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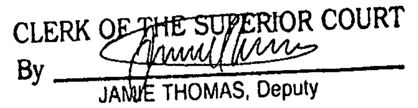
Attorneys for Respondent
CITY OF OAKLAND'S DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT
RENT ADJUSTMENT PROGRAM



FILED
ALAMEDA COUNTY
FEB 27 2019
CLERK OF THE SUPERIOR COURT
By JAMIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JONATHAN OWENS,

Petitioner,

v.

CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM, and DOES 1 through 25,

Respondents.

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

Real Parties in Interest

Case No. RG18914638

ASSIGNED FOR ALL PURPOSES TO
HON. JEFFREY BRAND
DEPARTMENT 511

RESPONDENT CITY OF OAKLAND'S RENT ADJUSTMENT PROGRAM'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PETITION FOR ADMINISTRATIVE WRIT OF MANDATE

Reservation No.:

Date: April 2, 2019
Time: 9:00 a.m.
Dept.: 511

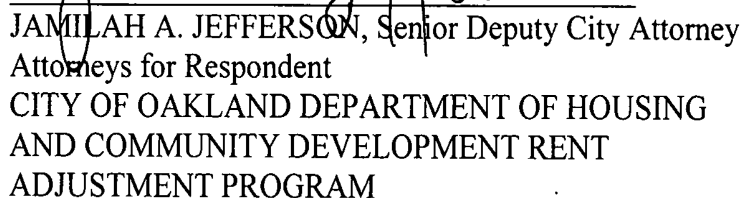
Petition filed: July 27, 2018
Trial Date: April 2, 2019

Respondent City of Oakland Rent Program requests that the Court take judicial notice pursuant to California Evidence Code sections 452 and 453 of the following:

- **Exhibit A**: *Li v. Liberty Properties, LLC* (T15-0101) – Hearing Officer Decision
- **Exhibit B**: *Li v. Liberty Properties, LLC* (T15-0101) – Rent Board Decision
- **Exhibit C**: *Jin v. Ha Lee* (T14-0284) – Hearing Officer Decision
- **Exhibit D**: *Jin v. Ha Lee* (T14-0284) – Rent Board Decision
- **Exhibit E**: *Anderson v. Jenkins* (T06-0005) – Hearing Officer Decision
- **Exhibit F**: *Anderson v. Jenkins* (T06-0005) – Hearing Officer Decision after Remand
- **Exhibit G**: *Anderson v. Jenkins* (T06-0005) – Rent Board Decision
- **Exhibit H**: *Rojas v. Tyler* (RWN-1284) – Hearing Officer Decision (Berkeley)
- **Exhibit I**: *Rojas v. Tyler* (RWN-1284) – Rent Board Decision (Berkeley)

Dated: February 27, 2019

BARBARA J. PARKER, City Attorney

By: 

JAMILAH A. JEFFERSON, Senior Deputy City Attorney
Attorneys for Respondent
CITY OF OAKLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM

EXHIBIT A

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: T15-0101, Li v. Liberty Properties, LLC

PROPERTY ADDRESS: 157 8th Street, Oakland, CA

DATES OF HEARING: June 26, 2015, July 13, 2015, September 29, 2015

DATE OF DECISION: October 12, 2015

APPEARANCES:
Chao Ping Li, Tenant (All dates)
Qing Hua Lin, Tenant (July 13, 2015)
Weikuen Tang, Interpreter (July 13, 2015, September 29, 2015)
Hilda Wong, Interpreter (June 26, 2015)
Kevin Cheng, Owner Representative (All dates)
Todd Mavis, Witness for owner (July 13, 2015)

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

Tenant Chao Ping Li filed a petition on February 4, 2015, which alleges that a current proposed rent increase from $400 to $520 a month exceeds the CPI Rent Adjustment and is unjustified and that he was not provided with the required form notice of the existence of the Rent Adjustment Program (RAP Notice) at least six months prior to the rent increase he is contesting.

The owner filed a response to the petition, which alleges that the unit is exempt from Rent Adjustment because it is located in a building with three or fewer units and the owner occupies one of the units continuously as her principal residence for at least one

year. Additionally, the owner claimed that the rent increase was justified by banking and capital improvements.

At the Hearing the owner's representative contended that the tenant's petition was untimely as it was filed more than 60 days after the tenant was provided with notice of the rent increase.

THE ISSUES

(1) Was there good cause for the tenant's and the owner representative's failure to produce certain documents prior to the Hearing? If yes, can the documents that were not produced prior to the Hearing, be allowed to come into evidence?
(2) Is the unit in a building of three units or less?
(3) Can a limited liability corporation receive an exemption based on a claim that the owner resides in a unit of a building containing three units or less?
(4) Was the tenant "current on his rent" at the time he filed his Petition?
(5) In what language should the tenant have been served with the RAP Notice?
(6) Was the tenant petition timely filed?

EVIDENCE

Rental History: Tenant Chao Ping Li testified he moved into a unit in the bottom floor of a two story building in January of 2012. He speaks Cantonese and does not speak English. He cannot read written English. He was not provided with the *RAP Notice* when he moved in. He was first served with an English language copy of the *RAP Notice* in February of 2015.

Li further testified that when he moved into the building he met with a man named Chan[1], from unit #2, who showed him around. He also met the owner of the building, Lana Koo, a woman who at the time lived in the upstairs unit. All conversations about renting the unit with Chan and the owner were done in Cantonese. Hey Chan is the nephew of the owner of the property. Tenant Li was not provided a written lease when he moved in.

With respect to the size of the building in question, at first the tenant testified that the building was a three-unit building. The tenant further testified that he and his wife and child live in one room on the ground floor of the unit and in the area where he lives the owner rents out two other units. Each downstairs room (unit) has a lock on the door. His room is labelled as Unit #1. Hey Chan and his family live in Unit #2. Hey Chan collects rent on behalf of the owner. A woman named Bao[2] lives in Unit #3 with two other people. The three units house a total of 8 people.

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[1] During the hearing it seemed at first that the tenant was referring to this person as "Cheng", however, the owner's representative testified that his name was Hey Chan, not Cheng.
[2] Kevin Cheng testified that the family that lives in room # 3 is Qing Shen Chen and her family.

Kevin Cheng testified that the building is a two unit building. The downstairs of the building is shared by Mr. Li and his family, the tenant Chan and his family, and Mr. and Mrs. Chen, who live in the rear of the downstairs unit. This unit is known as 157 8th Street. The owner of the property, Lana Koo, lives in the upstairs unit, which has a separate address of 159 8th street.

Kevin Cheng further testified that the downstairs of the building is rented to these three separate families and that each room has a lock on the door. Each tenant (or family) that rents a room has access to a common area kitchen and bathroom.

Tenant Li testified that he was given notice of a rent increase verbally, by Kevin Cheng, the owner's representative in February of 2015. He was told that the rent was going up 30% starting that month. The amount was not mentioned.

Kevin Cheng testified that on November 28, 2014, he gave the tenant a written rent increase notice purporting to increase the rent from $400 to $525.00 a month effective February 1, 2015. He served a *Notice of Rent Increase* and the *RAP Notice*[3]. The documents were given to the tenant in English. Mr. Cheng speaks Cantonese and he explained the documents he was giving to the tenant in Cantonese. He further explained to him that there were social service agencies in Chinatown that could explain the *RAP Notice* to him further. Cheng further testified that this was the first time that the tenant was given the *RAP Notice* that he is aware of. Cheng testified that he did not serve an *Enhanced Notice of a Capital Improvement Rent Increase* when he served the rent increase notice.

Todd Mavis testified that he works with Kevin Cheng and Liberty Development Company and was with Kevin Cheng when they both visited Mr. Li and the other tenants in the building to serve rent increase notices on all the tenants. This occurred on November 28, 2014. Mavis remembers the date specifically because it was Thanksgiving weekend and he had just had dinner with Kevin Cheng and family before they went to the building at 157 Eighth Street to serve tenant Li (and other tenants) with these documents. There was a woman there who translated the documents to tenant Li. Kevin Cheng also explained the documents to the tenant in Cantonese. Mavis himself handed the documents in question to tenant Li and to the other tenants at the time.

The tenant denied receiving any written notices on November 28, 2014.

The tenant denied meeting Mr. Mavis in November of 2014. He testified that the meeting occurred in January of 2015. At the time that the meeting occurred he was told that the other tenants told him that the landlord was coming and he wanted to raise the rent by 30%. Li testified that he got really upset that the rent was going up so much all at once. Li testified that he was not given any documents during this meeting.

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[3] Exhibit 7, pp 1-3. The tenant objected to these documents coming into evidence arguing that he did not receive them on the date the owner's representative testified they were given. This objection was overruled.

The tenant further testified that up until the first Hearing in June of 2015, he paid his rent to co-tenant Chan. Generally, when rent is due on a monthly basis, Hey Chan approaches the tenant and asks him for his rental payment. This happened in all months through January of 2015. However, in February of 2015, Hey Chan did not collect rent at all. At the beginning of February the tenant went to see Chan to ask whether it was time to pay rent and he was informed that he had not yet received the bill[4] from the owner representative (Kevin Cheng). This was repeated in March and April of 2015. Hey Chan did not collect rent until May of 2015. In May, Mr. Chan collected rent for February, March and April and gave the tenant receipts for each payments[5].

The rent receipt for rent from February 1, 2015-March 1, 2015 is dated February 1, 2015; the rent receipt for March 1, 2015-April 1, 2015 is dated March 1, 2015; and the rent receipt for April 1, 2015-May 1, 2015 is dated April 1, 2015[6]. The tenant and owner representative are in agreement that despite the dates on these receipts, the rent for these three months was not paid until May 8, 2015.

Kevin Cheng testified that the rent at the subject unit is collected by a co-tenant who lives there whose name is Hey Chan. Chan is a nephew of the owner of the property. He testified that he believes that this Hey Chan went to the tenant on February 1, 2015, to ask for rent but it was not paid. Kevin Cheng further testified that he went to the tenant four weeks after Chinese New Year's, and told him he had not paid rent and was in arrears. Cheng's estimate was that it was a date in late February or early March. He did not testify as to the exact date this occurred[7]. He also talked to Li again in April about the rent increase and his non-payment of rent.

Kevin Cheng also testified that he gives signed receipts to Hey Chan two to three months in advance so that he has them when he is collecting rent. Cheng doesn't remind the tenants that rent is due.

At the Hearing on June 26, 2015, Kevin Cheng was asked if he could produce Mr. Chan to come to testify[8]. He said he could produce Mr. Chan at the subsequent Hearing. At the Hearing held on July 13, 2015, Mr. Hey Chan was not present to testify.

The tenant further testified that he was not asked to pay the increased rent until June of 2015. In June, Hey Chan came to collect rent for May and June of 2015. That month he asked for $460 for each month. The tenant did not pay him and said he wanted to wait until after the Hearing in this matter. The parties agreed that in July 2015 the tenant

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[4] On further testimony, it seems that the tenant was referring to a "receipt" rather than a "bill."

[5] See Exhibit 1. The Owner's Representative objected to the admission of these documents as they were not provided to the RAP at least 7 days prior to the Hearing. This matter is discussed below.

[6] Exhibit 1.

[7] His testimony is that he ran into the tenant after taking his father to dim sum lunch to celebrate Chinese New Year's. The lunch occurred about 4 weeks after the actual Chinese New Year's date.

[8] Recording, Track 1 at 53:50-54:32. The Hearing Officer said "Where is this Mr. Chan, can you bring him to testify?" To which Kevin Cheng responded "Um, I can but he's either at the residence or at work right now; I believe he is at work." The Hearing Officer responded: "I would like to hold this over for another day to have Mr. Chan come and testify because he is the one who a lot of this is about...and a lot of this story is unclear to me and ... I'd rather hear it from him."

paid rent to Kevin Cheng in the amount of $400 for each month, May, June and July of 2015[9].

At the Hearing on September 29, 2015, tenant Li testified that he had given a check to Hey Chan in the amount of $800 before he left for China in August of 2015. This was paying rent for August and September of 2015. Kevin Cheng denied receivng that check. On a break from the Hearing the tenant called his bank. He then testified that the bank informed him that the check in question had not been cashed. Tenant Li agreed to pay Kevin Cheng the $800 owed for August and September of 2015 before the end of the week[10].

Documentary Evidence: At the Hearing on June 26, 2015, tenant Li produced rental receipts showing that he had paid rent in February, March and April of 2015, that he had not produced prior to the Hearing. Li testified that he did not understand the *Notice of Hearing* (which is written entirely in English) that set forth the requirement to provide documents to the Rent Adjustment Program 7 days prior to the Hearing[11].

Exemption Issues: Kevin Cheng testified that the owner of the building, Lana Koo, lives in the upstairs of this building. He believes it is a two unit building. Ms. Koo has been quite ill and has been residing Highland Hospital for many months. She was too sick to attend the Hearing. While she has not been in her actual residence for several months, her furniture, personal effects and clothing remain in the upstairs unit. Kevin Cheng further testified that the last time Ms. Koo slept in the unit was in March of 2015, and had resided there for about a month. Both before and after that one month period Ms. Koo was sleeping at the hospital. He did not know when she would come back from the hospital.

He further testified that the building is actually owned by a single member limited liability corporation called 157-159 Eighth Street LLC. He provided the *Grant Deed*[12] to establish the ownership details. The *Grant Deed* shows that the property had previously been owned by the *Wai Lan Koo Revocable Trust* and that on January 22, 2013, it was transferred to the limited liability corporation.

Kevin Cheng further testified that Ms. Koo was the sole shareholder of the limited liability corporation. He also produced documents at the Hearing, that were not previously provided to the Rent Adjustment Program, from the County of Alameda[13]. Mr. Cheng testified that these documents establish that even though the home is owned

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[9] Exhibit 12

[10] Kevin Cheng was informed that if he did not receive rent payment by one week from the date of the Hearing he could contact the RAP and a further hearing would be held to determine how much rent has been paid.

[11] Kevin Cheng objected to this evidence. He was asked if he wanted to have the Hearing on another day to review the documents to determine their authenticity but he refused that option. See discussion below.

[12] Exhibit 2

[13] See Exhibits 3 and 4. Exhibit 3 is a document from the *Office of Assessor* which shows that a $7,000 homeowner's exemption was granted to the 157-159 Eight Street LLC. Exhibit 4 is also from the *Office of Assessor* and shows a continuing $7,000 homeowner's exemption for tax year 2012-2013 and 2013-2014.

in the name of a limited liability corporation, that it has been granted a homeowner's exemption.

Mr. Cheng further testified that Ms. Koo is registered to vote and that her address on the voter's registration form is 159 Eighth Street. He produced an *East West Bank* statement, a *PG&E* bill and a California Voter Registration identification showing that a Lana Koo receives mail at 159 8th Street in Oakland[14].

Mr. Li testified that Ms. Koo does not live in the building anymore and has not for a long time. When he moved into the building Ms. Koo lived in the upstairs unit. He believes that Ms. Koo died last year.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Are documents that were not produced to the RAP prior to the 1st Hearing admissible?

The administrative procedures of the Rent Adjustment Program (RAP) require that all parties submit any documents they want to admit at a Hearing, 7 days prior to a Hearing. This procedure is communicated to the parties in the *Notice of Hearing*. The *Notice* states in pertinent part: "All proposed tangible, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing." The purpose of this rule is to allow the opposing party an opportunity to review all documents that may be presented at a Hearing, before the Hearing actually occurs.

In this case both parties sought to admit documents at the Hearing that were not produced to the RAP prior to the Hearing. The tenant sought to admit rent receipts which were given to him by an agent of the owner. Because the tenant did not speak English, he did not know that he was required to provide any documentary evidence prior to the Hearing.

The fact that the tenant did not speak English provides good cause for the tenant's failure to produce the documents before the Hearing. Additionally, the owner's representative was given an opportunity to request a later hearing date to examine the documents if he did not feel that they were authentic. The owner's representative denied this request. Since the owner was given an opportunity to take time to review these documents and continue the Hearing, but he chose not to, there was no prejudice to the owner for allowing these documents into evidence[15].

Additionally, the owner's representative sought to admit documents from the *County of Alameda* that he had not previously provided to the RAP. The reason these documents were not provided in a timely fashion is because at first he believed that the *Grant Deed*

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[14] See Exhibits 5 and 6

[15] Additionally, the case was ultimately continued to another date for other reasons. If the owner representative doubted the authenticity of the documents he could have brought that up on the second or third day of Hearing. He did not.

and *Property Tax Statements* would be sufficient to prove that the Limited Liability Corporation had been granted a homeowner's exemption and that he did not need the documents from the tax assessor. However, in an abundance of caution he decided to also produce these documents from the County.

Since these documents are official documents from the County of Alameda, and the *Notice of Hearing* states that *"The Hearing Officer can also use the official records of the City of Oakland and Alameda County Tax Assessor as evidence if provided by the parties for consideration"* these documents were admitted into evidence.

Does the tenant reside in a building of three units or less?

The owner claims an exemption from the RAP based on the claim that she lives in a building with three or fewer units and she occupies one of the units.

The Oakland Rent Adjustment Ordinance[16] states:

> A. . . The following dwelling units are not Covered Units[17] for the purposes of this Chapter 8.22: . . . 8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an Owner of Record as his or her principal residence. For purposes of this section, the term Owner of Record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.

There are two addresses on the premises. The address of the unit in which Ms. Koo claims to reside is 159 8th Street. While Ms. Koo has been living for an extended period of time in Highland Hospital, the evidence provided by Mr. Cheng that she is alive and that she still considers 159 8th Street to be her principle residence is convincing. Just because Ms. Koo is ill, does not mean she has given up her home of many years.

The question then is whether or not the unit at 157 8th Street is one unit or multiple units. The evidence from all parties was abundantly clear that 157 8th Street has been divided by the owner into three separate units. That single address is rented to three separate families, each who pay rent separately. Each family has its own room, each of which has a lock on the door. It is clear from the evidence that each family rented their unit separately from each other family. In fact, Hey Chan, who has lived there longer than the tenant, rented the room to him. The fact that there is a common area kitchen and bathroom does not change these facts.

Since the downstairs address contains three separate units, the entire property consists of a total of 4 units. The owner is only entitled to an exemption if she lives in a building of three units or less. The owner's request for an exemption is therefore denied.

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[16] O.M.C. Section 8.22.030

[17] A "Covered Unit" is a rental unit that is not exempt from the Rent Ordinance (O.M.C. § 8.22.020).

Can a limited liability corporation claim an exemption?

The owner claims that even though the building in owned by a limited liability corporation, she is entitled to an exemption because she is the person who owns the corporation. However, since the unit is not a unit in a building of three units or less, this issue need not be decided here.

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

In order to file a petition, a tenant must be current on his or her rent or lawfully withholding rent.[18] The owner has the burden of proof to establish that the tenant was not current on this rent. The tenant filed his Petition on March 9, 2015.

The evidence was clear that prior to the Hearing, tenant Li paid rent by paying Hey Chan, a co-tenant and agent of the owner, his monthly rent. His rent was paid when Hey Chan came to him and asked him for payment. Usually that occurred at the beginning of every month. But the tenant credibly testified that in February and March of 2015, Mr. Chan did not come to him to request payment. There was no evidence offered that Mr. Li knew of any other way to pay his rent besides giving it to Mr. Chan.

The tenant credibly testified that in early February and early March of 2015, he approached Hey Chan and asked him whether he should pay rent. Hey Chan informed the tenant that he did not yet have the invoices from the owner to collect the rent. This testimony was believable.

Kevin Cheng testified that he believed that Hey Chan asked for the tenant's rent on February 1, 2015 and March 1, 2015. However, Kevin Cheng was not present when this alleged conversation occurred and therefore this testimony is not as credible as tenant Li's testimony.

At the Hearing on June 26, 2015, the owner's representative was informed that the Hearing was being continued in order for him to bring Hey Chan to testify. This was done in order to determine the key question as to whether or not the tenant was current on his rent at the time the Petition was filed. However, Kevin Cheng chose not to bring Hey Chan to the second day of Hearing[19].

> "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."[20]

Kevin Cheng also testified that he spoke to tenant Li about his unpaid rent. That conversation allegedly occurred 4 weeks after Chinese New Year's. According to

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[18] O.M.C. & Regulations, Section 8.22.090

[19] Kevin Cheng is a nephew of the owner, as is Hey Cheng. Additionally, Kevin Cheng is also the Owner Representative; as such he had the capacity to request Hey Cheng, who collects rent for the owner, to be present at the Hearing.

[20] Evidence Code 412

Wikipedia, in 2015, Chinese New Year's occurred on February 19, 2015. Four weeks after that date was March 19, 2015.

It is reasonable to believe that tenant Li had tried to pay rent in February of 2015 but that the owner's agent Hey Chan turned him away because he did not have rent receipts to give him at the time. According to tenant Li, he was not asked for rent by Chan in the month of February. He again tried to pay rent in March and was again turned away. The conversation with Kevin Cheng about unpaid rent did not occur until 10 days after the tenant's petition was filed.

The tenant's testimony that he paid his rent when Hey Chan requested it was credible. Since he offered to pay rent in February and March and was turned down, and since no requests were made before the approximate March 19, 2015, conversation with Kevin Cheng about the rent, Mr. Li was current on his rent at the time his petition was filed.

The RAP Notice has not been legally served on the tenant because it was not given in the same language in which the negotiations are made.

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[21] and together with any notice of rent increase or change in the terms of a tenancy.[22] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.[23]

In this case, an English language copy of the *RAP Notice* was served on the tenant on November 28, 2014. While the tenant denies receiving it, the owner's representatives testimony was convincing[24]. However, an English language copy of the *RAP Notice* is not sufficient.

California Civil Code § 1632(b)(3) states that when a person enters into a contract and primarily negotiates the terms of the contract in a language other than English, the owner must give the consumer a translation of the contract in the same language in which the negotiation was held. Here, when the tenant moved into the unit, all discussions were in Cantonese. Both Hey Chan and the owner of the property, Lana Koo, spoke to the tenant only in Cantonese. The RAP Board has held that in keeping with Civil Code § 1632(b)(3), the *RAP Notice* must also be given in the same language in which the negotiations were held. Soriano et al. v. Western Mgt. Properties (T06-0154).

Since the tenant is a monolingual Cantonese speaker who does not read English, serving him with a *RAP Notice* in English did not provide him with actual notice of his rights. Furthermore, the fact that someone was present when the tenant was given the English

[21] O.M.C. § 8.22.060(A)

[22] O.M.C. § 8.22.070(H)(1)(A)

[23] O.M.C. § 8.22.060 (C)

[24] It is somewhat odd that both Kevin Cheng and Todd Mavis testified that they were the ones who handed the document to the tenant. Only one of them could have done that. However, considering the scene as described by the parties was somewhat chaotic, it is possible that their memories as to which one of them handed the documents to the tenant was confused.

language copy of the notice and allegedly translated it, does not change this result. The tenant has never been validly served with the *RAP Notice.*

What are the consequences for failing to legally serve the RAP Notice?

As noted above, no rent increases can be given to the tenant until 6 months after he is served with a valid copy of the RAP Notice. Therefore, the rent increase notice given to the tenant in November of 2014, purporting to increase his rent to $525.00 is invalid.

Was the tenant petition timely filed?

The Rent Adjustment Ordinance states that 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 <u>or</u> the date the tenant first receives written notice of the existence and scope of the RAP, whichever is later.[25] While a preponderance of the evidence is convincing that the tenant was served with the rent increase notice on November 28, 2014, since the tenant was never served with a valid copy of the *RAP Notice* in Cantonese, the tenant petition was timely filed.

<u>ORDER</u>

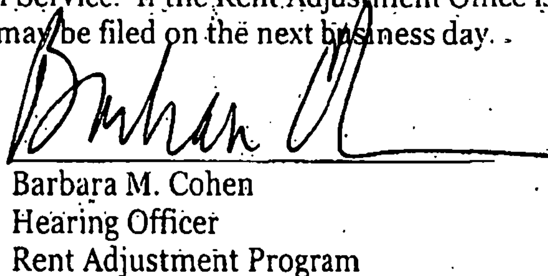
1. Petition T15-0101 is granted.

2. The unit is not exempt from the Rent Adjustment Ordinance as it is not a located in a building with three or fewer units.

3. The tenant's base rent is $400 a month.

4. The owner may otherwise be entitled to a rent increase but may not increase the rent until 6 months after the tenant is first served with a Cantonese language version of the *RAP Notice*. Any rent increase must be served in accordance with Civil Code § 827 and the RAP Ordinance.

5. <u>Right to Appeal</u>: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.



Dated: October 12, 2015

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

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[25] O.M.C. § 8.22.090 (A)(2); Appeal Decision in Case No. T09-0086, <u>Lindsey v. Grimsley</u>, et al

PROOF OF SERVICE

Case Number(s): T15-0101

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.

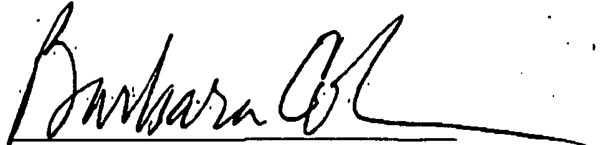
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Kevin Cheng
Liberty Properties Group, LLC
PO Box 460171
San Francisco, CA 94146

Chao Ping Li
157 8th Street
Oakland, CA 94607

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 13, 2015, in Oakland, California.



Barbara M. Cohen
Oakland Rent Adjustment Program

EXHIBIT B

CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CA 94612-2043 TEL(510)238-3721
Housing and Community Development Department FAX (510) 238-6181
Rent Adjustment Program TDD(510)238-3254

Housing, Residential Rent and Relocation Board

APPEAL DECISION

CASE NUMBER:	**T15-0101, Li v. Liberty Properties** **T15-0347, Li v. Liberty Properties**	
APPEAL HEARING:	**April 14, 2016**	
PROPERTY ADDRESS:	**157 Eighth Street** **Oakland, CA**	
APPEARANCES:	**Kevin Cheng**	**Owner Appellant Representative**
	Todd Mavis	**"**
	Chao Ping Li	**Tenant Appellee**
	Monica Wong	**Chinese Interpreter**

Procedural Background

The tenant filed a petition on February 4, 2015, which contested a rent increase in excess of the annual CPI adjustment on the grounds that she has not received the notice of the existence of the Rent Adjustment Program (RAP) and the owner did not provide a summary of the justification for the rent increase despite her written request.

The owner filed a timely response, which claims that the subject building is exempt from the Rent Ordinance because it contains three units and the owner resides in one of the units. The Hearing Decision granted the tenant petition.

Grounds for Appeal

The owner filed appeals on the grounds that the Hearing Decision was not supported by substantial evidence; that the decision is inconsistent with

decisions issued by other hearing officers; that he was denied a sufficient opportunity to present his claim or respond to the petitioner's claim; and hearing officer bias.

Appeal Decision

After Board discussion and questions put to both parties, N. Frigault moved to affirm the decision based on substantial evidence presented. E. Lai seconded.

The Board voted as follows;

Aye: E. Lai, R. Chang, J. Warner, T. Singleton, N. Frigault, K. Friedman

The motion was approved by consensus.

NOTICE TO PARTIES

Pursuant to Ordinance No(s). 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 Code 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.

CONNIE TAYLOR
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

5/13/16
DATE

PROOF OF SERVICE

Case Number T15-0101; T15-0347

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.

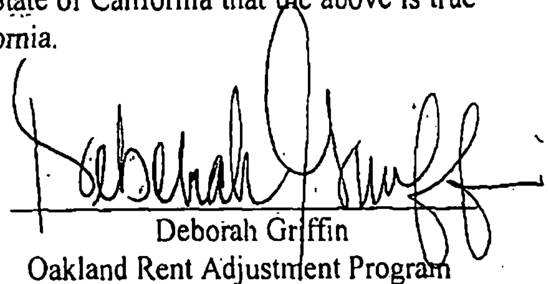
Today, I served the attached **Appeal Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Chao Ping Li
157 8th Street
Oakland, CA 94607

Liberty Properties Group, LLC
K. W. Cheng
P.O. Box 460171
San Francisco, CA 94146

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 **May 5, 2016** in Oakland, California.



Deborah Griffin
Oakland Rent Adjustment Program

EXHIBIT C

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: **T14—0284, Jin v. Ha Lee**

PROPERTY ADDRESS: **1945 8th Ave, Oakland, CA 94606**

DATE OF HEARING: **November 26, 2014**

DATE OF DECISION: **January 5, 2015**

APPEARANCES: **Kang Jin, tenant**
Frances Lai, interpreter

No appearance by owner

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

Tenant Kang Jin filed a petition which alleges that multiple rent increases exceeded the CPI Rent Adjustment and were unjustified; that no written notice of the Rent Program (*RAP Notice)* was given to him with the contested rent increases; that he not given the *RAP Notice* 6 months prior to the rent increases; and that his housing services have been decreased due to the loss of access to the washing machine and that he was required to pay for utilities.

The owner filed a timely response to the petition, which alleges that the unit is exempt from the Rent Adjustment Program because the unit is located in a building with three or fewer units and the owner has occupied one of the units as her principal residence for at least one year.

The owner did not appear at the Hearing.

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THE ISSUES

1. When, if ever, was the tenant given Notice of the Rent Adjustment Program (*RAP Notice*)?
2. Can the owner's claim of exemption be determined without the owner's testimony?
3. Were the rent increases valid?
4. Have the tenant's housing services been decreased and, if so, what is the remedy?
5. What remedy can the RAP impose when the tenant no longer resides in the unit?

EVIDENCE

All the following information came from the tenant's testimony:

General Information: Mr. Jin moved into the basement of the subject unit in March of 2009 at an initial rent of $250.00 a month[1] with utilities included. He was never given the *RAP Notice*. The building is a duplex. The tenant lived in the basement room in one of the two units. His room had a lock on it. There were two additional bedrooms in the half of the duplex in which he resided. The owner slept in one of the rooms and the owner rented out the third bedroom to a series of other tenants. Both the owner's room and the room of the other tenant had individual locks on their doors. The tenant, the owner and the other tenant shared access to the kitchen and the bathroom. The tenant testified that this was not a shared housing community. He had access to his room, the bathroom and the kitchen. He was not welcome to use any other part of the house. Additionally, while he was living there when the other tenants would vacate the third bedroom, the owner did not include him in the decisions about to whom to rent that room.

The tenant testified that the other half of the duplex is also divided into individual rooms that the owner rents out separately.

Rent History: The tenant testified that in March of 2010 he was given a notice increasing his rent from $250 to $260 a month, effective May 1, 2010[2]. In February of 2011, the tenant was given a notice that his rent no longer included utilities and that beginning in April of 2011 the tenant would have to pay 1/3 of the *PG&E* bill[3]. From then on the owner would tell him each month how much he owed for the *PG&E* bill and he would give her cash. He estimates that he paid the owner $10 to $15 a month. He does not have any records as he paid her in cash.

The following month, in March of 2011, the tenant was given a rent increase notice purporting to increase his rent from $260 to $270 a month, effective May 1, 2011[4]. In

[1] Exhibit 1
[2] Exhibit 6
[3] Exhibit 4
[4] Exhibit 5

June of 2012, the tenant was given a rent increase notice purporting to increase his rent from $270 to $280 a month, effective August 1, 2012[5]. The tenant received another rent increase notice in June of 2013 purporting to increase his rent from $280 to $290 a month, effective August 1, 2013[6]. Then in May of 2014 he received a rent increase notice that increased his rent from $290 to $300 a month, effective August 1, 2014[7].

The tenant paid all the rent increases. He moved out of the unit on September 5, 2014.

Decreased Housing Services: The tenant claimed that his housing services have been decreased because when he moved in utilities were included in his rent and beginning in April of 2011 he was required to split the utility bill. Additionally, when he moved in the lease specifically allowed him to use the washing machine one or two times a week[8] and beginning in August of 2012 he was prohibited from using the washing machine.

The tenant has been paying the owner money for the utility bill since April of 2011 at a cost of approximately $10-15 a month. Additionally, since August of 2012 he has had to add the additional expense of using a coin operated laundry facility, at a cost of approximately $10-$20 a month.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. When, if ever, was the tenant given the *RAP Notice?*

The tenant's uncontested testimony is credited. It is determined that the tenant was never provided with the *RAP Notice.*

2. Can the owner's claim of exemption be decided without her presence?

The owner asserted a claim in her *Landlord Response* that the unit is exempt from the RAP because it is a unit located in a building with three or fewer units and the owner occupies one of the units continuously for at least a year. It is true that a "dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence[9]" may be exempt from the RAP. However, here the tenant testified that the unit is a duplex and that each half of the duplex is subdivided into individual units that the owner rents out. There is no contrary testimony.

When a property owner subdivides a single rental unit into multiple rental units, each individual rental counts as a "unit". Therefore, if the owner rents two units in her half of the duplex and an additional two (or three) units in the other half of the duplex, then the tenant's unit is not exempt. The owner has the burden of proof to establish an

[5] Exhibit 3
[6] The tenant could not find this rent increase notice.
[7] Exhibit 2
[8] Exhibit 1
[9] O.M.C. § 8.22.030(A)(8)

exemption. Therefore, without her presence at the Hearing she has not sustained her burden of proof and the tenant's unit is not exempt from the Rent Adjustment Ordinance.

Were the rent increases valid?

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy[10] and together with any notice of rent increase or change in the terms of a tenancy.[11] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first RAP Notice is given.[12]

Since no *RAP Notice* was ever given, each of the rent increases the tenant has received was invalid. The tenant's rent should never have been more than $250.00 a month, inclusive of utilities.

3. **Have the tenant's housing services been decreased?**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent[13] and may be corrected by a rent adjustment.[14] However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased services case, where the *RAP Notice* has been given at the beginning of a tenancy, (or more than 60 days before the tenant petition was filed) the tenant is only allowed relief for 60 days prior to the filing of the petition[15]. However, where the tenant never received the *RAP Notice*, he is entitled to relief for the entirety of his tenancy up to three years. Since the evidence established that the tenant did not receive the *RAP Notice*, the tenant is entitled to restitution for three years, beginning in September of 2011 through August of 2014, when the tenant moved out.

The usual 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. However, where the amount lost by the tenant is an easily determined dollar amount, as in this case, the appropriate measure of restitution is to determine the average monthly dollar amount for the lost service. By using this approach, the tenant is in the same financial position that would exist if these losses had not occurred.

The Rent Adjustment Program Regulations specifically prohibit an owner from "splitting utilities" between multiple units. The regulation states:

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[10] O.M.C. § 8.22.060(A)
[11] O.M.C. § 8.22.070(H)(1)(A)
[12] O.M.C.§ 8.22.060 (C)
[13] O.M.C. § 8.22.070(F)
[14] O.M.C. § 8.22.110(E)
[15] Board Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

> When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. . . . The best way to remedy the bill is to install individual meters. It this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent[16].

The testimony presented by the tenant regarding the amounts of PG&E billing, along with the rent increase notice sent by the owner requesting that the tenant pay 1/3 of the PG&E bills, convincingly demonstrate that the owner was splitting utilities in violation of the RAP Regulations.

The tenant testified that he paid approximately $10 to $15 a month for *PG&E* bills since April of 2011. The average loss is therefore $12.50 a month. Since he is only allowed restitution for three years, he is entitled to restitution in the amount of $450.00 ($12.50 a month x 36 months) for the *PG&E* overpayments.

Additionally, the loss of use of the washing machine in the tenant's home is a changed condition that also amounts to a decrease in housing services. The tenant testified that since August of 2012 he has been paying an average of $15.00 a month for laundry mat services. He is entitled to restitution in the amount of $375.00 for this loss.

4. What remedy is available since the tenant moved out of the property?

The jurisdiction of the RAP limits the authority of the Hearing Officers to only set forth the legal rent for the unit; no orders of direct restitution may be made. Therefore, if the tenant wishes to seek further orders in this matter he needs to file a claim in a court of competent jurisdiction. The tenant's losses are specified in the chart below:

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
PG&E	1-Sep-11	31-Aug-14			$ 12.50	36	$ 450.00
Laundry	1-Aug-12	31-Aug-14			$ 15.00	25	$ 375.00
				TOTAL LOST SERVICES			$ 825.00

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Sep-11	31-Jul-12	$270	$250	$ 20.00	11	$ 220.00
1-Aug-12	31-Jul-13	$ 280.00	$ 250.00	$ 30.00	12	$ 360.00
1-Aug-13	31-Jul-14	$ 290.00	$ 250.00	$ 40.00	12	$ 480.00
1-Aug-14	31-Aug-14	$ 300.00	$ 250.00	$ 50.00	1	$ 50.00
			TOTAL OVERPAID RENT			$ 1,110.00

RESTITUTION

Total to be repaid to Tenant	$ 1,935.00

[16] Rent Adjustment Regulation 10.1.10

ORDER

1. The tenant's claims are granted. The allowable legal rent for his Unit at all relevant times was $250.00 a month.

2. The tenant's claims for decreased services amount to a financial loss to him in the amount of $825.00.

3. For a period of 3 years, the tenant has made net rent overpayments in the amount of $1,100.

4. In total the tenant has overpaid the owner $1,935.00. Since Mr. Jin no longer resides in the unit the RAP has no further authority to enforce this order.

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) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: January 5, 2015

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T14-0284

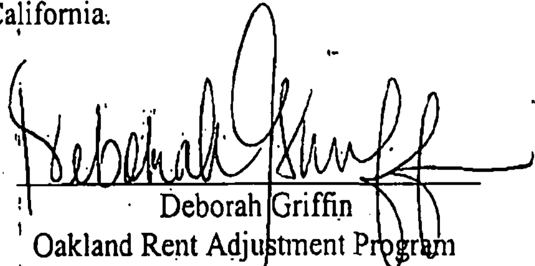
I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

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:

Lai Ha Lee 1945 8th Avenue Oakland, CA 94606	Kang Jin 6710 Lion Way Oakland, CA 94621	Kang Jin 1945 8th Avenue 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 **January 7, 2015** in Oakland, California.



Deborah Griffin
Oakland Rent Adjustment Program

EXHIBIT D

CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development TEL (510) 238-3721
Rent Adjustment Program FAX (510) 238-6181
TDD (510) 238-3254

Housing, Residential Rent and Relocation Board (HRRRB)

APPEAL DECISION

CASE NUMBER: **T14-0284-Jin v. Ha Lee**

APPEAL HEARING: **January 28, 2016**

PROPERTY ADDRESS: **1945 8th Avenue Oakland, CA**

APPEARANCES:
Ha Lee Owner Appellant
Kang Jin Tenant Appellee
Cantonese Interpreter

Procedural Background

The tenant filed a petition on July 28, 2014, which contested a rent increase on the grounds that it exceeded the CPI Adjustment; that he did not receive the RAP notice and he also claimed various decreased housing services. The owner did not appear at the Hearing.

The Hearing Decision granted the tenant's petition on the grounds that the tenant never received the RAP notice, and denied the owner's claim of an exemption based on the tenant's testimony that the owner rented out several rooms which converted the duplex into a multiple residential building.

1. Grounds for Appeal

The owner filed an appeal on January 16, 2015, and contends that the decision is not supported by substantial evidence; and that the subject property is exempt from the Rent Ordinance because it is a duplex and she lives in one of the units.

Appeal Decision

After Board discussion and questions to both parties B. Williams moved to affirm the Hearing Decision based on the Hearing Officer's rationale. B. Scott seconded. the Board voted as follows:

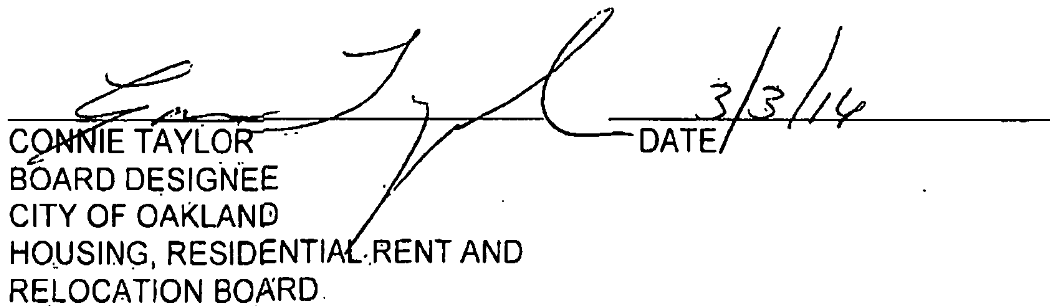
Aye: E. Lai, B. Williams, J. Warner, U Fernandez, R. Chang, B. Scott
Abstain 0
Nay

The motion was approved by consensus.

NOTICE TO PARTIES

Pursuant to Ordinance No(s). 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 Code 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.



CONNIE TAYLOR — DATE 3/3/14
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

PROOF OF SERVICE

Case Number T140284

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 **Appeal 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:

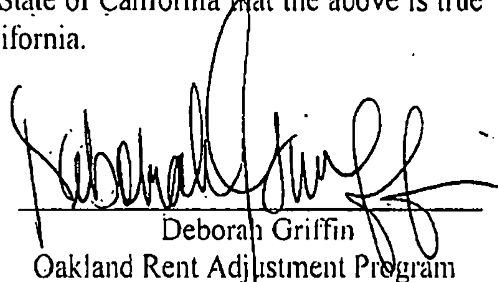
Kan Jin
1945 8th Avenue
Oakland, CA 94606

Lai Ha Lee
1945 8th Avenue
Oakland, CA 94606

Kang Jin
6710 Lion Way #418
Oakland, CA 94621

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 3, 2016 in Oakland, California.



Deborah Griffin
Oakland Rent Adjustment Program

EXHIBIT E

CITY OF OAKLAND

CITY OF OAKLAND

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

Community and Economic Development Agency(510) 238-3721
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: **T06-0005 (Anderson v. Jenkins)**

PROPERTY ADDRESS: **873 – 30th St., Oakland, CA**

HEARING DATES: **February 27 & March 13, 2006**

APPEARANCES:
Gerlen Anderson (Tenant)
Samuel Anderson (Tenant)
Linda S. Jenkins (Landlord)
Samuel Hoover Williams (Witness for Landlord)
Shirley A. Williams (Witness for Landlord)
Alan Beales (Landlord Representative)
Felix Seidler (Attorney for Landlord)[1]

INTRODUCTION

On January 6, 2006, the tenants filed a petition that contests rent increases which the tenants claim violate the Oakland Municipal Code (O. M. C.) Chapter 8.22 and Rent Adjustment Ordinance Regulations. The tenants also claim decreased housing services. The landlord filed a timely response to the tenant petition.

The persons named above appeared at the hearing and were given full opportunity to present relevant evidence and argument. All persons other than Mr. Beales and Mr. Seidler testified under oath.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background: The tenants originally moved into their rental unit, a single family house located on a lot with another single family house, on May 3, 2000 at an initial rent of $300 per month. The landlord lives in another house on the same property, which has been divided into two units. The tenants were served with multiple disputed rent increase

[1] Appeared only at the hearing of March 13, 2006

notices, beginning in July of 2000, when the landlord increased their rent from $300 to $500 per month.

Exemption from the Rent Ordinance: The Oakland Municipal Code (O. M. C.)[2] states, in part:

> Units in owner-occupied properties divided into three or fewer units will be exempt from Chapter 8.22, Article I under the following conditions:
>
> 1... A qualifying Owner of Record must first occupy one of the units continuously as his/her principal residence for at least one year...
>
> 3... The Owner of Record qualifying for this exemption may notice the first rent increase **that is not regulated** by this Chapter 8.22, Article 1 one year after the effective date of this exemption or one year after the qualifying Owner of Record starts residing at the affected property as his/her principal place of residence. (emphasis added)
>
> 4... This exemption for owner-occupied properties of three or fewer units takes effect one year after the adoption of this ordinance modifying Chapter 8.22 Article 1.[3]

The parties agree, and state in their sworn petition and response, that the landlord lives in a two-family residence on the same property as the single-family residence in which the tenants live. Further, the parties agree that the landlord has lived in her home for a number of years, and at least one year before the tenants filed their petition.

Section 8.22.030(D)(3), quoted above, states that rent increases that are noticed one year after a rental unit first becomes exempt from the Rent Ordinance are not regulated by the Ordinance. Therefore, by implication, rent increases prior to that date <u>are</u> regulated by the Ordinance, and may be challenged by a tenant.

However, because the tenants' unit is exempt from the Ordinance at this time, the Rent Adjustment Program presently has no jurisdiction over the unit. Without such jurisdiction, the Rent Adjustment Program can not set the rent and thus enforce an order setting rent for the tenants' unit. The Rent Adjustment Program has no present ability to provide the petitioners with an effective remedy. The tenants' petition is therefore dismissed.

Although the tenants may not challenge prior rent increases through the Rent Adjustment Program, they may be able to pursue a remedy through the court system.

---

[2] O.M.C. Section 8.22.030(D)

[3] The Ordinance was adopted on September 30, 2003.

ORDER

1. Petition T06-0005 is dismissed.

2. The tenant's unit is exempt from the Rent Program as an owner-occupied property divided into three or fewer units.

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 this decision. The date of service is shown on the attached Proof of Service. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day.

Dated: April 20, 2006

____

Stephen Kasdin
Hearing Officer
Rent Adjustment Program

EXHIBIT F

CITY OF OAKLAND

CITY of OAKLAND

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

Community and Economic Development Agency(510) 238-3721
Rent Adjustment Program

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

REMAND DECISION

CASE NUMBER: **T06-0005 (Anderson v. Jenkins)**

PROPERTY ADDRESS: **873 – 30th St., Oakland, CA**

HEARING DATE: **August 2, 2006**

APPEARANCES: **Gerlen Anderson (Tenant)**
Samuel Anderson (Tenant)
Roxanne Romell (Attorney for Tenants)
Linda Jenkins (Landlord)
Shirley A. Williams (Witness for Landlord)
Felix A. Seidler (Attorney for Landlord)

INTRODUCTION

On January 6, 2006, the tenants filed a petition that contests rent increases which the tenants claim violate the Oakland Municipal Code (O. M. C.) Chapter 8.22 and Rent Adjustment Ordinance Regulations. The tenants also claim decreased housing services. The landlord filed a timely response to the tenant petition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural Background: A Hearing Decision was issued on April 20, 2006. On May 5, 2006, the tenants filed an appeal of this Decision. The tenants' appeal was heard by the Board on July 13, 2006. On that date, the Board remanded the case for a hearing to determine "whether the property is exempt or not. The factual issues are (1) whether there are three or four units on the parcel and (2) whether, at the time of the petition, the subject unit was physically located in Oakland or in Emeryville. If the property is not exempt from the Rent Adjustment Program jurisdiction, the Hearing Officer shall decide the petition on the merits."

At the Remand Hearing, the landlord's attorney stipulated that the tenants' rental unit is located in the City of Oakland. Therefore, the only preliminary question is the number of rental units on the parcel.

Factual Background: The tenants originally moved into their rental unit, a single family house located on a lot with two other single family houses, on May 3, 2000 at an initial rent of $300 per month. The landlord lives one of the other houses on the same property. The tenants were served with multiple disputed rent increase notices, as follows:

$300 to $500 – effective July 1, 2000
$500 to $670 – effective December 3, 2001
$670 to $770 – effective December 5, 2002
$770 to $820 – effective July 5, 2002
$820 to $920 – effective October 6, 2002
$920 to $925 – effective February 5, 2003
$925 to $1,125 – effective November 5, 2004

At the hearing, the parties agreed that the tenants paid the above-stated rents through the month of April, 2005. On May 1, 2005 the tenants began paying rent of $811 per month, which they continued to pay through the month of October, 2005. They paid no rent from November 1, 2005, through July 31, 2006, when they vacated their rental unit.

Exemption from the Rent Ordinance: The Oakland Municipal Code (O.M.C.)[1] states, in pertinent part: "Units in owner-occupied properties divided into three or fewer units will be exempt from Chapter 8.22, Article I" under certain conditions, none of which are at issue in this case. Therefore, if the property contains three or fewer rental units, the Rent Adjustment Program has no jurisdiction to consider the tenants' petition. If there are more than three rental units, the tenants' unit is a "covered unit," and subject to the Rent Ordinance.

At the hearing, the landlord testified that there are three houses on the property. Two of the houses are leased as single-family residences. The third house – in which the landlord lives – has a basement unit. The landlord's niece has lived in the basement unit since the year 2002, for which she pays the landlord an average of approximately $600 per month. This basement unit has its own bathroom and kitchen, the only entrance is an outside door apart from the entrance to the upper portion of the house, and the unit has a separate electric meter.

However, the landlord contends that the basement unit is illegal and, therefore, should not be considered to be a "unit" for the purpose of determining exemption from the Rent Ordinance. In support of this contention, the landlord submitted a document from the records of the City of Oakland Building Services agency (Landlord Exhibit No. 1, August 2, 2006). This Exhibit is a letter dated July 9, 1957 from the Bureau of Sanitation to the then-owner of the house in which the landlord resides. The letter states, in part: "Vacate lower unit as ceiling height is below the 8-foot standard set by the State Housing Act."

[1] O.M.C. Section 8.22.030(D)

The landlord correctly notes that, under California law, if any object of a contract is unlawful, the entire contract is void. This principle applies to a contract for the rental of an illegal dwelling unit. The landlord argues that an illegal unit is not a true rental unit under the Rent Ordinance, and that the tenants have no standing to invoke the status of the landlord's niece, an unrelated third party. Further, the landlord contends that a denial of exemption would penalize her while failing to serve any public policy, whether a health and safety issue or any of the objectives of the Rent Ordinance as stated in O.M.C. Section 8.22.010 (encouraging rehabilitation of property, assuring a fair return to owners, promoting stability in housing, etc.).

Section 8.22.030(D) of the Rent Ordinance exempts certain units in owner-occupied properties "divided into three or fewer units." By its wording, this section of the Ordinance includes legal as well as illegal units. A California Court of Appeal[2] considered the situation of a landlord who had illegally rented residential units in a warehouse before obtaining Certificates of Occupancy. After obtaining such Certificates, the landlord contended that the units became exempt from the San Francisco rent ordinance as "new construction." The Court quotes, with approval, a portion of the Rent Board Decision:

> 'The Rent Board ha[s] held consistently that rental units are subject to the jurisdiction of the Rent Ordinance so long as a tenant resides there, whether the unit is legal or illegal . . . To permit landlords to rent out illegal units but to avoid the obligations imposed by the Ordinance is contrary to the purpose and intent of the Ordinance.' (at page 30).

This principle squarely applies in the present case. To hold otherwise would, in effect, reward a landlord for his or her illegal act. The basement apartment is a rental unit, there are four rental units on the property and, therefore, the tenants' unit is a "covered unit" under the Rent Ordinance.

<u>Non-Payment of Rent</u>

A tenant must prove that he or she is current in the rent, or lawfully withholding rent, in order to have standing to file a petition.[3] The landlord's attorney and representative argued that the tenant petition should be dismissed because the tenants were neither current in payment of the rent nor lawfully withholding the rent when they filed their petition. As stated above, the tenants had not paid rent for the last nine months of their tenancy – from November, 2005 through July, 2006. Therefore, their standing to file a petition depends on whether they were legally withholding the rent.

---

[2] <u>Da Vinci Group v. San Francisco Residential Rent Stabilization and Arbitration Board</u>, 5 Cal.App. 4th 24 (1992)

[3] O.M.C. 8,.22.090.A.3.B

A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.[4] 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. If a breach of the warranty of habitability exists, then the rent withholding is authorized by statute.

To confer standing to file a Rent Adjustment petition, tenants must show that they might prevail in a claim for a habitability breach. That is, they must present a *prima facie* case that they are withholding the rent legally. In this case, the landlord admitted that there were significant Code violations, including a leaking roof, unsafe porch stairs, and inadequate foundation.

It is clear that there is sufficient evidence to at least potentially find a breach of the warranty of habitability during the time the tenants were withholding rent. Therefore, the tenants have standing to file their petition despite withholding rent payments beginning in November of 2005.

Superior Court Stipulation: On January 31, 2006, the parties entered into a Stipulation Re: Dismissal/Judgment in an Unlawful Detainer action concerning the tenants' unit, being Alameda County Superior Court No. WG05-246612 (Tenant Exhibit No.1, pages 4 through 6, received on March 13, 2006). In this case, the landlord sought possession of the unit because of unpaid rent, and the tenants defended the action by alleging a breach of the implied warranty of habitability. The Stipulation in this matter provides, in pertinent part:

(1) The tenants shall vacate their unit on July 31, 2006;
(2) If the tenants fail to vacate on July 31, 2006, the landlord will be entitled to judgment for rental arrearages;
(3) If the tenants vacate on July 31, 2006, the landlord will dismiss the case, and waive any claim for rent through July 31, 2006; and
(4) The parties waive any claims as to "fees and costs" through July 31, 2006.

The Stipulation is silent regarding any other claims that the parties may have had, such as a claim that the tenants paid rent increases that were illegal under the Rent Ordinance. At the Hearing on February 27, 2006, Ms. Anderson testified that it was her understanding that the Stipulation was intended to cover the tenants' claim that the landlord had breached the implied warranty of habitability,[5] but that claims regarding the rent increases would be handled separately. Ms. Jenkins testified that she believed that the Stipulation was intended to resolve "everything."

At the Hearing on March 13, 2006, the tenants submitted the sworn Declaration of Jorge Aguilar (Tenant Exhibit No. 1, pages 1 and 2). Mr. Aguilar is the attorney who

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

[5] Since the implied warranty of habitability was raised in the pleadings, this issue was resolved by the Stipulation and dismissal of the case, as a matter of law.

represented the tenants in the Unlawful Detainer action, and signed the aforementioned Stipulation. Mr. Aguilar's Declaration states, in part: "The stipulation and order did not encompass a waiver of any claim by the tenants/petitioners for any illegal increase in rent . . . any petition before the rent board concerning illegal rent increases is not precluded by the terms of the stipulation."

At the same Hearing session, Felix A. Seidler, the attorney who had represented the landlord in the Unlawful Detainer action and also signed the Stipulation, testified that the Stipulation was "not a global settlement."[6] The Stipulation was signed 21 days after the tenant petition was mailed to the landlord.[7] Therefore, the landlord was on notice of the tenants' claim of rent overpayments well before she entered into the Stipulation.

In view of both the language of the Stipulation and evidence presented by the parties, it is clear that the Stipulation settled the tenants' claim of decreased housing services, but did not affect their claim of rent overpayments. Therefore, the allegation of rent overpayments in the tenant petition will be considered.

Notice and Filing Requirements: The Rent Ordinance requires a landlord to serve notice of the existence and scope of the Rent Adjustment Program (RAP) at the start of a tenancy[8] and together with any notice of rent increase.[9] A notice of rent increase with an effective date less than six months after a landlord first gives notice of the RAP is void.[10]

At the hearing, the parties agreed that the tenants were first given notice of the RAP notice on January 26, 2006, a date after the tenants filed their petition. Since the landlord did not comply with the any of the notice requirements of the Rent Ordinance, all rent increases are invalid.

Rent Reduction Due to Lack of the Required Notice: Because the tenants never received the RAP notice before any of the rent increases, their rent is reduced to the original amount of $300 per month. Additionally, the tenants overpaid rent since July 1, 2000, when they first paid increased rent. Although the tenants overpaid rent for more than 5 years, a tenant's claim for rent overpayments is limited, by Board decision, to three years. See also Cal. Code of Civil Procedure, Section 338.

The rent overpayments are computed for the period August, 2003 through July, 2006. However, since the tenants paid no rent for the period November, 2005 through July, 2006, no rent overcharge can be assessed for that period of time.

---

[6] CD No. 2, at 1:03:00

[7] The Proof of Service of the notice of tenant petition filing, signed under penalty of perjury by a Rent Adjustment Program employee, states that a copy of the tenant petition was mailed to the landlord on January 10, 2006.

[8] O.M.C. Section 8.22.060(A)

[9] O.M.C. Section 8.22.070(H)(1)(A)

[10] O.M.C. Section 8.22.060, and by Board decision

The parties agree to the rent history under the heading "Factual Background" on page 2, above. As set forth in the following Table, the tenants' rent overpayments resulting from lack of the required notice total $17,391.

OVERPAID RENT								
	From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total	
	1-Aug-03	1-Oct-04	$ 925.00	$ 300.00	$ 625.00	15	$ 9,375.00	
	1-Nov-04	1-Apr-05	$ 1,125.00	$ 300.00	$ 825.00	6	$ 4,950.00	
	1-May-05	1-Oct-05	$ 811.00	$ 300.00	$ 511.00	6	$ 3,066.00	
					-			
						TOTAL OVERPAID RENT	**$ 17,391.00**	

ORDER

1. Petition T06-0005 is granted.

2. The tenants overpaid rent in the amount of $17,391.

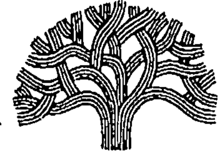
3. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of this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

Dated: September 6, 2006

Stephen Kasdin
Hearing Officer
Rent Adjustment Program

EXHIBIT G

CITY OF OAKLAND



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

Community and Economic Development Agency
Rent Adjustment Program

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

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB)

APPEAL DECISION

CASE NUMBER: **T06-0005 (Anderson v. Jenkins)**

APPEAL HEARING: **January 25, 2007**

PROPERTY ADDRESS: **873 30TH Street, Oakland, CA**

APPEARANCES: **Felix Seidler, Esq., Attorney for Landlord**
Roxanne Romel, Esq., Attorney for Tenant

Procedural Background

The petition in this case was filed by the tenant on January 6, 2006, alleging that certain rent increases violate the Oakland Municipal Code (O.M.C.) Chapter 8.22 and Rent Adjustment Ordinance Regulations. The tenant also claimed decreased housing services and the landlord filed a timely response to the tenant decision.

The tenant contested rent increases back to 2000. On April 20, 2006, the Hearing Officer determined that the Rent Adjustment Program had no jurisdiction over the subject unit on the basis that the property was owner occupied and involved one duplex and one single family house on the property and dismissed the tenant's petition. The tenant filed an appeal. An appeal hearing was conducted on July 13, 2006, and the Board remanded the case for a hearing to determine whether there were three or four units on the parcel and whether the property was physically located in Oakland or Emeryville.

A hearing on remand was conducted on August 2, 2006, and the Hearing Officer determined that there were four rental units and the property was located in Oakland which subjected the property to the Rent Ordinance. The Hearing Officer noted the parties agreed that the tenant did not receive notice of the RAP until January 26, 2006, and because the landlord did not comply with the notice provisions of the RAP all rent increases were invalid. The rent overpayments were computed for the period August 2003 through July 2006. However, the tenants paid no rent for the period November 2005 through July 2006 so there was no rent overcharge for that period of time. The overpayments were calculated by the Hearing Officer at $17,391.00.

Appeal

The landlord filed an appeal challenging the calculations used by the Hearing Officer. The landlord representative argued that the base rent should be $500, not $300, for purposes of calculating the overpayments, that the landlord should be credited for the nine month period when the tenants did not pay rent , in the amount of $4,500.00 at $500 per month and that there was a $966.00 error in computation for the period April 2005 through September 2005. He contended that the rent overpayments totaled a net of $6445.00, not $17,391.00.

Appeal Decision

The Board determined that the overpayment calculation for the period November 5, 2004 through April 1, 2005, needed to be re-calculated as the rent amount paid the tenant during this time period was $925.00, not $1,125.00 and referred the case back to Staff for a re-calculation. The amount of the re-calculation is $1,200.00. From November 5, 2004, to April 1, 2005, the tenant paid $925.00 per month, not $1,125.00. After the re-calculation the amount of the total overpaid rent is $16,191.00 (See attached table).

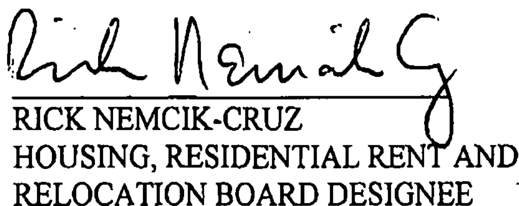
Action taken by the following vote:

Ayes: A. Flatt, J. Leavitt, S. Sanger, R. Hunter, L. Arreola
Nay: None
Abstain: None
Absent C. Hargrave, S. Kennedy, D. Taylor
The motion carried and the Hearing Decision was affirmed as modified.

NOTICE TO PARTIES

Pursuant to Ordinance No(s). 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 Code 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 DEICISON OF THIS BOARD IN YOUR CASE.



RICK NEMCIK-CRUZ
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD DESIGNEE

February 9, 2007
DATE

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
					$ -		-
					$ -		-
					$ -		-
					$ -		-
					$ -		-
					$ -		-
					$ -		-
					TOTAL LOST SERVICES		$ -

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Aug-03	1-Oct-04	$ 925.00	$ 300.00	$ 625.00	15	$ 9,375.00
1-Nov-04	1-Apr-05	$ 925.00	$ 300.00	$ 625.00	6	$ 3,750.00
1-May-05	1-Oct-05	$ 811.00	$ 300.00	$ 511.00	6	$ 3,066.00
				$ -		-
				TOTAL OVERPAID RENT		**$ 16,191.00**

RESTITUTION

	MONTHLY RENT	
	TOTAL TO BE REPAID TO TENANT	$ 16,191.00
	TOTAL AS PERCENT OF MONTHLY RENT	#DIV/0!
AMORTIZED OVER #DIV/0!	MO. BY REG. IS	**#DIV/0!**
OR OVER	MONTHS BY HRG. OFFICER IS	

PROOF OF SERVICE
Case Number T06-0005

I am a resident of the State of California and over 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 **Appeal 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:

Roxanne Romell
1814 Franklin St. Unit 503
Oakland, CA 94612

Felix Seidler
2527 Santa Clara Ave
Alameda, CA 94501

Alan Beales
6114 LaSalle Ave Unit 354
Oakland, CA 94611-

Gerlen Anderson
873 30th St.
Oakland, CA 94608

Linda Sue Jenkins
P.O. Box 11554
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 Friday, February 09, 2007, in Oakland, California.

CHRISHELLE CHATMAN

EXHIBIT H

CITY OF BERKELEY
Rent Stabilization Program
2125 Milvia Street
Berkeley, California 94704
(510) 644-6128

NOTICE OF DECISION OF HEARING EXAMINER

PETITION NO. RWN-1284

PETITIONER(S): Paul Rojas, et al.

RESPONDENT(S): Greg Tyler, et al.

PROPERTY ADDRESS: 2401 Warring Street
Berkeley, California

DATE OF HEARING: January 7, 2000

DATE OF DECISION: January 31, 2000

HEARING EXAMINER: Lillian Mayers

A hearing was held on the above petition and the following decision is rendered:

THE PETITION IS APPROVED AS SUBMITTED

You are hereby advised that you have the right to appeal this decision to the Rent Stabilization Board. Such appeal must be filed, on a form provided by the Board, within 30 days after receipt of notice of this decision. An appeal to the Board is necessary before any further review in the courts. If no appeal is filed, the decision shall become the final non-reviewable decision of the Board.

If an appeal is filed and you disagree with the decision of the Board on appeal, you may seek judicial review of the decision. (Reference: Berkeley Rent Stabilization Ordinance, Section 18 and California Civil Procedure Code Section 1094.6 for judicial review time limitations.)

Enclosure: Decision

CITY OF BERKELEY
RENT STABILIZATION BOARD
2125 Milvia Street
Berkeley, CA 94704
(510) 644-6128

Paul Rojas, et al.,

PETITIONERS, PETITION NO. RWN-1284

vs.

DECISION

Greg Tyler, et al.,

RESPONDENTS.

_______________________/

RE: 2401 Warring St., Berkeley, CA.

PROCEDURAL SUMMARY

Tenants filed the above-referenced petition for rent withholding for failure to register on November 12, 1999. The hearing was held on January 7, 2000. Appearing for Petitioners were Yvonne Lee, Wendy Yang, David Gelbart, Karim Moussally, Matthias Paetz, Paul Rojas, Melvin Tsai, Katherine Holden and Emily Dell, tenants. Appearing for Respondents were Michael Sandel and Bruce Reeves, landlord's representatives. Alvaro De Legarra, Senior Field Investigator, appeared for the Rent Board.

ISSUES

1. Have the tenants demonstrated good cause for the Hearing Examiner to recuse herself from hearing this petition?

2. Is the unit subject to the registration requirements of the Rent Stabilization and Eviction for Good Cause Ordinance (Berkeley Municipal Code Chapter 13.76) (Ordinance)?

SUMMARY OF EVIDENCE AND ANALYSIS

1. Disqualification of Hearing Examiner.

The tenants requested that the Hearing Examiner recuse herself permanently from this case and any and all subsequent related cases, alleging that she is "biased against tenants and has a history of favoritism towards landlords and their representatives. . . ." The tenants did not offer any examples to support their allegation.

Regulation 1225 concerns the disqualification of a hearing examiner or a Board member, and provides for disqualification when the hearing examiner or Board member has a personal financial interest in the outcome or a personal bias for or against any party. The regulation goes on to explain that neither general status as a landlord or tenant or political or philosophical beliefs constitute personal bias. The tenants did not allege that the Hearing Examiner has a personal financial interest in the outcome or a personal bias for or against any party. Therefore, the tenants' request was denied.

2. Is the property subject to the Ordinance?

The property in question is a two and one-half-story building with a basement that, according to the City's Residential Building Record, contains an entry hall, living room, dining room, kitchen and breakfast room on the first floor; four bedrooms and a bathroom on the second floor; and one bedroom and a bathroom on the top floor.

This property was first registered on September 1, 1984, when the current owner filed an Initial Registration Statement (IRS), which described the property as a single-family house with eight residential units. The Board's records show that seven units were claimed to have been rented for the 1985-1986 registration year, and eight units were claimed to have been rented thereafter, until June 30, 1995, when he filed a second IRS. This IRS described the property as a rooming house with nine residential units, including a penthouse that was first rented April 12, 1995. On June 27, 1996, the landlord filed a Unit Status Form that claims that units #2-8 and the penthouse have not been available for rent since August 22, 1995, and on June 30, 1999, the landlord filed an Amended Registration Statement, which indicates that the property contains one unit and that this "formerly exempt unit" was first rented on August 25, 1997, for $6508.00.

The Senior Field Investigator's report, following a December 16, 1999 inspection of the premises, indicates that the building is a three-story house with a bedroom in the basement;[1] four bedrooms, a lobby, a bathroom and a kitchen on the first floor; six bedrooms (one with a half bath) and a bathroom on the second floor; and a penthouse that, the tenants informed him, has a bedroom and a bathroom.

---

[1] Apparently, this room does not meet the code requirements for use as a bedroom and its use as such was, allegedly, without the landlord's knowledge and permission.

B.M.C. Section 13.76.050 provides that the Rent Ordinance applies to "all real property which is being rented or is available for rent for residential use in whole or in part, . . . " unless specifically exempted. B.M.C. Section 13.76.080 requires landlords to register any unit that is subject to its provisions. Thus, unless specifically exempted, any unit that is being rented or is available for rent for residential use must be registered. Since January 1, 1999, pursuant to the Costa-Hawkins Rental Housing Act (Civil Code §1954.50 et seq.) and Board Regulation 508, single family residences for which new tenancies began on or after January 1, 1996, are exempt from the Ordinance's registration requirements. The landlord argues that this property is exempt because it is a single family house and all of the tenancies began after January 1, 1996. He contends that he rents the property to a master tenant who then sublets rooms,[2] that these separately rented rooms are not individual units, and that he has no landlord-tenant relationship with any of the occupants other than the master tenant who, although he signed the petition, did not attend the hearing.

A single family residence, as defined in the Costa-Hawkins Rental Housing Act and Regulation 508(B), is a unit that is alienable separate from the title to any other dwelling unit; in other words, a unit that can be sold by itself. It is undisputed that these tenants are not a single family; they rent individual rooms and have separate rental agreements with the master tenant. It is also undisputed that the subject building can be sold separately, as can any hotel, motel, rooming house or boarding house. Thus, the question is, how the term "unit" is defined in a rental situation such as this. Regulation 403 defines a rental unit as:

> (A) a dwelling unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation; or
>
> (B) a room or suite of rooms in a hotel, motel, rooming house, boarding house or other group living accommodations building that is intended for human habitation and is not a Transient Unit, as defined in Regulation 504, or otherwise exempted from the Rent Ordinance.

This property is currently, and has been historically, operated as a "rooming house," which is defined in Regulation 403(C) as "a building other than a hotel where lodging for five (5) or more persons is provided for compensation, whether direct or indirect." Thus, each bedroom

[2] A July 7, 1999 rental agreement authorizes occupancy by 14 adults.

constitutes a rental unit and, because a bedroom cannot be sold separately, the property is not exempt from the Ordinance's registration requirements.

DECISION

The property is subject to the registration requirements of the Ordinance and is not properly registered because the landlord has not filed Vacancy Registration (V-R) forms and there are outstanding fees and penalties in an amount to be ascertained after the landlord provides an accurate history of the number of rooms that have been rented.

Accordingly, Petitioners' request for a rent withholding order is granted. In accordance with McHugh v. Santa Monica Rent Control Board (1989) 49 Cal.3d 348, **the rent withholding order becomes effective 35 days after the mailing date of this decision**, unless the Respondent properly registers each unit on the property (or shows that it is exempt from registration) or files a timely appeal of this decision with the Board. If an appeal is filed, the rent withholding order becomes effective 35 days after the appeal decision is mailed, unless the order is stayed or reversed.

If Respondent fails to file the V-R forms and pay registration fees and penalties by the effective date of this decision, Petitioners must pay rent into escrow as set forth in the following Escrow Order. After Respondent files the required V-R forms and pays all outstanding registration fees and penalties, he may submit a written request for a compliance decision. Pursuant to Regulation 1530, a compliance decision will be issued within ten days of the date of mailing on Respondent's request, unless the tenants request a compliance hearing within that time. The compliance decision will dissolve the rent withholding order and order the disbursement of any monies held in escrow, as well as the payment of any withheld rent that was not paid into escrow.

ESCROW ORDER

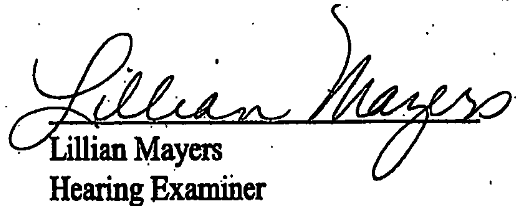
Petitioners must deposit rent into escrow with the Compliance Unit of the Rent Stabilization Board at 2125 Milvia Street, Berkeley, California, the first day of each month, beginning with the next regularly scheduled rental payment after the effective date of the rent withholding order. Rent may be paid in cash or by check, money order or other valid negotiable instrument approved by the Board. Checks, money orders or other negotiable instruments must

be made payable to the City of Berkeley. Each payment must be accompanied by a cover letter that includes the petition number and property address.

If Respondent properly registers the property within 60 days of the effective date of the rent withholding order, the Petitioners will receive 50% of the escrow funds. If the property is not properly registered within those 60 days, the escrow funds will be disbursed to the Petitioners and they need make no further payments into escrow. (Regulation 1531.)

If the Petitioners fail to pay rent into escrow as described above, then this order and the order to withhold rent will be dissolved.

Dated: January 31, 2000



Lillian Mayers
Hearing Examiner

PROOF OF SERVICE BY MAIL

I am employed at 2125 Milvia Street, Berkeley, Alameda County, California 94704. I am over the age of eighteen years and not a party to this action. I am readily familiar with the Berkeley Rent Stabilization Program's practice for collection and processing of correspondence for mailing with the United States Postal Service and this correspondence will be deposited with the United States Postal Service on the date entered below in the ordinary course of business.

On the date entered below, I served one copy of the attached:

NOTICE OF DECISION OF HEARING EXAMINER; DECISION (RWN-1284)

following ordinary business practices, by placing for deposit in the United States Postal Service a true copy thereof, enclosed in a sealed envelope, in the City of Berkeley's mail room, 2055 Center Street, Berkeley, California, addressed as follows:

Karim Moussally
Steven Wilson
2401 Warring St. #2
Berkeley, CA 94704

Matthias Paetz
2401 Warring St. #9A
Berkeley, CA 94704

Oleg Kosyak
2401 Warring St. #4
Berkeley, CA 94704

Yvonne Lee
2401 Warring St. #6
Berkeley, CA 94704

Michael St. John
St. John & Associates
2121 West Street
Berkeley, CA 94702

Paul Rojas
2401 Warring St. #9B
Berkeley, CA 94704

Dave Gelbart
Melvin Tsai
2401 Warring St. #3
Berkeley, CA 94704

Daniel Rennert
2401 Warring St. #4
Berkeley, CA 94704

Michael Sandel
Sandelco Properties
1323 61st Street
Emeryville, CA 94608

Hand Delivered:
Alvaro DeLegarra
Sr. Field Investigator
2125 Milvia Street
Berkeley, CA 94704

Wendy Yang
2401 Warring St. #5
Berkeley, CA 94704

Emily Dell
Melody Moradzadeh
2401 Warring St. #10
Berkeley, CA 94704

Katherine Holden
2401 Warring St. #1
Berkeley, CA 94704

Bruce Reeves
2527 Santa Clara Avenue
Alameda, CA 94501

I certify under penalty of perjury, under the laws of the State of California, that the foregoing information is true and correct to the best of my knowledge and belief. Executed at Berkeley, California.

Dated: February 2, 2000

EXHIBIT I

CITY OF BERKELEY
RENT STABILIZATION BOARD
2125 Milvia Street
Berkeley, California 94704
Telephone (510) 644-6128 Facsimile (510) 644-7703

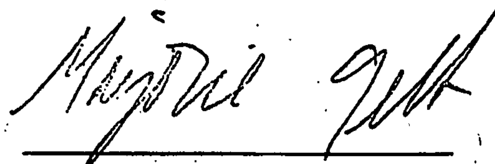
Paul Rojas, et al.,	)	
	)	Case No. RWN-1284
Petitioners,	)	
	)	NOTICE OF
vs.	)	DECISION ON APPEAL
	)	
Greg Tyler, et al.,	)	
	)	
Respondents.	)	
	)	

Property Address: 2401 Warring Street, Berkeley, CA.

You are hereby advised of the attached decision of the Rent Stabilization Board.

This decision is the final decision of the Board. If you disagree with this decision, you may seek judicial review of the decision in a court of appropriate jurisdiction pursuant to California Code of Civil Procedure §§1094.5, 1094.6 (See, Rent Board Regulation 1801). You have 90 days from the date of the decision in which to seek judicial review, however, the Board's decision shall become effective 30 days after the date of this notice unless a stay of operation is granted by a court of appropriate jurisdiction.

Dated: 6/8/00



MARJORIE GELB
Executive Director

CITY OF BERKELEY
RENT STABILIZATION BOARD
2125 Milvia Street
Berkeley, California 94704
Telephone (510) 644-6128 Facsimile (510) 644-7703

Paul Rojas, et al.,	)	
	)	Case No. RWN-1284
Petitioners,	)	
	)	
vs.	)	DECISION ON APPEAL
	)	
Greg Tyler, et al.,	)	
	)	
Respondents.	)	
	)	

Property Address: 2401 Warring Street, Berkeley, CA.

SUMMARY

The landlord appeals the hearing examiner's decision ordering him to register the subject property with the Rent Board. The Board affirmed the decision because there is substantial evidence in the record to support the hearing examiner's finding that the property should be registered as a rooming house rather than a single-family home.

PETITION HISTORY

RWN petition filed:	11/12/99
Hearing:	01/07/00
Hearing Examiner decision mailed:	02/02/00
Landlord appeal filed:	02/14/00
Tenant response to appeal filed:	03/02/00
Decision on appeal:	06/0500

BACKGROUND

The subject property is a three-story building located at the corner of Warring Street and Channing Way in the South Campus section of Berkeley. Since 1980, the property has been registered on and off with the Rent Board. On November 12, 1999, the tenants in the building filed the instant petition to withhold rent in order to compel the landlord to properly register the property. The hearing on the petition was held January 7, 1999.

At the hearing, the tenants alleged that the property was an eleven bedroom rooming house which needed to be registered with the Rent Board. The landlord claimed that the property was a single-family house which was exempt from the provisions of the Rent Ordinance pursuant to the Costa-Hawkins Rental Housing Act (Civil Code section 1954.50 et seq.). In a decision issued January 31, 1999, the hearing examiner found that the building had been and currently was being operated as a rooming house which is defined in Board Regulation 403(C)(3) as "a building other than a hotel where lodging for five (5) or more people was provided for compensation, whether direct or indirect." Under Board Regulation 403(B), rooms in rooming houses are rental units which need to be registered with the Board. Since the owner had registered the property as a single-family house rather than a rooming house, the hearing examiner held that the property was not properly registered with the Board.

The landlord filed a timely appeal of the hearing examiner decision on February 14, 1999. The tenants filed a response to the appeal on March 2, 1999.

ISSUE

Is the subject property exempt from the registration requirements of the Berkeley Rent Ordinance?

ANALYSIS

THE HEARING EXAMINER'S DETERMINATION THAT THE SUBJECT PROPERTY IS BEING OPERATED AS A ROOMING HOUSE IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.

On appeal, the landlord claims the hearing examiner's decision is in error because the hearing examiner failed to recognize that the subject rental unit was occupied by persons constituting a "group living arrangement" as defined in Board Regulation 405. Appellant argues that because he rented the entire property to a group of people, rather than renting individual rooms, the unit cannot be considered to be a rooming house but rather, is a single-family house which, pursuant to the Costa-Hawkins Rental Act (Civil Code section 1954.50 et seq.[1]), is exempt from the registration requirements of the Rent Ordinance.

Regulation 405 states in pertinent part:

> a "group living arrangement," ... is a situation in which a covered rental unit is rented ... by two or more persons who share a common household including the use of common kitchen and bath facilities and, where rights of access to the various portions of the rental unit are determined by mutual agreement among the residents. **An establishment such as a ... rooming house ... is not a group living arrangement** notwithstanding the fact that the residents of the establishment may share common eating, cooking or sanitation facilities. (Emphasis added)

Thus, a "group living arrangement" is a common household where the rights of access to various portions of the rental unit are determined by mutual agreement among the residents. This is

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[1] Civil Code section 1954.52(a)(3) exempts rental units which are "alienable separate from the title to any other dwelling unit," (single family homes and condominiums) from the rent ceiling provisions of the Rent Ordinance. Since the landlord may change the rent at will, Board Regulation 508 exempts these units from the registration provisions of the Ordinance.

distinguished from a rooming house where the rights of access are determined by the landlord.

Here, it is undisputed that appellant operated the subject property as a multi-unit rooming house from the adoption of the Rent Ordinance in 1980 until 1995. (See Appeal p.4.) Beginning August 25, 1995, appellant claims that the subject property was rented as a single unit to tenants who composed a group living arrangement. The issue, therefore, is whether the property is, in fact, rented as a single unit and whether changing the manner in which the property is rented changed it from a multi-unit rooming house to a single dwelling, which would be exempt from the rent registration provisions of the Rent Ordinance. (See Civil Code section 1954.52(a)(3) and Board Regulation 508.)

The first inquiry is into the physical nature of the property which, most often, determines its function. Here, the floor plan submitted by the Board's Senior Field Investigator reveals that the house consists primarily of bedrooms. The first floor consists of four bedrooms, a kitchen, and a bathroom. The second floor consists of six bedrooms and one and a half bathrooms. The third-floor consists of one bedroom and a bathroom. Finally, in the basement, there is a laundry room and a bedroom. There are virtually no common areas other than the kitchen and the bathrooms. This, however, does not appear to have been the original design of the house. Testimony was given that there are heating ducts in the basement labeled "living room" and "library." Since there is currently no living room or library in the house, it would appear that the former living and library rooms were converted to bedrooms. Similarly, both the attic and part of the basement were converted to bedrooms. Testimony was also given that each bedroom has a door with a lock and that there is a number on each door. Thus, in its current configuration, it would appear that the house is intended to function as a multi-unit rooming house rather than a single family home.

Appellant claims that both the City of Berkeley and Alameda County consider the property to be a single family residence. This claim is based on a January 14, 2000 printout from the Alameda County Tax Assessor's Office and a December 29, 1999 Memorandum from a Senior Planner in the City's Planning and Development Department. These documents might be compelling if the determinations were based on actual inspections of the property. There is, however, no indication that the Tax Assessor recently inspected the property. Similarly, in her letter, the City Planner states "[t]he Sanborn Map and City Building, Finance, and Zoning records all indicate that [2401 Warring Street] is a single-family house." This is a simple recitation of what information is in City records and not a determination based on the current use of the property. This is evident from the fact that there is in the record a February 19, 1986 Inspection Report from the City's Codes and Inspection Division in which appellant is cited for operating a rooming house without a permit. At the time, seven rooms were being rented out. Currently, eleven rooms in the house are being rented to 14 unrelated individuals. Thus, while the building in question may originally have been a single-family house and may be listed as such in certain City and County records, the evidence presented indicates that it has been modified to create additional bedrooms and, from all appearances, is currently being operated as a rooming house.

The next inquiry is whether appellant has rented the property to a group of individuals who compose a "group living arrangement" as defined Board Regulation 405. The evidence indicates that appellant negotiated a lease with Daniel Rennert to commence on July 1, 1999. However, Rennert, who had moved into the house on January 1, 1999, never signed the lease. The lease indicates that appellant's intent was to have Rennert find 13 other people to sign the

lease and share the house with him. However, four of the petitioners were already tenants in the house prior to July 1, 1999[2] and were under no compulsion to sign a new lease with Rennert. In addition, in the record there is a copy of a June 6, 1999 letter from Rennert to Michael Sandel, the property manager, in which Rennert explains why the June rent for the house was late and informs Sandel of repairs he is making around the house. There is also a copy of a June 7, 1999 rent check from Rennert to Sandelco in the amount of $6508 and a page of a rent ledger in record which indicate that Rennert collected rent from the other tenants and paid it to Sandel. These documents suggest that Rennert was the house manager prior to July 1, 1999, the date the unsigned lease was to go into effect. The suggestion that Rennert was the house manager, rather than a member of a group living arrangement, is strengthened by testimony that Rennert assigned rooms to new occupants of the house and informed them of their rent. The suggestion is further strengthened by the fact that, on "Attached Sheet A" to the petition, Rennert listed the amount of rent he paid as "$0". The Rent Board takes official notice of fact that it is not uncommon for a resident manager to pay no rent in return for overseeing the day-to-day operation of a property. (See Franz v. Board of Medical Quality Assurance (1982) 31 Cal.3d 124, 140 [agency may take official notice of matters within the expertise of its members].)

Additionally, there was testimony that the occupants of the house do not share food or cooking responsibilities or otherwise interact as a household. From the floor plan, it does not appear as if all 14 occupants of the house could eat a meal together in the kitchen, the only common area suitable for dining. What's more, the lease indicates that there are two stoves and two refrigerators in the kitchen, something that would not be found in most single family homes.

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[2] Petitioners Yang, Rojas, Wilson, and Moussally (See "Attached Sheet A" to the petition.)

Petitioners also testified that, when informed by the City's Code and Inspections Department that the basement room did not meet the code requirements for a habitable bedroom, appellant served a 3-Day Notice to Vacate on the occupant of the room. If this were a true group living arrangement, appellant would have notified the household of the problem and had the occupants resolve the problem among the themselves. Thus, the evidence in the record indicates that the occupants of the house are not a household or group living arrangement conceived and brought together by the occupants. Rather, through the guise of renting the entire property under a single lease, the owner has attempted to turn an eleven room rooming house into a single dwelling in order the take advantage of the exemption from rent control the Costa-Hawkins Rental Housing Act provides for single dwelling units.

Finally, the Board takes official notice of the legislative history of Costa-Hawkins, which indicates that the Costa-Hawkins' single dwelling exemption was never meant to apply to rooming houses.[3] (See County of Santa Clara v. Perry (1998) 18 Cal.4th 435, 442 [the legislative history of a statute may be considered for the purpose of ascertaining the legislative intent].). For example, an April 25, 1995 Senate Rules Committee Report on SB 1257[4] (Costa) stated:

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[3] "Official notice" is an exception to the rule that no new evidence may be considered after the record has closed. An administrative agency may take official notice of any fact that the courts may judicially notice, which generally are facts that are not reasonably subject to dispute. The requirements of due process are satisfied as long as the parties to an administrative hearing are given notice of, and a reasonable opportunity to refute, officially noticed matters. Accordingly, the Board may take official notice of the legislative history of the Costa-Hawkins Rental Housing Act pursuant to Evidence Code section 452(c). Appellant has been served with the officially noticed material and in accordance with Regulation 1242(F) may submit documentary evidence to refute the officially noticed facts. If Appellant contends that this is insufficient time to prepare a refutation of these facts, he may request a continuance of the appeal hearing.

[4] Prior to adoption the Costa-Hawkins Rental Housing Act was referred to as Senate Bill (SB) 1257 or Assembly Bill (AB) 1164.

> [t]his bill provides that any new tenancy of a **single family-type dwelling** created after January 1, 1996, be exempt from local rent controls, as specified. (Emphasis added.)

Similarly, a May 11, 1995 report of the Assembly Committee on Housing and Community Development referred to the exemption as follows:

> **Single-family exemption.** Exempts from local controls a new tenancy created after January 1, 1996 in a single-family home, condominium, townhouse, specified community apartment projects and stock cooperatives, and any dwelling unit which could be sold or transferred separately. (Emphasis in original.)

A July 12, 1995 report of the Assembly Committee on Appropriations SB 1257 (Costa) stated that the bill:

> [e]xempts from local controls a new tenancy created after 1/1/96 in **a single family home.** (Emphasis added.)

A July 23, 1995 Senate Rules Committee Report AB 1164 (Hawkins) stated that the bill would:

> [p]reempt local rent controls on the rental of **"single-family" dwellings**, but preserve protections for existing tenants. (Emphasis added.)

Thus, the legislative record establishes that in adopting Costa Hawkins, the Legislature intended to exempt "single-family type houses" from local rent controls. The common understanding of a "single-family type house" is a dwelling unit with a kitchen, a living room, a dining room, a bathroom, and one or more bedrooms. The term "single-family type house" does not include a structure with no living room or dining room but with eleven numbered bedrooms and a kitchen.

With regard to appellant's claim that the property in question is a single-family house because it is rented under one lease, Senator John Burton, who was in the Assembly when Costa-Hawkins was passed and who participated in negotiations and amendments to the bill, unequivocally states that "[a]t no time during the committee deliberations or floor debates on the

Act or any other discussions regarding the bill, was it was suggested by anyone that this language[5] was intended to or would authorize the exemption of entire rooming house merely by leasing the entire structure to a master tenant who would in turn be responsible for renting out individual rooms." (See Declaration of Senator John Burton (attached).)

In sum, while the structure in question may have originally been a large single-family house, it has been modified for use as a rooming house and has historically been used as such. In addition, the occupants of the house do not carry on their daily activities as if they are part of a larger household and the landlord does not treat them as being part of a household or group living arrangement when it is convenient not to do so. Finally, the legislative history of Costa-Hawkins establishes that the exemption in question was not intended to apply to properties like the subject property which are best characterized as rooming houses. For these reasons, the decision of the hearing examiner is affirmed.

DECISION

There is substantial evidence in the record to support the decision of the hearing examiner that the property is a rooming house rather than a single-family home. The decision, therefore, is affirmed and the owner is ordered to properly register the property.

The property is not properly registered because the landlord has not filed Vacancy Registration (V-R) forms and there are outstanding fees and penalties in an amount which will be ascertained after the landlord provides an accurate history of the number of rooms that have been rented.

The tenant/respondents' request for a rent withholding order is granted. In accordance

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[5] The exemption for "a dwelling unit that is alienable separate from the title to any other

with McHugh v. Santa Monica Rent Control Board (1989) 49 Cal.3d 348, the rent withholding order becomes effective 35 days after the mailing date of this decision, unless the landlord properly registers each unit on the property (or shows that it is exempt from registration) or unless the order is stayed pending judicial review.

If the landlord fails to file the V-R forms and pay registration fees and penalties by the effective date of this decision, the tenants are to pay rent into escrow as set forth in the Escrow Order on pages 4 and 5 of the hearing examiner decision. After the landlord files the required V-R forms and pays all outstanding registration fees and penalties, he may submit a written request for a compliance decision. Pursuant to Regulation 1530, a compliance decision will be issued within ten days of the date of mailing of the landlord's request, unless the tenants request a hearing within that time. The compliance decision will dissolve the rent withholding order and order the disbursement of any monies held in escrow, as well as the payment of any withheld rent that was not paid into escrow.

Adopted by the Rent Stabilization Board on June 5, 2000 by the following vote:

Yes:	Harris, Kruckel, Patel, Silverman, Spector
No:	None
Abstain:	None
Absent:	Anderson, Maldonado
Recused:	Bernay, Janowitz

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dwelling unit" (Civil Code section 1954.52(a)(3).)

PROOF OF SERVICE BY MAIL

I am a resident of Alameda County. I am and was at the time of the service hereinafter mentioned over the age of eighteen years and not a party in the within below entitled action: My business address is 2125 Milvia Street, Berkeley, California 94704.

I am readily familiar with my employer's practices for collecting and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service this same date in the ordinary course of business. On the date entered below, I served one copy of the attached **Notice of Decision on Appeal and Decision on Appeal in RWN-1284** placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Greg Tyler
2401 Warring #8
Berkeley, CA 94704

Bruce Reeves
2527 Santa Clara Avenue
Alameda, CA 94501

Paul Rojas
2401 Warring #9b
Berkeley, CA 94704

Mike Sandel
Sandelco Properties
1323 61st Street
Emeryville, CA 94608

Karim Moussally/Steve Wilson
2401 Warring #2
Berkeley, CA 94704

Matthias Paetz
2401 Warring #9a
Berkeley, CA 94704

Oleg Kosyak
2401 Warring #4
Berkeley, CA 94704

Yvonne Lee
2401 Warring #6
Berkeley, CA 94704

Dave Gelbart/Melvin Tsai
2401 Warring #3
Berkeley, CA 94704

Daniel Rennert
2401 Warring #4
Berkeley, CA 94704

Wendy Yan
2401 Warring #5
Berkeley, CA 94704

Emily Dell/M. Moradzadeh
2401 Warring #10
Berkeley, CA 94704

Katherine Holden
2401 Warring #1
Berkeley, CA 94704

Michael St. John
2121 West Street
Berkeley, CA 94702

That sealed envelope was then placed at my place of business for deposit in the United States Postal Service on this same date, by following my employer's ordinary business practices for depositing mail in the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

6/8/00 Karen H. Dewees

1
PROOF OF SERVICE
2
Jonathan Owens v. City of Oakland's Dept. of Housing and Community Development, et al.
Alameda County Superior Court Case No. 18914638

3
I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor,
4
Oakland, California 94612. On the date set forth below I served the within documents:

5
RESPONDENT CITY OF OAKLAND'S RENT ADJUSTMENT PROGRAM'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PETITION FOR
6
ADMINISTRATIVE WRIT OF MANDATE

7
☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00
8
p.m.

9
☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed
10
as set forth.

11
☐ by causing personal delivery by (name) of the document(s) listed above to the person(s) at the address(es) set forth below.

12
☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
13

☒ by causing such envelope to be sent by Federal Express/ Express Mail.
14

Clifford E. Fried, Esq.
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Attorneys for Petitioner
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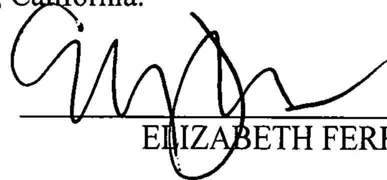
I am readily familiar with the City of Oakland's practice of collection and processing
20
correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
21

I declare under penalty of perjury under the laws of the State of California that the above
22
is true and correct.

23
Executed on February 27, 2019 at Oakland, California.
24



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ELIZABETH FERREL
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