue should be decided in your favor.
- The decision is not supported by substantial evidence. You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
- I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.
- The decision denies me a fair return on my investment. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached . 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 OCT 14, 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	Simone Meyer and Fareed Traylor
Address	2509 109 th AVE #D
City, State Zip	Oakland, CA 94603
Name	
Address	
City, State Zip	

	10/14/16
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 Name: Roderick Harris, Jr. **Landlord**

Property Address: 2509 109th Ave #D Oakland, CA 94603

Appellant's Mailing Address: 1953 102nd Ave Oakland, CA 94603

Case Number: T16-0104

Date of Decision appealed: September 28, 2016

I appeal the decision issued in the case and on the date written above on the following grounds. I was denied sufficient opportunity to present my claim or respond to the petitioner's claim. Notification regarding this case was mailed to me at the incorrect address which did not afford me the 35 days which should have been granted for a written response to be filed. The notice was sent to the property address and not my mailing address. The notice was given to me on September 2, 2016 by the tenant at 2509 109th Ave Apt. A. Furthermore, not receiving the notification in a timely manner made it impossible to submit evidence to support my case to the Rent Adjustment Board.

As a result, there were several issues presented to which I was not able to provide evidence for dispute:

1. The security door on the immediate doorway entrance to the unit had a working lock to which they had the key.
2. The sewage leak was repaired four days after the owner was notified. The complainants were the only tenants in the building at the time. The plumber found a backup cause by feminine products and rice. *Tenant notified city before landlord*
3. The wall heater was operable, the pilot light just need to be lit.
4. While the tenants were current on rent at the time the petition was filed, they began falling behind two months after they moved in.

000006

10/23/2017 (RC)

Please excuse the mistakes scribbled out.
(I apologize)

RECEIVED

NOV 01 2017

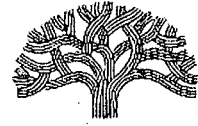
To whom it may concern,

RENT ADJUSTMENT PROGRAM
OAKLAND

Case # T16-0104 Meyer vs. Harris
Property address 2509 109th Ave. Oakland,
Ca 94603. ^{APT D}

Last year my fiancé and I (Fareed Traylor and Simone Meyer) ~~we~~ had a case hearing against our landlord not providing the proper locks for our doors/new door, a new refrigerator, we went a whole year without a proper working fridge and 3 months without ~~hot~~ hot water while I was 3 months pregnant) Our rent was reduced because of these inconveniences and the landlord was ordered to replace everything. As of today 10/23/17, he ~~has~~ had not done ~~anything~~ anything of what was ordered for him to do. I am ~~replying~~ replying to the appeal for those reasons. Nothing has been fixed or replaced so far. We feel our rent should stay reduced until he fixes what was ordered by the hearing board. There are other stuff that we found after the hearing that is not up to date or needs to be fixed around the apartment. For example, the mold in ceiling and our oven is not working anymore etc. But that I will proceed on a separate complaint. Thank you for your cooperation.
Regards, 000007
Fareed Traylor, Simone Meyer

(650) 290-1006



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: T16-0104, Meyer v. Harris
PROPERTY ADDRESS: 2509 109th Ave, #D, Oakland, CA
DATE OF HEARING: September 22, 2016
DATE OF DECISION: September 28, 2016
APPEARANCES: Simone Meyer, Tenant
Fareed Traylor, Tenant
Rob Harris, Owner

SUMMARY OF DECISION

The tenant's petition is granted. The legal rent for the subject unit is listed in the Order below.

CONTENTIONS OF THE PARTIES

Tenants Simone Meyer and Fareed Traylor filed a petition which alleges that their housing services have decreased and that at present there exists a health, safety, fire, or building code violation in the unit. Their list of decreased services included no refrigerator in their unit; no working heater; dirty rug; back door does not open; no lock on front door; bathroom sink leaked and they had to repair it themselves; hot water heater broken; and a sewer leak in the laundry room.

The owner never filed a response to the petition.

///

///

000008

THE ISSUES

1. Is there good cause for the failure of the owner to file a response to the tenant petition?
2. When, if ever, was the *RAP Notice* first served on the tenants?
3. 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?
4. What restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Owner Response: The owner testified that he received the *Tenant Petition* along with a letter informing him that he had to file a response within 35 days of receipt of the tenant petition. He did not file a response. The owner did not have an explanation about why he did not file a response.

Rental History: The tenants testified that they moved into the unit in October of 2015 at an initial rent of \$1,250 a month. It is a four plex. When they moved in the owner told them that the unit was being rented "as is." They were never provided with a *RAP Notice*.

At the time they filed their petition they were current on their rent. They started falling behind on the rent in March of 2016 because Ms. Meyer lost her job. As of the day of the Hearing they owed rent for August and September of 2016.

On cross-examination the tenants denied being behind on their rent at the time they filed their petition. The owner did not cross-examine the tenants on their testimony that they had not received the *RAP Notice*.

Decreased Housing Services:

No refrigerator: When they moved into the rental unit the unit did not have a refrigerator. The tenants provided their own mini-fridge, about the size of a cooler, to keep food cold, but it was not sufficient for their needs. About three weeks ago they purchased a full sized refrigerator, but it only worked for a few weeks before it stopped working because the compressor failed.

The tenants spoke to Mr. Harris about the lack of a refrigerator in the unit. He told them that if they could move the refrigerator themselves they could take one from one of the empty rental units in the building. They were not able to do so.

On cross-examination the owner asked the Fareed Traylor, "didn't I tell you when you moved in that there was no refrigerator in there?"¹ Traylor responded that he noticed there wasn't a refrigerator after he signed the lease. He further testified that "maybe" he

¹ Tape recording: 24:20-24:32

was told that there wasn't a refrigerator in the unit. Additionally, Traylor testified that they were told the unit was being provided "as is."

No working heater: The tenants testified that their unit has a single wall heater in the center of their unit. This heater was not working when they moved in. The covering of the heater was not on the device. They complained about it to the owner immediately when they moved in. It was repaired in August of 2016. The tenants had no working heat for the entirety of the winter of 2015-2016. (They used the oven to heat the unit.)

Dirty rug: The tenants dismissed this claim at the Hearing.

Back door does not open: The tenants testified that when they moved into the unit their back door was locked with a deadbolt and they were not given a key to this lock. This created a situation where they had no secondary exit from their unit.

The tenants further testified that they did not complain to the owner about this, but he should have given them a key to this lock when he moved them into the unit.

After many months of living with this locked door, one month ago the tenants had a friend over who completely removed the lock from the door. They can now open and close this door and lock it from the handle.

No lock on front door: The tenants testified that since they rented the unit from the owner the front door does not lock at all and the key they have does not operate the door. There is a locking security gate. They complained to the owner when they moved in, and he informed them to just lock the security gate. This door is still in the same condition as when they moved into the unit.

On cross-examination the tenants testified that the front door has a lock, but that they don't have a key to that lock. The only lock they were given a key for is the lock on the security gate.

Bathroom sink leaked: The tenants testified that soon after they moved in, there was a major leak in the bathroom sink. The leak was from the "u" pipe underneath the drain, and only leaked when the water was turned on. The tenants did not tell the owner about the leak. Simone Meyer's dad replaced the sink and the pipes at a cost of \$550. They had to replace the sink because it was old and rusted.

The tenants further testified that they had a verbal agreement with the owner that anything that they repaired, he would reimburse the tenants. The owner found out about the leak at some point when he came to collect rent and noticed the old bathroom sink outside the unit. This was after the repair had been completed. They have not yet asked the owner to reimburse them for the money they paid to repair the sink.

Hot water heater broken: The tenants testified that when they moved into the unit the water heater worked. In late November of 2015, the water heater stopped working. Fareed tried to investigate the hot water heater, which is in the laundry room, and he

couldn't get in because there was a massive sewage leak. The sewage appeared to be coming up from the center of the laundry room floor. (See sewer leak below.) The tenants complained to the owner but he did not repair the water heater.

In March of 2016, the tenants called *PG&E*, who came and investigated the water heater. The worker was able to repair the water heater by turning the pilot light back on. When *PG&E* came, the sewer leak had been repaired so they were able to access the water heater unit in the laundry room.

Sewer leak in the laundry room: The tenants testified that the sewer leak that they discovered in the laundry room caused horrible smells throughout their unit for several months. They informed the owner about it when they first saw it in November of 2015, but it did not get repaired until March of 2016. In February of 2016, the City of Oakland had an inspector come to the building. They do not know if a *Notice of Violation* was issued.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Is there good cause for the Owner's failure to respond to the petition?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed.² "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."³

The owner did not have an explanation for why he did not respond to the tenant petition. There is no good cause for the owner's failure to file a response to the petition. Therefore, the owner's participation at the Hearing was limited to cross-examination and providing a summation.⁴

When, if ever, were the tenants served with the *RAP Notice*?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁵ and together with any notice of rent increase or change in the terms of a tenancy.⁶ An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.⁷ The tenants credibly testified that they never received a *RAP Notice* when they moved into the unit, or at any time since. The owner did not cross-examine the tenants on this issue.

It is found that the tenants have not received the *RAP Notice*.

² O.M.C. § 8.22.090(B)

³ O.M.C. § 8.22.070(C)(2)

⁴ Board Decision in *Santiago v. Vega*, HRRRB, T02-0404.

⁵ O.M.C. § 8.22.060(A)

⁶ O.M.C. § 8.22.070(H)(1)(A)

⁷ O.M.C. § 8.22.060 (C)

Have the tenants' housing services been decreased?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁸ and may be corrected by a rent adjustment.⁹ 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 tenants must establish that they have given the owner notice of the problems and the opportunity to fix the problems before they are entitled to relief.

Further, in a decreased services case, where the *RAP Notice* has been given at the beginning of a tenancy, tenants are only allowed relief for 60 days prior to the filing of the petition¹⁰. However, where no *RAP Notice* was given before the tenant petition was filed, the tenants can seek restitution for up to three years. Here, since no *RAP Notice* was ever given, the tenants are entitled to restitution for conditions as far back as when they moved into the unit in October of 2015.

The tenants' claims of decreased services are discussed below:

No refrigerator: The tenants' have established that they were never given a refrigerator in their unit. While the owner tried to argue that the unit was provided "as is" and did not come with a refrigerator, the Oakland Building Maintenance Code requires that a refrigerator be provided with every rental unit.

"Each dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with an approved kitchen sink, cooking appliance, refrigeration appliance and cabinet for storing food...."¹¹

While it appears to be true that the tenants agreed to take the unit "as is", parties cannot agree to violate a rent control ordinance.¹² Nor can parties agree to violate a law established for a public reason.¹³ Here, the Oakland Building Maintenance Code requirement that a refrigerator be provided with every dwelling, was clearly enacted for a public reason. The parties cannot agree to violate this law.

The tenants are entitled to an ongoing rent decrease of 10% (\$125) as well as restitution for overpaid rent since they moved into the unit for the lack of a refrigerator.

⁸ O.M.C. § 8.22.070(F)

⁹ O.M.C. § 8.22.110(E)

¹⁰ Board Decision in *Lindsey v. Grimsley, et al.*, HRRRB T09-0086

¹¹ O.M.C. § 15.08.230 (C)

¹² *Gombiner v. Swartz*, 167 Cal.App. 4th 1365 (2008)

¹³ A law established for a public reason cannot be contravened by a private agreement.; see e.g. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 517.

No working heater: The tenants were believable that they had no working heater from when they moved into their unit until August of 2016. "All habitable space shall be provided with heating facilities capable of maintaining a room temperature of 68° F at a point 3 feet above the floor." O.M.C. § 15.08.260. Failure to provide a working heater is a habitability violation.

The tenants are entitled to restitution of overpaid rent of 10% (\$125 a month) from when they moved into the unit until August of 2016, when heat was restored to their unit.

Dirty rug: The tenants dismissed this claim at the Hearing.

Back door does not open: The tenants established that when they moved into the unit, their back door was locked shut and they were not given a key. Failure to provide a key to this exit is a safety concern.

The tenants are entitled to restitution of overpaid rent of 5% (\$67.50 a month) from when they moved into the unit until August of 2016, when they took the lock off the door, providing access.

No lock on front door: The tenants established that they were not provided a key for the front door when they were rented the unit. This is a safety concern.

The tenants are entitled to an ongoing rent decrease of 2% (\$25.00 a month), as well as restitution of overpaid rent for the lack of a key to the front door.

Bathroom sink leaked: The tenants established that there was a leak in their bathroom sink. However, they did not complain to the owner about it, before they took it upon themselves to repair it. Unlike the other claims, which were in effect from the time they rented the unit and were known to the owner, this problem happened after the tenants were living in the unit for some time.

Additionally, even if they had an agreement with the owner to repair and deduct, the tenants still have to inform the owner of the problem before they do so.

This claim is denied.

Hot water heater broken: The tenants established that the water heater broke at the end of November of 2015 and they informed the owner, who did not repair it. The tenants were not able to relight the pilot themselves because of the sewage leak in the laundry room, where the water heaters are installed. Lack of hot water is a habitability violation.¹⁴

The tenants were able to have *PG&E* relight the pilot after the sewage leak was repaired.

¹⁴ O.M.C. § 15.08.230 (D)

The tenants are entitled to restitution of overpaid rent of 10% of the rent (\$125 a month) from December 2015-February of 2016, when the hot water was restored. This would have given the owner one week to restore the hot water, after he was informed of the problem in November of 2015.

Sewer leak in the laundry room: A sewage leak is a health hazard and a habitability violation. The tenants established that there was a sewage leak in the laundry room, which caused odors throughout their apartment. This leak should have been repaired within a week of the owner being informed of the problem, by the beginning of December of 2015. However, while the tenants testified that the sewer leak was repaired in March 2016, they also testified that it was repaired by the time that *PG&E* came to relight the pilot on the water heater, which was at the end of February of 2016. Therefore, it is found that this was repaired by the end of February of 2016.

The tenants are entitled to restitution of overpaid rent of 10% of the rent (\$125 a month) from December 2015-February of 2016, when the leak was repaired.

What restitution is owed between the parties and how does it impact the rent?

As noted above, the tenants' base rent is \$1,250 a month. As shown on the chart below, the tenant has underpaid rent in the amount of \$2,500.

Because of the ongoing problems associated with the lack of a refrigerator and the lack of a key to the front door lock, the tenant is entitled to an ongoing rent decrease of 12%, (\$150 a month.) Before consideration of restitution, the tenants' current legal rent is \$1,100 a month.

Additionally, according to the chart below, the tenants are owed restitution in the amount of \$4,612.50 for past decreased services. The total overpayment (decreased services minus rent underpayments) totals \$2,112.50.

///

///

///

///

///

///

///

///

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
No refrigerator	1-Oct-15	30-Sep-16	\$1,250	10%	\$ 125.00	12	\$ 1,500.00
No Heater	1-Oct-15	31-Aug-16	\$1,250	10%	\$ 125.00	11	\$ 1,375.00
Back Door	1-Oct-15	31-Aug-16	\$1,250	5%	\$ 62.50	11	\$ 687.50
No Key to Front door	1-Oct-15	30-Sep-16	\$1,250	2%	\$ 25.00	12	\$ 300.00
Hot Water Heater	1-Dec-15	28-Feb-16	\$1,250	10%	\$ 125.00	3	\$ 375.00
Sewer Leak	1-Dec-15	29-Feb-16	\$1,250	10%	\$ 125.00	3	\$ 375.00
TOTAL LOST SERVICES							\$ 4,612.50

UNDERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Aug-16	30-Sep-16	\$0	\$1,250	\$ (1,250.00)	2	\$ (2,500.00)
TOTAL UNDERPAID RENT						\$ (2,500.00)

RESTITUTION

MONTHLY RENT	\$1,250
TOTAL TO BE REPAID TO TENANT	\$ 2,112.50
TOTAL AS PERCENT OF MONTHLY RENT	169%
AMORTIZED OVER 12 MO. BY REG. IS	\$ 176.04

Overpayments of this size are normally adjusted over a period of 12 months¹⁵. For now this \$176.04 a month is subtracted from the current legal rent of \$1,100 for a total rent of \$923.96 a month. From October of 2016 through September of 2017, the tenants' rent is \$923.96.

However, should the owner provide a refrigerator, the owner can increase the rent by 10% or \$125.00 a month. If the owner provides a key for the front door lock, the owner can increase the rent by 2% or \$25 a month. In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.

Additionally, if the owner wishes to pay the tenants the restitution in one lump sum, he has the authority to do so. If the owner pays the tenants restitution, the tenants must stop deducting the restitution.

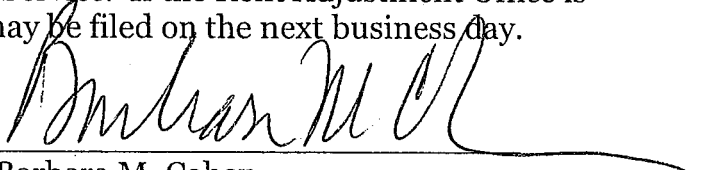
If the tenants have already paid October 2016 rent, in an amount greater than \$923.96, they can deduct any overpayment from their November 2016 rent.

¹⁵ Regulations, Section 8.22.110(F)

ORDER

1. Petition T16-0104 is granted in part.
2. The base rent for the unit is \$1,250.
3. Due to ongoing decreased housing services, the tenants are entitled to an ongoing rent decrease of 12% (\$150 a month.) The tenants' current legal rent, before consideration of restitution, is \$1,100 a month.
4. Due to past decreased services and underpaid rent, the tenants are owed restitution of \$2,112.50. This overpayment is adjusted by a rent decrease for the next 12 months in the amount of \$176.04 a month.
5. The tenants' rent for the months of October 2016 through September of 2017 is \$923.96 per month. The rent reverts to \$1,100 a month in October of 2017 (if the refrigerator has not been provided and the key to the front lock has not been provided).
6. If the tenants have already paid October rent, in an amount greater than \$923.96, they can deduct any overpayment from their November 2016 rent.
7. If the owner wishes to, he can repay the restitution owed to the tenants at any time. If he does so, the monthly decrease for restitution ends at the time the tenants are provided restitution.
8. If the owner provides a refrigerator, the owner can increase the tenants' rent by \$125.00 a month. If the owner provides a key to the front door, the owner can increase the tenants' rent by \$25 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 tenants are first served with the *RAP Notice*, provided that 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 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 28, 2016


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

000016

Tile 0104 RC/BC

<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: 2016 FEB 16 PM 2:52</p>
---	---

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 Simone Meyer Fareed Traylor	Rental Address (with zip code) 2509 109th Ave #D Oakland CA 94603	Telephone (415) 290-1000 (510) 472-3430
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Rod Harris	Mailing Address (with zip code)	Telephone (510) 593-9094

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	<input type="radio"/> No	Legally Withholding Rent. You must attach an explanation and citation of code violation.

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

<input type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" 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 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: Oct 2015 Initial Rent: \$ 1250 /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		
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* You have 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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

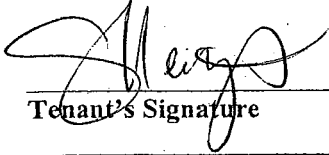
Please see behind →

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

000018

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

02/16/16

Date

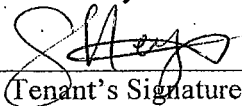
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

2/16/16

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): called & was referred

000019

My fiance & I moved into our apt at 2509 109th Ave #D
Oakland CA 94603 in Oct. 2015. When we originally moved in
we waived our deposit stating that we need to clean the
apt. & fix all that was broken or missing. We moved in there
was no refrigerator till this day, no heater (its broken) rug was
dirty. back door does not open its locked indefinitely. no lock
for front door just lock for gate. The bathroom sink had a
major leak which we eventually had to fix ourselves. Then
in Nov. 15 our hot water heater just stopped working. My
fiance called the land lord to inform him and we were told
that it wasnt his problem that we needed to fix it our
selves. My fiance went downstairs to check it out and
was appalled to find the laundry room which held the
water heaters filled with feces and it was so bad he
could not even step inside to fix the water heater it
was filled up in there. it was outside the bldg as well.
He then called the land lord and informed him again
and still nothing was done & we were told again that
we needed to clean and fix it up. The whole apt. bldg
is a mess. We called the City of Oakland and inspector
came and filed. they told us to come to the Rent Board
and file paperwork as well. We believe our loss
s at ~~100~~ 100% we have been without hot water since
November 2015. I'm also 5 months pregnant. The whole apt
old living conditions are bad for anyone to live there. Thanks

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0423
Case Name: Habarek v. Vaughn
Property Address: 550 Fairmount Ave., #D, Oakland, CA
Parties: Mourad Habarek (Tenant)
Brad Vaughn (Property Owner)

TENANT APPEAL:

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	August 11, 2016
Owner Response filed	August 31, 2016
Hearing Decision issued	December 6, 2016
Tenant Appeal filed	December 20, 2016
Owner Appeal filed	January 23, 2017

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2016 DEC 20 PM 12:02

APPEAL

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

Appellant's Name

MOURAD HABAREK

Landlord

Tenant

Property Address (Include Unit Number)

550 Fairmount Ave Apt D
Oakland, CA 94611

Appellant's Mailing Address (For receipt of notices)

550 Fairmount Ave Apt D
Oakland, CA 94611

Case Number

T15-0423

Date of Decision appealed

12-06-2016

Name of Representative (if any)

Representative's Mailing Address (For notices)


I appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

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 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 December 20, 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:

Name	MOURAD HABAREK
Address	550 Fairmount Ave Apt D
City, State Zip	Oakland, CA 94611
Name	Brad Vaughn
Address	1290 Howard Ave
City, State Zip	Burlingame, CA 94010

	DATE 12/20/16
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	

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.

December 20,2016

Mourad Habarek
550 Fairmount Ave Apt D
Oakland,CA 94611.

To Whom it May concern,

In the light of last ruling from The City of Oakland housing authority , I would like to express my total disapproval and concern regarding the decision to increase my rent based on capital improvements basis. I feel like the total process is biased and the outcome is very discriminatory as I ended up the sole tenant to take on the burden of capital improvement, as I have more seniority than some tenant , I'm the only tenant included in this unfair rent adjustment . Through this appeal I would like city of Oakland to review this injustice and to treat its residences in equal and fair way . My rent increase is a long process of pressure from landlord , started with offering compensation multiple times to vacate the property, then escalated by trying to change my lease terms , then increasing my rent, even though nothing is done to improve my unit conditions , like carpet replacement I requested before . I invite city of Oakland to repair this injustice by treating everyone equally .

Sincerely,

Mourad Habarek.

RECEIVED

T16-0423

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	JAN 23 2017 RENT ADJUSTMENT PROGRAM OAKLAND APPEAL
Appellant's Name BRAD VAUGHN	Landlord xD Tenant D
Property Address (Include Unit Number) 550 FAIRMOUNT AVENUE #D, OAKLAND, CA 94611	
Appellant's Mailing Address (For receipt of notices) 1290 HOWARD AVENUE, BURLINGAME, CA 94010	Case Number T16-0423 Date of Decision appealed 12-06-2016
Name of Representative (if any) MELISSA BAIS & CARLOS HERNANDEZ AGENTS FOR OWNER	Representative's Mailing Address (For notices) 377 SANTA CLARA AVENUE. PH#1 OAKLAND, CA 94610

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.)*

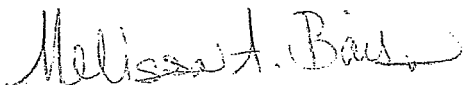
1. D The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. D The decision is inconsistent with decisions issued by other hearing officers. You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. D 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. D 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. D 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. D 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. **XD 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) ONE. Please number attached pages consecutively. *Responding to tenant appeal. In agreement with initial decision. Request to dismiss tenant appeal.

000025

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 JANUARY 20, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	MOURAD HABAREK
<u>Address</u>	550 FAIRMOUNT AVENUE #D
<u>City, State Zip</u>	OAKLAND, CA 94611
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE 1-20-2017

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.

January 12, 2017

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2017 JAN 18 PM 3:50

Rent Adjustment Board, City of Oakland

Case Number: T15-0423

Habarek – Petitioner and Tenant / Vaughn – Owner

550 Fairmount, Unit #D, Oakland, CA 94611

Dear Appeal Board,

We ask that the original decision to grant a rent increase based on capital improvements be upheld. The resident has been treated fairly and equally. Mr. Habarek was not the only resident given an increase. All capital improvements directly benefit Mr. Habarek.

The 10-unit building at 550 Fairmount Avenue, was purchased in dilapidated condition and major renovation was needed. The complex went under a 3-month construction project that left neighbors and residents complimenting the improvement. The following list are work items done, not all of which were included in the increase:

- New unit Interior Electrical panels
- New double pane windows and patio doors
- New wood railings for patios and walkways
- Landscape cleanup
- New exterior LED lighting
- New address and individual door numbers/letters
- New Paint along with fixing any stucco areas needing work and drainpipes
- Updated laundry room and added new machines
- Replaced or fixed all broken stairs and uneven cement walkways
- Added parking lot stripes for assigned parking
- New exterior signage
- New enclosed trash, recycle and compost area
- New community locks/keys for laundry and trash areas
- New mail box area and boxes

Mr. Habarek did not previously bring up the carpet request. Since it was not included in this current case, we will need to schedule a time to view his carpet and discuss it as a separate matter. Also, Mr. Habarek's lease term was not changed. Most of Oakland, and this building are rent controlled, therefore, there is not a need to re-sign a new lease as tenants stay month to month after initial lease term expires. Mr. Habarek was not encouraged to move out. Compensation was offered for a short time only, if residents elected to relocate since the construction was going to be extensive.

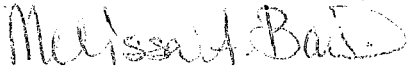
000027

RECEIVED
CITY OF OAKLAND
Housing Division Program
2017 JAN 18 PM 3:50

With ownership of multiple buildings in Oakland, for decades we have worked alongside our tenants to make sure their living experience is stress free. We pride ourselves on well-kept and professionally managed buildings always working in unison with the tenants.

Thank you for giving us the opportunity to explain why the correct decision of granting a rent increase was made in the first place. We ask that you please uphold the initial ruling.

Sincerely,

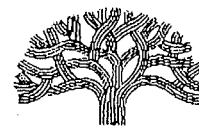


Melissa Bais

510-206-2474

Property Manager

Agent for Owner



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: T16-0358, Kaci v. Vaughn Management
T16-0360, Habarek v. Vaughn Management
T16-0391, Khalfouni v. Bais
T16-0423, Habarek v. Vaughn
T16-0429, Khalfouni v. Bais
T16-0455, Kaci v. Vaughn Management

PROPERTY ADDRESS: 550 Fairmount Ave, Apts. A, D and F, Oakland, CA

DATES OF HEARING: October 19, 2016, November 10, 2016

DATE OF DECISION: December 6, 2016

APPEARANCES: Melissa Bais, Owner Representative (10/19 only)
Brad Vaughn, Owner
Sophiane Khalfouni, Tenant Apartment A
Mourad Habarek, Tenant Apartment D (10/19 only)
Ali Kaci, Tenant Apartment F

SUMMARY OF DECISION

The tenants' petitions T16-0358, T16-0360 and T16-0391 are granted. The tenants' petitions T16-0429 and T16-0455 are granted. The tenant's petition T16-0423 is partly granted. The tenants' legal rents are set forth in the Order below.

CONTENTIONS OF THE PARTIES

Tenant Kaci filed two petitions. The first, T16-0358, alleges that his housing services have increased based on a \$100 charge for parking, when in the past he had not paid for parking. The second, T16-0455, alleges that a rent increase he received purporting to

000029

increase his rent from \$917 to \$998.88, exceeds the CPI Adjustment and is unjustified or is greater than 10%.

The owner filed a late response to both of tenant Kaci's petitions, in which he alleged that the rent increases were justified by capital improvements and denied that his housing services had decreased.

Tenant Habarek filed two petitions. The first, T16-0360, alleges that his housing services have increased based on a \$100 charge for parking, when in the past he had not paid for parking. The second, T16-0423, alleges that he was contesting a rent increase he received purporting to increase his rent from \$830 to \$911.88. He also claimed that the notice of rent increase did not contain the enhanced notice requirements of the Rent Adjustment Ordinance. He also alleged that he had lost services originally provided by the owner or the conditions have changed.

Habarek did not include a list of decreased services with his petition in case T16-0423 (as directed on the Petition form.) He was sent a deficiency letter on August 31, 2016, instructing him to provide a list of any alleged problems in writing. Habarek responded to the deficiency letter by sending three photographs, one of his patio door, one of a slightly torn screen and one of the lock on his screen door.¹ These documents were sent to the owner.

The owner filed timely responses to Tenant Habarek's petitions, in which he alleged that the parking charge was not a rent increase, that there were no decreased housing services and that the rent increase for the unit was justified by capital improvements.

Tenant Khalfouni filed two petitions. The first, T16-0391, alleges that his housing services have increased based on a \$100 charge for parking, when in the past he had not paid for parking. The second, T16-0429, alleges that he was contesting a rent increase he received purporting to increase his rent from \$962 to \$1,043.88.

The owner filed a timely response to Tenant Khalfouni's petition in case T16-0391, in which he alleged that the parking charge was not a rent increase and that there were no decreased housing services. The owner did not file a response to Tenant Khalfouni's petition in case T16-0429.

THE ISSUES

1. Did the Owner have good cause for failing to file a response in T16-0429, Khalfouni v. Bais?
2. Did the Owner have good cause for filing late responses in both T16-0358 and T16-0455 (Kaci v Vaughn)?
3. What is the impact of failing to file timely responses?
4. When, if ever, was the form Notice to Tenants (*RAP Notice*) first served on the tenants?

¹ See Exhibit 9.

5. Did Tenant Habarek's petition (T16-0423) and Tenant Khalfouni's petition, (T16-0429), adequately allege that the rent increase was invalid?
6. Can the owner validly charge these tenants for parking?
7. Were the rent increase notices served according to the law?
8. Did Mr. Habarek adequately allege a decrease in housing services?
9. Did the owner properly serve and file the *Enhanced Notice to Tenants for Capital Improvements*?
10. Did the owner properly serve the rent increase notices?
11. Is the owner entitled to a rent increase based on capital improvements?
12. How much, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Rental History, the RAP Notice and Parking:

Tenant Kaci: Tenant Kaci testified that he moved into apartment "F" in the subject building in August of 2006 at an initial rent of \$850 a month. A *Rental Agreement* between *JW Silveira Company* was produced by the parties.² The only references to parking or the parking lot in the rental agreement is in paragraph 6, which states "No mechanical or auto work to be done in parking or garage area" and paragraph 20 (b) which states "Parking in garage areas by tenants renting spaces only." Kaci testified that he was served with the *RAP Notice* when he moved into the unit.

Kaci further testified that when he moved in he was allowed to park in the underground parking area. While there are 10 apartments and only 9 parking spaces, when he moved in there was an open space, so he was given permission to park there. He was never charged for parking nor was he ever given a document to sign regarding parking in the lot. After he had been living on the premises for a while, there was a dispute between the tenants about access to the parking lot. At that time, *JW Silveira* clarified to all the tenants that parking was first come, first served based on tenancy. At that time, Kaci had been parking in the lot and continued to do so.

Kaci further testified that on July 1, 2016, he received an email from Melissa Bais, the property manager, saying that going forward there would be a \$100 charge a month for parking in the lot.³ This email not sent with a *RAP Notice*. Kaci informed Ms. Bais that this was a new charge that had never before been imposed by the prior owner (the building had been purchased by Mr. Vaughn in March of 2016.) Kaci has not paid for his parking space and is still parking in the lot.

On August 1, 2016, Kaci received a rent increase notice from Ms. Bais in the mail, purporting to increase his rent to \$998.88 a month, effective September 1, 2016. The rent increase notice was served with an *Enhanced Notice to Tenants for Capital*

² Exhibit 1. This Exhibit and all other Exhibits referred to in this Hearing Decision were admitted into evidence without objection.

³ Exhibit 2

Improvements and a *RAP Notice*.⁴ Prior to this rent increase, Kaci was paying rent of \$917 a month. Kaci has paid the rent increase since September 1, 2016.

Mr. Vaughn testified that the rent increase notices were served on July 29, 2016, by USPS 1-Day Mail.⁵ He also confirmed that Mr. Kaci has been paying the rent increase on his unit, but has not been paying for parking.

Tenant Habarek: Tenant Habarek testified that he has been living in apartment D in the subject building since August of 2006 at an initial rent of \$830 a month. A *Rental Agreement* between *JW Silveira Company* was entered into evidence.⁶ The *Rental Agreement* is the same form as Mr. Kaci, and has the same language about parking. Habarek testified that he was served with the *RAP Notice* when he moved into the unit.

Habarek further testified that when he moved in he was told by the manager that parking was "first come first serve" and since there was an open spot when he moved in, he was allowed to park in the underground parking area. He was never charged for parking nor was he ever given a document to sign regarding parking in the lot. In September of 2013, there was a dispute between the tenants because someone had more than one car. At that time *Silveria* clarified to all the tenants that parking was first come, first served based on tenancy and assigned particular spaces to particular people. He was given a spot that was assigned to him. At that time Habarek filled out a form for *Silveria* entitled *Tenant Vehicle Form* which listed the make and model of his car. This form was emailed to the then owner in September of 2013.⁷

Habarek further testified that when the new owner was purchasing the property, he filled out an *Estoppel Certification*.⁸ He understood that the purpose of the *Estoppel* was to inform the new owner what was included in his lease. This document states that included in the rent is a parking space, garage and storage space. He never got a response from the old owner disagreeing with the *Estoppel Certification*.

Habarek received the same email notification from Ms. Bais on July 1, 2016, saying that going forward there would be a \$100 charge a month for parking in the lot.⁹ This was not sent with a *RAP Notice*.

On approximately July 31, 2016, Habarek received a rent increase notice from Ms. Bais in the mail, purporting to increase his rent to \$911.88 a month, effective September 1, 2016. The rent increase notice was served with an *Enhanced Notice to Tenants for Capital Improvements* and a *RAP Notice*.¹⁰ Prior to this rent increase, Habarek was paying rent of \$830 a month. Habarek has not paid the rent increase.

⁴ Exhibit 3

⁵ Exhibit 4 is the tracking receipt from USPS.

⁶ Exhibit 5

⁷ Exhibit 6, page 3

⁸ Exhibit 6, page 1

⁹ Exhibit 6, page 2

¹⁰ Exhibit 7

000032

Mr. Vaughn testified that the rent increase notices were served on July 29, 2016, by USPS 1-Day Mail.¹¹ He also confirmed that Mr. Habarek has not been paying the rent increase on his unit, and has not been paying for parking.

Tenant Khalfouni: Tenant Khalfouni testified that he has been living in apartment "A" in the subject building since November of 2012 at an initial rent of \$925 a month. A *Rental Agreement* between *JW Silveira Company* was entered into evidence.¹² The tenant was given a *RAP Notice* when he moved into the unit.

The *Rental Agreement* states in paragraph 6 that "Tenant shall use the Premises exclusively as a residence and for no other purpose. No business shall be conducted from the Premises and no mechanical or garage work shall be performed in the parking or garage areas and such parking and garage areas are for Tenant's use only." Paragraph 20 states in part that "Any garage and storage areas and covered patio areas which may be a part of the Premises are not represented to be watertight and are to be used primarily for parking of cars and/or normal patio uses, with only incidental storage use, all at Tenants risk."

Vaughn testified that there was an additional document that was part of Khalfouni's lease entitled *Resident Policies and Rules*. This document was not produced by the owner prior to the Hearing. This document has the same language regarding the parking area that was in the Habarek and Kaci leases and was signed by the tenant. The language specified: "Parking in garage areas by tenants renting spaces only."

Khalfouni further testified that when he moved in there was a free spot for him in the parking lot, and he was assigned a spot to use. He never had to pay for parking.

Khalfouni received the same email notification from Ms. Bais on July 1, 2016, saying that going forward there would be a \$100 charge a month for parking in the lot.¹³

On approximately July 31, 2016, Khalfouni received a rent increase notice from Ms. Bais in the mail, purporting to increase his rent to \$1,043.88 a month, effective September 1, 2016. The rent increase notice was served with an *Enhanced Notice to Tenants for Capital Improvements* and a *RAP Notice*.¹⁴ Prior to this rent increase, Khalfouni was paying rent of \$962 a month. Khalfouni has been paying the rent increase.

Mr. Vaughn testified that the rent increase notices were served on July 29, 2016, by USPS 1-Day Mail.¹⁵ He also confirmed that Mr. Khalfouni has been paying the rent increase on his unit, and has not been paying for parking.

///

¹¹ Exhibit 4 is the tracking receipt from USPS.

¹² Exhibit 10

¹³ Exhibit 6, page 2

¹⁴ Exhibit 11

¹⁵ Exhibit 4 is the tracking receipt from USPS.

000033

Decreased Housing Services:

On Tenant Habarek's petition in case T16-0423, he checked "yes" on the box "Have you lost services originally provided by the owner or have the conditions changed?" He did not provide an accompanying list of reduced services, as directed by the form. On September 1, 2016, Mr. Habarek was sent a deficiency letter, asking him to provide a list of decreased services in writing. Mr. Habarek responded by sending back photographs of three conditions in his unit.¹⁶ These photographs were sent to the owner.

Non locking screen door: Mr. Habarek testified that there is a patio door in his unit that leads to a small patio. When he moved in, there was a screen door. That screen door was replaced about three months prior to the Hearing. The new screen door does not lock properly, and he has to push very hard to get it to lock. He complained to the person who installed it, but did not complain to either Ms. Bias or Mr. Vaughn.

Hole in screen: Mr. Habarek testified that there is a small hole in the new screen door. He complained to the contractor, not to Bias or Vaughn.

Mr. Vaughn and Ms. Bais testified that they had not heard any complaints about these problems.

Parking: With respect to all the complaints about the loss of parking, Vaughn testified that the new tenants pay for parking; and that after he purchased the building he numbered and striped the lot, which had not been done in the past. Each of the tenants continue to park in the lot, and none of them are paying for parking. Vaughn further testified that it was not his intent that the email sent to the tenants about parking was to be considered a rent increase.

Enhanced Notice to Tenants for Capital Improvements:

Official Notice is taken that on August 5, 2016, the RAP received copies of the *Enhanced Notice to Tenants of Capital Improvements*, along with the rent increase notices and *RAP Notices*, for each of these tenants.

Owner Responses:

Official Notice is taken of the case file in T16-0358. In that case, the *Tenant Petition* was mailed to the owner on July 11, 2016, along with a letter that states:

YOU MUST FILE A WRITTEN RESPONSE TO THE ATTACHED TENANT PETITIONS WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR A DECISION MAY BE MADE AGAINST YOU. THE RESPONSE MUST BE FILED ON THE PROPER FORM AND MUST BE RECEIVED AT THE CITY OF OAKLAND'S RENT ADJUSTMENT PROGRAM OFFICE ON OR BEFORE THE DUE DATE.

¹⁶ Exhibit 9, pp 1-3

Official Notice is also taken of the case files in cases T16-0429 and T16-0455. These cases have the same letter in the file. The date of mailing of the letter in T16-0429 is August 24, 2016. The date of mailing of the letter in T16-0455 is August 25, 2016.

T16-0429:

Brad Vaughn testified that he filled out an owner response form in T16-0429. He mailed it to the Rent Adjustment Program (RAP), but he doesn't know when. He did not keep a copy of the response he sent to the RAP. On September 30, 2016, he tried to reach Robert Costa (the analyst with RAP assigned to the case) to find out if all the paperwork had been received. On that day he was informed that Mr. Costa was out of town. He called again on October 4, 2016, at which point Mr. Costa told him that "everything was fine." On October 6, 2016, Roberto Costa, called him to inform him that the case file in T16-0455, was missing an *Owner Response*. He filed an *Owner Response* in that case on that day. Mr. Costa did not tell him he was missing anything in case T16-0429.

The case file in T16-0429, does not have an *Owner Response*.

T16-0358:

Vaughn testified that he believes he mailed in the *Owner Response* in T16-0358 "long before" the due date. He did not keep copies of any of the *Owner Responses* he mailed in. He further testified that he wrote a letter that he mailed along with the *Owner Response* form. That letter, which was in the case file, was dated September 13, 2016. Additionally, the *Owner Response* form was signed on September 15, 2016.

T16-0455:

Vaughn testified that this was the case that Robert Costa informed him that an *Owner Response* had not been received. He believed that he mailed the response originally before it was due. This case also had a copy of a letter written by Vaughn on September 13, 2016, in which he references the *Owner Response* form. This letter was received by the RAP on October 6, 2016, with the *Owner Response* form.

Capital Improvements: Mr. Vaughn testified that he hired *T4 Company* to "install retrofit windows, replace balcony 4' privacy wall, install 60 AMP subpanel at each unit, paint exterior."¹⁷ According to the *Enhanced Notice to Tenants of Capital Improvements* the owner sought to pass-through just the cost of replacing the electrical panels and the exterior building paint.¹⁸

The invoice sets forth the cost of replacing the 60 AMP sub-panels as \$42,350. The invoice sets forth the cost for the paint job as \$19,200 plus \$4,200 for materials, for a

¹⁷ See Exhibit 12, page 2, the Invoice from *T4 Company*

¹⁸ Exhibit 11, page 2

total of \$23,400. The costs for the other work (windows, sliders, privacy screen, dry rot repair and supervision/project management) is also listed separately on the invoice.

Mr. Vaughn testified that there was additional costs associated with the sub-panel installation and paint job that are listed on the invoice under “permits”, “disposables”, “GL insurance” and “fee”. These are part of the overhead costs for all the work that was done. These costs apply to all the costs listed on the invoice. Vaughn decided how much to list on the *Enhanced Notice* by asking the contractor (Mr. Bahm) how much of each of those additional costs applied to the sub-panels and the exterior paint.¹⁹ Vaughn did not know whether permit fees were required for the exterior paint, but there were permit fees for the electrical work. No permit documentation was provided.

Kaci (and the other tenants) testified that the electrical work was not completed in their units prior to the time that the rent increase notice was given. The electrical panel was replaced in May of 2016, but the walls in the units were not repainted until August of 2016. Kaci further testified that while the exterior was painted, the contractor has not returned to install the unit numbers on the doors.²⁰ Additionally, the exterior painting was not finished before the rent increase was to take effect; about two to three weeks before the Hearing the painters were on the premises doing some additional exterior paint that required plastic to be placed across his door.

Vaughn testified that the contractor had to leave the interior walls unfinished in the units until the *City of Oakland* came to confirm that the wiring had been done correctly. The work to patch the interior walls and repaint was done by his in-house crew, and was not part of the charges for the capital improvement pass-through. Additionally, Vaughn testified that with respect to the exterior painting, the contractor had to come back to install a downspout (which was done prior to the rent increase effective date) but that the contractor used the wrong paint. So approximately three weeks prior to the Hearing the contractor returned to do some touch up on this small area where the wrong paint had been used.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was there good cause for the failure of the owner to file a response to the tenant petition in case T16-0429, Khalfouni v. Bais?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed.²¹ “If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . .”²² This information is clearly laid out, all caps and in bold, in the letter the owner is sent along with the tenant petition.

¹⁹ Vaughn did not have any document from the contractor that specifies how much of these costs apply to the electrical work or the exterior paint.

²⁰ See Kaci photos, Exhibit 13.

²¹ O.M.C. § 8.22.090(B)

²² O.M.C. § 8.22.070(C)(2)

No *Owner Response* was filed in case T16-0429, *Khalfouni v. Bais*. Mr. Vaughn stated that he mailed an owner response, but no evidence other than Vaughn's testimony was presented that such a response was ever actually mailed. Mr. Vaughn did not keep a copy of this document. No additional letter (like those filed in the other cases along with the *Owner Response*) was provided. Vaughn attempted to blame the RAP Program for giving him faulty information after he called an analyst and was told that the file was complete. However, it is not the responsibility of the RAP Program to keep track of Mr. Vaughn's responses. It is his responsibility to make sure that his responses have been received in a timely fashion.

The tenant petition in this case was served on Mr. Vaughn on August 24, 2016. His response was therefore due in the office on September 29, 2016. There is no good cause for the owner's failure to file a response to the petition.

Did the Owner have good cause for filing late responses in both T16-0358 and T16-0455 (Kaci v Vaughn)?

In case T16-0358, the owner was informed of the tenant petition in a letter mailed on July 11, 2016. The owner response was due on August 16, 2016. The owner response in that case was filed on September 19, 2016.

While Mr. Vaughn tried to argue that he mailed the owner response long before it was due, Mr. Vaughn appears to not have a clear memory about this issue. The *Owner Response* that was filed in this case was signed on September 15, 2016. It is highly unlikely that Mr. Vaughn would have postdated his *Owner Response* form and list a date one month after he mailed the form to the RAP Office. Additionally, the letter that he testified was sent to the RAP Program with the *Owner Response* is dated September 13, 2016.

It is obvious from the record that Mr. Vaughn did not mail the response to the RAP Office before it was due. There was no good cause for the failure to timely file a response to the petition in case T16-0358.

The same is true with case T16-0455. In this case, the owner was mailed the notification letter on August 25, 2016. The owner response was due on September 29, 2016. The response was filed on October 6, 2016. While the owner may have mailed it to the RAP office earlier in September 2016, the owner did not provide any proof as to the day it was mailed to the RAP program. The *Owner Response* that was filed was signed on October 6, 2016. There was no good cause for the failure to timely file a response to the petition in case T16-0455.

What is the impact on failing to file timely responses?

Generally speaking, when an *Owner Response* is not timely filed, the owner cannot provide direct testimony and is limited to cross-examination and argument. However, in this case, the testimony regarding the owner responses being late (or absent) was not on the record until after the owner had testified about the capital improvements and

000037

parking issues raised by the petitions. Furthermore, since these were combined cases in which the *Owner Responses* were timely in some cases and untimely in others, the owner would have been given a chance to testify in those cases in which he filed timely responses.

Nonetheless, when an *Owner Response* is not timely filed, and there is no good cause for the late filing, there is no legal justification for the rent increase. In the case of *Kaci v. Vaughn*, T16-0358, the rent increase for parking is invalid. In the case of *Kaci v. Vaughn*, T16-0455, the rent increase for capital improvements is invalid. In the case of *Khalfouni v. Bais*, T16-0429 the rent increase for capital improvements is invalid. (See below for the allowable rent.)

Did Tenant Habarek's petition (T16-0423) adequately allege that the rent increase was invalid?

In case T16-0423, the tenant did not check the box on the first page of the petition which states "the increase exceeds the CPI Adjustment and is unjustified or is greater than 10%." However, on page 2 of the petition, under the words "list all rent increases that you want to challenge...." the tenant did list the rent increase he received in August of 2016, increasing his rent from \$830 to \$911.88. Additionally, he checked the box "are you contesting this Increase in this Petition" next to that rent increase.

All *Tenant Petitions* and *Owner Response* forms are reviewed in their entirety. It is clear from the *Tenant Petition* that tenant Habarek intended to contest the rent increase he received increasing his rent from \$830 to \$911.88. The tenant's petition gave the requisite notice to the owner of what rent increase he was contesting. Tenant Habarek's petition contesting the rent increase can be heard by the RAP.

Was the RAP Notice served on the tenants as required?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy²³ and together with any notice of rent increase.²⁴ All tenants acknowledged that they received the RAP Notice when they moved in, and together with the capital improvement rent increases served in July of 2016.

However, as to the owner's email informing the tenants that they were required to pay for parking, this document was not served with a *RAP Notice*. (Nor was it served legally, as email notice is not permitted.) The Ordinance specifies "As part of any notice to increase rent or change any terms of tenancy, an owner must include: (a) Notice of the existence of this chapter."²⁵ Any change in terms of tenancy, including a change to a long standing practice of parking on the premises, must be served with a *RAP Notice*.

²³ O.M.C. § 8.22.060(A)

²⁴ O.M.C. § 8.22.070(H)(1)(A)

²⁵ O.M.C. § 8.22.070(H)(1)(A)

The owner's belief that the emailed notice was not a rent increase, is not controlling. As to the case *Kaci v. Vaughn*, T16-0358, this is a second reason why the rent increase for parking is invalid. As to *Habarek v. Vaughn*, T16-0360 and *Khalfouni v. Bais*, T16-0391, the rent increases as to parking are invalid as they were not properly served.

Can the owner validly charge these tenants for parking?

Even had the owner properly served the rent increases for parking, the evidence in this case was overwhelming that each of the tenants was permitted to rent a parking space in the building, included in the rent they were paying, beginning when they moved into the building.

While each of their leases had language which stated that "Parking in garage areas by tenants renting spaces only" this language does not specify that there is any charge for parking. Mr. Vaughn provided no evidence to suggest that these tenants were parking without permission. In fact, the evidence was to the contrary. Mr. Habarek presented evidence of *Tenant Vehicle* form that he filled out for the prior owner, listing the make and model of his car.²⁶ Additionally, his *Tenant Estoppel Certificate* stated that the parking space was included in the rent.²⁷ While the *Estoppel Certificate* is not binding, it is uncontroverted evidence that the tenant had been parking his car in the lot, without charge, for a long time. All three tenants provided testimony that they had been parking in the lot, with permission, since they moved into their units.

The Rent Adjustment Ordinance provides that parking is "housing service." O.M.C. § 8.22.020. The owner cannot charge for a housing service that previously had been provided free of charge. The owner cannot charge any of these tenants for their right to park in the parking lot.

Did Mr. Habarek adequately allege a decrease in housing services?

In Mr. Habarek's petition in case T16-0423, he had checked the "yes" box to the question, "Have you lost services originally provided by the owner or have the conditions changed." However, he had not followed the directions on the petition in which he was asked to attach a separate sheet of paper listing his reduced services and problems.

On August 31, 2016, Mr. Habarek was sent a deficiency notice regarding his failure to fill out the petition correctly. The letter stated: "**you must provide a list of the alleged problems in writing.**" (Emphasis in the original.) In response, Mr. Habarek sent the RAP three photographs of potential problems in his unit. This is insufficient.

Photographs do not amount to a list. In order to make a valid claim for decreased services, a tenant must provide a list of the problems claimed. Photographs are

²⁶ Exhibit 6, page 3

²⁷ Exhibit 6, page 1

ambiguous and do not give adequate notice of the claimed problems. Mr. Habarek's claims of decreased services are therefore denied.

Did the owner properly serve and file the *Enhanced Notice to Tenants* and accompanying documents?

The Rent Adjustment Ordinance requires that an owner who gives a rent increase on the basis of capital improvements must provide an "*Enhanced Notice*" with the rent increase and then file a copy of the *Enhanced Notice* with the Rent Adjustment Program within 10 days of the date the rent increase notice is served. O.M.C. § 8.22.070 (H)(1)(d)(ii). Official Notice is taken that an *Enhanced Notice* for the tenants involved in this case was filed with the RAP office on August 5, 2016 along with the accompanying rent increase documents.

The *Enhanced Notices* were timely filed.

Did the owner properly serve the rent increase notices?

Civil Code § 827 requires an owner to provide at least 30 days' written notice of a rent increase of less than ten per cent. The notices are required to be hand delivered or served by mail. However, when a rent increase notice is served by regular mail, an extra 5 calendar days is added to the notice period; therefore, the rent increase cannot go into effect until 35 days after the notice is mailed. Code of Civil Procedure § 1013. But when a rent increase notice is served by express mail, the time period is extended by two court days. Code of Civil Procedure § 1013(c).

In this case the owner served the rent increase documents by express mail on July 29, 2016. Thirty days after July 29, 2016 was August 28, 2016, a Monday. Two court days following August 28, 2016, was August 30, 2016. Since the rent increase notices were not set to go into effect until September 1, 2016, the tenants were given adequate notice of the rent increase.

As to tenant Habarek, is the owner entitled to a rent increase based on capital improvements?

The Ordinance: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.²⁸ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life.²⁹ The improvements must primarily benefit the tenants rather than the owner. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.³⁰

²⁸ O.M.C. Section 8.22.070(C)

²⁹ Regulations Appendix, §§ 10.2 through 10.2.3

³⁰ Regulations Appendix, §10.2.2(4)(d)

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Additionally, the improvements must have been completed and paid for within 24 months prior to the date of the proposed rent increase.³¹ An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

Here, the owner sought to pass through costs associated with replacing the electrical panels and the exterior building paint. The evidence established that the owner upgraded the electrical system in each unit, installing a 60 AMP subpanel in each unit.

The tenants' contention that this work was not finished prior to the date they received the notice for the rent increase does not require a different result. First, the requirement is that the work must be finished prior to the effective date of the rent increase, not the date the notice was received. As to the subpanels, the evidence established that the work was completed by August of 2016. The rent increase was effective September 1, 2016.

Additionally, the owner established that most of the work on the subpanels was completed in May of 2016, before the rent increase notices were sent. The only work done in August of 2016, after the notices were sent, was the painting done in each unit to "finish" the walls that were disturbed by the upgrade. This work was done by Vaughn's in-house work crew, and was not charged as part of the electrical improvement. Therefore, the tenants' objections regarding the timing of the electrical work are not valid.

However, the invoice produced by the owner does not support the amount of the requested pass-through as to the electrical work. The invoice specifies that the electrical work cost for replacing the 60 AMP sub-panels was \$42,350. The additional costs listed for "permits, disposables, GL insurance and fee" are not separately stated and cannot be estimated by the contractor, without evidence. The owner is entitled to a capital improvement pass-through of \$42,350 for the electrical work.

The same is true for the exterior painting. The invoice provided shows costs associated with the painting as \$23,600 (\$19,200 for exterior paint and \$4,200 for materials.) No additional costs are allowed, as it is impossible to tell from the documents provided what additional costs are associated with the paint job.

The tenants' concerns about the timing of the completion of the paint job does not alter this result. The work was finished prior to September 1, 2016, the date that the rent increase went into effect. The owner was convincing that in October of 2016, the contractor returned to paint over a minor mistake that had been made earlier in the job. The paint job was completed and paid for prior to September 1, 2016.

The attached *Capital Improvement Worksheet* attached to the Hearing Decision as Exhibit "A" specifies that as to Mr. Habarek, the owner is entitled to a rent increase for capital improvements of \$76.71, effective September 1, 2016.

³¹ Regulations Appendix, § 10.2.1

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

Tenant Kaci: Tenant Kaci's rent remains \$917.00 a month. Neither the rent increase for parking nor the rent increase for capital improvements is valid. The tenant has been paying rent of \$998.88 a month since September 1, 2016, an overpayment of \$81.88 a month. Through the end of December of 2016, the tenant has overpaid \$327.52.

Restitution of this amount is paid over a 6 month period. Therefore, the tenant's rent is reduced by \$54.59 a month beginning in January of 2017. From January 2017 through June of 2017, the tenant's rent is \$862.41 a month. His rent reverts to \$917 in July of 2017.

Nothing in this Hearing Decision prevents the owner from increasing the rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.

Tenant Khalfouni: Tenant Khalfouni's rent remains \$962 a month. Neither the rent increase for parking nor the rent increase for capital improvements is valid. The tenant has been paying rent of \$1,043.88 a month since September 1, 2016, an overpayment of \$81.88 a month. Through the end of December of 2016, the tenant has overpaid \$327.52.

Restitution of this amount is paid over a 6 month period. Therefore, the tenant's rent is reduced by \$54.59 a month beginning in January of 2017. From January 2017 through June of 2017, the tenant's rent is \$907.41 a month. His rent reverts to \$962 in July of 2017.

Nothing in this Hearing Decision prevents the owner from increasing the rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.

Tenant Habarek: Tenant Habarek's rent increase for parking is invalid. The owner is entitled to a rent increase for capital improvements in the amount of \$76.71. The tenant's rent, effective September 1, 2016, is \$906.71. The tenant has been paying rent of \$830 a month, an underpayment of \$76.71 a month. Through the end of December of 2016, the tenant has underpaid \$306.84.

Restitution of this amount is paid over a 6 month period. Therefore, the tenant's rent is increased \$51.14 a month, beginning in January of 2017. From January of 2017 through June of 2017, the tenant's rent is \$957.85. His rent reverts to \$906.71 in July of 2017.

000042

On September 1, 2021, the tenant's rent will be reduced by the capital improvement pass-through of \$76.71.

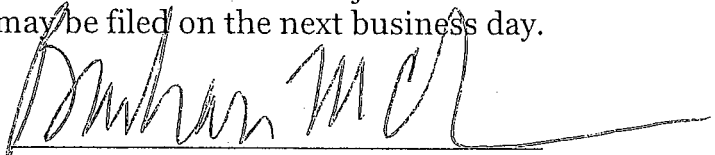
ORDER

1. Petitions T16-0358 (Kaci v. Vaughn Management), T16-0360 (Habarek v. Vaughn) and T16-0391 (Khalfouni v. Bais) are granted. The owner cannot charge these tenants for parking.
2. Petitions T16-0429 (Khalfouni v. Bais) and T16-0455 (Kaci v. Vaughn Management) are granted. The owner did not timely file a response to the tenant petitions.
3. Petition T16-0423 is partly granted. The owner is entitled to a capital improvement rent increase as to tenant Habarek in the amount of \$76.71 a month, effective September 1, 2016.
4. Tenant Kaci: Tenant Kaci's base rent is \$917.00 a month. The tenant has overpaid rent in the amount of \$327.52.
5. From January 2017 through June of 2017, tenant Kaci's rent is \$862.41 a month. His rent reverts to \$917 in July of 2017.
6. Nothing in this Hearing Decision prevents the owner from increasing tenant Kaci's rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.
7. Tenant Khalfouni: Tenant Khalfouni's base rent is \$962 a month. The tenant has overpaid rent in the amount of \$327.52.
8. From January 2017 through June of 2017, tenant Khalfouni's rent is \$907.41 a month. His rent reverts to \$962 in July of 2017.
9. Nothing in this Hearing Decision prevents the owner from increasing tenant Khalfouni's rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.
10. Tenant Habarek: The tenant's rent, effective September 1, 2016, is \$906.71. The tenant has underpaid \$306.84.
11. From January of 2017 through June of 2017, tenant Habarek's rent is \$957.85. His rent reverts to \$906.71 in July of 2017.
12. On September 1, 2021, tenant Habarek's rent will be reduced by the capital improvement pass-through of \$76.71.

000043

13. 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: December 6, 2016



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

000044

T16-0423 Re/BC

RECEIVED

<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. CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 AUG 19 PM 2:38</p>
---	---

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 MOURAD HABAREK	Rental Address (with zip code) 550 Fairmount Ave Apt D Oakland, CA 94611	Telephone (510) 456-6476
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) BRAD VAUGHN	Mailing Address (with zip code) 1290 Howard Ave, Suite 309 Burlingame, CA 94010	Telephone (650) 347-3552

Number of units on the property: 10

Type of unit you rent (circle one)	House	Condominium	Apartment, Room, or Live-Work
Are you current on your rent? (circle one)	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 type="checkbox"/> (a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/> (c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input type="checkbox"/> (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input type="checkbox"/> (e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input 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 checked="" 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 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: 08/01/2006 Initial Rent: \$ 830.00 /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: 08-01-2016. 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>08-01-2016</u>	<u>09-01-2016</u>	\$ <u>830.00</u>	\$ <u>911.88</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: T16-0360

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.



Tenant's Signature

08/07/2016

Date

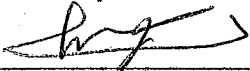
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

08/07/2016

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): _____

550 Fairmount Apts.; Agent for Owner,
Melissa Bais, Property Manager

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2016 AUG 19 PM 2:34

377 Santa Clara Ave. Oakland, CA 94610 | 510-206-2474 | 550Fairmount@gmail.com

July 25, 2016

Mourad Habarek
Mohard Ferhati
550 Fairmount Avenue #D
Oakland, CA 94611

Dear Mourad and Mohard:

This letter is to inform you of a rental increase. We have made capital improvements which I hope you are enjoying. In the last few months we have replaced electrical panels (\$54,245.45), painted the exterior of the building (\$29,972.69) and more. The capital improvements will be spread amongst tenants over 72 months. That increase is \$81.88 per unit.

Your new rental rate effective September 1st, 2016 will be \$911.88 per month.

Please keep the attached copy of a Notice to Tenants of the Residential Rent Adjustment Program from the City of Oakland for your records.

Sincerely,

Melissa Bais

550 Fairmount Apts.; Agent for Owner, Melissa Bais, Property Manager

000048

ENHANCED NOTICE TO TENANTS FOR CAPITAL IMPROVEMENTS*

This enhanced notice must be served with a notice of rent increase and RAP Notice and filed with the Rent Adjustment Program within 10 days of service of these notices on the tenant.

Date: 7/25/2016

To Tenant(s): Mourad Habarek, Mohard Ferhati

Property Address: 550 Fairmount Avenue Unit Number D

Current Rent: \$ \$830.00 # of Units 10

Date of Rent Increase: 9/1/2016

Step 1: Enter the building-wide capital improvements (See instructions for examples)

Building-wide Capital Improvements CATEGORY (Attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
Replace Electrical Panels	\$54,245.45	07/12/16	07/15/16
Exterior Building Paint	\$29,972.69	07/12/16	07/15/16
SUBTOTAL:	\$84,218.14		

Step 2: Multiply Subtotal in Step 1 by 70% (Increase Limited to 70%)

$$\frac{\$ 84,218.14}{\text{Subtotal}} \times 70\% = \frac{\$ 58,952.70}{\text{Step 2}}$$

Step 3: Divide results of Step 2 by the number of units affected

$$\frac{\$ 58,952.70}{\text{Step 2}} \div \frac{10}{\text{\# of units}} = \frac{\$ 5,895.27}{\text{Step 3}}$$

Step 4: Enter capital improvements for specific unit

Step 7e:(# of years) If 7d is not a whole number, round up to the next highest number. 6(7e)

7e= the # of years you are allowed to pass through the rent increase.

Step 7f: (Allowable # of months) The allowable # of months is 7e x 12 72. The rent increase ends on the last month.

Step 8: INSTRUCTIONS TO CALCULATE THE RENT INCREASE

Step 8a: If the number determined in 7b is less than or equal to 60, divide the total pass-through per unit (6c) by 60.

$$\begin{array}{c} \$ \underline{\hspace{2cm}} \\ (6c) \end{array} \div \underline{\hspace{2cm}} = \$ \underline{\hspace{2cm}} \\ \text{ALLOWABLE RENT INCREASE}$$

Step 8b: If the number determined in 7b is greater than 60, divide the total pass-through per unit (6c) by the number of allowable months (7f)

$$\begin{array}{c} \$ \underline{5,895.27} \\ 6c \end{array} \div \begin{array}{c} \underline{72} \\ 7f \end{array} = \$ \underline{81.88} \\ \text{ALLOWABLE RENT INCREASE}$$

Step 9: PROVIDE NOTICE OF THE NEW RENT AND AMORTIZATION PERIOD

Rent Increase Amount: \$ 81.88

Rent Increase% 9.86 (cannot exceed 10%) (To determine the % divide the rent increase amount by the current rent, then multiply the remaining number by 100)

$$\begin{array}{c} \$ \underline{81.88} \\ \text{Rent increase} \end{array} \div \begin{array}{c} \$ \underline{830.00} \\ \text{Current Rent} \end{array} \times 100 = \begin{array}{c} \underline{9.86} \\ \% \text{ increase} \end{array}$$

New Rent: \$ 911.88 (old rent plus rent increase)

Amortization Period 6 (In years, minimum of 5)

Date Rent Increase Begins: 9/1/16 Date Rent Increase Ends: 8/31/2022

*An Owner may still file an *Owner Petition* for capital improvement increase instead of the enhanced notice requirements.

Use of this form is optional; an owner may provide his or her own form that meets the requirements of the RAP Ordinance and Regulations.

There is an excel spreadsheet available on the RAP website which will calculate the amortization period for you.

<http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/index.htm>

000051

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 AUG 31 2016 OAKLAND RENT ADJUSTMENT
---	--

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 T16-0423

OWNER RESPONSE

Please print legibly.

Your Name BRAD VAUGHN	Complete Address (with zip code) 1200 Howard Ave. Suite 39	Phone: 650 347-3552 Email: BVaughn@gmail.com
Your Representative's Name (if any)	Complete Address (with zip code) Burlingame CA 94010	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 16 residential units in the subject building. I acquired the building on 3/24/2016

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

I. RENTAL HISTORY

The tenant moved into the rental unit on _____

The tenant's initial rent including all services provided was \$ SEE / month. *Response*

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? 7/30/2016 . 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

See Notice

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)?
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

Date

8/26/2016

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

8/26/2016



• 1290 Howard Ave. • Suite 309 • Burlingame, CA 94010

T: 650-347-3552 www.vaughnmanagement.com

8/26/2016

Case T16-0423

To whom it May Concern:

Attached is the proper documentation that the tenant believes wasn't filed including a copy of the certified receipt from July 29th. This petition should be dismissed immediately as the tenant has no claim that the enhanced notice was not sent and the petition was not filed with RAP.

Regards,

Brad Vaughn
Managing Member 550 Fairmount LLC

RECEIVED

AUG 31 2016

OAKLAND RENT ADJUSTMENT