

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:** T15-0263; Panganiban v. Chang

**PROPERTY ADDRESS:** 338 Lenox Ave, Apt 2, Oakland, CA

**DATES OF HEARING:** October 21, 2015; December 4, 2015

**DATE OF DECISION:** December 8, 2015

**APPEARANCES:** Kim Panganiban, Tenant  
Gary Cloutier, Attorney for Tenant (10/21/15)  
Symon Chang, Owner  
Patty Chang, Owner

## **SUMMARY OF DECISION**

The tenant's petition is denied.

## **CONTENTIONS OF THE PARTIES**

The tenant filed a petition which alleges that a current proposed rent increase from \$1,167 to \$1,232.52, effective June 1, 2015, exceeds the CPI Rent Adjustment and is unjustified and that her housing services have decreased due to having to move out of the unit for six months because of flooding in the unit; because the owner removed the garbage disposal and did not replace it; because of lack of weatherproofing; because the owner removed the shower doors and did not replace them; because the heater vent is filled with dust and is a hazard; because the owner replaced a brand new stove with a broken stove; because the front screen door doesn't lock; because the cable provider was unable to install cable because the jack was near the heater; and because the phone jack in the living room does not work. The tenant also alleged that she lost property due to the flooding in July of 2014.

The owner filed a response to the petition, which alleges that the contested rent increase is justified by banking that was approved in a prior Hearing Decision (L14-0062), and denies any decreased housing services.

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## THE ISSUES

1. Was the rent increase approved in a prior case?
2. Were the tenant's claims for decreased housing services timely filed?
3. For those claims that were timely filed, did the tenant experience a decrease in housing services?
4. Does the Rent Adjustment Program have jurisdiction of the tenant's claims of having to move out of the unit and damage to her property due to flooding?
5. If restitution is owed, what is the tenant's rent?

## EVIDENCE

History: The tenant testified that she moved into the subject unit in November of 2003 at an initial rent of \$875 a month. On July 2, 2014, there was a leak in the upstairs unit that caused substantial flooding in her unit. The tenant was required to move out of her unit so that repairs could be made. She moved out of the unit while the work was being done. The work was completed in December of 2014. The tenant was given the keys to move back in sometime in late December of 2014 and began paying rent in January of 2015. The tenant further testified that because of a health condition at the time, she did not move back in to the unit right away. While she did start coming to the unit in January and February, she didn't move her things back in or start spending the night in the unit until approximately March 1, 2015.

On March 3, 2014, the owners filed a Petition in case L14-0062, in which they sought a rent increase based on banking. That case was consolidated with several tenant petitions (cases T14-0551, T14-0540 and T15-0046). A Hearing Decision was issued on April 17, 2015. In that decision the owner petition was granted and the Order allowed the owner to increase the tenant's combined rent (for her apartment and parking) to a maximum of \$1,233.52 based on banking.

The owner, Symon Chang, testified that on April 23, 2015, he served a *Notice of Change of Terms of Tenancy*<sup>1</sup> on the tenant purporting to increase the rent to \$1,233.52 per month, effective June 1, 2015. The owner testified that this rent increase was served pursuant to the Order in the prior case. The tenant testified that when she moved back into the unit she signed a new lease which specified that the rent was \$1,167.00.

On January 23, 2015, the tenant filed a civil complaint in Superior Court against the owner for damages arising from the condition of her rental unit. The tenant claimed that the owners breached the implied warranty of habitability by:

“failing to properly maintain the property, by failing and refusing to make repairs, and by delaying in making necessary repairs to the Subject Premises after

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<sup>1</sup> Exhibit 1. This Exhibit and all other Exhibits referred to in this Hearing Decision other than Exhibit 7, was admitted into evidence without objection.

obtaining knowledge and/or being notified of the conditions of the subject Premises.”<sup>2</sup>

The tenant alleged in the lawsuit that the failure to make repairs caused the flooding (see First Cause of Action and Sixth Cause of Action.)

On her petition, which the tenant filled out under penalty of perjury, the tenant stated that she first received the RAP Notice from the owner on July 3, 2014. The owners stated on their response, that they first gave the tenant the RAP Notice in December of 2012.

The tenant testified that she has been paying rent in the amount of \$1,167 since June 1, 2015. The owner agreed with this testimony.

Decreased Housing Services:

Displaced for 6 months and Damaged Property: The tenant was not permitted to testify about these things because of lack of jurisdiction (See below.)

Garbage Disposal: The tenant testified that prior to the flood there was a garbage disposal in her kitchen. After the work was done in her unit after the flood there was no longer a disposal. She discovered this in December of 2014 when she, her attorney, Andrew Wolff, and the owner did a “walk through” of the premises and she complained about the loss of the disposal in that meeting and she informed the owner that she wanted him to replace it. A “Move-In/Move-Out Check List” was completed at that walk through and the lack of a garbage disposal is listed.<sup>3</sup>

The owner testified that he did see that the lack of a garbage disposal was on the “Move-In/Move-Out Checklist” but he was told by the tenant’s attorney that the list was just to document the conditions and was not necessarily requesting a garbage disposal. Other than this list, the owner never received a complaint from the tenant about the lack of a garbage disposal.

Shower Doors: The tenant testified that before the flood there were shower doors in her bathroom shower. When she moved back in there were no longer shower doors. On the day of the pre-move in inspection (and on the first visit she made to the apartment earlier in December of 2014), she complained about the lack of shower doors. The owner said he was not going to replace the shower doors.

The owners testified that the tenant actually came to view the apartment on more than one occasion in December of 2014. On the first occasion, the tenant complained about

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<sup>2</sup> Exhibit 7. The owner objected to the introduction of the *Complaint for Damages* into evidence as it had not been provided by either side 7 days prior to the Hearing. The Hearing Officer requested a copy of the complaint. Since both parties knew about the pending lawsuit, no one was harmed by the introduction of the document into evidence. It was requested by the Hearing Officer to determine whether or not she still had jurisdiction over the tenant’s claims.

<sup>3</sup> Exhibit 2, page 1

the lack of a shower door. On the second occasion, which is when the tenant filled out the checklist, she did not complain about the lack of a shower door.

Heating Vent: The tenant testified that because of the construction in her unit the heating vents were very dirty when she moved back in. There is one heating vent on the floor of her unit, which she vacuumed. However, there are two other vents high up on the walls, and she was unable to reach them herself.

Because of how dirty the vent was, she did not turn on the heat at all in the winter of 2015. The tenant testified that she was not cold. She does not know if the temperature in her apartment was ever below 68°.

Mr. Chang testified that the tenant never complained to him about the condition of the heater vent. He did, however, send someone to the unit to respond to the list of problems on the tenant's petition. A handyman was sent to the unit in September of 2015. He was not able to confirm that there were any problems with the heating vent<sup>4</sup>.

Lack of weatherproofing: The tenant testified that when she did her walk through of the premises before moving back in, there was water on the window sill. However, since that day, she has not seen any other water entry. She complained about the moisture on the day of the inspection, but not at any other time.

The owner testified that there was moisture on the window sill on the date of the inspection by the tenant, and he called the contractor who caulked the window before the tenant moved back in.

Additionally, the tenant complained that her living room windows did not close properly beginning from the time she moved into the unit. This condition continued to get worse during the time she was living there. Occasionally, in order to close the window she would have to go outside. To deal with the problem she wouldn't open these windows. About a month ago the owner sent someone to install new handles on the living room windows and they now operate properly.

The tenant testified that she has no problems relating to the security of her windows nor are there any gaps in the windows.<sup>5</sup>

Stove problems: The tenant testified that before the flood she had a working stove. When she returned after the flood there was a different stove in her unit which had been painted over and she was concerned about the paint. She consulted an appliance store and was told that stoves should not be painted and could cause toxins to be released. The tenant complained to the owner about this stove at the walk through and again after she moved in. The owner replaced the stove with a different stove within a few weeks after she complained. This occurred likely in January of 2015.

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<sup>4</sup> See Exhibit 3.

<sup>5</sup> The tenant testified that she did not prepare the list of decreased services that was provided with her Tenant Petition, but that it was prepared by her attorney's office.

The tenant further testified that there was something wrong with this new stove that was provided by the owner in that whenever she tried to “bake” something the stove would operate on “broil”. She complained to the owner who ordered a part for the stove. It was only a few weeks that she had this non-functioning stove. The tenant testified that it was by approximately February of 2015 that the owner had fixed the stove and it has been working correctly ever since.

Mr. and Mrs. Chang testified that the tenant did complain to them about the stove in December of 2014. They replaced the stove in mid-January. Then she complained again about the new stove in March of 2015 and Lapham, who took over management, handled the problem.

Front Screen Door: The tenant testified that she has had a problem with the front door screen not locking since she moved into the unit. The door would swing back and forth and slam. She complained to the owner about this problem in December of 2014, before she moved back into the unit. No action has been taken by the owner.

The tenant testified that she did something to fix this door and it now doesn't swing back and forth. It is no longer a problem for her.

The owner testified that the tenant never complained to him about the front door screen. The owner also produced a “*Maintenance Request*” from Lapham Company (the current managers of the property) which shows that on May 13, 2015, the tenant filed a request to fix her outside door from slamming.<sup>6</sup> On September 15, 2015, a repair person reviewed problems in the tenant's unit and found that the front door screen does lock.<sup>7</sup> A report from *APT Maintenance*, who performed the repairs, states that “Tech confirmed that screen door latches and locks, tech found latch functional when closed properly.”<sup>8</sup>

Cable Jack: The tenant testified that before she moved out of the unit because of the flood, there were two cable jacks in her unit, one in the living room on the side of her living room opposite the heater and the other in her bedroom. After she moved back in, the cable jack in the living room was adjacent to the heater and the one in the bedroom had been removed. She noticed this change when she moved back into the unit on approximately March 1, 2015. She further testified that at one of the inspections in December she noticed that the cable jack had moved and she complained to Mr. Chang about it and asked him to move it.

The owner testified that the tenant never complained to him about the cable jack.

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<sup>6</sup> Exhibit 4

<sup>7</sup> Exhibit 3

<sup>8</sup> Exhibit 6

Phone Jack: The tenant testified that when she moved back into the unit on approximately March 1, 2015, she noticed that her phone jack in the living room, which had worked previously, was no longer working.

The owner testified that the tenant never complained about the phone jack.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### **Was the rent increase approved in a prior case?**

On April 17, 2015, a *Hearing Decision* was issued by the *RAP*, in cases L14-0062, T25-0540, T14-0051 and T15-0046. In those combined cases the Hearing Officer ordered that the rent remained \$1,167 per month and that “The owner may increase the combined rent to a maximum of \$1,233.52 per month after giving the tenant notice pursuant to Civil Code § 827 and providing the tenant with the required form Notice to Tenants.”<sup>9</sup> The tenant did not appeal this decision and it became final.

On April 23, 2015, the owner sent a rent increase notice pursuant to the Order in the prior case.

The tenant contends that this rent increase is not valid because she had just signed a new lease in December of 2014, and hence, the rent increase was a second increase within a year. However, the Rent Adjustment Ordinance provides that “A rent increase following an owner’s petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision.” O.M.C. § 8.22.070(D)(6). If the tenant believed that the rent increase approved in L14-0062 was a violation of the Ordinance, she needed to appeal that decision.

Allowing a tenant to contest a rent increase after a *Landlord Petition* is granted would in effect give the tenant a second bite of the apple. The Hearing Decision in the prior case is final. The rent increase is valid.

The tenant’s rent, effective June 1, 2015, is \$1,233.52 per month.

### **When did the tenant first receive the “RAP Notice”?**

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy<sup>10</sup> and together with an y notice of rent increase or change in the terms of a tenancy.<sup>11</sup> 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.<sup>12</sup>

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<sup>9</sup> See Hearing Decision in combined cases L14-0062 (Chang v. Panganiban), and T14-0540, T14-0051 and T15-0046 (Panganiban v. Chang)

<sup>10</sup> O.M.C. § 8.22.060(A)

<sup>11</sup> O.M.C. § 8.22.070(H)(1)(A)

<sup>12</sup> O.M.C. § 8.22.060 (C)

While there was no testimony regarding when the tenant first received the *RAP Notice*, the tenant declared under penalty of perjury in her petition that she received it by July 2014. The owner declared under penalty of perjury that it was served in December of 2012.

As long as the *RAP Notice* was first served at least 6 months prior to the rent increase in question, then the exact date it was served is not necessary to this decision. It is found that the tenant received the *RAP Notice* as least as early as July of 2014.

### **Are the tenant's claims of decreased housing services timely filed?**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>13</sup> and may be corrected by a rent adjustment.<sup>14</sup> 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.

Since a decreased service is, in effect, a rent increase, the general filing limit for RAP Petitions applies: a Petition must be filed within 60 days after receipt of the *RAP Notice* or the knowledge of the existence of a decreased housing service, whichever is later<sup>15</sup>. While there is an exception for those conditions of property which get worse over time (like a roof leak), for discrete losses, the time limit applies.

As noted above, the tenant received the *RAP Notice* at least as early as July 2014.

The tenant was notified that she no longer had a garbage disposal or shower doors when she saw the unit in December of 2014. She learned about the loss of the cable jack and the broken phone jack by the time she moved back to the unit on March 1, 2015. The tenant petition was filed on May 20, 2015, longer than 60 days after March 1, 2015 (and obviously far longer than 60 days after the December 2014 inspection). Therefore, the tenant's claims about the garbage disposal, shower doors, cable jack and phone jack are denied as untimely.

Additionally, the tenant testified that the water entry into her windows occurred only on the day she inspected the property in December of 2014. The owners testified that when they saw the water entry they called the contractor and had him repair the windows. A tenant petition must be filed within 60 days after the last date that there was a decrease in housing services.<sup>16</sup> The tenant testified that by the time she moved into the unit on March 1, 2015, there was no more entry of water. Since there was no ongoing problem in the time period after March 21, 2015 (60 days before she filed her petition), her claim is denied.

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<sup>13</sup> O.M.C. § 8.22.070(F)

<sup>14</sup> O.M.C. § 8.22.110(E)

<sup>15</sup> Board Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

<sup>16</sup> O.M.C. Section 8.22.090(A)(2)

The same is true with respect to the condition of the stove. While at first there was a problem with the stove, the owners corrected the problem by replacing the first stove and then fixing the second stove. The repairs were done before March 21, 2015. Since there was no time in the applicable period during which the tenant had an inoperable stove, this claim is also denied.

The tenant's contention that her failure to timely file should be excused because of "excusable neglect" is not a correct assertion of the law. There is no excusable neglect for failing to bring a timely Tenant Petition.

**For those issues that are not untimely, have the tenant's housing services been decreased?**

The two remaining issues claimed by the tenant in her petition relate to her front screen door and the heating vent. Neither of these items rise to the level of a decreased housing service. With respect to the front screen door, the tenant testified that it has been a problem since she moved into the unit. However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided. The broken screen door is not a habitability problem and is not a condition different from the beginning of the tenancy.

Additionally, the tenant must give the owner notice of the problems and the opportunity to repair before she is entitled to relief. With respect to the tenant's heating vent, the owner credibly testified that he was never notified about this problem.

The tenant's claims of decreased services are denied.

**Does the RAP have jurisdiction over claims of loss of property or damages for having to move out?**

The tenant's list of decreased housing services raises concerns about having to move out because of the flood and because of the loss of property from the flood. In the case of *Larson v. City and County of San Francisco*, (2011) 192 Cal.App.4th 1263, the court examined the authority of San Francisco's Rent Board. The court held that the jurisdiction of administrative agencies is limited to those claims that are quantifiable in nature.

The RAP does not have jurisdiction over the tenant's claims for decreased housing services as they relate to the flood and to her loss of property. These are not claims that can be made under the Rent Adjustment Ordinance. While these acts may or may not constitute civil wrongs, these claims must be made in a court of competent jurisdiction.

Additionally, the tenant has already filed a claim about these matters in Superior Court. The *Complaint for Damages* filed against the owners in court raise claims that the owner's failure to maintain the property caused the flooding. The plaintiff seeks unspecified damages for breach of the implied warranty of habitability, breach of quiet

enjoyment, private nuisance, and premises liability amongst other claims. The tenant has ceded these matters to the jurisdiction of the Superior Court. They cannot be litigated in two places. Therefore, the tenant's claims for decreased housing services as they relate to having to move out and related to loss of her property are dismissed.

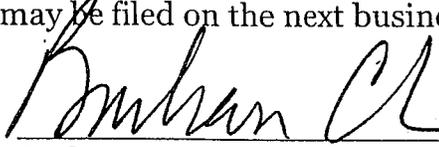
**If restitution is owed, what is the tenant's rent?**

The tenant's rent is \$1,233.52, effective June 1, 2015. The tenant has underpaid rent since June of 2015 in the amount of \$66.52 a month for a period of 7 months, for a total underpayment of \$465.64. An underpayment of this amount is repaid over a six month period<sup>17</sup> so the rent increase is \$77.60 a month. For now this \$77.60 a month is added to the current legal rent of \$1,233.52 for a total of \$1,311.13 a month. From January of 2016 through June of 2016 the rent will be \$1,311.13 a month. The rent will revert to the current rent of \$1,233.52 in July of 2016.

**ORDER**

1. Petition T15-0263 is denied.
2. The current rent, effective June 1, 2015, is \$1,233.52.
3. The tenant has underpaid rent in the amount of \$465.64.
4. The tenant's rent is increased by \$77.60 a month, from January 2016-June 2016, to \$1,311.13 a month. The tenant's rent reverts to \$1,233.52 in July of 2016.
5. Nothing in this Order prevents the owner from increasing the rent according to the rules of the Rent Adjustment Program, at any time on or after June 1, 2016, providing the rent increase notices are served pursuant to the Civil Code § 827 and the Rent Adjustment Ordinance.
6. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: December 8, 2015

  
Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

<sup>17</sup> Regulations, Section 8.22.110(F)

## PROOF OF SERVICE

Case Number(s): T15-0263

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, 5<sup>th</sup> 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

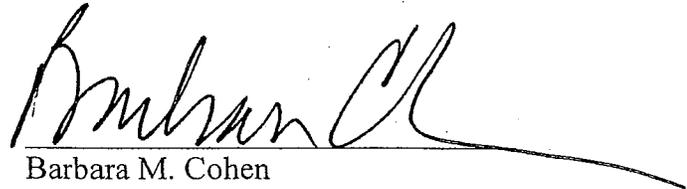
Kim Panganiban  
338 Lenox Ave, Apt 2  
Oakland, CA 94610

Symon Chang  
Patty Chang  
1088 Doheny Terrace  
Sunnyvale, CA 94085

Gary Cloutier  
Law Office of Andrew Wolff  
1970 Broadway, Suite 210  
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2015, in Oakland, California.



Barbara M. Cohen  
Oakland Rent Adjustment Program

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<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. <div style="text-align: right;">           CITY OF OAKLAND            RENT ADJUSTMENT PROGRAM            2015 JUN 24 PM 3:18         </div>
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**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.**

**CASE NUMBER T15-0263**

**LANDLORD RESPONSE**

Your Name <i>Simon Chang</i> <i>Patty Chang</i>	Complete Address (with zip code) <i>1088 Doheny Terrace</i> <i>Sunnyvale CA 94085</i>	Phone:  Email: <i>simonchang@gmail.com</i>
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) <i>Kim Pangani ban</i>	Complete Address (with zip code) <i>338 Lenox Ave. Apt #2</i> <i>Oakland CA 94610</i>	

Have you paid for your Oakland Business License? Yes  No  Number 28036474

Have you paid the Rent Program Service Fee? (\$30 per unit) Yes  No

There are 15 residential units in the subject building. I acquired the building on 04/10/2012

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

**I. JUSTIFICATION FOR RENT INCREASE** You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

**You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.**

<u>Date of Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
06/01/15*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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\* Note: Banking increases are per Hearing Decision, dated 4/17/2015 of case L14-0062, Order #3.

**II. RENTAL HISTORY** If you contest the Rental History stated on the Tenant Petition, state the correct information in this section.

The tenant moved into the rental unit on 11/01/2003

The tenant's initial rent including all services provided was: \$ 895 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" to all of the petitioning tenants? Yes  No \_\_\_\_\_ I don't know \_\_\_\_\_

If yes, on what date was the Notice first given? 12/31/2012

Begin with the most recent rent and work backwards. If you need additional space please attach another sheet.

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
4/23/2015	06/01/2015	\$ 1,167.00	\$ 1,233.52	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No L14-0062
12/31/2012	05/01/2013	\$ 1,105.00	\$ 1,167.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No T13-0027
02/28/2012	04/01/2012	\$ 1,050.00	\$ 1,105.00	<input type="checkbox"/> Yes <input type="checkbox"/> No
unknown	04/01/2007	\$ 995.00	\$ 1,050.00	<input type="checkbox"/> Yes <input type="checkbox"/> No
N/A	03/01/2006	\$ 895.00	\$ 995.00	<input type="checkbox"/> Yes <input type="checkbox"/> No
N/A	11/01/2003	\$	\$ 895.00	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

(See attach Exhibit 4 for more details for rent + parking)

### III. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

\_\_\_\_\_ The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). **If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:**

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

\_\_\_\_\_ The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

\_\_\_\_\_ The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.

\_\_\_\_\_ On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** less than 30 days.

\_\_\_\_\_ The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

\_\_\_\_\_ The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.

\_\_\_\_\_ The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

### IV. DECREASED HOUSING SERVICES

If the petition filed by your tenant claims **Decreased Housing Services**, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

### V. VERIFICATION

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



Landlord's Signature

Date:

**IMPORTANT INFORMATION:**

**Time to File**

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open. **You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received a copy of the petition filed by your tenant with this letter. Copies of **documents attached** to the petition form will not be provided to you. You may review these in the RAP office by appointment. For an appointment to review a file call (510) 238-3721.

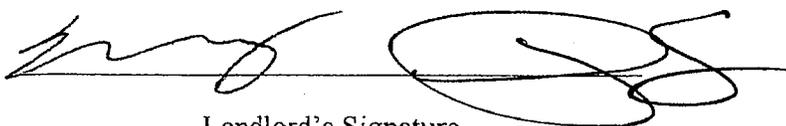
**Mediation Program**

Your tenant may have offered to mediate his/her complaints. If the tenant signed the mediation section in the copy of the petition mailed to you, they requested mediation. Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider the needs of the parties involved. If you agree to mediation before an RAP staff member trained in mediation, a mediation session will be scheduled before the hearing begins.

If you and the tenant agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

**It is required that both parties agree to mediation in order to have a case mediated. The tenant must have already signed the request for mediation on their petition so be sure to review their signature page of the copy that was provided within your notification package.**

**If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign and return this form along with your Landlord Response .** I agree to have my case mediated by a Rent Adjustment Program Staff member (no charge).



Landlord's Signature

6/23/2015

Date

## Response to Case T15-0263

**By:** Symon Chang and Patty Chang

**Date:** June 23<sup>rd</sup>, 2015

### Errors on Tenant Petition Application Form

The application form for Tenant Petition by Kim Panganiban for 338 Lenox Ave #2, dated 05/20/2015, (Case T15-0263), contains numerous errors and false information that needs to be clarified.

On Page 2, II. Rental History:

**Incorrect:** Initial Rent: \$875

**The truth:** The initial Rent is \$895.00, see Lease Agreement between Wayne Lazarus and Kim Panganiban, dated 11/01/2003 (EXHIBIT 3).

**Incorrect:** When did the owner first provide you with a written RAP Notice? Date: July 3, 2014.

**The truth:** The owner Symon Chang and Patty Chang first provided the tenant with a written RAP Notice is on 12/31/2012. See the copy the RAP Notice signed by the tenant on 01/01/2013 (EXHIBIT 5-1).

Note that the tenant has used this RAP Notice as the reason for contesting rent increase on Case T14-0100. The information she has provided for Case T14-0100 Petition (EXHIBIT 5-2), Case L14-0062 Response on 11/10/2014 (EXHIBIT 5-3), Case T14-0540, Case T14-0551, Case T15-0046 and this Case T15-0263 have conflict and inconsistency information on the RAP Notice. This information has demonstrated the tenant's doubtful creditability and the repudiation history. The log of RAP Notice given to this tenant and the copies of the RAP Notice signed by the tenant is attached this response (EXHIBIT 5).

**Incorrect:** Amount Rent Increased to \$1232.52

**The truth:** Amount Rent Increase To **\$1,233.52**

**Incorrect:** List case number(s) of all Petition(s) you have ever filed for this rental unit: T14-0540, T14-0051, T15-0046, and T14-0100.

**The truth:** There is also a case T13-0027 that the tenant filed for the same rental unit.

On Page 2, III. Description of Decreased or Inadequate Housing Services:

Those 3 boxes are all checked. However, this rent increase is based on the Hearing Decision, dated 04/17/2015, for the case of L14-0062, T14-0540, T14-0051 and T15-0046, Order #3. On Order #5, the tenant's claims of decreased housing services are denied. The tenant should not reclaim those decreased housing services again. The following are detailed explanations for why the tenant claim of "Lost Housing Services and Serious Problems" on the tenant petition case T15-0263 are invalid.

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## **Address to Lost Housing Services and Serious Problems Claims**

### **Item #1 -- Displaced for approximately 6 months (July 2014 to December 2014) and Item #2 -- Lost property due to flooding:**

These two items have been addressed on the landlord response on the case of T14-0540, T14-0051 and T15-0046. The tenant is required to vacate the unit solely due to water damage resulting from flood on 07/02/2014 which is an accident outside the control of the owner. To vacate the unit is required for substantial construction works for code enforcement due to the water damage, and such damage was not caused by the acts or the negligence of the owners, or by a preexisting condition. This relocation should have nothing to do with decrease housing services what the tenant is claimed for.

The tenant's personal properties are not the housing services provided by the landlord. The tenant's personal property lost on this water damage incident should be covered by the tenant's renter insurance, instead of landlord's responsibility. While lacking of the renter insurance, the tenant should not claim for the lost housing services to the landlord.

There is no rent charged for the unit from July 2014 to December 13, 2014. Since there is no charged, the tenant's claim on decrease housing services is invalid. The owner has been made all necessary arrangements and best efforts for the relocation legally, in according to the according to the "Oakland Just Cause for Eviction Ordinance" (OMC §8.22.300) and the "Oakland Code Enforcement Relocation Program (OMC §15.60). The owner has paid the relocation benefits of \$2,710 to the residential tenant who must move because of the City's enforcement of housing and building codes, per "Summary of The City of Oakland's Code Enforcement Relocation Ordinance".

Since the relocation benefits have been paid, and there is no rent is charged during the relocation period, it should not be counted as losing services originally provided by the owner. Details of evidences for those facts can be found on the Landlord response for Tenant Petition case T14-0540, T14-0051 and T15-0046. They are not repeated here for this case T15-0263.

### **Item #3 – Owner took out garbage disposal, Item#4 Window problems, Item #5 – Owner took out shower doors, and Item #7 – Owner replaced brand new stove:**

These 4 items all have been address at the hearing on 03/27/2015. The descriptions of these 4 items can be found on the second paragraph on page 3 of the Hearing Decision, dated 04/17/2015. Since these decreased housing services are denied per the order item#5 of the Hearing Decision. Tenant cannot claim these lost of services again. Some of items were shown on the Move-in/Move-out Check List which is an indication of there are existing issues at the tenant move-in on 12/15/2015. Under the Oakland Rent Ordinance, a decrease in housing services is an increase in rent. However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously

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affects the habitability of a unit or one that is required to be provided in a contract between the parties<sup>1</sup>. Item #3 and Item #5 are not the loss of a service that seriously affects the habitability of a unit, and are not required in both old lease agreement on 11/01/2003 (EXIBIT 3) and new lease agreement on 12/12/2014 (EXIBIT 6).

When the tenant moved back on 12/12/2014, the substantial construction works for code enforcement have been completed, and the lease agreement has resigned (EXIBIT 6). The tenant moved back with new building code upgraded unit where the conditions of the unit have been changed, but the housing services are not reduced, instead the services that are provided to the tenant are increased. The following are some of increased services on 12/12/2014 when the tenant move-back:

1. Provided new energy efficient water heater
2. Provided new low-e energy saving, egress window in the bedroom
3. Provided new R-13 energy saving wall insulation to the exterior walls
4. Provided new soundproof and R-30 energy saving ceiling
5. Provided new range hood in the kitchen and new ventilation in the bathroom
6. Provided water saving toilet and faucet in the bathroom
7. Provided new energy saving lighting for the whole unit that in compliance with 2013 Title-24 CF-6R LGT01
8. Provided new digital thermostat

All of above housing service improvements were built by licensed contractors, and passed the building inspection by the inspectors from building department. When the tenant signed the lease agreement and the move-in move-out checklist on 12/12/2014, it implies that the tenant has accepted the move-in conditions with missing of garbage disposal and shower doors, in exchange to the increase services on above 8 items. Should the tenant does not like the conditions of this brand new unit, she can opt to not accept the conditions, and not move back to the unit. Tenant should not claim for reduce service on these two items after 6 months of move back.

Item#4 Window problems the window in the bedroom is replaced with new low-e energy saving, egress window per requirements on the current 2013 building code. The leaking problem on the bedroom window has been fixed in December 2014.

Item #7 – Owner replaced brand new stove is a false statement. To best of my knowledge, the stove at the unit was not replaced since April 2012, and it was not new. On 01/21/2015, per Tenant's request, a new stove is installed to replace the old one. After that, the tenant called the property management company Lapham for services on the same new stove twice, on 04/02/2015 and on 04/13/2015. All the service requests have closed in one day.

**Item 6 – Heater vent is filled with dust, Item 8 – Front screen door doesn't lock, Item 9 – Cable provider was unable to install cable, and Item 10 – Phone jack in living room doesn't work:**

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<sup>1</sup> Green v. Superior Court, 202 C.A.>2d 121 (1974) and Case T12-0047.

All those items are normal maintenance and repair items, the loss of a service that seriously affects the habitability does not apply. Some of those items are not even the landlord's responsibility, such as cleaning the dust, and install the cable. In addition, the tenant never notifies the landlord on any of these problems. It is the first time that the landlord learned the tenant has complains on these issues.

Beginning on April 2015, the landlord has hired the property management company, the Lapham Co., to manage all apartment units at 338-340 Lenox Ave. Since then, Lapham only received two services requests and they all are related to stove mentioned above. There is no services request for other issues from the tenant. On 05/13/2015, Lapham conducted the first annual inspection at 338 Lenox Ave and it asked all tenants to fill out the maintenance request sheet for any items that the tenant would like inspector from Lapham to look at. The tenant at 338 Lenox Ave Apt#2 filled out the maintenance request sheet on 05/13/2015 (EXIBIT 6). However, the sheet does not contain any item that is listed on the page of "Lost Housing Services and Serious Problems" on the tenant petition case T15-0263. This is evidence for that the tenant never notifies the landlord for those so call serious problems and lost housing services problems. Those issues are only used to claim reduce services for rent reduction purpose, and they should be invalid for this rent increase petition.

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T15-0263 KM/LM

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>For date stamp 2015 MAY 20 AM 11:29</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

**TENANT PETITION**

Please print legibly

Your Name KIM PANGANIBAN	Rental Address (with zip code) 338 LENOX AVE #2 OAKLAND, CA 94610	Telephone [REDACTED]
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) SYMON CHENG and PATTY CHANG	Mailing Address (with zip code) 1088 DOHERTY TERRACE SUNNYVALE, CA 94085	Telephone

Number of units on the property: \_\_\_\_\_

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

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

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

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

Date you moved into the Unit: NOVEMBER 1, 2003 Initial Rent: \$ 875 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: JULY 3, 2014. If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
4/23/15	6/1/15	\$ 1,167	\$ 1232.52	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

T14-0590A T14-0051, T-15-004 and T14-0100

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

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

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

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

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

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, CA 94612. Phone: (510) 238-3381

**IV. VERIFICATION:** The tenant must sign:

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

Kemi Payne  
Tenant's Signature

05/18/2015  
Date

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

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

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

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

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

Kemi Payne  
Tenant's Signature

05/18/2015  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

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

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

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

Kim Paniganiban  
338 Lenox Ave #2  
Oakland, CA 94610

Rent Board Petition

**Lost Housing Services and Serious Problems**

1. Displaced for approximately six (6) months (July 2014 to December 2014) due to flooding in unit.
2. Lost property due to flooding in the unit (see blow)
3. Owner took out garbage disposal and it was never replaced
4. Lack of weatherproofing
  - a. windows leak when raining
  - b. need to go outside to shut windows
  - c. windows not secure
  - d. gaps in windows
5. Owner took out shower doors and they were never replaced.
6. Heater vent is filled with dust and therefore hazard when turned on.
7. Owner replaced brand new stove (that was not broken) with a broken stove.
8. Front screen door doesn't lock
9. Cable provider was unable to install cable because cable jack was near heater.
10. Phone jack in living room doesn't work.

**Lost Property due to flooding in July 2014**

1. Bathroom Shelving and toiletries (approximate value \$50)
2. Mattress and box spring (approximate value \$750)
3. Headboard and night stands (approximate value \$500)
4. Clothes and shoes (approximate value \$200)
5. Drapes (approximate value \$100)
6. Lamps (approximate value \$50)
7. Towels (approximate value \$40)

## CHRONOLOGICAL CASE REPORT

Case No.: T15-0360  
Case Name: Harrison v. Solares  
Property Address: 275 Vernon Street, Unit 11, Oakland, CA  
Parties: Clifton and Mercedes Harrison (Tenants)  
Kathleen Solares (Property Owner)

### LANDLORD AND TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 17, 2015
Landlord Response filed	September 3, 2015
Hearing Decision issued	March 4, 2016
Tenant Appeal filed	March 23, 2016
Landlord Appeal filed	March 24, 2016

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 MAR 24 AM 11:41 <b>APPEAL</b>	
<b>Appellant's Name</b> Kathleen Solares		<b>Landlord</b> <input checked="" type="checkbox"/> <b>Tenant</b> <input type="checkbox"/>	
<b>Property Address (Include Unit Number)</b> 275 Vernon Street, Unit 11 Oakland, CA 94610			
<b>Appellant's Mailing Address (For receipt of notices)</b> 279 Vernon Street, #1 Oakland, CA 94610		<b>Case Number</b> T15-0360	
		<b>Date of Decision appealed</b> March 4, 2016	
<b>Name of Representative (if any)</b> Stephen M. Judson Ramsey Law Group		<b>Representative's Mailing Address (For notices)</b> 3736 Mount Diablo Blvd., Suite 300 Lafayette, CA 94549	

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

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

7.  Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 13. Please number attached pages consecutively.

**8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on March 24, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	Clifton Harrison
<b><u>Address</u></b>	275 Vernon Street, #11
<b><u>City, State Zip</u></b>	Oakland, CA 94610
<b><u>Name</u></b>	Mercedes Harrison
<b><u>Address</u></b>	275 Vernon Street, #11
<b><u>City, State Zip</u></b>	Oakland, CA 94610

	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE March <u>24</u> , 2016

**IMPORTANT INFORMATION:**

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

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4. **The decision is not supported by substantial evidence**

The Hearing Decision conclusion to disallow the sum of \$15,380.11 of the requested capital improvement pass through is not supported by substantial evidence. The Landlord did submit substantial evidence of the itemization of the final payment to the contractor to qualify as a recoverable capital improvement pass through. The Decision contains error on page 10, where the Hearing Officer writes "The costs paid on June 4, 2014, totaling \$15,380.11 are disallowed because the check was made payable to the owner's attorney and the amount payable to the contractor was not itemized." (underline added). The payment was made to the contractor's attorney, not the owner's attorney. This is possibly a typographical error by the Hearing Officer (although it appears twice at the bottom of page 10), since the testimony was clear to whom the payment was made, and what the payment was for.

The final payment to the contractor was made in the context of a settlement of a lawsuit by the contractor for payment. The contractor had placed a lien on the property that contains the Tenant's unit (as but one of the eleven units). The settlement of the lawsuit allowed the Landlord to make the final payment to the contractor which included those invoices for the capital improvement work to Tenants' unit.

Tenants submitted the lawsuit documents into evidence at the hearing. The Complaint is at Tenants' Ex. G, pgs. 126-132. The contractor is listed as Jon Vianu, First Choice Construction, and his attorneys are listed as Wood, Smith, Henning & Berman LLP. (Tenant pg. 126) The check from Landlord to contractor's attorney is in evidence as Landlord's Ex. 11, pg. 359. This is a payment by the Landlord for the benefit of the contractor, and was payable to the contractor's attorney trust account as explained more fully below.

The Landlord has the burden to establish the eligibility of a cost as a capital improvement. Here, the substantial evidence in the record is as follows:

- a. Tenants' Ex. G, pgs. 126-132 – collection lawsuit filed by contractor First Choice Construction seeking \$26,587.66 for work done on 275 and 279 Vernon. Tenants' unit is in 275 Vernon. The case is identified as Alameda County Superior Court Case No. RG14709656
- b. Landlord's Ex. 11, pgs. 358-381 – establishes the payment (check no. 5389) to the contractor through his attorney trust account in the amount of \$27,000. The check is for settlement of the contractor's invoices in Alameda County Superior Court Case No. RG14709656. Some of those invoices (\$15,380.11 worth) were for work done on Tenants' unit.
- c. Landlord's Ex. 11, pg. 359 – summarizes and itemizes the specific contractor invoices for the Tenants' unit (Unit 11) which were paid by the Landlord check.
- d. Landlord's Ex. 11, pgs. 360 – 381 – itemizes and attaches all of the contractor invoices and receipts for the portion of the capital improvement work on Unit 11 totaling \$15,380.11 that was paid from check no. 5389. No amount of the final payment check of \$27,000 was allocated by the

Landlord to the capital improvement, except for the amount necessary to pay the final contractor invoices solely for Tenants' Unit 11.

There is extensive, detailed testimony in the taped Hearing Record, at Day 1, 11/17/15, commencing at **1:35:00** and continuing to **1:48:00**, which precisely connects the final payment to the contractor to the capital improvement expenses incurred at Unit 11. Landlord witness Elvera Bordessa at two locations in the Hearing Record, Day 1, (at **1:38:55ff** and **1:44:22ff**) expressly ties and substantiates with documentation the \$15,380.11 of the final payment to the contractor for the capital improvement of Tenants' unit. Substantial evidence is in the record to support this, and there can be no dispute.

None of the \$15,380.11 allocated to the capital improvement went to pay the contractor's attorney's fees, or to anything other than the work and materials used on the capital improvement. It is all tied directly to the contractor invoices which appear in the record as Landlord' Ex. 11, pgs. 359-381. To put the allocation argument regarding attorney's fees entirely to rest, the Board is requested to take into evidence the attached Settlement Agreement and Mutual Release between the Landlord and her contractor. (Landlord's Ex. 1A) landlord did not submit this evidence (Ex. 1A) at the hearing since she received no notice that Tenants intended to raise an issue about the final payment to the contractor. Tenants' Ex. G does not disclose this as a challenge to the capital improvement pass through. The settlement agreement (Ex. 1A) clearly shows at Section 2 on page one under the heading "Agreement" that each side in the case bore their own attorney's fees and costs. So, no amount of the \$27,000 payment by Landlord is allocated to contractor's attorney fees – the \$15,380.11 portion of it went to retire the contractor's final invoices for work done on the Tenants' unit.

The settlement agreement itself makes clear that no amount of the payment is allocated to attorney fees. The Settlement Agreement and Mutual Release attached hereto as Landlord's Ex. 1A provides in part as follows:

#### Settlement Agreement and Mutual Release

This Settlement Agreement and Mutual Release ("Agreement") is entered into on this 21<sup>st</sup> day of May 2014 by and between Jon Vianu dba First Choice Construction ("Vianu") and Solares Properties – Vernon Street Apartment, LLC and Kathleen Solares (collectively referred to herein as "Solares".) The parties are referred to herein individually as "Party" or collectively as "Parties."

[...]

#### Agreement

NOW, THEREFORE, the Parties hereto agree as follows:

1. Terms: Solares shall pay Vianu the sum of **twenty-seven thousand dollars and 00/100 (\$27,000)** in full and complete satisfaction of the Claim, which shall be paid by draft made payable to the "Wood, Smith, Henning & Berman LLP Client Trust Account," Tax ID number 95-4608xxx.

[...]

11/17/15 13:00:00

2. Fees and Costs: Each Party hereto shall bear its own costs, including attorney's fees, except as otherwise provided herein.

Furthermore, as outlined above, there is substantial evidence in the record that the Landlord has carried her burden to establish the amount of \$15,380.11 as a proper capital improvement pass through cost. Tenants have not rebutted that burden by adducing evidence to dispute that. They have merely opined in argument that maybe we do not know for sure how it was allocated. That is not a successful rebuttal of Landlord's evidentiary proof.

Finally, it is clearly not the Landlord's burden to establish how a third party, the contractor, may have allocated Landlord's payment to him. For all we know, once Landlord paid the contractor for the capital improvement work, the contractor could have paid subcontractors, vendors, his attorneys, or he could have kept all the payment himself. All Landlord is required to do is to establish that her contractor was paid by her for the capital improvement work at the subject unit. Landlord Solares has done so, and the evidence in the record supports that conclusion and no other.

Landlord Appeal  
Case No. T-15-0360 (Harrison v. Solares)  
Date of Decision: March 4, 2016

3. The decision raises a new policy issue that has not been decided by the Board

The application of the provision of the Ordinance (10.2.1, Capital Improvement Costs) is inconsistent in its application to this appealing Landlord in that the capital improvement in this instance ran over the 24-month period for recovery of payments through no fault of the Landlord.

The Hearing Officer disallowed \$21,150.39 of the capital improvement pass through because it fell outside the 24 month period prior to the date of the proposed rent increase. The Rent Adjustment Board Regulations Appendix A in effect at the time of this increase (revision 11/18/11), Section 10.2.1, provided as follows:

10.2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date of the proposed rent increase. However, no more than twelve months of capital improvement costs may be passed on to a tenant in any twelve (12) month period. For example: in year one the landlord makes a capital improvement by replacing the roof. In year two the landlord makes another capital improvement by painting the exterior of the building. The landlord would not be able to pass on the roof and exterior painting capital improvement costs during the same year, but would have to pass then (sic) on in separate years, subject to the twenty-four (24) month time limitations.

This project was a singular capital improvement, and cannot be arbitrarily squeezed into a hypothetical 24-month period. This work was done pursuant to a single contract with a single

contractor. Progress payments were made, but it was all part of a single capital improvement project. The project did not "become" a capital improvement until it was completed and paid for. At that time, it matured into a single capital improvement.

The permit was paid for on November 7, 2012. (Landlord's Ex. 2A, originally filed with the Hearing Officer on December 21, 2015.) Due to the Tenants' refusal to vacate, the Owner had to pay for a permit extension in June 2013. Due to the Tenants' delay, and refusal to temporarily vacate, the actual work could not start for 7 ½ months. Work then commenced pursuant to a single contract which was "completed and paid for" on June 4, 2014.

In a prior RAP proceeding filed April 23, 2014, T14-0117, the Tenants objected to this same capital improvement pass through by the Landlord, and the Owner rescinded her notice on technical grounds. Tenants then appealed the rescission of the rent increase, and after many continuances granted by the RAP to accommodate these Tenants' stated needs (see, attached Exhibit 2A), the Harrisons dropped their appeal and the RAP dismissed the appeal as moot on August 10, 2015. Tenants' actions, (and the RAP scheduling shortcomings), caused an additional 16 months of delays. The Landlord could not have possibly put through another capital improvement pass through while proceeding T14-0117 was still pending. This current proceeding (T15-0360) then followed.

The RAP Regulations do not state that a single capital improvement must be *completed* within a 24 month period. The illustration in Regulation 10.2.1 is vague, and cannot apply to this capital improvement. Other, *separate*, capital improvement project costs cannot be passed on to a tenant if they are older than 24 months, but this is a *single* capital improvement project. It is not divisible. It is not the subject of separate contracts such as the Ordinance's own example illustrates. That makes all the difference. Clearly the Rent Adjustment Program does not intend to force owners to pass through costs on a piecemeal basis for a single capital improvement project. Indeed, the owner would be prevented from doing so because the capital improvement would not come into existence until the work is "completed and paid for." That would be nonsensical, and is not in the policy or terms of the Ordinance or the Regulations.

The Tenants cannot be allowed to subvert the policy and intent and purpose of the Rent Adjustment Program through their own actions and conduct and delay. Nor, can the Rent Adjustment Program be complicit in allowing any tenants to do so. If so allowed, the Ordinance, and its protections, would be rendered ineffectual and subject to utter gamesmanship.

The delaying conduct of these Tenants is well illustrated by the timeline of RAP proceeding T14-0117, which the Hearing Officer was requested to take judicial notice of. The Tenant timeline is attached hereto as Exhibit 2A, and incorporated herein. The timeline speaks for itself, and cannot be used by Tenants to avoid a valid and proven Capital Improvement pass through.

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**Landlord Exhibit 1A**

7.

2023 MAR 24 AM 11:41

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## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into on this 21<sup>st</sup> day of May 2014 by and between Jon Vianu dba First Choice Construction ("Vianu") and Solares Properties – Vernon Street Apartment, LLC and Kathleen Solares (collectively referred to herein as "Solares"). The parties are referred to herein individually as "Party" or collectively as "Parties."

### RECITALS

1. **WHEREAS**, Vianu entered into several written construction agreements with Solares, which provided that Vianu would furnish certain labor and materials for remodeling of several condominium units located at 275 and 279 Vernon Street, Oakland, California (the "Project").
2. **WHEREAS**, Vianu filed a Complaint in Alameda County Superior Court, case number RG14709656 ("Complaint"), to foreclose on Vianu's asserted and recorded mechanic's lien related to the Project (the "Claim").
3. **WHEREAS**, in order to avoid the costs of litigation and to resolve the claims and issues recited above, by and between Vianu and Solares only, the Parties hereby agree that this matter is settled pursuant to the following terms and conditions.

### AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Terms:** Solares shall pay Vianu the sum of **twenty-seven thousand dollars and 00/100 (\$27,000)** in full and complete satisfaction of the Claim, which shall be paid by draft made payable to the "Wood, Smith, Henning & Berman LLP Client Trust Account", Tax ID number 95-4608126. The draft shall be mailed Vianu's counsel, David E. Young, Esq, c/o Wood, Smith, Henning & Berman LLP, 1401 Willow Pass Rd, Suite 700, Concord, CA 94520. Such payment shall be issued within five (5) days of receipt of the fully executed Agreement.

Upon receipt of the fully executed Agreement and the payment, as described above, Vianu will immediately complete and record a release of the lien and the Lis Pendens and dismiss the Complaint with prejudice.

2. **Fees and Costs:** Each Party hereto shall bear its own costs, including attorney's fees, except as otherwise provided herein.

3. **Mutual Releases:** Except for the obligations and terms set forth in this Agreement, Vianu and Solares, including their former and present corporate affiliates, heirs, assigns, partners, predecessors, successors, officers, directors, board members, shareholders, assigns, individual members, homeowners, employees, attorneys,

agents, consultants, and representatives will forever discharge and release each other, including their respective former and present corporate affiliates, heirs, partners, predecessors, successors, officers, board members, directors, shareholders, assigns, employees, ex-employees, former and present attorneys, agents, consultants, sureties, insurance carriers, subcontractors, suppliers, and/or representatives, from any and all claims, demands, expenses, actions, torts, obligations, duties, damages, credits, offsets, liabilities and causes of action of any nature, whether or not now known, anticipated, suspected or claimed, whether contractual, equitable or of any other nature, arising out of, or in any way connected with the Claim and Project, *OR ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY OF THE OTHER CLAIMS THAT MAY EXIST BETWEEN THE PARTIES* 3

4. Section 1542 Waiver. As to the releases provided in Section 3, above, and obligations created herein, the Parties recognize that they may not now fully know the number and magnitude of all claims they now have or in the future may have against the other Parties, but nevertheless, intends to assume the risk that they are releasing such unknown claims. The Parties agree that this Agreement is a full and final release of all such claims and as a further consideration and inducement for this settlement, agree to waive the provisions of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that a material part of this Agreement is the deliberate extinguishing of any claims, which currently are unknown or which may not yet exist, so that there is no possibility of future claims among these Parties concerning the Contract (and all addendums and modifications thereto), the Project and the Claim..

5. Covenant Not to Sue: Except as to the rights duties created by this agreement, each Party hereby covenants and agrees never to commence, prosecute or cause, permit or advise to be commenced or prosecuted against any Party herein released, any action in any form at law or equity, or other proceedings, based upon any of the claims released herein. If such prohibited action or proceeding is instituted, this Agreement may be pleaded as a full and complete defense thereto.

6. Authority: Each person executing this Agreement represents and warrants that they are duly authorized to execute this Agreement on behalf of and bind the Party they purport to represent. The Parties to this Settlement Agreement and Mutual Release each warrant that they have not made any assignment of any claims or causes of action that they have or may have in the future against any other Party hereto, and further agree to defend, indemnify and hold harmless those Parties hereto from all costs, loss, damages or liability incurred or imposed by reason of any person or entity claiming to have an interest in any claim they have released herein.

AM 11:42

to make a press release or take a public position disparaging or make unfavorable statements to third parties concerning the other Party.

13. **Successors and Assigns:** All covenants and agreements herein shall bind and inure to the benefit of the parties' respective successors, assigns, heirs, representatives, board members, agents, employees, transferees, directors, officers, attorneys, principals, parent companies, affiliates, partners, members and joint ventures of the parties hereto.

14. **Neutral Construction:** The Parties hereto agree that this Agreement will be interpreted neutrally, and that it should not be construed for or against any Party deemed to be the drafter thereof. The Parties specifically agree that no prior versions or drafts of this Agreement shall be relevant or admissible to interpret or construe the scope of the Agreement.

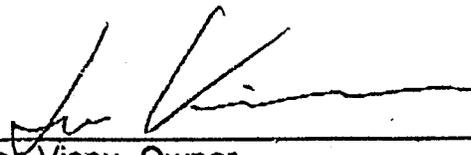
15. **California Law Applies:** This Agreement shall be deemed to have been entered into in the State of California, and all questions concerning the validity, interpretation, or performance of any of its terms or provisions, or of any rights or obligations related to this Agreement of the Parties hereto, shall be governed and resolved in accordance with the laws of the State of California.

16. **Severability:** In the event that, at any time after the execution of this Agreement, any portion or provision of it is found to be illegal, invalid, unenforceable, non-binding, or otherwise without legal force or effect, the remaining portion(s) will remain in force and be fully binding.

17. **Execution:** This Agreement may be executed in counterparts by the Parties, each of which shall be deemed an original, and shall be valid and binding on each Party as if fully executed in one copy. Facsimile or .pdf signatures are sufficient to bind the Parties hereto until receipt of original signatures.

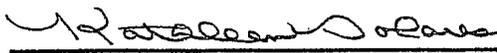
Dated: May 22, 2014

**Jon Vianu dba First Choice Construction**

By:   
Jon Vianu, Owner

Dated: May 28, 2014

**Solares Properties – Vernon Street Apartment  
LLC**

By:   
Kathleen Solares, Member

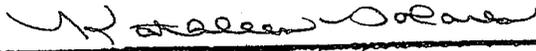
2015 MAY 24 AM 11:12

**MORE SIGNATURES FOLLOWING PAGE**

11.

Dated: May 28, 2014

Kathleen Solares

By:   
Kathleen Solares

END OF AGREEMENT

2014 MAR 24 AM 11:42

12.

5389  
KS

90-7118-3211

DATE 6/4/2014

\$ 27,000.00

DOLLARS



SOLARES PROPERTIES  
VERNON ST. APTS. LLC

278 VERNON ST. #1  
OAKLAND, CA 94610  
PH. (510) 893-2224

PAY  
TO THE  
ORDER OF

Wood, Smith, Henning & Bermon

Twenty-seven thousand & xx/100

citibank  
CITIBANK N.A. BR #48  
375 BROADWAY AVE  
IRVING, CA 94601

Victoria J. Deane

FOR Case No. ASCJ RG14709656



13

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2010 MAR 24 AM 11:42

10/11/11 11:42 AM  
2011 MAR 24 AM 11:42

**Landlord Exhibit 2A**

14.

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## Owners' Exhibit 1

1  
2 March 13, 2014 60 Day Notice of Rent Increase to tenants  
3  
4 April 23, 2014 M. Harrison files Tenant Petition  
5  
6 May 15, 2014 Start of new rent (capital improvement pass through)  
7  
8 May 30, 2014 Landlord response to tenant petition  
9  
10 July 29, 2014 Hearing date for Harrison vs. Solares scheduled  
11 Harrison's request new hearing date, Solares consented  
12  
13 August 13, 2014 New Hearing date  
14  
15 August 27, 2014 Landlord files Post Hearing Brief  
16  
17 October 1, 2014 Hearing Decision in favor of Solares (TP denied because Solares  
18 rescinded the rent increase)  
19  
20 October 22, 2014 Harrison's file Appeal  
21  
22 April 9, 2015 Harrison's Appeal Hearing cancelled (due to time date and place not  
23 being posted as required by the Brown Act).  
24  
25 May 14, 2015 Harrison's Appeal Hearing. Tenant Clifton Harrison states there is a  
26 "new document" entered into the file he has never seen or read. Board  
27 allows continuance  
28  
June 11, 2015 Harrison's Appeal Hearing date, Mr. Harrison is not available  
July 9, 2015 Harrison's Appeal Hearing date is cancelled by Mr. Harrison due to a  
claimed emergency. New Appeal Hearing date set for September 10,  
2015  
August 6, 2015 Harrison's drop their Appeal  
August 10, 2015 Rent Adjustment Board sends notice Tenant Petition T14-0117 is being  
dismissed by the Harrison's  
August 13, 2015 Solares receives letter from the Rent Adjustment Board that the  
Harrison's have dismissed their petition  
Hearing Officer Barbara Cohen's decision stands in favor of Solares.  
September 10, 2015 Harrison Appeal Hearing is dismissed as moot

15.

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<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2015 MAR 23 PM 3:46 <p style="text-align: center;"><b>APPEAL</b></p>	
<b>Appellant's Name</b> Mercedes & Clifton Harrison		Landlord <input type="checkbox"/> Tenant <input checked="" type="checkbox"/>	
<b>Property Address (Include Unit Number)</b> 275 Vernon Street, Apt 11, Oakland CA 94610			
<b>Appellant's Mailing Address (For receipt of notices)</b> 275 Vernon Street, Apt 11, Oakland CA 94610		<b>Case Number</b> T15-0360	
		<b>Date of Decision appealed</b> March 4, 2016	
<b>Name of Representative (if any)</b> N/A		<b>Representative's Mailing Address (For notices)</b>	

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

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

7.  Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 2 Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on March 23, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	<sup>①</sup> Kathleen Solares	<sup>②</sup> Alan Beale
<b>Address</b>	Solares Properties LLC, 279 Vernon Street, Apt 1	6114 LaSalle Ave #354
<b>City, State Zip</b>	Oakland, CA 94610	Oakland, Ca 94611
<b>Name</b>	<sup>③</sup> Stephen Judson Ramsey Law Group	
<b>Address</b>	3736 Mt Diablo Blvd Suite 300	
<b>City, State Zip</b>	Lafayette, Ca 94549	

<i>Marcelo Harin</i> SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	3/23/2016 DATE
---	-------------------

**IMPORTANT INFORMATION:**

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

2016 MAR 23 PM 3:45

Mercedes & Clifton Harrison  
275 Vernon, Unit 11  
Oakland, CA 94610

City of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza  
Oakland CA, 94612

March 23, 2016

**RE: Appeal of Case No. T15-0360**

To Whom It May Concern:

We have attached our appeal regarding Case No. T15-0360. Please feel free to contact us if you have any questions or concerns about the appeal form. We may be reached at (510) 835-2919.

Sincerely,

  
Mercedes Harrison

  
Clifton Harrison

000113

The tenants are appealing this decision on the grounds that: (1) specific aspects of the decision are inconsistent with the Oakland Rent Adjustment Ordinance; Rent Board Regulations, and prior decisions of the Board; (2) a section of the decision is inconsistent with decisions issued by other hearing officers; and (3) one element of the decision is not supported by substantial facts because there are factual errors in the opinion.

- The Ordinance states that all capital improvements must have been completed and paid for within the 24-month period prior to the proposed rent increase. *See* Appendix A of the Rent Adjustment Program Regulations § 10.2.1. The decision erroneously omits \$12,797.97 of untimely costs, which are listed in the table included in the decision. As the proposed rent increase was for August 1, 2015, all capital improvements paid for prior to August 1, 2013 may not be passed down to the tenants. The decision states that \$21,150.39 of costs are untimely because they fall outside of the 24 month period. However, the table on pages 6-7 of the decision indicate that there are additional costs in the amount of \$12,797.97 that also fall outside of the 24 month period and cannot be passed down. These costs include those made to:
  - City of Oakland: paid for on 11/7/12 (\$1,123.57), paid for on 6/21/13 (\$162.95);
  - GMS Sales: paid for on 2/23/13 (\$437);
  - Stone Trading: paid for on 6/18/13 (\$1,639.75);
  - Pacific Sales: paid for on 6/25/13 (\$1,382.10), paid for on 7/23/13 (\$119.90, \$2,366.28);
  - Import Tile Co: paid for on 7/30/13 (\$774.54);
  - Walnut Creek Lighting: paid for on 7/17/13 (\$390.60);
  - Martinelli's Cabinet: paid for on 7/3/13 (\$4,300);
  - Glenview Key and Lock: paid for on 6/18/12 (\$102.26);
- There is a clerical error in the table on page 7 in the decision, and the allowable pass-through should consequently be reduced. Page 7 of the decision should read that "American Blinds and Draperies Inc" is the vendor for the "drapes – living room and dining room" on check # "5323 (other apts included in this check)" for \$635.83, and there should be an additional row which reads "American Blinds and Draperies Inc" as the vendor for "drapes – bedrooms, blinds – kitchen" on check # "5323 (other apts included in this check)" for \$685.69. However, Owner attempted to introduce check # 5323 into evidence at the hearing, which was for \$2,137.09. Of this amount, \$1,321.52 was intended to be passed down to the Tenants. Tenants' representatives objected to the attempt to submit this evidence at the hearing, and this amount should be subtracted from the allowable pass-through as the proof of payment was untimely.
- The statement that deferred maintenance cannot be considered because the amendment had not passed yet is inconsistent with prior decisions of the Board and hearing decisions by other hearing officers. Tenants drew the Hearing Officer's attention to a Memo from

Connie Taylor that indicated that it was the practice of the Rent Adjustment Program to consider deferred maintenance in capital improvement cases prior to the incorporation of the amendment. The memo cites T13-0175, Schneck v. Dang where the Hearing Officer considered deferred maintenance in making a decision about capital improvements, which the Board affirmed. Furthermore, the decision states that the amendment was not in effect prior to December 9, 2014. The notice of rent increase was served on the tenants in May 2015, when this amendment was in effect, as there is no grandfathering provision that applies to the deferred maintenance amendment. Therefore, consideration of the tenants' deferred maintenance arguments is proper.

- The tenants are challenging factual errors in the decision related to their deferred maintenance claim. For example, on page 4 the decision states "There was no leak and no water stain. The tenants claimed there was a leak. There was no leak." This is incorrect, as the Owner testified there was a "drip" and the Tenants testified to the leak and submitted evidence regarding the leak. The testimony was clear and uncontroverted.

CITY OF OAKLAND



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

Department of Housing and Community Development  
Rent Adjustment Program

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

**HEARING DECISION**

**CASE NUMBER:** T15-0360, Harrison v. Solares  
**PROPERTY ADDRESS:** 275 Vernon Street, No. 11  
Oakland, CA  
**DATES OF HEARING:** November 17, 2015  
November 24, 2015  
**DATE OF LAST POST-HEARING BRIEF:** January 8, 2016  
**DATE OF DECISION:** March 4, 2016

<b>APPEARANCES</b>	<b>November 17</b>	<b>November 24</b>
<b>Tenant</b>		
Clifton Harrison	X	X
Mercedes Harrison	X	X
Laura Shoaps, Esq.	X	X
Derek Schoonmacher, Esq.	X	X
<b>Owner</b>		
Kathleen Solares	X	X
Elvera Bordessa	X	X
Stephen Judson, Esq.	X	X
<b>Observer</b>		
Etha Jones	X	
Rebecca Hom	X	
Alma Blackwell	X	
Charles Brooks III	X	
James Vann	X	X
<b>Court Reporter</b>		
Cathy Meuter	X	
	(a.m. only)	

## SUMMARY OF DECISION

The tenants' petition is granted in part. The rent increase based on capital improvements is granted in the amount of \$33,492.69, or \$ 558.21 monthly.

## INTRODUCTION

Tenants Clifton Harrison and Mercedes Harrison filed a petition on July 17, 2015, which alleged the following:

1. The rent increase exceeds the CPI Adjustment and is unjustified or is greater than 10%;
2. The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014);
3. The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).

The tenant petition also claimed a decreased housing service regarding removal of a door from the hallway into the tenants' living room. They dismissed this claim at the Hearing.

The owner filed a timely response and states the following:

1. The costs exceeded 10% and the owner provided the enhanced notice to the tenants as well as a summary of the vendors, expenses, and payments;
2. The enhanced notice was included with the expense list and 60 day notice of change of monthly rent;
3. The capital improvements were performed on the tenants' unit prior to the August 1, 2014, change in the ordinance regarding capital improvements and the amended ordinance does not apply to this pass-through.

The Hearing adjourned on November 24, 2015. The last post-hearing brief was received on January 8, 2016.

## CONTENTIONS

The tenants contend that the rent increase exceeds 100% of their monthly rent , and the owners' motive is to displace them. Even if the capital improvements benefit the tenants the costs are impermissible. The tenants contend that \$33,948.00 of the capital improvement costs are untimely because they were paid outside the 24 month window; there was deferred maintenance regarding the roof leak and mold in the bathroom, and

there were priority 1 and 2 code violations; the costs are not supported; the last \$27,000 payment to the contractor was paid to the contractor's attorney and there is no documentation of how the fees were apportioned; there is no enhanced notice regarding the capital improvements, and the increase exceeds 30% in five years. The tenants also question the \$5,000 credit for the bathroom repair which they contend is not documented.

The tenants also contend that the capital improvement rent increase is invalid because the owner's motive was to displace them.

The owner contends that the tenants' petition does not allege mold as a decreased housing service and any evidence regarding this issue should be disregarded because the owners were not apprised of this issue in the tenants' petition and given an opportunity to respond to this issue.

Additionally, the issue of mold is not relevant to the issues presented in this case and was also decided in a prior hearing decision in T12-0333. The tenants sought to submit a mold test report which was denied by the hearing officer; the bathroom condition has been cleared by the city inspector and the rent reduction for this item was removed and has long since expired.

The owner also contends that it was not her motive to displace the tenants and that her attorney sent a notice advising the tenants' of their right to move back to the unit upon completion of repairs.

### **ISSUES PRESENTED**

1. Is the owner entitled to increase the tenants' rents on the basis of Capital Improvements? If so, in what amount?
2. Is the amendment to the capital Improvement regulations regarding deferred maintenance applicable in this case?

### **EVIDENCE**

#### **Rent History**

The tenants moved into the subject unit in 1988 at an initial monthly rent of \$750.00 and are currently paying a monthly rent of \$1,147.00. They received notice of a rent increase on May 23, 2015, increasing their rent from \$1,147.00 to \$2,326.20. They are currently paying \$1,147.00 monthly.

The owner filed a timely response and states that the rent increase is justified on the basis of capital improvements.

### Capital Improvement Claim

The owner testified that the subject building was built in 1954 and the kitchen was never remodeled. She removed cabinets, counters, sheetrock, down to the studs. She installed new cabinets, and updated the electrical and plumbing to meet current code requirements, all at the request of the tenants. There was a hairline crack in the ceiling. A prior Rent Board Appeal Decision stated the owner should replace the ceiling sheetrock. There was no leak and no water stain. The tenants claimed there was a leak. There was no leak. The owner obtained a permit for the bathroom, and to open up the rest of the bathroom walls, and she completed a ceiling repair. She removed the sheetrock from the bathroom ceiling. She has credited the tenants with \$5,000 of the capital improvement expenses for the work on the bathroom ceiling. One year later, in September 2012 the tenant suddenly complained of a moldy smell. The owner also did work to comply with new electrical code requirements. She moved the electrical box, added more outlets, and upgraded the electrical wiring in the tenants' unit.

### Enhanced Notice to Tenants

There is no issue regarding enhanced notice to the tenants. The owner sent a copy of the enhanced notice to tenants and to the Rent Adjustment Program on May 28, 2015.<sup>1</sup> The owner also provided a declaration of service on the tenants and the tenants agree that the owner provided the enhanced notice to them.

### Scope of the Capital Improvements

The owner testified that the scope of the renovations included remodeling of the kitchen at the tenants' request, which consisted of removing the sheetrock down to the studs; replacing the kitchen cabinets, upgrading plumbing, lighting and electrical to comply with changes in codes. She further testified that she attempted to remodel the kitchen in 2002 and pulled permits for this work but the tenants said they did not want a remodel and she received a letter from Sentinel Housing opposing the work so she withdrew the permit. The tenants requested that the kitchen be remodeled in August 2012.<sup>2</sup>

The tenants testified that in 2000 a hinge on a kitchen cabinet fell off and it was repaired.<sup>3</sup> They also complained about a kitchen faucet leaking on and off. However, this was not mentioned in the letter from the tenants to the owners in August or September 2012.<sup>4</sup>

The work was performed by First Choice Construction (FCC) and was done between June 23, 2013 and August 21, 2013. The work on the bathroom, which was

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<sup>1</sup> L Ex. No. 1

<sup>2</sup> Ex. No. p. 383

<sup>3</sup> T. Ex. p. 20

<sup>4</sup> T. Ex. p.. 21-22

guted, was completed and paid for by June 4, 2014. The remodel of the kitchen was completed and paid for by June 4, 2014.

She also remodeled the bathroom. There was a hairline crack in the bathroom ceiling. Over time it worsened and this issue has been litigated in a prior case (T12-233). She testified that suddenly the tenants complained of a moldy, musty smell in the bathroom. The hearing officer found that she needed to replace the sheetrock in the ceiling. The owner further testified that although the tenants claimed there was a leak in the bathroom ceiling there was no leak, and there was no entry from the roof. She arranged to remove the sheetrock in the ceiling and the contractor found no leak, it was dry and there were no water stains. She testified that there are four people using one bathroom and she decided to remodel the entire bathroom. There were radiant pipes above the bathroom ceiling which heated the entire apartment and provided hot water.

The remodeling of the kitchen and bathroom occurred between June 23, 2013, and August 21, 2013. The final payment to the contractor occurred on June 4, 2014, due to a dispute between him and the owner. Check number 5369 in the amount of \$27,000 was made payable to the contractor's attorney.<sup>5</sup> The owner testified that of this amount, \$15,380.11 was attributable to the remodeling work on the tenants' unit.

There was extended testimony by both the owner and the tenants as to whether there was mold in the bathroom, whether it was a priority one or two condition, whether the issue had been decided in a prior hearing decision<sup>6</sup>, and whether there was deferred maintenance.

The tenants submitted a Notice of Violation from a city inspector dated October 12, 2012, which stated that "the bathroom ceiling is water damaged. Repair:"<sup>7</sup> The tenants also submitted a mold inspection report dated November 9, 2012, which concluded that "there was suspect visible mold, and elevated moisture levels within the back right corner of the bathroom ceiling, a 2x2 foot span. The roof over the bathtub as well as adjacent drywall above the shower appeared warped/damaged. The damaged ceiling continues beyond the bathroom front wall and into the living room."<sup>8</sup> The tenants provided an email transmission from Greg Morris, P.C. Department Director, Environmental Services, the company which conducted the mold inspection, which states that he "confirmed mold growth discovered in the surface sample taken in the bathroom. The air samples taken in the Bathroom and Living Room when compared to the outside (comparison) sample, are showing elevated levels of Cladosporium and Penicillium/Aspergillus."<sup>9</sup>

The tenants also testified that it was unnecessary to replace the dishwasher and disposal because they had been replaced in October 2012.

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<sup>5</sup> Ex. No. 359

<sup>6</sup> T12-0333, Harrison v. Solares

<sup>7</sup> T. Ex. No. p. 3233

<sup>8</sup> T. Ex. No. pp. 36-57

<sup>9</sup> T. Ex. No. p. 58-59

The owner testified that the total cost of renovations for the capital improvement pass-through was \$75,752.19 and provided a summary of the expenses.<sup>10</sup> \$15,380.11 of the final \$27,000 payment was attributable to the remodeling work on the tenants' unit. The owner testified that \$5,000 of the remodeling costs was deducted as a credit to the tenants for the work on the bathroom ceiling. The owner provided documentation of the following costs in support of the capital improvement pass-through:

Vendor	Description	Check No.	Amount	Date	Ex. No.
City of Oakland	Permits	4946	\$1,123.57	11/7/12	226
		5101	\$162.95	6/21/13	228
First Choice Construction	Contract for remodel kitchen and bathroom	5124	\$1,000.00	7/10/13	232-235
		5147	\$8,808.36	7/5/13	236-243
		5137	\$6,689.34	7/17/13	244-258
		5138	\$4,652.69	7/22/13	261-270
		5152	\$2,871.17	8/1/13	271-275
		5153	\$6,658.72	8/1/13	276-281
		5185	\$1,611.35	8/21/13	282-287
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13	288
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13	290-291
Pacific Sales	Bath items-	Visa	\$1,382.1 <sup>11</sup>	6/25/13	292-295
	Bath towel bar	Visa	\$119.90	7/23/13	299-301
	Kitchen items <sup>4</sup>	Visa	\$2,366.28	7/23/13	305-307
	Kitchen sink faucet	Visa	\$134.07	8/28/13	308-309
	Toilet	Visa	\$218.00	9/3/13	310-312
	Bath sink	Visa	\$66.00	9/3/13	314
Home Depot	Door lock/pulls	HD charge	\$32.47	8/19/13	315-316
	Door latch set, dead bolt,	HD charge	\$188.32	8/26/13	317
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13	319-320
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13	321-322
Dick's Carpet	Carpet for 2 bedrooms, hall, living room and dining room	5186	\$1,000	8/26/13	323-326
		5214	\$2885		
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300	7/3/13	327-330
			\$4,300	8/16/13	
"	Kitchen cabinet pulls	Visa	\$286.06	9/18/13	331
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12	332
Romart's Marble & Granite	Fabricate and install kitchen counter tops, bathroom vanity, and back splashes; shower walls	5157	\$3,305	9/13/13	335-337
Diablo Glass Inc.	Tub enclosure	5201	\$975.45	9/6/13	338-339

<sup>10</sup> Ex. No. pp. 226-227;359

<sup>11</sup> This includes a double charge for a disposal of \$179.00

Vendor	Description	Check No.	Amount	Date	Ex. No.
"	Drapes-bedrooms Blinds-kitchen <sup>14</sup>	4323	\$685.69	1/23/14	341
	8 Window screens and screen door	5304	\$550	1/7/14	342- 342a
Bed,Bath & Beyond	Toilet paper stand	Cash	\$19.99	1/20/14	343
SUBTOTAL			\$60,372.08		
First Choice Construction <sup>12</sup>	Contractor for construction Invoice 8/4/13 Invoice 8/27/13 Invoice 9/5/13 Invoice 9/15/13 Combined invoice 9/23/13 for Apt. 2,4 and 11(labor)	5389	\$2,325 \$7,413.60 <sup>13</sup> \$2,672.46 <sup>14</sup> \$1,289.05 \$1,680	6/4/14	159-161- 181
SUBTOTAL			\$15,380.11		
			\$75,752.19		
Credit for bathroom			-\$5,000		
NET TOTAL			\$70,752.10		

### Deferred Maintenance

The tenants allege that the mold issue constituted deferred maintenance. The issue of mold in the bathroom ceiling due to a roof leak was considered by the hearing officer in T12-0233.<sup>15</sup> Based in part on the site inspection by Hearing Officer Cohen who noted "a musty smell" in the bathroom and she could "see some dark spots that might be mold" as well as "bubbling paint and cracked pain in multiple other places on the ceiling" the hearing officer determined that the damage to the bathroom ceiling was a decreased housing service.

The tenants refused to move out of their unit for the repairs because they were concerned that they would not be able to move back in. The owner testified that she had to file a lawsuit to gain possession of the tenant's unit and they did not move out until June 2013, which further delayed the repairs.

The owner testified to the following repairs in the tenants' unit from 1988 to 2014:

- 1988-new fridge

<sup>12</sup> Tenants objected to this exhibit on the grounds that check was made to owner's attorney and amount allocated to contractor was not itemized

<sup>13</sup> Includes clerical error of \$19.38 in Home Depot Bill L. Ex. 364

<sup>14</sup> The Home Depot amount for 8/16/13 is \$175.84, not \$195.22-difference of \$19.38

<sup>15</sup> T. Ex. No. 113-119

- 1989-new stove
- 1992-kitchen faucet
- 1993-new fridge
- 1997-new dish washer, kitchen faucet, toilet, bathroom fan, vanity
- 1998-replace bathroom vanity after one year due to excessive moisture
- 1998-new bathroom faucet
- 1999-new stove
- 2002-new dishwasher, new blinds
- 2006-new fridge, garbage disposal, dishwasher, bathroom fan
- 2007-new carpet
- 2010-new stove-new kitchen faucet
- 2013-new dishwasher-garbage disposal
- 2013-new garbage disposal, carpet, bath faucet, curtains, fridge, kitchen faucet, blinds, bath fan, toilet, doors, disposal, dishwasher, refurbished stove, electrical upgrade, bath vanity

### Retaliation

The tenants testified that the owner was motivated to evict them because they complained about decreased housing services and they did not have to move out for the renovations and repairs to their unit. They testified that there were 3 available units that they could have moved into. The owner testified that there were no units available and her attorney wrote to the tenants on October 15, 2012, which stated that the owner needed to recover possession of the tenants' unit in order to make substantial repairs that could not be completed while the unit was occupied, and were necessary to either bring the property into compliance with applicable code and laws affecting the health and safety of the tenants, or under an outstanding code violation notice.

The letter further stated that when the needed repairs were completed on the unit the owner must offer them the opportunity to return to their unit on the same terms as the original rental agreement subject to rent increases under the Rent Ordinance.<sup>16</sup> The tenants testified that they did not receive this letter.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### Deferred Maintenance

The City Council passed Resolution 85306 on December 9, 2014, which amended Rent Adjustment Regulations, Appendix A, Sections 10.1 and 10.2.2 to address excluding the costs of deferred maintenance from Capital Improvement and Housing Service Costs Rent increases.

Regarding deferred maintenance, Section 10.2.2 4 (b) states the following:

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<sup>16</sup> T. Ex. p. 173

Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

However, this amendment was not in effect prior to December 9, 2014, and was not in effect at the time the owner performed the capital improvements. Moreover, there was no objective evidence that the work performed constituted deferred maintenance. The only issue cited by the city inspector was the bathroom ceiling. The tenant's mold report was in November 2012. The owner began asking the tenants to move out so she could do the repairs in October 2012 and had to go to court to gain entry into the tenants' unit. Therefore, the capital improvement costs may not be denied on the basis of deferred maintenance.

Capital Improvements: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.<sup>17</sup> Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

A rent increase based upon capital improvements will only be given for those improvements which have been completed and paid for within 24 months prior to the date of the proposed rent increase.

Limitations on Capital Improvement Increases: The rules governing capital improvement pass-throughs were significantly modified by changes in the Rent Adjustment Ordinance and Regulations, which became effective August 1, 2014.

"Enhanced Notice" Requirements: "For any rent increase based on capital improvements commenced prior to the implementation date, if such rent increase is noticed on or after the implementation date of this Ordinance, the new noticing requirements under this Ordinance are required."<sup>18</sup> A rent increase notice based on capital improvements "must include the following:

- (c) The type of capital improvement(s);
- (d) The total cost of the capital improvement(s);
- (e) The completion date of the capital improvement(s);
- (f) The amount of the rent increase from the capital improvement(s);

ii. Within ten (10) working days of serving a rent increase notice . . . based in whole or in part on capital improvements, an owner must file the notice and all documents accompanying the notice with the Rent Adjustment Program. Failure to file the notice with[in] this period invalidates the rent increase."

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<sup>17</sup> O.M.C. Section 8.22.070(C)

<sup>18</sup> Ordinance No. 13226

The owner complied with the enhanced notice requirement and provided a documentation of capital improvement costs for the remodeling of the kitchen and the bathroom.

Additionally, as of August 1, 2014, the Rent Ordinance was amended to limit a capital improvement pass-through to a maximum of 70%.<sup>19</sup> However, the new Ordinance does not apply to capital improvements on which permits have been taken out and substantial monies paid or liabilities incurred (other than permit fees) prior to the implementation date of the Ordinance (August 1, 2014), and the Owner reasonably, diligently pursues completion of the work.” Since the owner’s costs were completed and paid for prior to August 1, 2014, the owner is entitled to a capital improvement pass-through of 100% of the cost of this project.

There is no objective evidence that the condition of the bathroom constituted a priority 1 or 2 condition. The Notice of Violation issued by the city inspector only stated that the bathroom ceiling was water damaged and needed to be repaired. The entire bathroom was gutted and remodeled. However, a portion of the construction costs for repair of the bathroom ceiling and walls as well as the kitchen is disallowed because these costs fall outside the 24 month period prior to the date of the proposed rent increase.

Regarding the kitchen remodel, there is no evidence of a priority 1 or 2 condition. The tenants’ complaint of a hinge falling off a kitchen cabinet and a leak under the kitchen sink in 2002 does not constitute a priority 1 or 2 condition. Although the tenants testified that it was unnecessary to replace the dishwasher and disposal, the owner gutted the entire kitchen so it was necessary to install new appliances.

The costs paid on June 4, 2014, totaling \$15,380.11 are disallowed because the check was made payable to the owner’s attorney and the amount payable to the contractor was not itemized. The owner provided proof of payment of \$33,492.69 after excluding the following costs:

Item	Cost	Reason
Construction First Choice Construction	\$21,150.39 (\$1,000.00,\$8,808.36,\$6,689 .34,\$4,652.69).	Falls outside 24 month period
“	\$15,380.11	Check made to owner’s attorney- payment to FCC not itemized
Pacific Sales	\$179.00	This item was charged twice
Screenmobile	\$550	Proof of payment was not submitted 7 days prior to hearing
<b>TOTAL</b>	<b>\$37,259.50</b>	

**CONCLUSION**

<sup>19</sup> Resolution 85306 C.M.S.