



20983358

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FILED
ALAMEDA COUNTY

JUL 27 2018

CLERK OF THE SUPERIOR COURT
By Erica Baker
ERICA BAKER, Clerk

5 Attorneys for Petitioner,
6 Jonathan Owens

7
8 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10 Jonathan Owens,

Case No.:

RG 18914638

11 Petitioner,

**PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS
[Code of Civil Procedure §§ 1085(a) and
1094.5]**

12 vs.

13 City of Oakland's Department of Housing and
14 Community Development Rent Adjustment
15 Program, and Does 1 through 25,

16 Respondents.

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19 Mark Steinberg,
Ralph Gregory Johnson,
20 Emily Baron,
And Does 1-20,

21
22 Real Parties in Interest.
23

24 **INTRODUCTION**

25 1. By this Petition for Writ of Administrative Mandamus, Petitioner Jonathan Owens
26 ("Petitioner" or "Owner") challenges the finding in the decision on appeal dated April 23, 2018
27 ("Decision on Appeal") and the hearing decision dated September 19, 2016 ("Original
28 Decision") by Respondent City of Oakland's Department of Housing and Community

1 Development Rent Adjustment Program (“RAP”) that Petitioner’s single-family home is not
2 exempt from the Rent Adjustment Ordinance under California Civil Code section 1954.52 (The
3 Costa-Hawkins Rental Housing Act). Attached hereto as Exhibit “A” is a true and correct copy
4 of the Original Decision. Attached hereto as Exhibit “B” is a true and correct copy of the
5 Decision on Appeal.

6 2. On August 25, 2016, Petitioner and then tenant Lauren Barghout appeared before
7 Hearing Officer Steven Kasdin in regards to case number T16-0259. The tenant filed a petition
8 seeking a decrease in housing services. Petitioner argued that the property was exempt from rent
9 adjustment because it is a single-family home and thus exempt under the Costa-Hawkins Rental
10 Housing Act and the Rent Adjustment Ordinance.

11 3. On September 19, 2016, the hearing officer issued a decision denying the tenant’s
12 petition because she was not current on her rent and also determined that no decreases in housing
13 services existed. However, the hearing officer erroneously made a finding of fact and conclusion
14 of law that the single-family home was not exempt because the landlord chose to rent to a
15 number of roommates, and this somehow transformed the single-family home into a multi-unit
16 dwelling, thereby rendering Petitioner’s rental within the single family home not exempt from
17 the Rent Adjustment Ordinance. Petitioner filed an appeal to the Rent and Relocation Board
18 challenging only the hearing officer’s finding of fact and conclusion of law that the home is not
19 exempt from the Rent Adjustment Ordinance under the Costa-Hawkins Rental Housing Act. The
20 Rent and Relocation Board affirmed the hearing officer’s decision.

21 4. The Rent Board erred in its determination that Petitioner’s single-family home is not
22 exempt from the Rent Adjustment Ordinance. The RAP made a finding that Petitioner’s single-
23 family home was not exempt because Petitioner, who resides in the home, had 3 roommates who
24 paid rent to occupy rooms in the household. This, according to the RAP, transformed the single-
25 family home into a multi-unit dwelling (See Hearing Decision dated September 19, 2016, pgs. 2-
26 3). Petitioner presented evidence demonstrating that the property was a single-family home.
27 That evidence included the Alameda County Property Assessment Information and the 2016-
28

1 2017 Notification of Assessed Value, showing Petitioner is receiving the Homeowner's
2 Exemption.

3 5. The RAP's decision directly contradicts state law. The Costa Hawkins Rental
4 Housing Act preempts local laws and exempts certain kinds of dwelling units from rent control
5 — notably, "separately alienable" units (i.e., single-family houses and condominiums) (Civil
6 Code section 1954.52(a)(3)(A)).

7 PARTIES

8 1. Petitioner is the owner of a single-family home located at 3420 Ruben Drive,
9 Oakland, California ("Property").

10 2. RAP is the administrative agency charged with administering the provisions of
11 the Rent Adjustment Ordinance (Oakland Municipal Code Section 8.22) ("Ordinance"), and is
12 the public entity, organized and existing under the laws of the State of California, whose
13 responsibility is to enforce and defend the Ordinance.

14 5. The Real Parties in Interest are tenants currently residing at the Property and who
15 also the time Respondent issued an administrative decision in the matter of Petition Case No.
16 L14-0065 resided at the Property. The Real Parties in Interest are Mark Steinberg, Ralph
17 Gregory Johnson, Emily Baron, and DOES 1 – 20. Petitioner is ignorant of the true names and
18 capacities of respondents and the real parties in interest designated herein as Does 1 through 20,
19 and therefore designates these parties by such fictitious names. Petitioner will amend this
20 petition to allege their true names and capacities when ascertained.

21 JURISDICTION AND VENUE

22 3. The Superior Court of California, County of Alameda has jurisdiction of the
23 matters herein pursuant to Code of Civil Procedure ("CCP") §§1085(a) and 1094.5, which
24 authorize Petitioner to seek a writ of administrative mandamus.

25 4. Venue is proper pursuant to CCP §§393 and 395, because the Rent Board is
26 located in the County of Alameda, and the leases were entered and the obligations thereunder are
27 incurred and are to be performed in the County of Alameda, and the Property is located in the
28 same county.

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EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. Petitioner has performed any and all conditions precedent to the filing of this Petition, by filing an appeal to the Original Decision and having an adjudicatory hearing before the full Rent Board. Petitioner has exhausted all of its administrative remedies.

6. The appeal ended with the Decision on Appeal against Petitioner, which became final on or about April 23, 2018.

7. Petitioner has a clear, present, and beneficial right to the Rent Board correcting its decisions so that Petitioner can own and operate the Property as exempt from the rent laws of the City of Oakland.

8. Petitioner has no plain, speedy, and or adequate remedy at law. This Petition is the only way for Petitioner to contest the Rent Board's final decision.

9. This Petition is filed timely within ninety (90) days of the issuance of the Decision on Appeal pursuant to CCP §1094.6(b).

FACTUAL BACKGROUND

10. For the Property to be considered exempt from the Rent Adjustment Ordinance, the Owner appealed the Original Decision to RAP showing that the Property was a single-family dwelling.

11. In support of its appeal, Owner submitted into evidence included the Alameda County Property Assessment Information and the 2016-2017 Notification of Assessed Value, showing Petitioner is receiving the Homeowner's Exemption.

12. However, RAP overlooked the evidence showing the Property was a single-family dwelling and instead made a conclusion of law that it was a multi-family dwelling based on the number of persons renting rooms in the household.

13. Due to this RAP's error, RAP effectively denied the Owner his rights of exemption under the Costa-Hawkins Rental Housing Act to charge rents exceeding the amount governed by rent control.

14. RAP has refused to correct this error or to clearly explain how persons renting rooms in the Property transformed the Property from a single-family home to a multi-family

1 dwelling, particularly when Petitioner shares bathroom and kitchen facilities with roommates at
2 the Property.

3 15. RAP should have correctly applied Oakland Municipal Code section 8.22 and
4 California Civil Code section 1954.52 to determine that the Property is exempt from the Rent
5 Adjustment Ordinance.

6 16. Petitioner is informed and believes that RAP committed prejudicial error, and
7 should have applied state and local law to determine that the Property is a single-family dwelling
8 exempt from the Rent Adjustment Ordinance.

9 **RELIEF REQUESTED**

10 17. A writ of administrative mandate “may be issued by any court to any inferior
11 tribunal, corporation, board, or person, to compel the performance of an act which the law
12 specially enjoins, as a duty resulting from an office, trust, or station.” CCP §1085(a).

13 **PREJUDICIAL ABUSE OF DISCRETION**

14 **Findings Unsupported by the Evidence**

15 18. Respondent abused its discretion by issuing the Decision dated September 19,
16 2016 and the Decision on Appeal dated April 23, 2018 that is unsupported by the evidence in
17 violation of C.C.P. §1094.5(b) and (e).

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner prays for judgment and relief as hereinafter set forth.

20 1. Either preemptorily or alternatively, issue a writ of administrative mandamus
21 commanding the Rent Board to vacate, rescind, void, and set aside the Original Decision dated
22 September 19, 2016 and the Decision on Appeal in Case No. T16-0259, and remanding the case
23 for RAP to make a finding that the Property is exempt from the Rent Adjustment Ordinance
24 under the Costa-Hawkins Rental Housing Act;

25 2. Either preemptorily or alternatively, issue a writ of administrative mandamus
26 commanding the Rent Board to reverse its finding that the Property is not exempt from the Rent
27 Adjustment Ordinance under the Costa-Hawkins Rental Housing Act;

28 //

1 3. Instructing the Clerk of the Court to issue a writ of mandamus directing the
2 Respondent to vacate or retract its finding of fact and conclusion of law in the Original Decision
3 dated September 19, 2016 and the Decision on Appeal dated April 23, 2018 in T16-0259 and to
4 make a new finding of fact and conclusion of law that the Property is a single-family home
5 exempt from rent control under the Costa-Hawkins Rental Housing Act;

6 4. For costs of suit herein and attorney fees under Government Code §800 or other
7 applicable provision; and

8 5. For such other relief as the Court deems just and proper.

9 Dated: July 27, 2018

Fried & Williams LLP

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12 Jonathan Madison, Esq.
13 Attorneys for Petitioner,
14 Jonathan Owens

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VERIFICATION

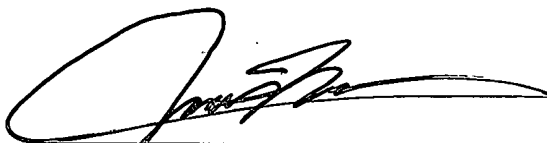
I, the undersigned, certify and declare that I have read the foregoing Petition for Writ of Administrative Mandamus. I am one of the attorneys for the Petitioner in this action. Petitioner Jonathan Owens is absent from the County where I have my office and is unable to verify the document that is described herein. For that reason, I am making this verification for and on behalf of Petitioner.

I am informed and believe and on these grounds allege that the matters stated in this document are true.

I declare under penalty of perjury under the laws of the State of California that this Petition is true and correct. In addition, I declare that the contents of this Petition are true of my own knowledge, except as to the matters which are therein stated on my information or belief, and as to those matters that I believe to be true.

Dated: July 27, 2018

Fried & Williams LLP



by Jonathan Madison,
Attorneys for Petitioner,
Jonathan Owens

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RENT ARBITRATION PROGRAM



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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: T16-0259, Barghout v. Owens
PROPERTY ADDRESS: 3420 Rubin Dr., Oakland, CA
DATE OF HEARING: August 25, 2016
DATE OF DECISION: September 19, 2016
APPEARANCES: Lauren Barghout (Tenant)
Jonathan Owens (Owner)
Alana Grace Conner (Attorney for Owner)

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on May 23, 2016, which alleges that she has never received the form Notice to Tenants (RAP Notice); that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to construction noise and inconvenience, the possible presence of lead or asbestos in the house, problems with the swimming pool electrical system, and the owner's retaliatory eviction attempts.

The owner filed a response to the petition, which alleges that the tenant's unit is exempt from the Rent Adjustment Ordinance as being a single-family house, states that he has not given the tenant a RAP Notice, and denies that the tenant's housing services have decreased.

THE ISSUES

- (1) Is the subject rental unit a single-family residence that is exempt from the Rent Adjustment Ordinance?

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- (2) When, if ever, did the tenant receive the RAP Notice?
 - (3) Was the tenant current on the rent, or legally withholding rent, when she filed her petition?
 - (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Exemption from the Rent Adjustment Ordinance: At the Hearing, the owner testified that he is the owner of a house containing a number of bedrooms. He lives in the house, he rents 2 rooms to the tenant, and two other people rent individual rooms in the house. All tenants pay rent separately.

RAP Notice: The parties agreed that the tenant has never received the RAP Notice.

Rent History: The tenant testified that she moved into the subject house in November 2014, at a rent of \$2,500 per month. In January 2015, after her daughter moved out, her rent changed to \$1,825 per month. However, instead of paying this amount, she "invested" in a law suit being prosecuted by the owner. In July 2015, this arrangement changed, and she began paying \$1,825 per month in cash. The owner agreed with this testimony.

The owner testified that the tenant has paid rent as follows: July through September 2015 - \$1,835 per month; October 2015 - \$2,047.49; November 2015 - \$1,100; December 2015 through February 2016 - \$1,875 per month; March 2016 - \$1,775; April 2016 - \$2,615. He testified that the tenant has paid no rent from May 2016 through the date of the Hearing. The owner further testified that, because of the construction activity, he discounted the tenant's rent in 2016 as follows: A reduction of \$100 in February; and reductions of 25% (\$456.25) in March; 50% (\$912.50) in April; and 35% (\$638.75) in May. The rent reductions total \$2,107.50.

The tenant further testified that in November 2015, the owner agreed to forgive \$725 in her rent in order to contribute to her daughter's "education campaign." She otherwise agreed with the owner's testimony, as stated above. The owner denied that he had reduced the rent aside from the rent reductions noted above.

Decreased Housing Services:

Construction Activity: The tenant testified that significant construction activity in the house began in late February 2016, and has continued. The work often lasts from 7:00 A. M. until 6:00 P. M. The tenant often works from home, and the construction noises and dust interfered with her ability to work, as well as causing health problems. Further, the construction activity temporarily limited the tenant's use of her home office and an area in the garage that she uses for storage.

Lead / Asbestos: The tenant testified that the house has an old furnace, which is located in the basement. Part of the construction activity included taking down walls and replacing the water heater in the basement. She believes that this work disturbed lead paint and/or asbestos;

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which has entered the house. However, she has no test results or other evidence to support her belief.

Swimming Pool Electric: The tenant testified that there is an electric panel on the wall of the garage, which is an estimated 5 to 8 feet from the swimming pool. She believes that this is a dangerous situation. The electric panel was in the same location at the start of her tenancy.

Retaliatory Eviction: The tenant believes that the owner has attempted to evict her in retaliation for her lawful activities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption from the Rent Adjustment Ordinance: Civil Code Section 1954.52 (Costa-Hawkins) provides that, under certain circumstances, a single-family home is exempt from local rent regulations. However, in this case, the owner has chosen to rent rooms out separately to a number of people, thereby transforming a single-unit dwelling into a multi-unit dwelling. That portion of the house rented to the tenant is therefore not exempt from the Rent Adjustment Ordinance.

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

Current on the Rent? The tenant's petition was filed on May 23, 2016, which is 11 months after she agreed to pay rent of \$1,825 per month. The full rent for this period of time – before consideration of rent credits – was \$20,218. The rent credits total \$2,107.50, which reduced the full rent to \$18,110.50. The testimony regarding a further rent credit of \$725 was equally credible, and the tenant has not sustained her burden of proof in this regard. It is found that the tenant paid a total of \$13,192.49 from July 2015 through May 2016. She was therefore approximately \$5,000 in arrears in her rent when she filed her petition.

If the tenant was not current on her rent or legally justified in withholding her rent when she filed her petition, she did not have standing to file a petition, and her petition must be dismissed.

A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.² The statutory authority for rent withholding is Code of Civil Procedure Section 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. As discussed below, none of the tenant's claims of decreased housing services arise to the level of a habitability violation. Therefore, she was not current on the rent or legally justified in withholding rent when she filed her petition.

¹ O.M.C. § 22:090.A.3.B

² See Green v. Superior Court, (1974) 10 Cal.3d 616, 635; Code of Civil Procedure § 1174.2.

Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent³ and may be offset by a rent adjustment.⁴ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

Construction Activity: The California District Court of Appeal considered the question of whether repair and replacement of tenants' decks - which resulted in the temporary loss of use of the decks and ventilation from the doorways to the decks - was a decrease in housing services under the San Francisco rent control ordinance.

The Court stated: "[A] landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence, does not effectuate a decrease in housing services within the meaning of the San Francisco rent control ordinance."⁵

This principle applies to the construction noises and activities in this case. Further, the tenant's rent was reduced for a number of months due to the construction activity, so she has already received some compensation for the inconvenience. The claim is denied.

Lead / Asbestos: There is no evidence of lead or asbestos in the house, and the tenant's mere speculation does not meet her burden of proving her claim by a preponderance of evidence. Therefore, the claim is denied.

Swimming Pool Electric: There is no evidence that this situation is dangerous. Further, since the situation was the same when the tenant moved in, her housing services have not decreased.

Retaliatory Eviction: This is a legal defense that can be asserted in a court action. However, it is not a claim that can be considered as a decreased housing service under the Rent Adjustment Ordinance, and the claim is denied.

Conclusion: The tenant's petition is denied for two reasons. First, all of her claims of decreased housing services are denied. Secondly, as explained above, the tenant was not current on the rent when she filed her petition.

³ O.M.C. Section 8.22.070(F)

⁴ O.M.C. Section 8.22.110(E)

⁵ Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board, 73 Cal.App. 4th, 1204, 1206 (1999).

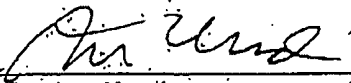
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ORDER

1. Petition T16-0259 is denied.
2. Claims of decreased housing services are denied.
3. The tenant was not current on her rent when she filed her petition.
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 service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: September 19, 2016



Stephen Kasdin,
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

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Case Number T16-0259

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:

Owner Representative
Alana Grace Conner
Fried & Williams LLP
1901 Harrison Street, 14th Floor
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 4, 2016** in Oakland, California.



Esther K. Rush
Oakland Rent Adjustment Program



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

Housing and Community Development Department
Rent Adjustment Program

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

**HOUSING RESIDENTIAL RENT AND
RELOCATION BOARD DECISION**

Case Number: T16-0259, Barghout v. Owens

Property Address: 3420 Rubin Drive
Oakland, CA

Date of Appeal Hearing: March 29, 2018

Appearances: Jonathan Madison Owner/Appellant Representative
No Appearance by tenant

Procedural Background

The tenant filed a petition alleging multiple grounds. The owner filed a response which claimed an exemption from the Rent Adjustment Ordinance. The Hearing Decision denied the tenant petition on the grounds that (1) she was not current in her rent at the time she filed the petition and (2) she did not meet the burden of proof on her decreased housing services claims. The Decision also found that the subject unit was not exempt from the Rent Adjustment Ordinance because the owner, who lived in the house, rented two rooms to individuals and the tenants pay rent separately.

Grounds for Appeal

The owner filed an appeal on the grounds that the subject property is a single family residence that is separately alienable pursuant to Costa-Hawkins; and that he lives in the house and rents two rooms to individuals with shared facilities.

Board Decision

After question to the appellant representative and Board discussion, U. Fernandez moved to affirm the Hearing Decision based on substantial evidence. K. Friedman seconded. The Board voted as follows:

Aye: M. Cook, K. Friedman, U. Fernandez, E. Lai, D. Mesaros
Nay: 0
Abstain:0

NOTICE TO PARTIES

This decision is the final decision of the City of Oakland.

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

YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.

4-23-18

DATE: _____

Michele Byrd

MICHELE BYRD
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL, RENT AND
RELOCATION BOARD

PROOF OF SERVICE

Case Number T16-0259

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 documents listed below 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:

Documents Included

Housing Residential Rent and Relocation Board Decision

Owner

Jon Owens
3420 Rubin Dr.
Oakland, CA 94602

Owner Representative

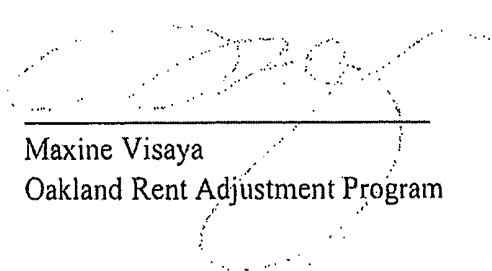
Alana Grice Conner, Fried & Williams LLP
1901 Harrison St 14th Floor
Oakland, CA 94612

Tenant

Laurin Barghout
3420 Rubin Dr.
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 Apr 30, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program