

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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T12-0181, Brooks v. Barsotti
PROPERTY ADDRESS: 6052 Chabot Rd., #5, Oakland, CA
DATE OF HEARING: September 19, 2012
DATE OF DECISION: October 17, 2012
APPEARANCES: Robin Brooks, Tenant
Mario Barsotti, Owner
Jessica Barsotti, Owner Witness
Jonathan Clowes, Agent for Owner
Janet Scaglione, Agent for Owner

SUMMARY OF DECISION

The tenant petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition contesting a proposed rent increase and alleging that the housing services have decreased. The owner filed response to the petition alleging that no services have decreased.

THE ISSUES

(1) Have the tenant's housing services been decreased, and if so, by what amount?

EVIDENCE

Rent History: The tenant moved into the subject property on October 15, 2009, at the initial rent of \$1,295 per month. There are 11 residential units in the subject building. It is undisputed that the tenant received the RAP notice when she first moved in on October 15, 2009. On July 1, 2011, the tenant's monthly rent increased from \$1,295 to

\$1,320.90, by 2%, the allowable CPI adjustment for that fiscal year. On May 18, 2012, the owner gave notice to the tenant increasing the monthly rent from \$1320.90 to \$1,360.53, effective July 1, 2012. The latest increase represents 3% which is the allowable CPI adjustment for this fiscal year.

Decreased Services: The tenant filed her petition on June 18, 2012, alleging decreased services. She attached 12-page single spaced documents describing her rental history, moving to the subject unit and dealing with the owner and his property managers. On June 25, 2012, this office sent a deficiency letter to the tenant requesting she must provide description of decreased services alleged in her petition. On July 2, 2012, the tenant submitted 1-page document listing the following items: (1) denied full access to the backyard; (2) lack of maintenance of the premises; (3) degrading asphalt in the driveway, and (4) peeling paint on the carport. The tenant's testimony during the hearing focused primarily on attacking the owner for lack of maintenance of the premises.

The landlord testified that the property management company regularly maintains common grounds, including monthly yard maintenance and gardening, and responds to tenants' requests for repairs. The owner submitted invoices and proof of payments made to various contractors for repairs, yard maintenance, landscaping, including re-paving the asphalt driveway and other work.

It should be noted that prior to the hearing, both parties submitted additional documents, about 1 inch thick by each party. Prior to the hearing, the parties voluntarily participated in the mediation. The mediation was not successful. To accommodate the parties, the Hearing Officer began the hearing immediately after the mediation. The hearing officer briefly reviewed the documents prior to the hearing. All documents were thoroughly reviewed again prior to the making of this Decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Decreased Housing Services: Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment.¹ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. "Living with lack of painting, water leaks and defective Venetian blinds may be unpleasant, aesthetically unsatisfying, but does not come with the category of habitability. Such things will not be considered in diminution of the rent."²

The listed conditions do not seriously affect the habitability of the unit and do not represent any hazardous conditions that would warrant decrease in rent. While the living situation may not be ideal at times, under the Rent Adjustment Ordinance the rent

¹ O.M.C. Section 8.22.070(F)

² *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637

can only be decreased for serious Code violations. No violations occurred. Therefore, the tenant is not entitled to compensation for any decreased services.

ORDER

1. Petition T12-0133 is denied.
2. The monthly rent is \$1,360.53 as of July 1, 2012.
3. The claim for decreased housing services is denied.
4. **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: October 17, 2012



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T12-0181

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

Robin Brooks
6052 Chabot Road, #5
Oakland, CA 94618

K&S Company
Mario Barsotti
1035 San Pablo Avenue, Ste. 12
Albany, CA 94706

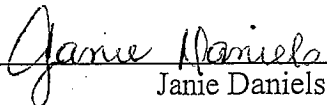
K&S Company
David Barsotti
1035 San Pablo Avenue, Ste. 12
Albany, CA 94706

Mario Barsotti
David Barsotti
6052 Chabot Road, #11
Oakland, CA 94618

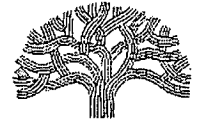
K&S Compnay
Jonathan Clowes
1035 San Pablo Avenue, Ste. 12
Albany, CA 94706

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 18, 2012**, in Oakland, California.



Jamie Daniels
Oakland Rent Adjustment Program



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L12-0055, Lin v. Tenant
PROPERTY ADDRESS: 1830 Lakeshore Ave. #111, Oakland, CA
DATE OF HEARING: October 17, 2012
DATE OF DECISION: October 17, 2012
APPEARANCES: Jillian Loh, Agent for Owner
No appearance by Tenant

SUMMARY OF DECISION

The owner's petition is granted. The subject property is exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

The owner contends that the subject unit is exempt from the Rent Adjustment Program (RAP) as a condominium.

THE ISSUES

1. Is the subject unit exempt from the Rent Adjustment Program?

EVIDENCE

Ms. Jillian Loh, the agent for the owner testified that she manages the unit for the owner, that the owner lived in the unit until recently and that the owner is now seeking to rent the unit. During the time period that the unit was owned by the current owner the subject property has never been rented. The property was owner occupied and had no prior tenant. There are no outstanding building, safety, fire or health code violations. The subject property is a condominium which may be separately sold. The owner

purchased the unit, which is one single condominium in the building, in 2004. The Grand Deed recorded on 6/11/2004 showing the property address and the owner's name was admitted as an exhibit at the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

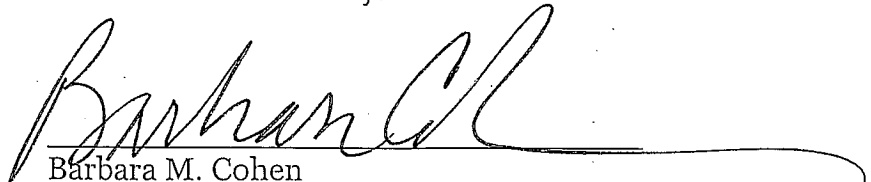
The Rent Ordinance exempts single family residences and condominiums pursuant to the Costa-Hawkins Act, California Civil Code §1954.52.¹ The subject unit is a condominium. The owner has satisfied the requirements for an exemption.

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

ORDER

1. The owner's petition L12-0055 is granted.
2. The subject unit is exempt from the Rent Ordinance.
3. A certificate of exemption shall be issued upon expiration of the appeal period.
4. **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: October 17, 2012


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

¹ O.M.C. §8.22.030(A)(7)

PROOF OF SERVICE
Case Number L12-0055

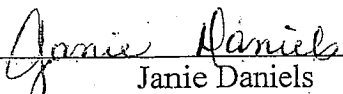
I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in 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:

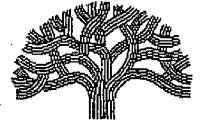
Wellington Property Company	Min Lin	Resident
6400 Moraga Avenue, #8	c/o Wellington Property Company	1830 Lakeshore Avenue, #111
Oakland, CA 94611	6400 Moraga Avenue, #8	Oakland, CA 94606
	Oakland, CA 94611	

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 **October 18, 2012**, in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Community and Housing Development Department
Rent Adjustment Program

TEL(510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: T12-0172, Pecot v. Williams

PROPERTY ADDRESS: 1420 E. 21st Street
Oakland, CA

HEARING DATE: September 6, 2012

DECISION DATE: October 12, 2012

APPEARANCES: Latriece Williams Tenant
No Appearance by Owner

SUMMARY OF DECISION

The tenant's petition is granted in part.

INTRODUCTION

Tenant Latriece Williams filed a petition on June 7, 2012, alleging various decreased housing services. The owner did not file a response to the tenant's petition, and did not appear at the Hearing. The Notice of Hearing was sent to the owner on June 12, 2012, with a proof of service, and was not returned to the Rent Adjustment Program. Therefore, the Hearing was properly noticed and proceeded without the owner.

ISSUE PRESENTED

- A. IS THE SUBJECT UNIT EXEMPT FROM THE RENT ADJUSTMENT PROGRAM?
- B. IF NOT, WERE THE TENANT'S HOUSING SERVICES DECREASED AND IF SO, BY WHAT AMOUNT?

EVIDENCE

Single Family Residence Exemption

The tenant testified that she moved into the subject unit, which is a single family residence, on March 1, 2011, at a monthly rent of \$1,500.00.

Decreased Housing Services

Garage Door Missing-The tenant testified that there was no garage door on the garage when she moved into the subject premises and her hedge trimmer, fishing poles and chest cooler have been taken from the garage. She submitted a police report regarding this loss dated May 29, 2012.¹

Fence is not Secure-The tenant testified that the fence is made of old wood, and is broken. The fence is about three feet wide, and four feet high. The fence was in this condition when she moved into the subject premises. She submitted a photograph of the fence.²

Kitchen Sink Leak-The tenant testified that she has had a leak under the kitchen since November 2011. She notified the owner in November 2011 and he has not repaired the leak. She testified that the floor is getting mildewed. She submitted a photograph of the leak.³

Front Railing is not Secure-The tenant testified that the front stair railing is not anchored to the steps, and this occurred in May 2011. She notified the owner but he has not made any repairs.⁴

Hot Water Heater Temperature Control Issue-The tenant testified that the water gets cold after one shower and she has to wait an hour before she has any hot water. This occurred since November 2011. The owner made a repair but it is still a problem.

Bath Tub Plumbing Issue-The tenant testified that the bath tub seal started to leak in November 2011 but she is able to take a bath.

Gas Leak-The tenant testified that P.G.E. inspected her unit on July 13, 2011, for a gas leak. She submitted a service report which stated that the range and oven were okay, and a referral was made to re-route the water heater vent and to install a power burner door, and to change the furnace filter. There was no finding of a gas leak.

¹ Police Report, Ex. no. 11; Photo, Ex. no.1

² Photo, Ex. no. 2

³ Photo, Ex. no. 3

⁴ Photo of front stair railing, Ex. nos.5-7

The Hearing Officer conducted a site inspection on September 6, 2012, and noted the following:

- There was bucket full of water underneath the kitchen sink and a strong smell of mildew;
- The front stair railing is not anchored to the steps and the Hearing Officer was able to detach the railing from the steps.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

There is an issue as to whether or not the subject property is a single family residence and exempt from the Rent Ordinance pursuant to the Costa-Hawkins Act.

The Rent Ordinance exempts single family residences pursuant to the Costa-Hawkins Act, California Civil Code §1954.52⁵. The subject unit is a single family residence. However, the owner did not file a response or appear at the Hearing. Therefore, it is not possible to determine whether or not the subject property is exempt. The owner bears the burden of proof on this issue and has provided no evidence. Therefore, the subject property is a "covered unit" under the Rent Ordinance, and the tenant's unit is subject to the Rent Ordinance.

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment. However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. "Living with lack of painting and defective Venetian blinds may be unpleasant, aesthetically unsatisfying, but does not come with the category of habitability. Such things will not be considered in diminution of the rent."⁶

The tenant has the burden of proving decreased housing services by a preponderance of the evidence. The owner did not provide the tenants with the RAP notice. Therefore, the time frame for consideration of the tenant's decreased housing service complaints is not time barred.

The complaints regarding the garage door and fence are dismissed because they do not constitute a serious habitability issue. The tenant was aware that the garage had no door when she moved into the subject unit and she put her items

⁵ O.M.C. §8.22.030(A)(7)

⁶ Green v. Superior Court, (1974) 10 Cal. 3d 616 at 637

there at her own risk. Additionally, the Rent Adjustment Program has no jurisdiction to award damages for loss of personal property. The fence was broken when the tenant moved into the subject premises.

The complaint regarding the gas leak is also dismissed because P.G.E. did not find a gas leak.

Kitchen Sink Leak-The leak under the kitchen sink constitutes a sanitation issue as there was a strong odor of mildew present.

Front Stair Railing-Appendix A, Rent Adjustment Board Regulations, Section 2.9 IV A, Structural-Priority 1 includes a loose, weakly supported handrail. The front stair railing loose and is not anchored to the stairway. The condition of the front stair railing constitutes a Priority 1 or 2 condition and constitutes a serious condition affecting habitability.

Hot Water- A warranty of habitability is implied by law in residential leases. Under the implied warranty, a residential owner covenants that premises he leases for living quarters will be maintained in a habitable state for the duration of the lease. This includes hot water. Lack of hot water in a dwelling unit constitutes an untenable dwelling and violates an owner's duty to render and maintain a residential building "fit" for residential occupation (CC §1941). It is unreasonable to run out of hot water after one shower.

The value of the decreased housing services is stated in the following table:

Front railing	5/1/2011	10/9/2012	\$1,500	3%	\$ 45.00	11	\$495
Hot Water Temperature	11/1/2011	10/9/2012	\$1,500	2%	\$ 30.00	11	\$330
TOTAL LOST SERVICES							\$1,320.00

RESTITUTION

	MONTHLY RENT	\$1,500.00
TOTAL TO BE REPAID TO TENANT		\$ 1,320.00
TOTAL AS PERCENT OF MONTHLY RENT	88%	
AMORTIZED OVER	12 MO. BY REG. IS	\$110.00

ORDER

1. Petition T12-0172 is granted in part.
2. The tenants' unit is not exempt from the Rent Adjustment Program as a single family residence pursuant to Costa-Hawkins (Civil Code Section 1954.53 et seq.).
3. The rent for the subject unit is \$1,500.00 monthly before

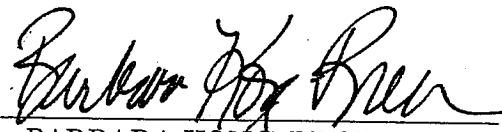
deductions for decreased housing services.

4. The total rent overpayment by petitioner Williams for past decreased housing services is \$1,320.00. The tenant's rent is temporarily reduced by \$110.00, commencing with the November 2012 rent and ending with the October 2013 rent. There is a further reduction in the tenant's monthly rent for current decreased housing services in the amount \$75.00. The tenant's net monthly rent is \$1,315.00. When the owner repairs the kitchen sink leak, the hot water temperature, and the front stair railing, he may increase the monthly rent by \$110.00 after giving notice in accordance with California Civil Code Section 827.

Base Rent	\$ 1,5 00.00 per month
Less Reduction for past DHS	\$ 110.00 per month
	<hr/>
	\$ 1,390.00 per month
Less Reduction for current DHS	\$ 75.00 per month
	<hr/>
Current Rent	\$ 1,315.00 per month

5. Right to Appeal: This Decision is the Final Decision of the Rent Adjustment Program Staff. Either party may appeal this Decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of this decision. The date of service is shown on the attached Proof of Service. If the last date to file is a weekend or holiday, the appeal may be filed on the next business day.

Dated: October 12, 2012


BARBARA KONG-BROWN, ESQ.
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T12-0172

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.

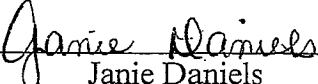
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Latrice Williams
1420 E. 21st Street
Oakland, CA 94606

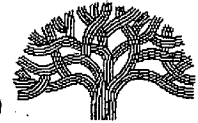
Herman Pecot
3686 Redwood Road
Oakland, CA 94619

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 17, 2012**, in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program



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

Community and Housing Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L12-0054, Aldrich et al. v. tenant
PROPERTY ADDRESS: 389 Belmont Street, Oakland, CA
DATE OF HEARING: October 11, 2012
DATE OF DECISION: October 11, 2012
APPEARANCES: Andrew Aldrich Owner

SUMMARY OF DECISION

The owner's petition is granted. The subject property is exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

The owner contends that the subject unit is exempt from the Rent Adjustment Program (RAP) as a condominium. The unit is currently unoccupied.

THE ISSUES

- Is the subject unit exempt from the Rent Adjustment Program?

EVIDENCE

The owner testified that he is the owner of the subject property, and that there was no prior tenant. He resided in the unit for twelve years prior to purchasing it in 2000. There were no prior outstanding building, safety, fire or health code violations and the subject property is a condominium which may be separately sold. The owner submitted

a Trust Transfer Deed, dated March 26, 2012, which confirms his ownership of the subject property.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts condominiums pursuant to the Costa-Hawkins Act, California Civil Code §1954.52². The subject unit is a condominium. The owner has satisfied the requirements for exemption.

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

ORDER

1. The owner's petition is granted. The subject unit is exempt from the Rent Ordinance.
2. A certificate of exemption shall be issued upon expiration of the appeal period.

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: October 11, 2012


BARBARA KONG-BROWN, ESQ.
Hearing Officer
Rent Adjustment Program

¹ Trust Transfer Deed, Ex. pp. 1-4

² O.M.C. §8.22.030(A)(7)

PROOF OF SERVICE
Case Number L12-0054

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.

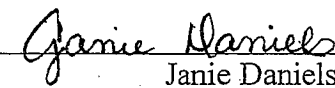
Today, I served the attached copy **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Resident
389 Belmont Street, Unit 105
Oakland, CA 94610

Andrew Aldrich
John Kirkley, TTEES
4616 California Street
San Francisco, CA 9118

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 17, 2012** in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program

PROOF OF SERVICE
Case Number T12-0171

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 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:

David Vaughn
377 Santa Clara Avenue
Rental Office
Oakland, CA 94610

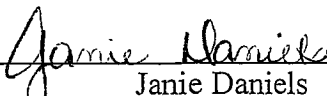
Linda Vaughn
377 Santa Clara Avenue
Rental Office
Oakland, CA 94610

Carlos Hernandez
Melissa Bais
377 Santa Clara Avenue
Rental Office
Oakland, CA 94610

Annett Gaynor
271 Santa Clara Avenue, #6
Oakland, CA 94610

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 16, 2012** in Oakland, California.



Jamie Daniels
Oakland Rent Adjustment Program



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

CITY OF OAKLAND

Community and Economic Development Agency
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T12-0171, Gaynor v. Vaughn
PROPERTY ADDRESS: 271 Santa Clara Ave., #6, Oakland, CA
DATE OF HEARING: October 3, 2012
DATE OF DECISION: October 12, 2012
APPEARANCES: Annette Gaynor (Tenant)
Carlos Hernandez (Agent for Owner)

SUMMARY OF DECISION

The tenant petition is granted in part.

INTRODUCTION

The tenant filed a petition on June 7, 2012 (supplemented with additional documentation on June 29th, 2012) which alleges that a rent increase from \$887 per month to \$906.25 (\$19.25) effective July 1, 2012 exceeds the CPI Rent Adjustment and is unjustified; that she was not provided with the required form notice of the existence of the Rent Adjustment Program (RAP Notice) together with the contested rent increase; that the owner did not give her a summary of the justification for the rent increase despite her written request; that her housing services have been decreased and that this is the second increase she has received in a 12 month period.

The owner filed a Response to the petition, alleging that the tenant was given the RAP Notice first in June 2005 and again concurrent with the rent increase. The owner also denied that there has been any decrease in housing services.

This is the tenant's second petition regarding the subject property. On April 18, 2012 the tenant filed a petition alleging that a rent increase on July 1, 2011 was unjustified and

that her housing services had been decreased¹. That petition was denied as untimely with respect to the rent increase. In that case the issues alleged as a decrease in housing services related to wall and ceiling damage, an inoperable closet door, and a problematic pipe in the carport. The Hearing Officer found that there was not a decrease in housing services with respect to the matters alleged in that petition²

At the instant hearing the tenant acknowledged that she had indeed been given the RAP Notice concurrent with the contested rent increase, hence that is not an issue in this case. Additionally, the subject rent increase of \$19.25 was an effective increase of 2.17% and hence is not greater than the allowable CPI increase for this year, which is 3%. Since the increase is below 3%, the landlord is not required to provide a summary for justification of the rent increase.

THE ISSUES

- (1) Has the tenant been given more than one rent increase in a 12 month period?
- (2) Is the tenant's Petition timely?
- (3) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the landlord?

EVIDENCE

RAP Notice: In her sworn petition, and at the Hearing, the tenant stated that she had received the initial RAP Notice on May 24, 2010 and that she received a concurrent RAP notice with the rent increase notice dated May 29, 2012.

Number of Rent Increases: The tenant's last rent increase went into effect on July 1, 2011. The rent increase in dispute here was noticed to go into effect on July 1, 2012. While the tenant initially moved into the property in October of 1993, her rents have not been raised every year.

Decreased Housing Services: In response to a question on the petition form asking for a description of claimed problems in her rental unit, the tenant attached a document alleging 5 problems with her unit; a non-locking exterior door; an incomplete paint job; an improperly working refrigerator; rusting drip pans and broken coils on her stove; and non-working lights above the stove. Therefore, the tenant claims of decreased housing services are limited to the entries in these documents.

Non-locking exterior door: The tenant testified that the lock on the sliding glass door to her patio has been broken since sometime in 2008. She credibly testified that she informed the prior managers about this door on multiple occasions and nothing was done to fix the problem until sometime in September of 2012. Mr. Hernandez, the landlord's agent, testified that he did not understand that her complaint was about her

¹ See Tenant Petition T12-0117.

² Hearing Decision T12-0117.

patio door; rather he thought it was about the non-locking screen door, hence he did not repair it until recently when he learned that it was the patio door at issue. The landlord has had multiple managers for this property over the years that the tenant has lived there.

The tenant's testimony that she has been living with the fear that her apartment would be easy to break into over the last three years was compelling and understandable.

Incomplete Paint Job: The tenant testified that areas of the ceiling in her unit are cracked and the paint is peeling in both the bedrooms and the living room. She also testified that her ceilings look like a discotheque. Mr. Hernandez testified that since the last hearing regarding the subject property he has tried to inspect the tenant's apartment to examine the paint job but the tenant has been unwilling to let him or Melissa, the direct manager of the property, in to view the apartment. The tenant testified that she did not want Mr. Hernandez or Melissa to examine the property and that she only wanted George Tsang, the maintenance person, to come into her apartment.

Improperly Working Refrigerator: The tenant testified at the hearing that since 2004 her refrigerator was not working correctly. She testified that it regularly froze her food and that she had been complaining to the property manager about it on and off over the years. She also testified that George Tsang inspected the refrigerator, denied that she needed a new refrigerator and told that landlord not to have it replaced. The property manager had the refrigerator replaced in September of 2012, after the petition in this matter was filed and the tenant now has a working refrigerator. While there was a dispute between the parties about the tenant's willingness to provide access to the apartment to have the refrigerator replaced, that dispute is irrelevant to the issues here because any delay in the replacement, if any, was only at most a matter of one or two days.

Rusting Drip Pans and Broken Coils on the Stove: The tenant testified that since sometime in 2006 or 2007 her stove had rotting drip pans and broken coils and that she complained to George Tsang about the problems with the stove and that her roommate, Marcus, also complained to George about the stove. The tenant testified that George told both her and Marcus that they were to replace the drip pans and coils themselves. She said that the coils were so bad that she couldn't cook on one of them at all. However, at no time was the stove completely unusable. The coils and the drip pans were replaced on August 15, 2012.

Non-working Lights above the Stove: The tenant testified that since 2007 the light in the range hood has not been working. She testified that she complained to George about it and nothing was done. Mr. Hernandez testified that sometime in July of 2012, prior to the first hearing on July 18, 2012, he and the tenant communicated about her list of problems and this was the first time he learned about this issue. However, Mr. Hernandez also testified that George the handyman had tried to replace the light in the range hood sometime in the past and replacing the light did not solve the problem.

Therefore, a decision was made to replace the entire range hood. In August of 2012 the entire range hood was replaced and there is now a working light above the stove.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice: A tenant petition must be filed within 60 days of the date of service of a rent increase notice or notice changing the terms of tenancy or the date the tenant first receives the RAP Notice, whichever is later.³ The tenant was served with a rent increase notice on May 29, 2012, and she filed her petition contesting her rent increase on June 7, 2012. Her petition is timely filed with respect to the new rent increase notice. However, since the rent increase is for less than 3%, the tenant cannot object to the increase absent a decrease in housing services.

Annual Rent Increases: The Oakland Municipal Code limits rent increases to once a year⁴. A new rent increase can be made one year after a prior increase went into effect. The anniversary date of a tenant's move-in date is not relevant to when rent increases can be made provided that 12 months have passed since the prior increase went into effect. That Ms. Gaynor's move-in date was October of 1993 does not require that rent increases can only be made in October. Since the July 1, 2011 rent increase was valid, the rent can be increased again effective July 1, 2012.

Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁵ and may be corrected by a rent adjustment.⁶ However, as with a petition alleging an improper rent increase, a complaint of decreased housing services must be made within a certain period of time. Since a decreased service is, in effect, a rent increase, the same filing limit applies: within 60 days after receipt of the RAP Notice or the existence of a decreased housing service, whichever is later. Because the nature of the tenant's complaints is ongoing, it would be unfair to deny her the right to raise these matters in their entirety. Instead, the tenant is limited to relief on her claim for decreased housing services to 60 days before she received her most recent RAP notice. Therefore, in accordance with the Regulations and Board decision⁷, the tenant can only be granted relief on her claims for decreased housing services beginning on March 31, 2012.

In order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a serious violation of the housing or building code which seriously affects the habitability of the tenant's unit.

The non-locking exterior door to the tenant's patio is a violation of the City of Oakland's Building Code⁸ and hence was a decrease in housing services during the time period

³ O.M.C. Section 8.22.090 (A)(2); Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al

⁴ O.M.C. Section 8.22.070 (A)

⁵ O.M.C. Section 8.22.070(F)

⁶ O.M.C. Section 8.22.110(E)

⁷ Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

⁸ O.M.C. Section 15.08.240.

from March 31, 2012 through the time it was replaced in September of 2012, which is a period of 5 months.

The incomplete paint job and the peeling paint were raised in the prior case heard in July of 2012. There was no testimony that the problem with the paint has gotten any worse since that case was heard. A tenant cannot keep litigating the same matters in consecutive actions⁹; hence the prior judgment of the Hearing Officer in that case, as to the paint, will not be reconsidered here. Additionally, the testimony was clear that the tenant has been denying access to her apartment to Mr. Hernandez and limiting who can inspect the property to the person of her choice. A tenant cannot prevent a manager from inspecting the property providing she is provided proper notice of the inspection. It is especially important for a tenant who is requesting that work be performed on her apartment to allow the manager to inspect the premises. Mr. Hernandez cannot be expected to know whether or not a paint job is necessary without a visual inspection. Ms. Gaynor's complaints about the paint job cannot be heard here until she gives Mr. Hernandez appropriate access to inspect her apartment. Therefore, with respect to the peeling paint and poor paint job, the tenant's claim of decreased housing services is denied.

The broken refrigerator and partially broken stove do amount to Code violations. "Each dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with....a cooking appliance (and) refrigeration appliance..."¹⁰. Since the refrigerator was repaired in September of 2012, the tenant is entitled to a rent reduction for five months as well. However, the stove was repaired in August of 2012, hence for the stove the reduction is only for 4 months.

The broken light above the stove does not amount to a problem serious enough to have affected the habitability of the unit and hence does not amount to a decrease in housing services. Therefore, with respect to the light above the stove, the tenant's claim of decreased housing services is denied.

The preferred method of evaluating decreased housing services is consideration of all the services provided by an owner and then determining the percentage by which the total services provided by the owner have decreased because of the lost housing services. The tenant's total package of housing services includes locking doors and working appliances. Since providing for the tenant's security is a serious responsibility, and because doors that lock keep tenants safe, the absence of a locking door reduced the package of housing services by 5%. Additionally, the use of a stove and refrigerator are essential to the use of an apartment. The regular freezing of the food purchased by the tenant cost her inconvenience and out of pocket expenses. The loss of use of the refrigerator reduced the package of housing services by an additional 2% but since the stove was not entirely broken it reduced the package of housing services by an additional 0.5%. The total value of decreased housing services equals 7.5%.

⁹ Amin v. Khazindar, 112 Cal. App. 4th 582, 589-590 (2003)

¹⁰ O.M.C.Section 15.08.230 (C).

Rent Payments: The tenant testified in this case and at the prior hearing that she has been paying rent as follows:

April 2012: \$880
 May 2012: \$880
 June 2012: \$880
 July 2012: \$880
 August 2012: \$917.33 (pursuant to the Order in case # T12-0117)
 September 2012: \$917.33
 October 2012: \$917.33

Month	Base rent	% decrease	Rent Deduction	Amount should have paid	Amount Paid	Amount Overpaid
April 2012	\$887	7.5%	\$66.53	\$820.47	\$880	\$59.53
May 2012	\$887	7.5%	\$66.53	\$820.47	\$880	\$59.53
June 2012	\$887	7.5%	\$66.53	\$820.47	\$880	\$59.53
July 2012	\$906.25	7.5%	\$67.97	\$838.28	\$880	\$41.72
August 2012	\$906.25	7.0%	\$63.44	\$842.81	\$917.33	\$74.52
September 2012	\$906.25	0%	\$0	\$906.25	\$917.33	\$11.08
October 2012	\$906.25	0%	\$0	\$906.25	\$917.33	\$11.08
Total						\$316.99

Therefore the tenant has overpaid rent in the amount of \$316.99.

ORDER

1. Petition T12-0117 is granted in part and denied in part.
2. The base rent is \$906.25 effective July 1, 2012 and additional rent increases can be made 12 months after that date.
3. The tenant has overpaid rent in the amount of \$316.99. The overpayment is ordered as a rent decrease over the next 3 months.¹¹ The rent is temporarily decreased by \$105.66 per month, to \$800.59 per month, beginning with the rent payment in November 2012 and ending with the rent payment in January 2013.
4. **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

¹¹ Regulations, Section 8.22.110(F)

PROOF OF SERVICE
Case Number T12-0171

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 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:

David Vaughn
377 Santa Clara Avenue
Rental Office
Oakland, CA 94610

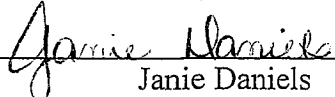
Linda Vaughn
377 Santa Clara Avenue
Rental Office
Oakland, CA 94610

Carlos Hernandez
Melissa Bais
377 Santa Clara Avenue
Rental Office
Oakland, CA 94610

Annett Gaynor
271 Santa Clara Avenue, #6
Oakland, CA 94610

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 16, 2012** in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program

PROOF OF SERVICE
Case Number L12-0044


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 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	Betsy Block
742 Wesley Way, #2C	3900 Greenwood Avenue
Oakland, CA 94610	Oakland, CA 94602

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 16, 2012** in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L12-0044, Block v. Tenant
PROPERTY ADDRESS: 742 Wesley Way #2C, Oakland, CA
DATE OF HEARING: October 15, 2012
DATE OF DECISION: October 15, 2012
APPEARANCES: Betsy Block, Owner
No appearance by Tenant

SUMMARY OF DECISION

The owner's petition is granted. The subject property is exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

The owner contends that the subject unit is exempt from the Rent Adjustment Program (RAP) as a condominium.

THE ISSUES

1. Is the subject unit exempt from the Rent Adjustment Program?

EVIDENCE

The owner testified that the subject property has never been rented prior to filing of this petition. The property was owner occupied and had no prior tenant. There are no outstanding building, safety, fire or health code violations. The subject property is a condominium which may be separately sold. The owner purchased one single condominium in the building. The Deed of Trust recorded on 4/22/2008 with attachments and subsequent Substitution of Trustee and Deed of Reconveyance

showing the property address and the owner's name was submitted with the Landlord Petition and admitted as an exhibit at the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts single family residences and condominiums pursuant to the Costa-Hawkins Act, California Civil Code §1954.52.¹ The subject unit is a condominium. The owner has satisfied the requirements for exemption.

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

ORDER

1. The owner's petition L12-0044 is granted.
2. The subject unit is exempt from the Rent Ordinance.
3. A certificate of exemption shall be issued upon expiration of the appeal period.
4. 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: October 15, 2012



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

¹ O.M.C. §8.22.030(A)(7)



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L12-0063, KREO LLC v. Tenant
PROPERTY ADDRESS: 640 East 15th St., Oakland, CA
DATE OF HEARING: October 1, 2012
DATE OF DECISION: October 18, 2012
APPEARANCES: Barbara Armstrong, Owner Representative
No appearance by Tenant

SUMMARY OF DECISION

The owner's petition is granted. The subject property is exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

The owner filed a petition for a Certificate of Exemption contending that the 9-unit residential property is exempt from the Rent Adjustment Program (RAP) on the ground of substantial rehabilitation. No tenant filed response to owner petition and no tenant appeared at the hearing.

EVIDENCE

Square Footage of the Building

The owner representative submitted a copy of Schematic Diagram of the property as shown on architectural plans showing the square footage of 8,425.11.¹ The County

¹ Exhibit A. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence.

Assessor Record for the subject property showing the property address and parcel number indicates the property is 8,514 square feet.²

Construction Expenses

The owner representative submitted proof of payments made to general contractor Harbro Inc., and related miscellaneous payments made to ASI Consulting, Brownie Hardware and Lowes, totaling \$2,057,346.51.³

The owner representative also submitted copies of the City of Oakland building permits describing the scope of the construction project for the subject property.⁴ Each permit provides project information, property address, the assessor parcel number for the subject property, and the property owner KREO, LLC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Substantial Rehabilitation

O.M.C. 8.22.030(A)(6) states that dwelling units located in “substantially rehabilitated buildings” are not “covered units” under the Rent Adjustment Ordinance.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.⁵

The most recent table issued by the Building Services agency, attached as Table “A,” refers to a dollar amount per square foot. Therefore, in order to make the necessary mathematical computation, an owner must present sufficient evidence of the square footage of the building, as well as the cost of the rehabilitation project.

Calculation

The attached Table “A” states that the average cost of new construction of apartment buildings of more than 2 units, type V – wood frame construction, is \$127.00 per square foot. This amount multiplied by the square footage of the building is

² Exhibit B.

³ Exhibit C, pages 2 through 23.

⁴ Exhibit D, pages 24 through 31.

⁵ O.M.C. Section 8.22.030(B)(2)

\$1,069,988.97 (8,425.11 x 127). 50% of this amount is \$534,994.49. Therefore, if the owner spent at least \$534,994.49 on the construction project the building is exempt from the Rent Adjustment Ordinance.

The proof of payment in the form of cashed checks payable to the general contractor for the construction cost is sufficient credible evidence that the owner spent \$2,057,346.51 on the rehabilitation project. This amount is well above the necessary sum of \$534,994.49. Therefore, the subject building has been "substantially rehabilitated." The rental units in the building are exempt from the Rent Adjustment Ordinance.

ORDER

1. The petition L12-0063 is granted.
2. The subject unit is exempt from the Rent Ordinance.
3. A certificate of exemption shall be issued upon expiration of the appeal period.
4. **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: October 18, 2012



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

City of Oakland
 Building Services
 Construction Valuation¹
 For Building Permits⁴
 Effective Aug. 1, 2009

Community Economic Development Agency
 Dalziel Administration Building
 250 Frank Ogawa Plaza - 2nd Floor
 Oakland, CA 94612
 510-238-3891

TABLE "A"

Occ.	Description ³	Construction Type	Level Ground ²		Hillside Construction		Marshall & Swift 3Q '09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6"wall)
	Foundation Upgrade (l.f.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12"reinf./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (Dmill/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (Cmill/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

¹ Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Secc. 99 pg 6 July 2009 Marshall & Swift)

² Hillside construction = slope >20%; multiply by additional 1.3 multiplier

³ Remodel Function of New Construction is a 0.52 multiplier.

⁴ Separate structures or occupancies valued separately.

⁵ Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

PROOF OF SERVICE
Case Number L12-0063

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 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:

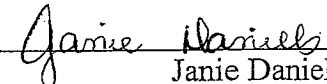
KREO LLC
One Daniel Burnham Court , Ste. 205C
San Francisco, CA 94109

Barbara Armstrong
165 Basinside Way
Alameda, CA 94502

Resident
640 East 15th
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 19, 2012**, in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L12-0053, Orvell v. Tenant
PROPERTY ADDRESS: 5980 Wood Dr., Oakland, CA
DATE OF HEARING: October 10, 2012
DATE OF DECISION: October 18, 2012
APPEARANCES: Jillian Loh, Owner Representative
No appearance by Tenant

SUMMARY OF DECISION

The owner's petition is granted. The subject property is exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

The owner contends that the subject unit is exempt from the Rent Adjustment Program (RAP) as a single family residence.

EVIDENCE

The owner representative testified that the property has never been rented prior to filing of this petition. The property was vacant and had no prior tenant. There are no outstanding building, safety, fire or health code violations. The subject property is a single family residence which may be separately sold. A copy of the detailed public information of the subject property, showing the parcel number 048C-7184-032, description as a single family residence, and the owner as Betty Orvell, was submitted as an Exhibit A at the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts single family residences pursuant to the Costa-Hawkins Act, California Civil Code §1954.52.¹ The subject unit is a single family residence. The owner has satisfied the requirements for exemption.

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

ORDER

1. The owner's petition L12-0053 is granted.
2. The subject unit is exempt from the Rent Ordinance.
3. A certificate of exemption shall be issued upon expiration of the appeal period.
4. 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: October 18, 2012



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

¹ O.M.C. §8.22.030(A)(7)

PROOF OF SERVICE

Case Number L1-0053

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 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:

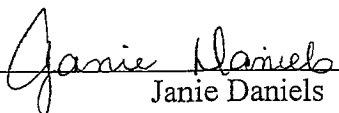
Betty Orvell
c/o Wellington Property
6400 Moraga Avenue, #8
Oakland, CA 94611

Wellington Property Company
Attn: Jillian Loh
6400 Moraga Avenue, #8
Oakland, CA 94611

Resident
5980 Wood Drive
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 **October 19, 2012**, in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L12-0052, Isenberg v. Tenants
PROPERTY ADDRESS: 2337 Adeline St., Oakland, CA
DATE OF HEARING: October 1, 2012
DATE OF DECISION: October 17, 2012
APPEARANCES: Herb Isenberg, Owner
Russell Wagner, Tenant

SUMMARY OF DECISION

The owner's petition is denied. The subject property is not exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

The owner filed a petition for a Certificate of Exemption contending that the 2-unit residential property is exempt from the Rent Adjustment Program (RAP) on the ground of substantial rehabilitation. One Tenant filed response contesting the exemption.

EVIDENCE

Square Footage of the Building

The owner submitted a copy of the records of the Alameda County Assessor for the subject property, which states that the building area is 1800 square feet.¹

¹ Exhibit 1. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence.

Construction Expenses

The owner submitted a certified copy of Amount of Claim for \$278,537.52 from Hartford Fire Insurance Co. with attached letter dated 4/5/2012 and attached table listing the payments made by the insurance company after the property was damaged by fire on 11/20/2010.² The owner testified that the amount of \$278,537.52 was the amount the insurance company paid to rehabilitate the building.

The loss of rental income and utility bill from the date of loss through October of 2011 paid by the insurance company in the amount of \$29,081.97 was also included in the total claim amount of \$278,537.52.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Substantial Rehabilitation

O.M.C. 8.22.030(A)(6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Adjustment Ordinance.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.³

The most recent table issued by the Building Services agency, attached as Table "A," refers to a dollar amount per square foot. Therefore, in order to make the necessary mathematical computation, an owner must present sufficient evidence of the square footage of the building, as well as the cost of the rehabilitation project.

Calculation

The attached Table "A" states that the average cost of new construction for a duplex is \$144.46. This amount multiplied by the square footage of the building (1800) is \$260,028. 50% of this amount is \$130,014. Therefore, if the owner spent at least \$130,014 on the construction project the building would be exempt from the Rent Adjustment Ordinance.

² Exhibit 2.

³ O.M.C. Section 8.22.030(B)(2)

Discussion

While the cost of construction spent was well above \$130,014, the owner did not spend that amount. The entire project was paid by the owner's insurance company, The Hartford Fire Insurance Co. The insurance company paid \$278,537.52 for the entire rehabilitation project. That amount included the building repair but also the loss of rental income, utility bills, and purchase of new appliances. The owner did not pay for anything. The owner confirmed that and testified that the insurance company would make payments directly to the contractor and if, in a few instances, the owner paid the contractor directly, the owner would get reimbursed from the insurance company. Therefore, the owner has not met the requirements of the Rent Ordinance and Costa-Hawkins Act, and the subject property is not exempt from the Rent Ordinance under substantial rehabilitation.

ORDER

1. The owner's petition L12-0052 is denied.
2. The subject property is not exempt from the Rent Ordinance.
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) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: October 17, 2012



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

City of Oakland
 Building Services
 Construction Valuation¹
 For Building Permits⁴
 Effective Aug. 1, 2009

Community Economic Development Agency
 Dalziel Administration Building
 250 Frank Ogawa Plaza - 2nd Floor
 Oakland, CA 94612
 510-238-3891

TABLE "A"

Occ.	Description ³	Construction Type	Level Ground ²		Hillside Construction		Marshall & Swift 3Q '09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6" wall)
	Foundation Upgrade (l.f.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12" reinf./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (Dmill/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (Cmill/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

¹ Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Secc. 99 pg 6 July 2009 Marshall & Swift)

² Hillside construction = slope >20%; multiply by additional 1.3 multiplier

³ Remodel Function of New Construction is a 0.52 multiplier.

⁴ Separate structures or occupancies valued separately.

⁵ Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

PROOF OF SERVICE
Case Number L12-0052

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.

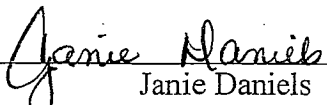
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Russell Wagner
2337 Adeline street
Oakland, CA 94607

Herb Isenberg
4955 Eliseo Drive, #3
Greenbrae, CA 94904

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 18, 2012** in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T12-0166, Murphy v. Dehlen
PROPERTY ADDRESS: 126 Moss Ave., Oakland, CA
DATE OF HEARING: September 17, 2012
DATE OF DECISION: October 17, 2012
APPEARANCES: Robin Murphy, Tenant
Craig S. Murphy, General Contractor for Robin Murphy
William McLaughlin, Tenant friend, former contractor
Menna Tesfatsion, Agent for Owner
Steve Smith, Agent for Owner, contractor
Clay Bartley, Agent for Owner, contractor
Anthony Collins, Agent for Owner, contractor

SUMMARY OF DECISION

The tenant petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition, which alleges serious problems with the condition of the rental unit and that the housing services have decreased. The landlord filed a response alleging that no services decreased and that all noticed repairs have been made.

THE ISSUES

- (1) Is the tenant current on her rent or legally withholding rent?
- (2) Has the tenant filed a timely petition?
- (3) If yes, have the tenant's housing services been decreased, and if so, by what amount?

EVIDENCE

Rent History: The tenant moved into the subject property in December of 2011, at the initial rent of \$1,375 per month. There are 10 residential units in the subject building. It is undisputed that the tenant received the RAP notice when she first moved in and that there is no pending rent increase.

Decreased Services: With her Petition, the tenant submitted the following items as decreased services: (1) rat infestation, (2) insufficient venting of the heater, water heater and furnace, (3) electrical overload and wiring without permit, and (4) structural issues, such as cracks in the floor and foundation.

It should be noted that prior to the hearing the tenant submitted 2 full file folders of documents, about 3 inches thick, and the landlord also submitted 1 full file folder of documents. The hearing officer reviewed the documents prior to the hearing. The documents were thoroughly reviewed again prior to the making of this Decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Tenant Not Current on Rent: In order to file a petition, a tenant must be current on the rent or legally withholding rent.¹ On her Petition, the tenant declared under penalty of perjury that she was current on her rent at the time she filed her petition on June 1, 2012. The tenant did not indicate that she was legally withholding rent on her petition. Prior to the hearing, the owner submitted a Resident Ledger showing the accounting of rental payments made and balance due. As of June 1, 2012, the tenant owed the balance of \$1,375.01 for unpaid rent. At the hearing, the tenant did not dispute this fact. Therefore, at the time the tenant filed her petition on June 1, 2012, she was not current on her rent and had no standing to file a petition unless she was legally withholding rent.

Legally Withholding Rent: The tenant did not indicate that she was legally withholding rent. There was no citation submitted with the petition. A city inspector issued a Notice of Violation on May 21, 2012. However, the issuance of such a notice does not necessarily constitute a serious condition affecting habitability or a decreased housing service. The notice listed the following items: overgrown vegetation in the yard, the front door jamb needs to be repaired, attic space lacks protection of electrical wiring, a hole in the pilot tubing for the heater facility needs to be repaired, structural reinforcements to the floor joists and the cripple walls were made without a building permit; accumulation of wood debris in the crawl space, and peeling paint on the exterior siding. The city inspector did not designate any of the listed items as a hazardous condition seriously affecting habitability or a life threatening condition requiring immediate correction. The listed items are minor repairs that would not justify non-payment of rent under the Rent Ordinance. Therefore, the tenant was not entitled to legally withhold rent at the time she filed her petition.

¹ O.M.C. Regs. §8.22.090B.1(a)

Timeliness of Decreased Housing Service Claims: Section 8.22.090(2) of O.M.C. provides that a tenant petition must be filed within 60 days after the date of service of a rent increase notice or the date the tenant first receives the RAP notice, whichever is later. The Board has held that a petition claiming decreased housing services must be filed within sixty days after the decrease in services must be filed within sixty days after the decrease in services occurred, or within sixty days after the Notice to Tenants is served, whichever is later.²

The tenant received the RAP notice when she first moved into the property on December 3, 2011. To be considered timely, the alleged claim for decreased housing services should have been filed by February 1, 2012. The tenant petition was filed on June 1, 2012. The tenant's emails addressed to the owner relating to the decreased services are dated as early as January of 2012 and some of them in December of 2011, at the time she first moved into the property. Therefore, the tenant's claim regarding the decreased housing services is not considered timely. This is further reason to deny this claim.

ORDER

1. Petition T12-0166 is denied.
2. The claim for decreased housing services is denied.
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) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: October 17, 2012



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

² T09-0086, Lindsay v. Grimsley (2010)

PROOF OF SERVICE
Case Number T12-0166

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 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:

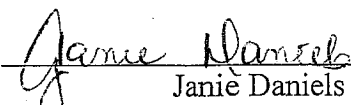
Robin Murphy
126 Moss Avenue
Oakland, CA 94611

Menna Tesfatsion
4844 Telegraph Avenue
Oakland, CA 94609

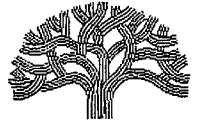
Monice Dehlen
4844 Telegraph Avenue
Oakland, CA 94609

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 18, 2012** in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Community and Housing Development Department
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

SETTLEMENT AGREEMENT AND DISMISSAL

CASE NUMBER: T12-0199, Temple v. Loehrlein

PROPERTY ADDRESS: 1048 B Alcatraz Ave., Oakland, CA

**PARTIES: Wade Temple Jr., Tenant
Christine Loehrlein, Owner**

I. INTRODUCTION

The following Settlement Agreement ("Agreement") refers to the Tenant Petition T12-0199.

Tenant Wade Temple Jr. and Christine Loehrlein, owner, (collectively "the Parties") elected to participate in the voluntary Rent Adjustment settlement Program to resolve the issues presented in the Petition and Response. The Mediation was conducted on October 17, 2012, by Linda Moroz, mediator in the offices of the Rent Adjustment Program and resulted in the Agreement set forth below.

In consideration of the mutual promises contained herein, the parties agree as follows:

II. TERMS AND CONDITIONS

It is the desire of both parties to this agreement to resolve the rent dispute concerning the property located at 1048 B Alcatraz Ave., Oakland, CA. In order to accomplish this resolution:

1. The tenant agrees to withdraw with prejudice Petition number T12-0199, which is currently pending with the Rent Adjustment Program.
2. Each party releases and forever discharges each opposing party, their respective successors, assigns, representatives, agents, executors, administrators, and other successors in interest of and from any and all claims, demands,

damages, costs, expenses or obligations arising out of, or in any way connected with, the subject of this petition or the facts or events alleged therein. Each party hereto fully understands that it cannot hereafter make further claims or seek any further recovery of any nature whatsoever based upon, arising out of, or in connection with said the subject of this petition.

3. The parties intend this Agreement to be binding and enforceable in a court of law.

4. As of October 1, 2012, the tenant's new monthly rent is \$763.00.

5. The owner waives the increased rent amount for the months of August and September 2012.

6. The anniversary date for any future rent increases will remain August 1.

7. The parties acknowledge that there is a covenant of good faith and fair dealing included in this agreement and further acknowledge their obligation to fulfill the terms of this agreement in good faith and to deal fairly with each other in doing so.

8. The parties understand that this Agreement is a compromise and does not constitute an admission of any violation of any law, including O.M.C. Title 8 Chapter 8.22 or Rent Adjustment Program Regulations.

9. The parties acknowledge that if either party violates this Agreement they may be subject to a fine or other sanction pursuant to the Rent Board Regulation 8.22.170.A.2g, in addition to whatever remedies may be available at law or in equity.

III. ENTIRE AGREEMENT

10. This written Settlement Agreement contains the entire agreement of the parties with respect to the subject matter of this petition, and supersedes all prior negotiations, agreements and understandings with respect thereto.

IV. GOVERNING LAW

11. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be governed by, and interpreted in accordance with, the laws of the State of California.

V. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

12. If any provision of this Agreement is held in whole or in part to be invalid, void, contrary to public policy or any law, or unenforceable for any reason, the

remainder of that provision will be severable and the remainder of the Agreement shall remain in full force and effect.

VI. ATTORNEYS' FEES AND COSTS

13. The parties acknowledge and agree that each of them will bear their own costs, expenses and attorneys' fees arising out of or connected with each party's Petition or Response.

14. The parties hereby represent that they are authorized to enter into this agreement. The parties further acknowledge that they have signed the agreement of their own free will and not under duress from any participant in the mediation process including the mediator.

The foregoing is agreed to and executed on the 17th day of October, 2012, at Oakland, California.

Wade T. Temple (Tenant)

Christine Joehlein (Owner)

ORDER OF DISMISSAL

Pursuant to the withdrawal of the petition in the mediation agreement above, Petition Number T12-0199 is hereby dismissed with prejudice.

Dated: October 17, 2012



LINDA M. MOROZ, ESQ.
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T12-0199

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.

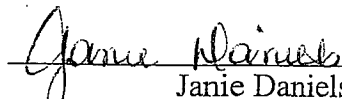
Today, I served the attached copy of **Settlement Agreement and Dismissal** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Wade Temple, Jr.
1048 Alcatraz Avenue, #B
Oakland, CA 94608

Christine Loehrlein
1720 Central Avenue
Alameda, CA 94501

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 18, 2012**, in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program