

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

January 18, 2018

7:00 p.m.

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

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - i. Appeal Hearing in cases:
 - a. L16-0075; Stewart v. Tenant
 - b. T16-0488; Keeland et al v. Black Diamond Holdings
 - c. T16-0622; Hall v. Leung
5. ADJOURNMENT

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

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

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

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OFFICE OF THE CITY CLERK
OAKLAND
2018 JAN 10 PM 4:26

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

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

CHRONOLOGICAL CASE REPORT

Case No.: L16-0075
Case Name: Stewart v. Tenant
Property Address: 3025 Chapman Street, Oakland, CA
Parties: Jon Dann (Tenant)
Michael Steward (Property Owner)

PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner petition filed	October 12, 2016
Notice of Dismissal issued	February 8, 2017
Landlord Appeal filed	February 21, 2017
Tenant Response to Petition filed	March 14, 2017

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2017 FEB 21 AM 11:41

City of Oakland Residential Rent Adjustment Program 50 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		APPEAL	
Appellant's Name MICHAEL STEWART		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 3025 CHAPMAN ST. (UPPER) OAKLAND, CA. 94601			
Appellant's Mailing Address (For receipt of notices) 3025 CHAPMAN ST. #6 OAKLAND, CA. 94601		Case Number 116-075 Date of Decision appealed 2-21-17	
Name of Representative (if any) _____		Representative's Mailing Address (For notices) _____	

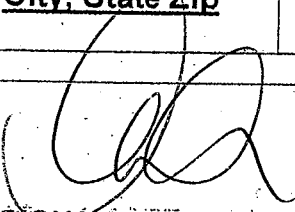
Appeal the decision issued in the case and on the date written above on the following grounds:
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. The decision is inconsistent with decisions issued by other hearing officers. You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. The decision raises a new policy issue that has not been decided by the Board. You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4. The decision is not supported by substantial evidence. You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5. I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.
6. The decision denies me a fair return on my investment. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

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 2.21, 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:

Name	JONATHAN DAMU
Address	3025 CHAPMAN ST. (UPPER)
City, State Zip	OAKLAND CA. 94601
Name	
Address	
City, State Zip	

	2.21.17
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.

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Michael Stewart

3035 Chapman Street
Suite 6
Oakland, CA 94601

T 510.910.2448

F 510.536.9866

F29.michael@gmail.com

February 18, 2017

RRAP

250 Front Ogawa Plaza, Suite 5313
Oakland CA 94612

Dear RRAP,

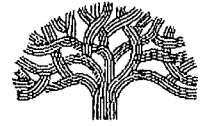
I will be gone the entire month of March 2017... so please do not schedule a hearing for that time.

I was under the mistaken notion that I shouldn't come to the the hearing because it was not contested... so I am asking that you reinstate my petition (L16-075) to increase the rent I charge my tenant. His rent has not been increased since August of 2011 in spite of increases I have fielded to my operating costs.

Sincerely yours,

Michael Stewart

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

Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE OF DISMISSAL

CASE NUMBER: L16-0075, Stewart v. Tenant
PROPERTY ADDRESS: 3025 Chapman Street (Upper), Oakland, CA
PARTIES: Michael Stewart, Owner
Jon Dann, Tenant
DATE OF HEARING: February 2, 2017
APPEARANCES: No appearance by owner or tenants

SUMMARY OF DECISION

The owner's petition is dismissed.

INTRODUCTION

The owner filed a petition on October 12, 2016, seeking approval for a rent increase. On October 25, 2016, a *Notice of Hearing* was sent to the owner and the named resident of the subject unit with a proof of service at the addresses of record. The Hearing was set for February 2, 2017, at 10:00 a.m.

On the day of the Hearing no one appeared at the Hearing. There was no returned mail in the Rent Adjustment Program file.

The Rent Adjustment Regulations provide that where a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may dismiss the case¹. The case is dismissed.

///

¹ Rent Adjustment Regulations § 8.22.110 (B)(1)

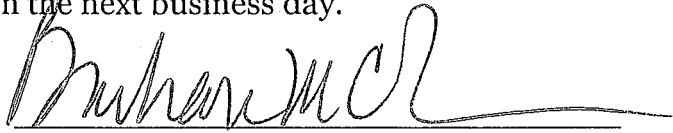
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ORDER

1. The owner's petition is dismissed.

2. **Right to Appeal:** This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of 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: February 2, 2017



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number L16-0075

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

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

Tenant

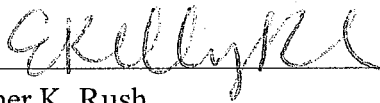
Jon Dann
3025 Chapman St Upper Unit
Oakland, CA 94601

Owner

Michael Stewart
3035 Chapman St Suite 6
Oakland, CA 94601

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

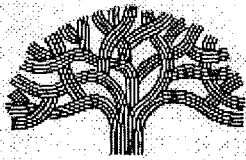
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 08, 2017 in Oakland, CA.



Esther K. Rush

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For date stamp only.
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 RENT ADJUSTMENT PROGRAM
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**CITY OF OAKLAND
 RENT ADJUSTMENT
 PROGRAM**

CASE NUMBER L16-075

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

TENANT RESPONSE

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

Your Name <u>Jonathan Dunn</u>	Complete Address (with zip code) <u>3025 Chayman St Upper Unit Oakland, CA 94601</u>	Telephone Day: <u>510-409-2378</u> Evening: <u>SAME</u>
Your Representative's Name	Complete Address (with zip code)	Telephone Day: _____ Evening: _____

Are you current on your rent?
 Yes No

Number of Units in this Building: 2

Rental History:

Date you entered into the Rental Agreement for this unit: approx May 2001

Date you moved into this unit: approx May 2001

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

Initial Rent: \$ 1100.00 Initial rent included (please check all that apply) () Gas
 () Electricity () Water (X) Garbage () Parking () Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's **NOTICE TO TENANTS** at any time during your tenancy in this unit?
 Yes No unknown

Please list the date you first received the Notice to Tenants _____

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

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Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice for rent increase?
		From	To	
Dont remember		\$ 1100.00	\$ 1250.00	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>Dont know</i>
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase:

Please attach a brief statement explaining why the landlord is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking	<input checked="" type="checkbox"/>	Debt Service	<input type="checkbox"/>
Capital Improvements	<input checked="" type="checkbox"/>	Uninsured Repair Costs	<input type="checkbox"/>
Increased Housing Service Costs	<input type="checkbox"/>	Constitutional Fair Return	<input type="checkbox"/>

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22¹ and the Rent Board Regulations² on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the contested rent increase is justified. If the landlord is claiming the unit is exempt from the Rent Adjustment Ordinance, do you contest the claim of exemption?

Yes No

Verification

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

Tenant's Signature *[Handwritten Signature]*

Date 3/14/17

Tenant's Signature _____

Date _____

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>
² <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

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Important Information: This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent & Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721. **You cannot get an extension of time to file your Response by telephone.**

File Review

You should have received with this letter a copy of the landlord petition. Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment. For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

If you are interested in submitting your dispute to mediation, please read the following information carefully. Voluntary mediation of rent disputes is available to all parties involved in Rent Adjustment proceedings. Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. Mediation will be scheduled only if both parties agree and after your response has been filed with the Rent Adjustment Program.

You may elect to use a Rent Adjustment Program staff Hearing Officer acting as mediator or an outside mediator. Staff Hearing Officers are available to conduct mediation free of charge. 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. If you are unable to resolve your dispute after a good faith attempt at mediation, you will be given a priority hearing presided over by a Hearing Officer who was not your mediator.

If you want to submit your case to mediation, please check the appropriate box and sign.

- I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).
- I agree to have my case mediated by an Outside Mediator (fees to be paid by the parties).

Tenant's Signature (for mediation request)

Date

Tenant's Signature (for mediation request)

Date

Case Number: L16-075

Tenant Response Statement

March 13, 2017

I, Jonathan Dann, have not received a 30-day notice of a rent increase from Michael Stewart.

Michael Stewart has made no capital improvements on the rental unit I live in. He has replaced the water heater and added smoke and CO detectors in my unit within the past two years. These are the only non-repair type changes he has made to the unit.

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L16-0075 KM/BC

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

For date stamp
2016 OCT 12 PM 1:51
**OWNER PETITION FOR
APPROVAL OF RENT INCREASE**

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your case. Before completing this petition, please read the Rent Adjustment Ordinance, sections 8.22.050 through 8.22.140 and Rent Adjustment Regulations, Appendix A.

Your Name MICHAEL STEWART	Complete Address (with zip code) 3035 CHAPMAN ST. SUITE 6 OAKLAND, CA. 94601	Telephone Day: 510 910 2448
Your Representative's Name —	Complete Address (with zip code) —	Telephone Day: —
Property Address (If the property has more than one address, list all addresses) 3025 CHAPMAN ST. (UPPER), OAKLAND, CA. 94601		Total number of units on property 2

For each unit affected by this petition, you must attach a list of the mailing addresses of all of the units on the property showing the tenants in each unit on this property. Increases based on debt service, increased housing service costs and constitutional fair return affect all of the units on the property.

Type of units (circle one)	<input checked="" type="radio"/> House DUPLEX	<input type="radio"/> Condominium	<input type="radio"/> Apartment or Room
I have given a copy of the NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM to the tenants in each unit effected by this petition:		YES	NO
Oakland Business License number: (Attach proof of payment of your business tax.) ✓		2795396	
Attach proof of payment of your Rental Property service fee (Account must be current.) ✓			

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CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2016 OCT 14

REASON(S) FOR PETITION: Check all that apply. I (We) petition for approval of one or more rent increases on the grounds that the increase(es) is/are justified by:

- Banking (Reg. App. 10.5)
- Capital Improvements (Reg. App. 10.2)
- Debt Service Costs (Reg. App. 10.4)
- Increased Housing Service Costs (Reg. App. 10.1)
- Uninsured Repair Costs (Reg. App. 10.3)
- Constitutionally required fair return

(Note that Debt Service has been eliminated as a reason for a rent increase for property purchased after April 1, 2014.)

History: Attach a rent history for the current tenant(s) in each affected unit.

Banking: You must complete this section if you are claiming banking as a justification.

Have you given prior increases to any affected tenant justified by increased housing service costs, debt service or constitutional fair return? Yes No If yes, attach a list noting the affected unit, the effective date of each such increase and the amount.

An Excel spreadsheet for calculating available banking increases is available online at

<http://www2.sdsdsd.net/Community/Utilities/UtilitiesResources/index.htm>. For each unit you may either complete and attach the spreadsheet or attach a separate page the date the current tenant moved into the unit, the initial rent, and if the tenant has lived in the unit for more than 10 years, the rent in effect 10 years ago.

Capital Improvements and Uninsured Repairs: You must attach an itemized schedule of claimed capital improvements, showing the affected units, the cost and completion date for each item. You can only pass-through 70% of the capital improvement costs you have incurred. **You must submit organized documentation supporting your claims, including proof of expenditures and proof of payment.** An Excel spreadsheet for calculating entitlement to a capital improvement pass-through is available online at <http://www2.sdsdsd.net/Community/Utilities/UtilitiesResources/index.htm>. You may print out and attach a copy of the spreadsheet, or complete a capital improvements schedule manually. Uninsured repair costs use the same calculations as capital improvements but are not limited to 70%.

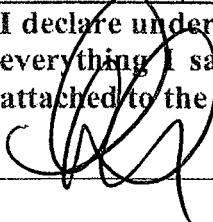
Debt Service: Debt service has been eliminated as a justification for a rent increase for all property purchased after April 1, 2014, unless a bona fide offer to purchase the property was made before April 1, 2014. To claim debt service you must submit organized documentation proving your commercially reasonable financing costs. This documentation must include at a minimum, a copy of the promissory note, a copy of the deed of trust, proof of the monthly mortgage payment and proof of your operating expenses. You may print out and attach a copy of the spreadsheet for calculation debt service costs found at:

<http://www2.sdsdsd.net/Community/Utilities/UtilitiesResources/index.htm>

Increased Housing Service Costs: You must present organized documentation of your housing service costs for two successive year periods. They may be calendar or fiscal years. You may print out and attach a copy of the spreadsheet for calculating increased housing service costs found at:

Verification (Each petitioner must sign this section):

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



Owner's Signature

10.11.16

Date

Owner's Signature

Date

CHRONOLOGICAL CASE REPORT

Case No.: T16-0488
Case Name: Keeland et al v. Black Diamond Holdings
Property Address: 3242 Magnolia Street, #A, Oakland, CA
Parties: Rhiannon Keeland (Tenant)
Joseph Williams (Property Owner)

LANDLORD APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant petition filed	September 1, 2016
Owner Response filed	September 23, 2016
Hearing Decision issued	February 1, 2017
Owner Appeal filed	February 21, 2017

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APPEAL
RENT ADJUSTMENT PROGRAM
OAKLAND

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

Appellant's Name
Joseph Williams

Landlord Tenant

Property Address (Include Unit Number)
3242 Magnolia Street, # A, Oakland, 94609

Appellant's Mailing Address (For receipt of notices)

Case Number
T16-0488

Date of Decision appealed
1.31.2017

Name of Representative (if any)
Hesna Cowan

Representative's Mailing Address (For notices)
1007. 39th St., Oakland, CA 94608

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.)

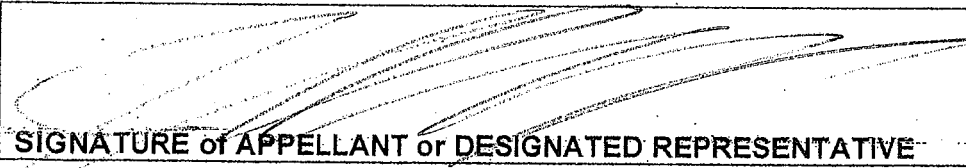
- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
- The decision is inconsistent with decisions issued by other hearing officers. You 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.

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

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 2-21, 2007, 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	Christopher Powell
Address	3242 Magnolia Street, #A
City, State Zip	Oakland, CA 94608
Name	Rhianwon Keenan
Address	3242 Magnolia Street, #A
City, State Zip	Oakland, CA 94608

	DATE <u>2-21-07</u>
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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.

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- 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.

To: Oakland Rent Board
Fr: Joe Williams

Case No: **T16-0488**
Case Title: **Williams v. Powell, et al.**
Property Address: **3242 Magnolia Street, #A, Oakland**

Subject: Explanation of Newly Constructed Units and/or Substantial Rehabilitation

The Landlord Petition Hearing was held on December 8, 2016 (Barbara Cohen, Hearing Officer).

The Hearing Decision, "denying" Landlord's Petition, was issued January 31, 2016.

The Appeal Petition by Joseph Williams was filed February 21, 2017.

At the Petition Hearing, Owner Williams argued that he built newly constructed units within the meaning of the ordinance and if they were no newly constructed, then the units were substantially rehabilitated within the meaning of the ordinance. And regardless, the units were exempt from the rent control ordinance. The hearing officer ruled against Mr. Williams and even said he was estopped from alleging substantial rehabilitation.

The explanation that will be subsequently submitted, prior to the appeal hearing date, will show that the Hearing Officer seriously "erred" in a number of ways which, we strongly contend, led to a wrong and unjust Petition Hearing decision.

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JOSEPH WILLIAMS
9909 Caloden Lane
Oakland, Ca, 94605
510-472-4116

JOSEPH WILLIAMS, IN PRO PER

APPEAL HEARING FOR CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM HAERING DECISION

) Case No.:T16-0488
)
) APEAL HEARING FOR CITY OF
) OAKLAND RENT ADJUSTMENT PROGRAM
) HEARING DECISION
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1. Mr. Joseph Williams (Owner) Response to the Rent Board Petition contained a stamped copy of the Finalized Permit for 3242 Magnolia Street, Oakland, Ca 94608 as evidence. Exhibit A, shows the permit was stamped as; **Received City of Oakland Rent Arbitration Program September 23, 2016 8:16am.** The City of Oakland Rent Arbitration Program had a copy of the Finalized Permit submitted and could be used during the final decision of the hearing. As indicated the permit was finalized April 25, 2000. Oakland Municipal Code 8.22.030(B) (2C), in lieu of

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RENT ADJUSTMENT PROGRAM
2010 JAN 29 AM 10:39

1 the Certificate of Occupancy an owner may provide that last
2 finalized permit. The Finalized permit indicates New
3 Residential Building. The Project Description on the finalized
4 stated was a New 3,000 Square Foot six-bedroom Duplex.

- 5
6 2. The Hearing Officer, Barbara M. Cohen, failed to explain why
7 the finalized permit from the City of Oakland on April 25,
8 2000 provided to the Rent Board before the petition hearing as
9 evidence by Mr. Joseph Williams did not satisfy City of
10 Oakland's Ordinance of **Entirely Newly Constructed** Build
11 Exempted from Rent Control. Instead, Barbara M. Cohen states
12 the Finalized Permit did not state what was on the lot before
13 the new duplex was constructed. The finalized permit supported
14 the Duplex being an **Entirely Newly Constructed** building. The
15 officer indicates that the Costa Hawkins Act stated that
16 **Entirely Newly Constructed** units are exempted if they have a
17 Certificate of Occupancy issued after February 1, 1995, or
18 were already exempt from rent control pursuant to a local
19 exemption for **Entirely Newly Constructed** units. Based on the
20 Costa Hawkins Act, the property in question should have been
21 exempted from Rent Control due to the finalized permit stating
22 it was a newly constructed duplex. The officer failed to state
23 what code, law or ordinance needed to be met by the owner to
24 indicate what was on the lot prior to him building the new
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duplex in 1999 as evidence that ~~should have been~~ filed with his petition response.

3. Mr. Joseph Williams requested a letter from the City of Oakland prior to him filing the Owner's Response for the Rent Board Petition. The letter given by Mr. Timothy Low, City of Oakland Acting Building Official, was requested around September 2016, but exhibit B indicates the letter was not written until January 5, 2018. Mr. Timothy Low provided a letter to Mr. Williams that indicates the Building Services Department issued the permit RB9600053 to demolish a vacant Single-Family Dwelling on August 20, 1996. The Building Services Department issued the aforementioned permit for a new 2 unit building on September 5, 1999 and finalized April 25, 2000 (Permit number RB9903495). 3242 Magnolia Street, Oakland, Ca 94608 was a **Entirely New Construction**. According to Oakland Ordinance Costa Hawkins Act, a Single-Family Dwelling is exempted from Rent Control.

4. In addition, a permit was approved August 12, 1999 by Willie Yee, City of Oakland Zoning Administrator, indicating the application for Design Review to **entirely construct a duplex on a vacant lot at 3242 Magnolia Street, Oakland, Ca 94608 was approved**. Refer to Exhibit C.

5. Oakland Municipal Code 8.221030 indicates new constructed building after January 1, 1983 is exempted from rent control. As indicated in the permits and documents given, the duplex was constructed as a new construction that was started in 1999 and finished/finalized in 2000.
6. Officer Barbara unrecognize the property in question as a new construction by referring to a case cited: Da Vinci Group v. San Francisco Residential Rent Stabilization and Arbitration Board. The case indicates that you cannot take an inhabitable unit that was occupied and try to bring it to code to make it habitable to obtain Certificate of Occupancy as a newly Constructed building. The case cited in the decision has no relations as the **Duplex was Entirely Newly Constructed** in 1999. Mr. Williams did not take an inhabitable building/warehouse and made improvement to make it habitable while allowing a tenant to stay in the unit illegally. By using the case cited cause for an improper ruling against Mr. Williams. The officer is trying to indicate Mr. Williams took an existing building and corrected the codes to make it habitable, but as the finalized permit stated it was a New Residential Building, a Duplex approved in 1999 and finalized April 25, 2000. The case cited has no standing in Mr. Williams's case. The officer failed to stated what code, law

1 or ordinance needed to be met by Mr. Williams to prove what
2 was on the property before the **Entirely Newly Constructed**
3 Duplex at 3242 Magnolia Street. According to the City of
4 Oakland's Ordinance Rent Adjustment Program Oakland Municipal
5 Code 8.22.030(A), his building should have been exempt from
6 rent control based on it being **Entirely New Construction** and
7 it was built after January 1, 1983.

9 7. Officer Barbara also cited case Burien, LLC v. Wiley (2014)
10 230 Cal.App.4th 1039,1049 to support that Certificate of
11 Occupancy does not precede the residential use of the property
12 and does not qualify a property for an exemption from rent
13 control under Civil Code Section 1954.52(a)(1). The case
14 presented indicates that the Landlord converted a Rent
15 Controlled Apartments to Condominiums. This case does not
16 apply to Mr. Williams's case because he did not convert a
17 Controlled Apartment to Condominiums to obtain a Certificate
18 of Occupancy to seek a rent increase. **As stated previously Mr.**
19 **Williams constructed a New 3,000 Square foot 6 Bedroom Duplex.**
20 **Mr. Williams did not convert any existing units to**
21 **condominiums.** Mr. Williams also did not have tenants living in
22 the units prior to the construction of the building because
23 there was nothing on the lot prior to him building.
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8. Both cases cited in reference to Mr. Williams's case does not have any standing because they both state tenants were living in the building during the conversion or the improvement of the buildings. **Mr. Williams constructed a New Duplex on 3242 Magnolia Street, Oakland, Ca 94608 on a vacate lot, which means no persons could be living at the building during his construction because he built Entirely a New Duplex.**

Conclusion:

1. Single Family Unit prior to duplex = exempt from rent control
2. New construction on vacate lot = exempt from rent control
3. Finalized Permit can be used in lieu of Certificate of Occupancy.
4. The cases provided as reference does not have any standing pertaining to the case in questioned.

Joseph Williams
DATED: January 8, 2017

000026

Permits for which no major inspection has been approved within 180 days shall expire by limitation. No more than 180 days after expiration or final.



EXHIBIT #A

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

CITY OF OAKLAND 2016 JAN 9 AM 10:20 2016 SEP 23 AM 8:16

250 FRANK H. OGAWA PLAZA ▪ 2ND FLOOR ▪ OAKLAND, CA 94612

Planning and Building Department
www.oaklandnet.com

PH: 510-238-3891
FAX: 510-238-2263
TDD: 510-238-3254

Permit No: RB9903495
Job Site: 3242 MAGNOLIA ST
Parcel No: 005 047303000
District:
Project Description: New 3000 sq ft 6 bedroom duplex
Related Permits:

Filed Date: 8/31/1999

Schedule Inspection by calling: 510-238-3444

	<u>Name</u>	<u>Applicant</u>	<u>Address</u>	<u>Phone</u>	<u>License #</u>
Owner:	WILLIAMS JOSEPH			5106324116	
Owner-Builder:	WILLIAMS JOSEPH	X	PO BOX 4919 OAKLAND, CA	5106324116	

PERMIT DETAILS: Building/Residential/Building/New	
General Information	
Green Code Checklist:	Sets Of Plans: 9 Report - Soil/Geotech:
Surveys:	Structural Calculations: Energy Calculations (T24):
Building Information	
Building Use: Duplex	Number Of Stories: 2 Fire Sprinklers: No
Occupancy Group: R-3	Number Of Units: 2 Floor Area (sq ft): 3000
Construction Type: 5N - WOOD FRAME (5), NO FIRE RATING	No. of Bedrooms: 6 Conditioned Floor Area (sq ft): 3000
Work Information	
Job Value: \$268,000.00	Occupied Floor Area (Non-Res)(sq ft): 3000

TOTAL FEES TO BE PAID AT FILING: \$0.00

Plans Checked By _____ Date _____

Permit Issued By _____ Date _____

Finalized By Robert Peterson Date 4/25/2000

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CITY OF OAKLAND

EXHIBIT #B

2016 JAN -9 AM 10: 35

250 FRANK H. OGAWA PLAZA ■ SUITE 2340 ■ OAKLAND, CALIFORNIA 94612-2031
Planning & Building Department (510) 238-3891
Bureau of Building FAX: (510) 238-2263
www.oaklandnet.com TDD: (510) 238-3254

01/05/2018

WILLIAMS JOSEPH
PO BOX 4919
OAKLAND CA 94605-6919

Dear Mr. Williams

RE: 005 -0473-030-00; 3242 MAGNOLIA ST, Oakland, CA

This letter is in response to your recent request for a building review for rent control exemption. Please see the enclosure for all the pertaining records we were able to locate after an extensive and thorough search.*

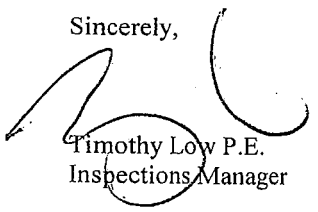
The Building Services department has concluded the following information for the address(es) in question based on the available information for permit RB9600053 and RB9903495

- The Building Services Department issued the permit RB9600053 to demolish a vacant single family dwelling on 8/20/1996.
- The Building Services Department issued the aforementioned permit for a new 2 unit building on 09/15/1999 (RB9903495), and Inspection Services finalized it on 4/25/2000.
- The building permit reflects the valuation of proposed work to be \$268,000.

Upon review of the referenced information, I have made the determination that the building located at 3242 MAGNOLIA ST was substantially rebuilt in 1999 as a new construction (in excess of 50% of the average basic cost for new construction) and was completed during the allotted timeframe

Should you have any questions with regard to this evaluation, please feel free to contact me at (510) 238-6315. I am available Monday through Friday between the hours of 8:30 and 11:30 am.

Sincerely,

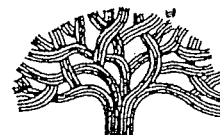

Timothy Low P.E.
Inspections Manager

Enclosure: pertaining record documents

* All permit history, including Certificate of Occupancy (C.O.) was transferred onto microfiche up until 1995. As part of that process, the original records were destroyed. Records for rebuilt after the 1991 "Hills Fire" was administered through the satellite "Hills Office" and the new C.O. cannot be found on the microfiche.



CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, 2ND FLOOR • OAKLAND, CALIFORNIA 94612

Community and Economic Development Agency
Zoning

(510) 238-3912
FAX (510) 238-4730
TDD (510) 839-6451

2016 JAN - 9 AM 10: 35
EXHIBIT # C

August 12, 1999

Joseph Williams
P.O. Box 4919
Oakland, CA 94605

RE: CASE NO. DR99-185; 3242 Magnolia Street

Dear Mr. Williams:

Your application for Design Review to construct a duplex on a vacant lot at 3242 Magnolia Street in the Mixed Housing Type Residential General Plan Land Use Classification and R-36 Small Lot Residential Zone has been found to comply with the Design Review criteria set forth in Section 17.136.070 of the Oakland Planning Code. (Environmental determination: exempt, Section 15301, State CEQA Guidelines; new construction of small structures.)

The proposal is hereby approved subject to the following conditions of approval:

1. The project shall be constructed substantially in accordance with the plans, elevations and details submitted July 9, 1999, as modified by the following conditions of approval. Changes to approved plans shall be submitted to and approved by the Zoning Administrator prior to the issuance of any applicable building permits and/or prior to the construction of the changes.
2. The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments.
3. These conditions of approval shall be reproduced on page one of any plans submitted for building permits for this project.
4. The property owner shall execute and record with the Alameda County Recorder a copy of these conditions of approval on a form approved by the Zoning Administrator within 30 days of the effective date of this approval. Proof of recordation shall be provided to the Zoning Administrator.
5. Conditional Use Permit approval shall be required for use of the property as more than two dwelling units (Planning Code section 17.20.100) or as a rooming house.

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Joseph Williams
Case No. DR99-185
August 12, 1999
Page 2

2019 JAN -9 AM 10:35

6. The following revisions shall be made to the site plan:
 - The front setback shall be a maximum of 30 feet; a smaller setback of 20 feet is encouraged to be more consistent with the predominant setback on the block and to provide more room for useable open space and parking in the rear.
 - An pathway separate from the driveway shall be provided from the sidewalk to the front entries.
 - The two required non-tandem parking spaces shall be located at the rear of the property, not within the front yard as proposed. Design Review approval is required for any garage or carport.
 - The driveway and the curb cut shall be a maximum of nine feet wide.
 - The driveway is encouraged to be two separate paved strips for the wheels with pervious surface and groundcover in between.
 - A six-foot-high solid wood fence shall be provided around the perimeter of the property, but not within the front yard (stopping at the building setback). Dilapidated portions of the existing fence shall be repaired or replaced. The fence shall be maintained in good repair in perpetuity.
 - The location, design and construction of any fencing and associated gates within the front yard shall be submitted for Zoning Administrator approval before applying for any required building permits or before installation if no building permits are required.
 - No barbed wire or razor wire is permitted anywhere on the property.
7. A landscape and irrigation plan for the front yard, showing sizes, quantities and specific common and botanical names of all trees, shrubs, groundcover, shall be submitted for Zoning Administrator approval before issuance of any building permits. Landscaping shall be installed per the approved plans prior to final building permit inspection. Drought-tolerant trees, shrubs and groundcover and water-conserving irrigation equipment and methods shall be used. All landscaping shall be maintained in perpetuity in a neat, safe and healthy condition, and a natural growth form.
8. One 24-inch box size street tree shall be provided along the property frontage to the satisfaction of the Director of Parks and Recreation (please contact the Tree Maintenance unit at 510-615-5850 for specifications).
9. The following revisions shall be made to the proposed architecture:
 - The details of windows, doors and other elements of the front elevations, and roof eaves and fascia all around, shall conform to Attachment A.
 - Front stair railings shall conform to Attachment B. The base of the front stairs shall be enclosed to the ground.
 - Windows on the side elevations shall match the front elevation (vertical proportions, wood or wood-like vinyl, vertical sliders, trim, header and sill).


2018 Jan - 2 Airtel 35

- If any of the windows are to have grids, then the window muntins shall project a minimum of ¼-inch from the exterior of the glazing.
 - All exterior doors shall be panel doors.
 - Nine-inch channel rustic wood siding shall be provided on the first story (beneath the water table) and triple clapboard siding on the second story.
 - Windows on the side elevations shall be aligned to the extent practicable.
10. Exterior design details and materials shall be submitted to and approved by the Zoning Administrator before issuance of building permits, including color chips, and vertical section details through windows all around; railings and moldings on the front elevation; exterior doors on the front elevation; and roof eaves, fascia and gutters.
11. This approval shall be contingent upon payment of the remaining \$75 application fee prior to application for any building permits. (The application fee was incorrectly reduced by \$75 in consideration of the pre-application conference; however, the \$75 pre-application conference fee had not been paid.)
12. This approval shall terminate one year from the effective date of its granting unless a building permit for the project has been applied for within such period or an extension has been applied for from the Community and Economic Development Agency prior to the expiration of the planning permit. In the event the building permit lapses, then the planning approval will also terminate unless an extension of the planning permit has been applied for prior to expiration of the building permit. This approval may be extended for one (1) year upon written request to the Zoning Administrator (maximum of three extensions allowed) prior to the expiration date.

This decision becomes effective in ten (10) days from the date of this letter unless appealed to the City Planning Commission. An appeal is made by completing an application and paying the required fee (\$419).

If you have any questions, please contact the case planner, Ricardo Bressanutti, at (510) 238-6417.

Sincerely,



WILLIE YEE
Zoning Administrator



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: T16-0488, Keeland et al v. Black Diamond Holdings

PROPERTY ADDRESS: 3242 Magnolia Street, Unit A, Oakland, CA

DATE OF HEARING: December 8, 2016

DATE OF DECISION: January 31, 2017

APPEARANCES: Chris Powell (Tenant)
Bopha Vu (Tenant)
Rebekah Vega (Tenant)
Erin Gardere, Agent for Owner
Joseph Williams, Owner
Lee Robertson, Agent for Owner

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

Tenants Rhiannon Keeland and Christopher Powell filed a petition which contends that a rent increase from \$3,000 to \$6,000, effective October 1, 2016, exceeds the CPI Adjustment, is unjustified or is greater than 10%; that no written notice of the Rent Program (*RAP Notice*) was given to them together with the rent increase; that no *RAP Notice* was given to them at least six months before the contested rent increase; and that the rent increase would exceed an overall increase of 30% in 5 years.

The owner filed a response to the petition, which alleges that the unit is exempt from the Rent Adjustment Ordinance because it is new construction. The Owner stated in his *Owner Response* that he first served the *RAP Notice* on July 28, 2016.

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THE ISSUES

- (1) Is the unit exempt from the Rent Adjustment Ordinance as new construction?
- (2) Can the owner claim an exemption for substantial rehabilitation when he did not list that claim on his *Owner Response* form?
- (3) If the unit is not exempt, what is the legal rent?

EVIDENCE

Tenant Christopher Powell testified that he moved into the rental unit at 3242 Magnolia Street, Apartment A, in June of 2016 at an initial rent of \$3,095 a month for the whole house. He was paying \$485 a month. The other tenant who had filed the petition with him, Rhiannon Keeland, recently moved out of the rental unit. It is a 6 bedroom house that is rented by a group of people as shared housing.

In July of 2016, the tenants received a rent increase notice by mail and posting, purporting to increase their rent to \$6,000, effective October 1, 2016.¹ The tenants have been paying the old rent of \$3,095.

The owner, Joseph Williams, testified that he purchased the property sometime around 1995 (he does not remember the exact date.) When he purchased the property there was a gutted, burnt residential structure on the premises. The owner did not know whether it was a single family unit or a multi-family unit prior to when he purchased it. He produced no photographs of this prior residential unit.

Williams further testified that he substantially rehabilitated the structure that had been on the lot that he purchased. He received permits for the work that was done. The owner produced a finalized permit from the Planning and Building Department from the City of Oakland showing that he received permit no RB9903495, which was finalized on April 25, 2000. The project description states "new 3,000 square foot 6 bedroom duplex." The Building use is listed as a duplex.² The owner testified that he did not have a Certificate of Occupancy and this document (the finalized permit) is what he received from the Building Department when he asked for a Certificate of Occupancy.

The owner further testified that the current building is a duplex. After he purchased the building he put in a completely new foundation, a new sewer, new interior plumbing, new electrical, new windows, a new roof, new interior and exterior doors, new sheetrock, new siding, new cabinets, countertops, new vanities, new stairs, new flooring throughout, new hot water heaters, new heating system, new landscaping and a new fence. It took him 6-8 months to do the construction on the property.

Mr. Williams testified that he did the work himself and he is not a contractor. He did not hire any subcontractors.

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

² Exhibit 2

The Owner Response Form:

The third page of the *Owner Response* form states, in part: "Exemption: If you claim that your property is exempt from Rent Adjustment.....please check one or more of the grounds:" Official Notice is taken of the case file in this case. On the *Owner Response* form, the owner checked only the box that the "unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Is the unit exempt from the Rent Adjustment Ordinance as New Construction?

The Oakland Rent Adjustment Ordinance states that dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983."³ The Ordinance states:

"To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential."⁴

An owner has the burden of proof on all elements of a claim for exemption.

In this case, the owner purchased a residential building that had previously been burned in a fire. The owner was unable to say whether it was a single family residence or a multi-family unit. In either case, the building that was there was a prior residence. No evidence was provided as to when the original building was built. The owner did not bring a grant deed or a title report that would provide evidence of the prior building.

The document produced by the owner established that he received permits from the City of Oakland to build a new 3000 square foot duplex. The document does not inform anyone about what was on the premises prior to the building of this duplex. This form alone does not satisfy the requirements for a new construction exemption.

The owner cited *Costa Hawkins*, California Civil Code § 1954.50 et seq. for his contention that a newly built building is exempt from rent control. While *Costa Hawkins* does state that newly constructed units are exempt if they have a *Certificate of Occupancy* issued after February 1, 1995, or were already exempt from rent control pursuant to a local exemption for newly constructed units, *Costa Hawkins* is not controlling here.

In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, 1049, the Court of Appeal held that a certificate of occupancy that does "not precede the residential use of the property"

³ O.M.C. § 8.22.030(A)(5)

⁴ O.M.C. § 8.22.030(A)(5)

and does not qualify a property for an exemption from rent control under Civil Code Section 1954.52(a)(1). In that case, the building in question had a prior residential use. The building was then converted into condominiums and a new *Certificate of Occupancy* was issued after 1995. The court held that just because a new *Certificate of Occupancy* was issued, it does not qualify the units as “new construction.” In other words, if a property contains residential units that are (or were) subject to rent control but the units are redone such that a new certificate of occupancy (or its functional equivalent) is issued, the property does not qualify for an exemption to rent control for “newly constructed dwelling units.”

In order to qualify for a new construction exemption, the new construction must create new units from space not already being used for residential purposes. (See also *Da Vinci Group v. San Francisco Residential Rent Stabilization and Arbitration Board* (1992) 5 Cal.App.4th 24 (rejecting rent control exemption for a live-work space that received a new certificate of occupancy for residential purposes after legalizing pre-existing residential uses).

Therefore, the owner has not met his burden of proof to establish that the subject building is exempt from the Rent Adjustment Ordinance as new construction.

Can the owner claim an exemption for substantial rehabilitation when he did not list that claim on his *Owner Response* form?

At the Hearing, the owner sought to argue that the building was exempt because it had been substantially rehabilitated. However, the owner did not claim substantial rehabilitation on his *Owner Response* form.

A party has a Due Process right to know what claims the other party is making. The Rent Adjustment Program mails a copy of the tenant petition to the owner and a copy of the owner’s response to the tenant. In this way, each party is afforded Due Process of law. Since the owner’s response did not state a claim that the unit was exempt because it had been “substantially rehabilitated” the owner cannot make that claim at this time.

If the unit is not exempt, what is the legal rent?

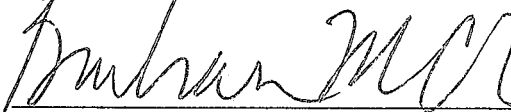
The owner sought only to claim that the unit was exempt from rent control. He did not seek to justify the rent increase. Since there is no justification for the rent increase, the rent remains \$3,095 a month.

ORDER

1. The tenant’s petition is granted. The legal rent for the unit remains \$3,095 a month.
2. The owner has not met the burden of proof to establish that the unit qualifies for the new construction exemption.

3. 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: January 30, 2017



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0488

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

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

Tenants

Christopher Powell
3242 Magnolia St #A
Oakland, CA 94608

Rhiannon Keeland
3242 Magnolia St #A
Oakland, CA 94608

Tenant Representative

Rhiannon Keeland
P.O. Box 633
Jackson, CA 95642

Owner

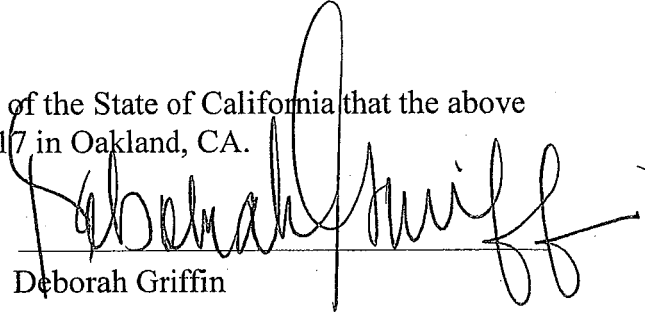
Joseph Williams, Sr.
9909 Caloden Ln
Oakland, CA 94605

Owner Representative

Black Diamond Holdings/Erin Gardere
7901 Oakport St #2450
Oakland, CA 94621

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 01, 2017 in Oakland, CA.


Deborah Griffin

000037

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp 2016 SEP 23 AM 8:15
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T 16 - 0488

OWNER RESPONSE

Please print legibly.

Your Name Joseph Williams, Sr.	Complete Address (with zip code) 9909 Caloden Lane Oakland, CA 94605	Phone: <u>510-472-4116</u> Email: <u>cmmholdings@gmail.com</u>
Your Representative's Name (if any) Erin Gardere / Black Diamond Management	Complete Address (with zip code) 7901 Oakport Street #2450 Oakland, CA 94621	Phone: <u>510-343-6160</u> Fax: <u>510-343-6170</u> Email: <u>egardere@blackdiamondholdings.com</u>
Tenant(s) name(s) Rhiannon Keeland Christopher Powell	Complete Address (with zip code) 3242 Magnolia St. - Unit A Oakland, CA 94608	209-418-8085 916-215-8223

Have you paid for your Oakland Business License? Yes No Number 28052576
(Provide proof of payment.)

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

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

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 01/2014.

The tenant's initial rent including all services provided was \$ 3105.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice") to all of the petitioning tenants?
Yes No I don't know If yes, on what date was the Notice first given? July 28, 2016

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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.**

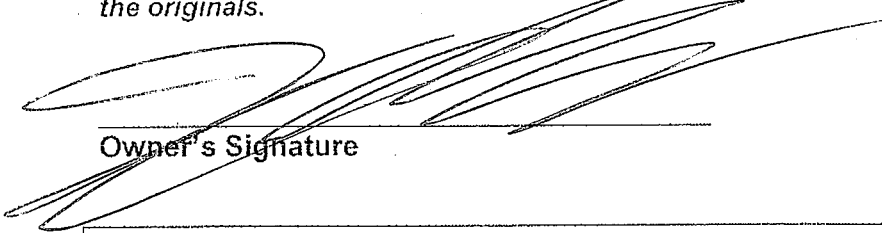
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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

9-22-16
Date

VII. MEDIATION AVAILABLE

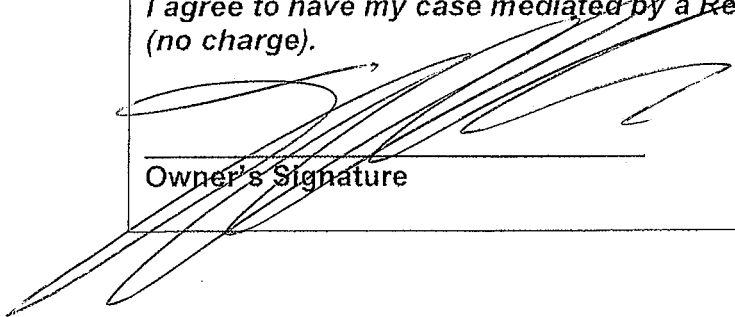
Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

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

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner Response have been filed with the Rent Adjustment Program. **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** (Rent Board Regulation 8.22.100.A.)

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

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


Owner's Signature

9-22-16
Date

000041

PROOF OF SERVICE

Case Number T16-0488

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

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

Tenants

Christopher Powell
3242 Magnolia St #A
Oakland, CA 94608

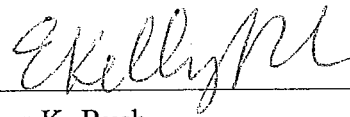
Rhiannon Keeland
3242 Magnolia St #A
Oakland, CA 94608

Tenant Representative

Rhiannon Keeland
P.O. Box 633
Jackson, CA 95642

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 28, 2016 in Oakland, CA.



Esther K. Rush

Oakland Rent Adjustment Program

000042

Tile 0488 KM/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.</p> <p style="text-align: right;">RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM SEPT 15th 2016-AUG-32 AM 10:49</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name <i>Rhiannon Keeland</i> <i>Christopher Powell</i>	Rental Address (with zip code) <i>3242 Magnolia St. Apt. A</i> <i>Oakland, Ca. 94608</i>	Telephone <i>209-418-8085</i> <i>916 215 8223</i>
Your Representative's Name <i>Rhiannon Keeland</i>	Mailing Address (with zip code) <i>P.O. Box 633</i> <i>Jackson, Ca. 95642</i>	Telephone <i>209-418-8085</i>
Property Owner(s) name(s) <i>Erin Gardere</i> <i>Black Diamond Holdings</i>	Mailing Address (with zip code) <i>7901 Oakport St. 2450</i> <i>Oakland, Ca. 94621</i>	Telephone <i>510-343-6160</i>

Number of units on the property: 2

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

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input checked="" type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: May 1, 2014 Initial Rent: \$ 500 /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		
7-28-16	10-1-16	\$ 3,000	\$ 6,000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$ (whole unit)	\$ (whole unit)	<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: NA

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.

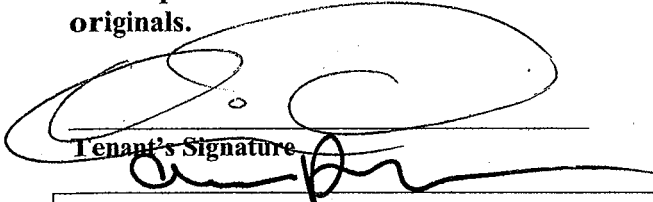
- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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

8-31-2016

Date
9-1-16

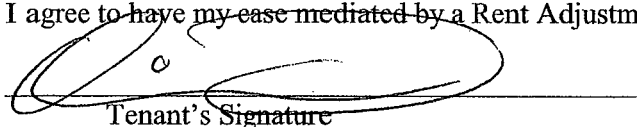
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

8-31-2016

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?

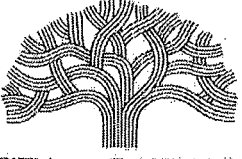
- _____ Printed form provided by the owner
- _____ Pamphlet distributed by the Rent Adjustment Program
- _____ Legal services or community organization
- _____ Sign on bus or bus shelter
- Other (describe): Internet research

CHRONOLOGICAL CASE REPORT

Case No.: T16-0622
Case Name: Hall v. Leung
Property Address: 1015 E. 22nd Street, Oakland, CA
Parties: Jaimeson Hall (Tenant)
Christopher Hodgson (Owner Representative)

PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant petition filed	November 1, 2016
Owner Response filed	December 14, 2016
Hearing Decision issued	April 13, 2017
Owner Appeal filed	May 3, 2017

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	2017 MAY -9 PM 1:32 For date stamp
		<u>APPEAL</u>

Appellant's Name Jenny Leung		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant
Property Address (Include Unit Number) 1015 E 22nd St Oakland CA 94606		
Appellant's Mailing Address (For receipt of notices) 4123 Broadway #108 Oakland CA 94611	Case Number T16-0622	
		Date of Decision appealed 4/12/17
Name of Representative (if any) Christopher Hodgson	Representative's Mailing Address (For notices) 4123 Broadway #108 Oakland, CA 94611	

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

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

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


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

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.
 Number of pages attached: 4.

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
 May 3, 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>	Jaimeson Hall
<u>Address</u>	1015 E 22nd St
<u>City, State Zip</u>	Oakland, CA 94606
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

 Jenny Leung	5/3/17
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

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

APPEAL T16-0622

Other: Calculation of the Value of lost services is flawed. Re: Underpaid rent.

The rent for the apartment in question is \$1200. This is the monthly rent figure used by the hearing officer to calculate the value of loss of services. The residents have previously decided between themselves how to split the \$1200 monthly rent amount. They pay \$600 each.

A March 29th date for the hearing was called specifically asking for the residents to produce proof of payment over the past 3 years.

For the \$600 Jaimeson Hall portion of the rent: no checks were produced by the resident for the months of May, June and July of 2016.

For the \$600 Bill Faas Portion of the rent: no checks were produced at all.

However, the hearing officer counted the Jaime Hall portion of the missing checks as underpayment, but not the Bill Faas portion. Both the missing Jaime Hall checks and Bill Faas checks are simply months where no proof of payment was produced. No explanation is provided to differentiate a missing Jaime Hall check from a Bill Faas missing check. The resident was given multiple opportunities to produce proof of rent payment after it was specifically requested by the hearing officer.

The Calculation of the Value of lost services is based off of a base rent of \$1200 yet half of that amount (\$600) each month was not proved to have been paid over the entire time period in question.

The decision is not supported by adequate evidence. Re: Electricity/ "lack of adequate amperage"

This is referring to the portion of the hearing officer's finding under "Electricity" in the Value of lost services section, and otherwise called "lack of adequate amperage" in the tenant petition and hearing decision.

The hearing officer used the basis that the upstairs portion of the unit was not inspected by an electrician, where there were no complaints about amperage made, to justify the majority of a 5% rent decrease from April 22nd 2016 to January 9th 2017 (totaling \$600, amortized over 12 months), under "Electricity" in the Value of Lost Services section of the finding. However, in doing so the hearing officer appears to be confusing an electric *meter* with an electric *breaker*. This apparent technical misunderstanding forms the basis for this portion of the hearing decision. For the electric capacity of a particular electric outlet in this context, how many appliances per *breaker* switch would have an effect on how the outlet performed. How many residential appliances per PGE *meter* would not. For example, a large home is usually on one meter.

This value of lost services of \$600.00 total, amortized over 12 months, should removed completely or reduced from the finding. It is largely based on a technical misunderstanding by the hearing officer.

The Finding of Fact and Conclusion of Law from page 16 of the hearing decision reads:

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"The tenant has established that there was insufficient electrical supply in his unit to cover the electric service he needed to run both the multiple space heaters in his unit and the dehumidifier. While this was likely the same condition as when he moved in, this became an issue because the tenant was required, to maintain the unit in a barely habitable way, to constantly run a dehumidifier and several electric heaters. While he testified that he complained about this to the old owner, this was not part of the RAP proceeding. It was first mentioned in writing in the April 8, 2016 letter to the prior owner.

No Action was taken by the previous owner to deal with the lack of adequate amperage. **All action taken by the new owner after September 13, 2016, was inadequate as the electrician never went upstairs or considered the unit as a whole.** Nor did the electrician consider the ongoing need for a dehumidifier. Mr. Hall was convincing that the electric outlets would ruin his electrical appliances and that it was the **electricity in the unit as a whole that was the problem.**

This matter should have been repaired two weeks after it was first brought to the prior owners attention. The tenant is entitled to restitution of overpaid rent of 5% of the rent from April 22, 2016 through January 9 2017, because of the condition."

From the evidence portion of the hearing decision on pages 9 and 10:

"The tenant testified that there is a lack of adequate amperage in the electricity system that provides power to the unit. He knows this because over the years he has had several of his electrical appliances blow up from being plugged into the electrical outlets in his unit. These include a subwoofer, an air purifier and several electric heaters. He also regularly has to reset the breakers because they would "pop."

He complained about this to the older owner in the past (see April 8 2016 letter) and to the new owner with the email his mother sent in September of 2016.

The tenant further testified that the new owner sent several electricians to check the electric outlets. However, these electricians checked the electric capacity, they were not also running electricity in the upstairs portion of the unit, where there are additional electrical appliances all connected to the same meter.

The owner's representative testified that on October 27, 2016, a licensed electrician came to the unit in response to the tenant's complaints. As far as he knows, the electrician did not test anything about the upstairs portion of the unit and they did not enter the upstairs portion together. The electrician entered the downstairs outlets and found a burned out outlet. Other than that the electrician found that the electricity produced in the bottom portion of the unit supported the electric heaters that were in use. The owner's representative specifically stated that he did not pay attention to the dehumidifier or ask the electrician any questions about whether its operation would impact the electricity in the unit."

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Also from the Evidence section of the hearing decision, on page 6.

The owner stated in an email dated November 1st, 2016 that “a professional electrician has verified the electricity in the apartment will more than support the heaters and provides a standard amount of electricity (amperage) for a space of its size.”

For the dehumidifier concern, a professional licensed electrician previously verified that the capacity of the apartment is appropriate. The tenant’s complaint was that there was lack of adequate amperage to run his appliances, however the electrician verified that all of these appliances could be run at the same time if needed. A dehumidifier was never specifically considered; however this device is designed for in-home use with the same demands on electricity as other devices that the electrician did specifically consider including: space heaters, a stereo system, tv, etc. What is important is that the specifications of the electrical outlets are configured for a space of that size, which was confirmed by the electrician.

The decision is not supported by adequate evidence. Re: Heat.

In the upstairs portion of the unit, the apartment has an installed, vented heater capable of heating the entire space of the up and downstairs of the apartment to a temperature of 68 degrees, 3 ft above the floor of the entire unit, required by OMC.15.08.260.

The apartment was rented to the residents as one unit. There is no Oakland ordinance that requires an installed heater on every floor, only an installed heater that can heat space to 68 degrees.

The ordinance reads:

Heating System. 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. Such facilities shall be installed and maintained in a safe condition and in accordance with the Oakland Building Construction Code and all other applicable laws. Unvented heaters shall not be permitted. All heating devices or appliances shall be of an approved type.

The hearing officer did not consider the fact that there is an installed heater on the upper floor in this finding. The tenant did not suggest that the installed heater would not heat the lower floor. The “Heat” portion of the ruling is not supported by adequate evidence because the hearing officer never considered the unit as a whole or incorporated the upstairs installed gas heater into her ruling. The fact that space heaters were episodically provided to the tenant does not discount the presence of an adequate installed heater on the top floor capable of heating the entire space without the addition of space heaters.

I was denied sufficient opportunity to respond to the petitioners claim. Re: Rap Notice.

In the Finding of Fact on page 14, the hearing officer wrote:

In a decreased services case, where a RAP Notice has been given at the beginning of a tenancy, a tenant is only allowed relief for 90 days prior to filing out of the petition. However, where no RAP notice was given before the tenant petition was filed, (or was not given at any time before 90 days before the tenant petition was filed) the tenant can seek restitution for up to three years.

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There is good reason to believe the resident would have received the RAP sheet during previous ownership. Access to this particular paperwork from the time period before the building changed ownership is difficult for current ownership. For example, the resident was served a 3 day notice by previous ownership on 10/1/14. In Oakland, for this form to be valid it needs to be accompanied by a RAP notice. This 3-day notice was served *after* a the referenced previous rent board case with previous ownership.

Importantly, recounted in the hearing decision, the resident has repeated difficulty recalling when he received certain paperwork, specifically when he received a RAP sheet from current ownership. This suggests he also may have trouble recalling paperwork from previous ownership.

From the evidence portion of the hearing decision on page 2:

During the hearing on February 28, 2017, the tenant testified that he was only ever given the *RAP Notice* as an attachment to an email sent to him by the new manager for the building on October 15, 2016. His statement that he first received the *RAP Notice* on August 31, 2016, which was listed on the *Tenant Petition*, was a mistake. During the hearing on March 29, 2017, the tenant acknowledged receiving Exhibit 46, a *24-hour notice to enter the premises*, which was posted on his door on August 31, 2016. He did not remember that a RAP Notice was included in the envelope. He had no explanation for why his tenant petition would have the same date for the receipt of the RAP Notice. He then testified that "he must have" recited the RAP Notice on that date.

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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: T16-0622, Hall v. Leung

PROPERTY ADDRESS: 1015 E. 22nd Street, Oakland, CA

DATE OF HEARING: February 28, 2017, March 10, 2017, March 29, 2017

DATE OF INSPECTION: March 9, 2017

DATE OF DECISION: April 12, 2017

APPEARANCES: Jaimeson Hall, Tenant
Terrylynne Turner, Witness for Tenant
Christopher Hodgson, Owner Representative

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

The tenant filed a petition on November 1, 2016, claiming that his housing services had decreased. His claims of decreased services include a lack of adequate heat; excessive humidity and mold due to lack of a vapor barrier and improper drainage; lack of adequate amperage; loss of the benefit of running the electric heaters and dehumidifier on house power; lack of consistent hot water in shower; lack of security doorknob and latch on rear security gate and lack of lock on side gate; and continued leaking in both the back stairwell and lower unit storage area (which cause a further problem with the humidity).

The owner filed a timely response to the tenant petition on December 14, 2016, denying that there had been a decrease in housing services.

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THE ISSUES

1. When, if ever, was the form *Notice to Tenant of the Residential Rent Adjustment Program (RAP Notice)* first served on the tenant?
2. Was the tenant current on his rent or lawfully withholding rent at the time he filed his petition?
3. Since the tenant signed a *Stipulation Re: Dismissal/Judgment* in November of 2014, when do the tenant's claims in this case begin?
4. Because the tenant can no longer reside in the downstairs portion of the unit, when does the tenant's claim end?
5. Have the tenant's housing services decreased? If yes, in what amount?
6. What if any restitution is owed between the parties, and how does it impact the rent?

EVIDENCE

Rental History: The tenant testified that he lives in a rental unit in a 4 unit building. He moved in in April of 2011. His initial rent was \$1,200 a month, and this has not been increased since he moved into the unit. When he moved into the unit it was owned by George Rowan, who sold the building to Jenny Leung in August of 2016.¹

The tenant further testified that when he was rented the unit it consisted of an upstairs section and a downstairs section, also referred to as a townhome unit. In the downstairs portion was the only kitchen in the unit, plus a dining room, a bedroom and a bathroom and a storage area that was under the front set of stairs. There was an opening from the downstairs living area into this storage area at all relevant times. The upstairs section had bedrooms, a living area and a bathroom, although no kitchen. There is a set of enclosed stairs that connect these two portions of the unit.

The tenant and his mother (Terrylynn Turner) further testified that when the unit was initially rented, the lease was signed by Ms. Turner and her daughter, Rachael Kirstin Castro Mondino, with the understanding that the unit would be occupied by Mr. Hall (the tenant) and his sister Ms. Mondino. During the time the tenant's sister lived in the unit, she lived in downstairs portion and the tenant lived upstairs. Ms. Mondino moved out of the unit in August of 2012 and Mr. Hall moved downstairs. At that time William Faas moved into the unit and resided upstairs.

When Mr. Faas moved into the unit he added a kitchen into one of the upstairs areas that had previously been rented as a bedroom. The kitchen depicted in Exhibit 37 shows the upstairs kitchen area. The sink, stove and refrigerator depicted in those photos were added by Mr. Faas.

With respect to the issue of rent payments, the tenant testified that he pays \$600 a month in rent and the other tenant pays \$600 a month in rent. The rent payments have always been paid separately as long as Mr. Faas has lived in the unit.

¹ Exhibit 5. This Exhibit, and all other exhibits referred to in this Hearing Decision, was admitted into evidence without objection.

Mr. Hodgson testified that he is the property manager for the new owner of the property who purchased the property in August of 2016. On August 31, 2016, he posted a 24 hour notice to enter the premises in an envelope on the door of all 4 units on the premises.² He did this because the new ownership needed keys to all the units and he had to come to the facility with a locksmith to get all the keys. The envelope in which he posted the notice to enter also contained a copy of the *RAP Notice*.

During the Hearing on February 28, 2017, the tenant testified that he was only ever given the *RAP Notice* as an attachment to an email sent to him by the new manager of the building on October 15, 2016. His statement that he first received the *RAP Notice* on August 31, 2016, which was listed on the *Tenant Petition*, was a mistake. During the Hearing on March 29, 2017, the tenant acknowledged receiving Exhibit 46, a *24-hour notice to enter the premises*, which was posted on his door on August 31, 2016. He did not remember that a *RAP Notice* was included in the envelope. He had no explanation for why his *Tenant Petition* would have the same date for receipt of the *RAP Notice*. He then testified that “he must have” received the *RAP Notice* on that date.

Official Notice is taken of a prior case between the tenant and the prior owners, Kiet Leong and George Rowan (T14-0256.) In the *Tenant Petition* filed in that case, the tenant stated that he never received the *RAP Notice*. The owner, in his *Landlord Response*, in response to the question “when was the tenant first served with the *RAP Notice*,” checked the box that said “I don’t know.”

The tenant testified that over the years he has had multiple disputes with the prior owner about the rent and the condition of the property. Because of those disputes there were periods of time during which he withheld rent, or paid a lower rent amount because of the conditions or because he paid for something out of pocket related to the use of the apartment and with the owner’s permission. Additionally, the prior RAP case against George Rowan was dismissed by the tenant after he settled a claim against Mr. Rowan in response to an *Unlawful Detainer* action that had been filed.

A *Stipulation re: Dismissal and Judgment* was admitted into evidence as Exhibit 44. This stipulation arose after the *Unlawful Detainer* action filed in 2014. The tenant had been withholding rent because of the conditions. The *Stipulation* states that the tenant was to remain in possession of the rental unit and that any “rent that was past due prior to and up to October 31, 2014 is waived as compensation for damages.” The *Stipulation* included a release from any and all claims arising from the tenancy and “any other prior acts.”

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² Exhibit 46.

The tenant and his mother testified that other than the months listed below (starting in November of 2014) the tenant paid rent of \$600 a month. His roommate paid the other half of the rent.³

Months:	Payment Amount	Months	Payment Amount
September 2015	\$594	May 2016	0 (See below)
February 2016	\$523.92	June 2016	0 (See below)
April 2016	\$13.11	July 2016	0 (See below)

As to these times when the tenant did not pay full rent: the tenant testified that in September of 2015 he withheld \$6.00 in rent because he had purchased a part for the toilet in his unit at the request of the owner. In February of 2016, the tenant paid \$523.92. The tenant did not remember why he withheld \$77 in rent that month.

In April of 2016, the tenant paid \$13.11 in rent. This was explained in a letter he wrote to the prior owner in April of 2016, in which the tenant was being compensated for the purchase of a dehumidifier and the extra costs of electricity for running a space heater and a dehumidifier (see decreased services section below.). The prior owner did not seek any further money from the tenant in response to the letter of April 5, 2016.

At the Hearing held on February 28, 2017, the tenant testified on cross-examination that he does not recall if he paid rent in May, June or July of 2016. At the Hearing held on March 29, 2017, the tenant testified that he believes he paid rent of \$400 a month from May to July of 2016. These checks were not produced. The tenant was directed to provide proof of these checks to the Hearing Officer by April 6, 2017. No checks were produced.

Mr. Hodgson testified Jenny Leung is the new owner of the property and he is the building manager. He visited the building with her in May of 2016 as she was considering purchasing the building and was first in the tenant's unit in August of 2016. Mr. Hodgson testified that when Ms. Leung purchased the building, she was informed by Mr. Rowan that Mr. Hall had not paid rent from May-July of 2016.

Before Jenny Leung purchased the building, Mr. Rowan informed her that there had been a previous Rent Board case with the tenant and was further informed that the tenant was starting the process again. Mr. Rowan also referred to the unit in which the tenant lives as a "townhouse unit" and it was clear that this was one unit in which both Mr. Faas and Mr. Hall were residing. This particular townhouse unit is the only unit like it in the building.

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³ There was testimony that during the time preceding the *Stipulation* his roommate was also not paying rent (or his rent was not accepted by the owner. Since all restitution here will be limited to after November of 2014 (see below) it is not necessary to determine what amount the roommate paid or even consider the fact that the tenant was withholding rent before November of 2014.

Decreased Housing Services:

Heat: The tenant testified that there has never been adequate heat in the downstairs portion of the unit. There is one gas heater in the back corner of the bedroom which has never worked properly.⁴ This is the only heater to cover the area of this room, the bathroom, hallway, kitchen area and living room portion of the downstairs of the unit.

The tenant provided a declaration from his sister about the time she lived in the unit. The declaration reads: "...the gas heater was of insufficient size to heat the entire apartment unit to even 60 degrees,⁵ requiring both the use of an electric heater and the running the oven while open to heat the apartment so I was able to sleep without excessive shivering."⁶

The tenant further testified that this gas heater would only heat a small corner of the back bedroom; otherwise the rest of the rooms were quite cold unless he provided supplemental heat. The temperature in his unit in the winter is not more than 54° if all he has turned on is the gas heater.

The tenant further testified that after complaining about the lack of heat in the unit, which he had done many times in the past, Mr. Rowan, the prior owner, provided him with a portable electric heater and agreed to pay the increased electric bills associated with the use of the electric heat. Additionally, Rowan agreed that he would fix the heater, but never did. The tenant would provide information to the owner about the excess electricity costs for using electric heat in the unit on a once yearly basis, and then deduct that amount from the rent.

The tenant produced a letter he wrote to the prior owner on April 5, 2016, about (amongst other things) the lack of adequate heat in the unit and the deduction for the increased electric bills.⁷ The tenant further testified that when Ms. Leung purchased the building he informed her about the lack of heat in the lower portion of the unit by email.

In the prior case between the tenant and the former owner (T14-0256) the tenant claimed decreased services arising from the lack of heat in the downstairs portion of the unit. On cross-examination, the tenant testified that part of the *Stipulation* in the prior *Unlawful Detainer* action was that the owner would repair the heater. The *Stipulation* states "Plaintiff will provide one additional heater to the Defendant."⁸

The tenant further testified that on August 23, 2016, Mr. Hodgson visited his unit. The tenant tried to tell him about the problems in the unit but Mr. Hodgson was not paying

⁴ See photograph of heater, Exhibit 35 # 7.

⁵ It is understood that she is referring to heating the downstairs portion of the unit, not the upstairs as well.

⁶ Exhibit 1. This Exhibit, and all other exhibits referred to in this Hearing Decision, was admitted into evidence without objection.

⁷ Exhibit 2

⁸ Exhibit 44

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attention to him. At that point, the tenant told Hodgson that he would send him information by email.

On September 13, 2016, Terrylynne Turner, the tenant's mother, wrote an email to Jenny Leung, the new owner, about the "habitability" issues in the unit. This email included complaints about the lack of adequate heat, the excessive humidity and mold, the lack of amperage, the lack of consistent hot water in the shower; the lack of a security doorknob on the rear security gate and the continued leaking in the back stairwell and lower unit front storage area.⁹

The tenant further testified that in response to this letter, there were multiple inspections and communications back and forth between the new management and the tenant. On September 20, 2016, the tenant's mother received an email from the manager of the property about testing the heater in the tenant's unit and the tenant received a 24 hour notice to enter.¹⁰ On September 22, 2016, the tenant met with Christopher (the manager) and showed him the lack of heat in the unit and the problems with the excessive humidity. He was told that the repairs would be forthcoming.

The tenant further testified that *PG&E* came to the unit on October 28, 2016, to check on the heater in his unit. *PG&E* issues a *Service Report* and a *Hazard Notice* stating that the heater had undergone a "safety check" and the heater was "disconnected due to potential hazard." The "hazard" was that the heater was vented into the stairway leading to the upper portion of the unit.¹¹ The tenant did not give the owner a copy of the *PG&E* notice.

In November of 2016, the owner provided two electric oil radiator heaters to the tenant. They supplied new ones because the tenant had informed the owner that the electric plugs on his older heaters had burned from the inadequate amperage in the electrical system. The owner stated in an email dated November 1, 2016, that a "professional electrician has verified the electricity in the apartment will more than support the heaters and provides a standard amount of electricity (amperage) for a space of its size."¹²

The tenant further testified that he contacted the City of Oakland Planning Department to have an inspection done on his apartment in October of 2016. The inspection was performed and in early November of 2016 a *Notice of Violation* was issued.¹³ As a result of the inspection the unit was "yellow tagged". The tenant produced a document from the City entitled CE ROUTING SLIP.¹⁴ This document notes that the owner was directed to "remove gas range & gas heater. Remove shower and repair electrical wiring. Should

⁹ Exhibit 8, page 1.

¹⁰ Exhibits 9 and 13

¹¹ Exhibit 20

¹² Exhibit 21

¹³ Exhibit 29, pages 5-6

¹⁴ Exhibit 23

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have filed check to determine open area used as closet near front door and rear stairs leading up to rear unit. Non tempered window at rear stairs.”

The tenant testified that as he understood it the owner was attempting to get the problems with the heat repaired, but then after the inspection, the owner learned that the heater in the unit could not be repaired because the unit itself was not considered habitable space. On December 3, 2016, the tenant received a letter from the owner, via email, specifying that the “space currently has three heaters that provide adequate and stable heat.”¹⁵ The heaters that were referenced were all space heaters. This letter additionally states: “We were in the process of replacing a non-operating and previously installed gas heater on the wall but the City of Oakland building inspector has now stepped in and asked that we not repair it because it was not previously approved by the city to be there.”

The owner’s agent testified that after Ms. Leung purchased the unit, he made several trips to the property and met the tenant. He was not told of any problem with the heater. His first knowledge (and the first knowledge of J Properties—the legal name of the owner) of any problem in the unit came when he received the email from Ms. Turner (Exhibit 8). At that point he started investigating the lack of heat, which was an issue they took seriously.

As part of the investigation into the lack of heat, they made at least three visits to the unit to try to repair the problem. At first they determined that the heater did not put out adequate heat and they were unable to repair the heater. Then, in late October of 2016, on the date that they were scheduled to replace the heater, he got a call from Randy Schimm, an inspector from the City of Oakland, telling him not to repair the heater. The owner had not sought a permit to replace the heater. Mr. Hodgson was unable to testify as to the name of the company that was scheduled to replace the heater on the day he was called by Randy Schimm.

The owner’s agent additionally testified that it has been difficult working with the tenant and his mother, both of whom have blocked his access to the unit or shouted him down about several things over the months. Because of that he has had a difficult time getting workers to come to make repairs, because he feels he has to disclose the combative nature of the relationship.

The owner’s agent testified that on approximately November 2, 2016, a *Notice of Violation* was issued regarding the unit which he received about a week later. The *Notice* states “unapproved basement unit being used for habitable space with unapproved gas heat. Discontinue use as habitable space. Remove kitchen/bathroom and return to open storage space. Obtain permits, inspections and approvals for open storage area.”¹⁶ In response to the *Notice of Violation* the owner has removed the shower and tub from the bathroom in the downstairs unit. Additionally, on January 2, 2017, the owner served a

¹⁵ Exhibit 24, page 2

¹⁶ Exhibit 29, page 5-6

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Notice to Cease on the tenants directing them to not use the downstairs portion of the unit.¹⁷

The owner's agent testified that he has removed part of the kitchen and the tub and shower in the bathroom. He is trying to get a permit to maintain the half bath in the downstairs portion of the unit.

Excessive Humidity: The tenant testified that there is a significant amount of humidity in the lower part of the unit. At first he just noticed that there were water leaks and pooling water in various pieces but at some point he noticed that the humidity meter in his snake's cage was reading 90%. This caused the tenant to investigate the humidity in his unit further. The tenant testified that the normal humidity inside a building is 30-40%; while in his unit in the summer the humidity levels remain in the 60% range, in the winter in the 70% range and when it rains it is in the 80% range. He knows this because he purchased a humidity gauge. The tenant provided photographs of two humidity gauges he had in his apartment. The photographs, taken in March of 2016, show humidity readings of 72% (in the kitchen/dining room area) and 62%.¹⁸ He also provided additional photographs of the humidity gauge taken in the last year showing readings of 50%, 64%, 71% and 77%.¹⁹ Photographs showing the placement of the humidity meter was entered into evidence as Exhibit 35, ## 1-2 and 5.

In April of 2016, the tenant sent a letter to Mr. Rowan documenting a prior conversation between them where Rowan had agreed to purchase a dehumidifier for the unit.²⁰ The tenant further wrote to Mr. Rowan later in April of 2016, complaining about the excess humidity in the unit, and the fact that the tenant had just learned that the underside of the house had been inappropriately sealed (making the moisture problem worse.)²¹ Attached to the second letter were the photographs of the humidity gauges taken in March of 2016.

Additionally, the letter documents that Mr. Hall was planning on taking a rent reduction in May to July of 2016 to \$400 a month. (Although as noted above, there is no proof of any rent payments during that period.)

The tenant testified that in investigating the source of the humidity in his unit, he and the former property manager, Kevin Ota, looked at the crawl space underneath his unit. They discovered that it was moist, covered with mold and efflorescence (a crystalline deposit on surfaces of masonry, stucco or concrete).²² This was caused by poor work done by a prior contractor in 2014, who was attempting to control for rodents by completely sealing the underside of the building. Additionally, the excess moisture was in part caused by a leak from a water heater in the laundry room, immediately adjacent

¹⁷ Exhibit 25

¹⁸ Exhibit 3, page 5

¹⁹ Exhibit 32. These photographs were taken on various dates in 2016 and are all recording the interior humidity in the center of the lower portion of the tenant's unit.

²⁰ Exhibit 2 (note that the dehumidifier is referred to inaccurately in the letter as a "humidifier.")

²¹ Exhibit 3

²² Exhibit 3, pages 3 and 4

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to the tenant's unit, which had been leaking tens of gallons of water a day back in 2014. All of this moisture was locked under the tenant's unit when the prior contractor sealed the area (including the vents that were necessary to provide an escape for the excess moisture).

The tenant further testified that he had an agreement with Mr. Rowan that he could use the "house power" to provide power to the dehumidifier. The tenant had learned that the storage area connected to his unit had electricity that was on the "house power" rather than being charged to the tenant's PG&E bill, so he used the outlet in that area to power the dehumidifier. Mr. Hall's request to use house power to power the dehumidifier is noted in the letter the tenant wrote to Mr. Rowen on April 8, 2016.²³

The tenant testified that Mr. Rowan did not respond to his letter of April 8, 2016, regarding the humidity in the unit and took no action to repair the problems. Nor did Rowan object to his using the house power to power the dehumidifier.

The declaration from the tenant's sister, Rachael Mondino, additionally discusses the water damage in the unit during the time she lived there.²⁴

Official Notice is taken that in the prior case regarding this unit, the tenant complained of excessive moisture in his unit.

On June 2, 2016, a representative of the new owner visited the building with Christopher Hodgson (the manager). The tenant does not know this other person's name. The unnamed person asked the tenant why he had the fans and dehumidifier set up in the unit and the tenant informed him of the problems with the humidity in the unit.

As noted in the section above on the heater, after the new owner was sent a letter regarding habitability problems in September of 2016, the new ownership started investigating the problem.

The owner representative testified that when he visited the unit and met Mr. Hall in August of 2016, he did not notice there was a dehumidifier in the unit, nor was he informed of any problems in the unit until the September 13, 2016, email.

The owner representative testified that he paid no attention to the tenant's complaints about humidity in the unit because the unit did not feel humid to him. He did acknowledge receipt of photographs of the meters showing the humidity in the unit, but did not know where to start with any complaint about the humidity.

Lack of adequate amperage: The tenant testified that there is lack of adequate amperage in the electricity system that provides power to the unit. He knows this because over the years he has had several of his electric appliances blow up from being

²³ Exhibit 3

²⁴ Exhibit 1

plugged into the electric outlets in his unit. These include a subwoofer, an air purifier and several electric heaters. He also regularly has to reset the breakers after they would “pop.”

He complained about this to the old owner in the past (see April 8, 2016 letter)²⁵ and to the new owner with the email his mother sent in September of 2016.

The tenant further testified that the new owner sent several electricians to check the electric outlets. However, these electricians checked the electric capacity, they were not also running electricity in the upstairs portion of the unit, where there are additional electrical appliances all connected to the same meter.

The owner’s representative testified that on October 27, 2016, a licensed electrician came to the unit in response to the tenant’s complaints. As far as he knows, this electrician did not test anything about the upstairs portion of the unit and they did not enter the upstairs together. The electrician tested the downstairs outlets and found a burned out outlet. Other than that the electrician found that the electricity provided in the downstairs of the unit supported the electric heaters that were in use. The owner’s representative specifically stated that he did not pay attention to the dehumidifier or ask the electrician any questions about whether it’s operation would impact the electricity in the unit.

At no time did the owner’s representative see any burned out electrical appliance.

Loss of the benefit of running the electric heaters and dehumidifier on house power: The tenant testified that he had an agreement with Mr. Rowan, the prior owner, to run the space heater and the dehumidifier through the “house power” rather than through the electrical outlets in his unit. This was to allow the cost to be borne by Mr. Rowan, rather than him. The tenant had learned some time in the past that there was an electric outlet in the storage area in the front of the unit that was connected to the “house power” rather than to his PG&E bill. He knew that because at some point the light in the storage area went out and when the tenant investigated he learned that the owner had not paid the PG&E bill that he was getting for the house power (the house power also covers the lights around the building and in the laundry room.)

The tenant further testified that in October of 2016 he received a *Notice to Cease* stating that he had to stop using the house electricity for the personal use in his unit.²⁶ Along with the *Notice to Cease* he received a letter from the owner stating that “PG&E has informed us that house power use at the building has spiked substantially in recent months, resulting in a bill 10x higher than the previous average.”²⁷ The tenant testified that there was a fan running in the crawl space that an agent of the owner had installed in order to deal with the humidity in the crawl space. This fan was connected to the laundry room power.²⁸ The tenant did not put the fan in that location. The only way the

²⁵ Exhibit 3

²⁶ Exhibit 17, page 2

²⁷ Exhibit 17, page 1

²⁸ A photograph of this fan was entered into evidence as Exhibit 34.

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tenant used house power was by connecting the dehumidifier into the electric outlet in the storage area in his unit.

Since he had to stop using the house power his bills for electricity alone have gone up to approximately \$270 a month (for running the dehumidifier and the electric heater) when it used to be only \$100 a month. The tenant did not produce these electric bills to show the change to his billing.

Lack of consistent hot water in shower: The tenant testified that the water in the shower was never hot enough. For the entire time he has lived in the downstairs portion of the unit, the water in the shower was not as hot as the water in the sink in the bathroom. He showed this to Chris on multiple occasions after Jenny Leung purchased the building and referred to it in the email about habitability problems that was sent on September 13, 2016.²⁹ He previously had pointed it out to the prior owner who had assured him it would be taken care of by Kevin, but nothing Kevin did actually repaired the problem. This complaint was in approximately 2015 or 2016.

The tenant testified that he believes that his complaints about the shower were a part of his previous RAP petition against George Rowan. Official Notice is taken of the prior case between the tenant and Mr. Rowan, case T14-0256. The tenant did not make a complaint about the shower temperature with the documents he filed in that case.

The owner's representative testified that he has never gone to the unit specifically to check on the hot water; but he has checked it multiple times to see if it was hot enough when he was there for other reasons. He tested the hot water on three occasions by putting his hand under the water from the shower on multiple occasions. He never measured the water with a thermometer or measure it against the water in the bathroom sink. The water has always seemed hot enough to him; on one occasion he had to remove his hand because the water was "too hot".

Lack of security doorknob: The tenant testified that after the new owner purchased the property, she had the knob removed from the security gate outside his unit in order to rekey all the locks to the unit. The new owner had a new deadbolt installed, but it broke off in the tenant's hand because it was not installed correctly. For a few months there was no doorknob or deadbolt on the back of his security gate. During this time there were no break-ins or other security problems. The only issue was that it was difficult to shut the door fully.

The tenant communicated to the owner about this in the email sent by Ms. Turner on September 13, 2016.

The tenant produced a 24 hour notice to enter from the owner that he received on November 16, 2016. This notice states that on November 17, 2016, someone would be

²⁹ Exhibit 8, page 1

coming to the unit to repair the “damaged exterior doorknob.”³⁰ It was repaired in November of 2016.

The owner representative testified that the security doorknob was missing a part of the knob but there was never a security problem because the door to the tenant’s bedroom, which is on the other side of this security door, also has a deadbolt lock that worked. According to a December 3, 2016, letter from the owner to the tenant, this was repaired on November 17, 2016.³¹

Lack of lock on side gate: The tenant testified that the new owner removed a lock on the outside gate that leads to a side yard.

The owner representative testified that this lock was removed because this is the area where the *PG&E* meters are, and *PG&E* needed access to the area.

Continued leaking in both the back stairwell and lower unit storage area: The tenant testified that there were ongoing leaks in the front storage area and in the interior staircase that connected the bottom part of the unit from the top portion of the unit. This started before 2014 and continued over the years. His sister complained about this in her declaration. He produced photographs of water entry in these areas taken in October of 2016.³² The leaks in the storage area cause mold to grow on many of the items that were stored there.

The tenant’s prior case against George Rowan, T14-0256, contains allegations about water entry in these areas. This problem was listed on the email that Ms. Turner sent to the new owner in September of 2016.³³

At the Hearing, the owner’s representative denied that there were any signs of water damage in the storage area of the back stairwell.

At the Inspection by this Hearing Officer there were obvious signs of water entry in the storage area adjacent to the living room in the downstairs portion of the unit.³⁴ The paint was peeling in a variety of places, particularly around the door frame. There was additional water damage in the stairwell area that connects the bottom portion of the unit to the top portion of the unit.

On cross-examination, the tenant testified that there is mold in the unit growing under the front stairs, there is mold on all the window sills, in the back stairwell on the ceiling and on the toilet in the bathroom. At the Inspection by this Hearing Officer there were signs of possible mold and mildew in the front storage area, the closet in the tenant’s bedroom, under the tenant’s bedroom rug, and on the tenant’s bedroom wall. There

³⁰ Exhibit 22

³¹ Exhibit 24, page 3

³² Exhibit 31.

³³ Exhibit 8

³⁴ See Inspection Photos 3-6

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were also signs of water damage and peeling paint on the exterior of the building, adjacent to the tenant's bedroom.

Mr. Hodgson testified that when he got the email from the tenant's mother regarding concerns about leaking and mold he looked at the walls in the tenant's unit and did not see any signs of mold. He did not look in the back stairwell or the area under the stairs when he did this investigation. He further testified that the stairwell connecting the two parts of the unit is actually an exterior stairwell that should not have been required to be water tight. He later testified that the stairwell is a hallway connecting the two parts of the unit.

Hodgson further testified that he has gone to the unit multiple times to look for water entry, including during times it was raining. He did not see any at any time before the tenant's petition was filed. He did see signs of water entry (but no active leak) in the back stairwell on one of his recent visits to the property in February of 2017, when he visited the unit during an exceptionally rainy day.

The owner representative further testified that dealing with the tenant has been very challenging. He has called him names (once having called him a "shyster" and "shady dude"); he has threatened him, and he has refused entry on at least one occasion (December 6, 2016) after a *24 Hour Notice* to enter was posted. The tenant wouldn't let him in because he said he was sick and had not received the notice to enter, which was still posted on his door.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy³⁵ and together with any notice of rent increase or change in the terms of a tenancy.³⁶ 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.³⁷ The tenant credibly testified that did not receive a *RAP Notice* when he moved into the unit, or at any time when George Rowan owned the building.

The owner representative convincingly testified that he gave the tenant a *RAP Notice* along with a notice to enter that was served on August 31, 2016. The tenant testified that while he did not remember getting the *RAP Notice* with that notice to enter, he did write that he received the *RAP Notice* on August 31, 2016 on his petition, so he must have received it that day.

It is found that the tenant received the *RAP Notice* on August 31, 2016.

³⁵ O.M.C. § 8.22.060(A)

³⁶ O.M.C. § 8.22.070(H)(1)(A)

³⁷ O.M.C. § 8.22.060 (C)

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Was the tenant current on his rent or lawfully withholding rent at the time he filed his petition?

In order to file a petition, a tenant must be current on his or her rent or lawfully withholding rent.³⁸ The owner has the burden of proof to establish that the tenant was not current on his rent. The tenant filed his Petition on November 1, 2016.

It is clear from the evidence that Mr. Hall withheld some rent that he owed to the prior owner in February of 2016, April of 2016 and May-July of 2016.

However, at the time the tenant filed his petition, there were ongoing problems in his unit regarding the lack of an operating heater, excessive moisture and water entry and a host of other issues. A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.³⁹ The statutory authority for rent withholding is Code of Civil Procedure § 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action. To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach, that is, the tenant must present a prima facie case that he or she is withholding the rent legally. Here, the tenant has established that there was a lack of heat (amongst other things) which is a clear habitability problem.

Due to these circumstances, the tenant is considered to be current lawfully withholding rent at the time his petition was filed.⁴⁰

Since the tenant signed a *Stipulation Re: Dismissal/Judgment on November 3, 2014*, when does the tenant's claims in this case begin?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁴¹ and may be corrected by a rent adjustment.⁴² 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. The tenant has the burden of proof with respect to each claim.

In a decreased services case, where the *RAP Notice* has been given at the beginning of a tenancy, a tenant is only allowed relief for 90 days prior to the filing of the petition⁴³. However, where no *RAP Notice* was given before the tenant petition was filed, (or was not given at any time before 90 days before the tenant petition is filed) the tenant can seek restitution for up to three years.

³⁸ O.M.C. & Regulations, § 8.22.090

³⁹ O.M.C. & Regulations, § 8.22.090

⁴⁰ The underpayment is included in the restitution section below.

⁴¹ O.M.C. § 8.22.070(F)

⁴² O.M.C. § 8.22.110(E)

⁴³ Board Decision in Case No. T09-0086, *Lindsey v. Grimsley, et al.* as modified by O.M.C. § 8.22.090(A)(3) 000066

In this case, the *RAP Notice* was served on August 31, 2016, and the tenant petition was filed on November 1, 2016. Here, since no *RAP Notice* was given earlier than 90 days before the tenant petition was filed, the tenant is entitled to restitution for conditions as far back as May of 2014. However, because of the *Stipulation* signed by the tenant and the prior owner in November of 2014, the tenant gave up all claims that could have been made prior to November 3, 2014. Therefore, the tenant's claims for restitution begin on November 4, 2014.

Because the tenant can no longer reside in the downstairs portion of the unit, when does the tenant's claim end?

The tenant filed his petition prior to being informed that he could no longer live in the downstairs portion of the unit effective January 9, 2017. The tenant was informed of the removal of this right in a *Notice to Cease* on January 2, 2017. This *Notice* requires the tenant to stop residing in the downstairs portion of the unit as of one week after the notice was given.

The tenant was informed at the Hearing that since his petition did not claim a decreased service related to the loss of the right to live in the downstairs portion of the unit, this issue was not a subject of the *Tenant Petition* he filed. As of the Hearing dates, the tenant had not yet filed a petition regarding the loss of services associated with this *Notice to Cease*.

Because the tenant can no longer reside in the downstairs portion of the unit, his claims associated with the conditions in the downstairs portion of the unit cease on January 9, 2017.

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

In order to claim a decrease in housing service, a tenant must establish that he has given the owner notice of the conditions and the opportunity to repair the problem. Each of the tenant's concerns are discussed separately below:

Heat: The tenant has established that he has not had a working installed heater at any time that he was living in the downstairs portion of the unit. The Oakland Building Maintenance Code provides that heating facilities shall be capable of maintaining a room temperature of 68° and "such facilities shall be *installed* and maintained in a safe condition and in accordance with the Oakland Building Construction Code..." O.M.C. § 15.08.260. (Emphasis added). Failure to provide an installed heater violates this Code and is a breach of the warranty of habitability.

The fact that episodically the tenant has been provided with space heaters does not change this result. Space heaters are not installed, as required by law. However, this problem was limited to the downstairs portion of the unit. The tenant is entitled to restitution of overpaid rent, from November 3, 2014 through January 9, 2017, for the failure to provide an installed heater capable of maintaining a reasonable room

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temperature. This failure amounts to a loss of service of 10% of the rent. (See chart in restitution section below.)

The fact that the original loss was caused by the prior owner does not change this result. The Ordinance states that “owner’ means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.” O.M.C. § 8.22.020. Therefore, the new owner stands in the shoes of the old owner.

Excessive Humidity: This matter is combined with the issue of the leaks (See below.)

Lack of adequate amperage: The tenant has established that there was insufficient electrical supply in his unit to cover the electrical service he needed to run both the multiple space heaters in his unit and the dehumidifier. While this was likely in the same condition as when he moved in, this became an issue because the tenant was required, to maintain the unit in a barely habitable way, to constantly run a dehumidifier and several electric heaters. While he testified that he complained about this to the old owner, this was not a part of the prior RAP proceeding. It was first mentioned in writing in the April 8, 2016, letter to the prior owner.

No action was taken by the prior owner to deal with the lack of adequate amperage. All action taken by the new owner after September 13, 2016, was inadequate as the electrician never went upstairs or considered the unit as a whole. Nor did the electrician consider the ongoing need for the dehumidifier. Mr. Hall was convincing that the electric outlets would ruin his electrical appliances and that it was the electricity in the unit as a whole that was the problem.

This matter should have been repaired two weeks after it was first brought to the prior owner’s attention. The tenant is entitled to restitution of overpaid rent of 5% of the rent from April 22, 2016 through January 9, 2017, because of this condition.

Loss of the benefit of running the electric heaters and dehumidifier on house power: Even if the tenant could establish that he had the right to plug into “house power,” he did not provide any evidence of PG&E bills after he had to stop using “house power” that would show that his PG&E bills increased. A rough estimate of his PG&E bills is inadequate when the tenant had the ability to provide proof of his loss. This claim is denied.

Lack of consistent hot water in shower: The owner representative’s testimony that he checked the hot water in the shower on three occasions and it was hot enough was convincing. This claim is denied.

Lack of security doorknob: The evidence is clear that there was a period of time between September 13, 2016 and November 17, 2016, when the security doorknob was not working properly. This should have been repaired immediately upon notice.

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The fact that the tenant had other locking doors does not solve the problem with the lack of a working lock on this door. This door leads to a staircase that connects the upper and lower portions of the unit, and is essentially a hallway of the tenant's unit. Therefore, it was required to be as secure as it had been in the past. Since the owner's actions caused it to break, the owner should have repaired it immediately. The tenant is entitled to restitution of overpaid rent of 2% of the rent for the period of time that this door lock was not operable. (See chart below.)

Lack of lock on side gate: The fact that the lock of the side gate was removed does not appear to have affected the tenant. The side gate does not provide direct access to the tenant's unit. It leads to two doors that do provide access, but providing those doors were locked, the side gate lock is only an additional safety feature. Furthermore, the owner reasonably needed access to this area to get to the *PG&E* meters. This claim is denied.

Continued leaking in both the back stairwell and lower unit storage area and excess humidity in the unit: The tenant has established that there have been ongoing leaks in both the front storage area and the back staircase through the entire time he has been living in the downstairs portion of the unit. This was a claim in his prior case in T14-0256. Additionally, the tenant has established that there has been an ongoing issue of excess humidity in his unit. This appears to be due in part to the leaks, but also due to the trapping of fluid in the crawl space under the tenant's unit. It is clear that he complained about the humidity again to Mr. Rowan back in 2016, because Mr. Rowan paid for the dehumidifier he purchased.

At the Inspection by this Hearing Officer there was paint peeling in a variety of places, particularly around the door frame of the storage area. There was additional water damage in the stairwell area that connects the bottom portion of the unit to the top portion of the unit. There was also signs of mold or mildew in the bedroom closet, under the bedroom rug and on the bedroom wall. There were also signs of peeling paint and moldy areas on the exterior of the building, on the other side of the wall from the tenant's bedroom. This exposed stucco is an obvious source of wicking moisture that could cause the mold growth in the tenant's unit.

The fact that Mr. Hodgson has not seen water entry on his trips to the unit does not change this conclusion. Hodgson did acknowledge that on one of his trips to the unit, on a particularly rainy period, he saw signs of prior water entry. Further, there are multiple photographs of water entry, and multiple signs in the unit of past water entry. Additionally, there are multiple signs of unusually high humidity levels in the unit. While the City of Oakland does not have a standard for levels of humidity, the Building Maintenance Code states that a room the "dampness of habitable rooms" is inadequate sanitation. O.M.C. § 15.08.340. Additionally, there is significant evidence of signs of mold and mildew in the unit, which is a sign of water entry and excessive humidity.

The tenant is entitled to restitution of overpaid rent of 8% of the rent, from November 3, 2014 through January 9, 2017, for the leaks, water entry, humidity and mold in the unit.

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

The chart below lists the tenant's claims of decreased services. The losses he experienced, for which he is entitled to restitution, are set off against the underpayments of rent that were not otherwise explained.

Mr. Hall underpaid rent on several occasions since November of 2014, when these reductions begin. In September of 2015, he deducted \$6.00 from the rent because he purchased a part for the toilet. This is not an "underpayment" because the reduction was with the agreement of the owner and is not related to any of Mr. Hall's claims. He also deducted \$76.08 in February of 2016. Mr. Hall did not remember why he deducted this amount of rent. Therefore, this amount is listed as an underpayment on the chart below.

In April of 2016, Mr. Hall deducted rent in the amount of \$586.89 and only paid rent of \$13.11. That deduction was for payment of the dehumidifier and for the costs associated with the extra *PG&E* payments being made for the use of the dehumidifier and space heaters. There is no evidence that Mr. Rowan objected to this rent decrease; and these particular losses are not a part of the tenant's claims. Therefore, this rent payment is not considered an "underpayment" here. However, there is no evidence of Mr. Hall paying any rent in May-July of 2016. These are underpayments. Therefore, the total underpayments related to Mr. Hall, that are entered on the below chart, equals \$1,876.08 (\$76.08 for February 2016 and \$600 each for May-July of 2016.).

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VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid	
Heat	3-Nov-14	9-Jan-17	\$1,200	10%	\$120.00	26.25	\$ 3,150.00	
Electricity	22-Apr-16	9-Jan-17	\$1,200	5%	\$ 60.00	10.00	\$ 600.00	
Security Doorknob	13-Sep-16	17-Nov-16	\$1,200	2%	\$ 24.00	2.25	\$ 54.00	
Leaks, moisture and mold	3-Nov-14	9-Jan-17	\$1,200	8%	\$ 96.00	27.00	\$ 2,592.00	
\$ -							-	
TOTAL LOST SERVICES								\$ 6,396.00

UNDERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-16	31-Jul-16	various	various			\$(1,876.08)
\$ -						-
TOTAL UNDERPAID RENT						\$(1,876.08)

RESTITUTION

MONTHLY RENT	\$1,200
TOTAL TO BE REPAYED TO TENANT	\$ 4,519.92
TOTAL AS PERCENT OF MONTHLY RENT	377%
AMORTIZED OVER 12 MO. BY REG. IS	\$ 376.66

Mr. Hall is entitled to restitution for overpaid rent in the amount of \$4,519.92.

Overpayments of this size are normally adjusted over a period of 12 months⁴⁴. For now this \$376.66 a month is subtracted from the tenant's current legal rent of \$1,200 for a total rent of \$823.34 a month. From May of 2017 through April of 2018, the tenant's rent is \$823.34 a month. It is up to the tenant to work out the rent payments he makes with his co-tenant.

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

ORDER

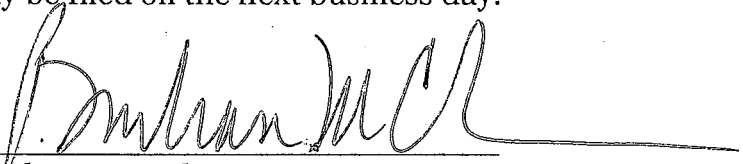
- Petition T16-0622 is granted in part.

⁴⁴ Regulations, Section 8.22.110(F)

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2. The tenant's base rent is \$1,200 a month.
3. The tenant is owed restitution for decreased services in the amount of \$4,519.92.
4. From May 2017 through April of 2018 the tenant's rent is \$823.34 a month.
5. The tenant's rent reverts to the base rent in May of 2018.
6. Nothing in this Order prevents the Owner from increasing the rent providing any rent increase notice is served pursuant to the laws of the Rent Adjustment Ordinance and Civil Code § 827.
7. **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: April 12, 2017


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

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PROOF OF SERVICE

Case Number T16-0622

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

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

Tenant

Jaimeson Hall
1015 East 22nd St
Oakland, CA 94606

Owner

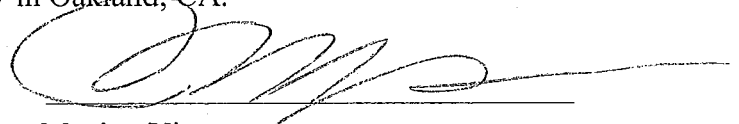
Jenny Leung
4123 Broadway #108
Oakland, CA 94611

Owner Representative

Christopher Hodgson
4123 Broadway #108
Oakland, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 13, 2017 in Oakland, CA.


Maxine Visaya

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RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

For filing stamp
2016 DEC 14 PM 1:11

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

CASE NUMBER T 16 - 0622

OWNER RESPONSE

Please print legibly.

Your Name Jenny Leung	Complete Address (with zip code) 4123 Broadway #108 Oakland CA 94611	Phone: 510-306-2383 Email: 1009e22nd@gmail.com
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Jaimeson Hall William Faas	Complete Address (with zip code) 1015 E 22nd St. Oakland, CA 94606	

Have you paid for your Oakland Business License? Yes No Number 28062871
(Provide proof of payment.)

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

There are 4 residential units in the subject building. I acquired the building on 08 / 05 / 2016

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

I. RENTAL HISTORY

The tenant moved into the rental unit on Jaimeson Hall: 4/1/11 -- William Faas 7/1/12

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

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM** ("RAP Notice") to all of the petitioning tenants?
Yes No I don't know If yes, on what date was the Notice first given? 8/31/16

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

12/10/16

Date

VII. MEDIATION AVAILABLE

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

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

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner Response have been filed with the Rent Adjustment Program. The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. (Rent Board Regulation 8.22.100.A.)

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

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



Owner's Signature

12/10/16

Date

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File: 0622 RC/BC

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

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

For date stamp:

2016 NOV - 1 AM 11:25

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 <i>Jaimeson Hall</i>	Rental Address (with zip code) <i>1015 E 22nd St. 94606</i>	Telephone <i>510 390 1328</i>
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>Jenny Leung</i>	Mailing Address (with zip code) <i>4123 Broadway #108 Oakland 94611</i>	Telephone <i>510 3062383</i>

Number of units on the property: 4

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

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

<input 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: 4/31/11 Initial Rent: \$ 1200.⁰⁰ /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: 8/31/16. If never provided, enter "Never."

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
		\$	\$	<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: T14-0256

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

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IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature



Date

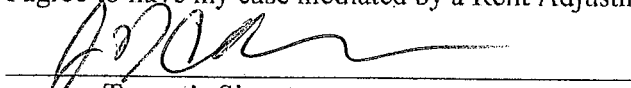
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

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

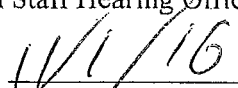
Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation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

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

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



Tenant's Signature



Date

VI. IMPORTANT INFORMATION:

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

File Review

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


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

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

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I, Jaimeson Hall, believe that the issues causing a reduction in services to my unit are:

1. Lack of adequate heat due to substandard gas heater in unit (less than 72 degrees year round).
2. Excessive humidity/mold due to lack of vapor barrier under building and improperly designed drainage. (Greater than 40% year round.) This affects ability to heat unit properly as moist air requires MUCH greater "heat" than dry air to bring up to the appropriate temperature. With unaddressed leaking in unit in both the front storage area and the back stairwells connecting the upstairs and downstairs portions of the unit this is a constant problem.
3. Lack of amperage with respect to Mr. Rowan's the previous landlord's temporary solutions to #1 and #2. Also, the previous owner, Mr. Rowan provided two electric heaters and a large dehumidifier and agreed to stipend the cost and/or run them off of house power instead of the unit's power. *Current landlord has served a cease and desist on the use of house power and not agreed to stipend the cost.* I rented unit with cost of gas heat factored in not electric. I also did not factor in cost of dehumidifier as a necessary expense for habitability.
4. Lack of consistent hot water for the shower due to broken mixing valve.
5. Lack of security doorknob and latch on rear security gate and lack of lock on side gate recommended by OPD.
6. Continued leaking in both the back stairwell and lower unit front storage area contributing to both the humidity and mold issues as outlined in 2 above.


Jaimeson G. Hall

Dated: October 31, 2016

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