

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
REGULAR MEETING**

**December 8, 2016  
7:00 P.M.  
CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
  - i. Approval of minutes October 13, 2016 and October 20, 2016
  - ii. Approval of draft decision in case:  
  
T15-0344, Barbalat v. McClain, et al.
4. OPEN FORUM
5. OLD BUSINESS
  - A. Correction of Minutes for July 28, 2016
6. NEW BUSINESS
  - i. Appeal Hearings in cases:
    - a. L14-0065; CNML Properties LLC v. Tenants
    - b. T15-0263; Panganiban v. Chang
    - c. T15-0360; Harrison v. Solares
  - ii. Discussion and Possible Action on Revisions to Rent Adjustment Regulations
7. SCHEDULING AND REPORTS
8. ADJOURNMENT

2016 NOV 30 PM 3:04  
OFFICE OF THE CITY CLERK  
OAKLAND

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

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

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

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

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

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

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**Regular Meeting  
October 13, 2016  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**DRAFT MINUTES**

**1. CALL TO ORDER**

The HRRRB was called to order at 7:05 p.m. by Board Chair, Jessie Warner.

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Beverly Williams	Homeowner	X		
Ramona Chang	Landlord			X
Tyfahra Singleton	Tenant	X		
Jessie Warner	Homeowner	X		
Noah Frigault	Tenant			X
Karen Friedman	Landlord			X
Joanne Karchmer	Homeowner			X
Ubaldo Fernandez	Tenant Alt	X		
Benjamin Scott	Landlord Alt	X		
Edward Lai	Homeowner Alt	X		

Staff Present

Richard Illgen	Deputy City Attorney
Connie Taylor	Rent Adjustment Program Manager

**3. CONSENT ITEMS**

**OPEN FORUM**

Brian Geiser

**i. Approval of consent items:**

J. Warner made motion to approve consent minutes for July 28, 2016. B. Williams seconded. The Board voted as follows:

AYE: J. Warner; B. Williams, U. Fernandez, T. Singleton, E. Lai  
NAY: 0  
ABSTAINED: B. Scott

The motion carried.

B. Williams made a motion to approve minutes for September 22, 2016. U. Fernandez seconded. The Board voted as follows:

AYE: J. Warner, B. Williams, U. Fernandez, T. Singleton  
NAY: 0  
ABSTAINED: B. Scott

ii. Approval of Draft decisions in cases:

- a. T14-0238; Geiser v. Chandler
- b. T15-0518; Bowen v. Eubanks
- c. T16-0316; Benitez v. Tang

OPEN FORUM

Brian Geiser

J. Warner made a motion to approve draft decisions with corrections. B. Williams seconded. The Board voted as follows:

AYE: J. Warner, B. Williams, U. Fernandez, T. Singleton, E. Lai  
NAY: 0  
ABSTAINED: B. Scott

The motion carried.

4. OPEN FORUM

James Vann  
Brian Geiser

5. NEW BUSINESS

i. Appeal Hearing in consolidated cases:

- a. T15-0344; Barbalat v. McClain, et al.

Appearances:

Tenant Representative

James Vann

Landlord

Ann McClain

Rebuttal

Both parties offered rebuttal.

Board Discussion

After discussion and questions to both parties, B. Scott made a motion to affirm the Hearing Officer's decision based on Ordinance No. 13266. E. Lai seconded. The Board voted as follows:

AYE: U. Fernandez, B. Williams, J. Warner, E. Lai, T. Singleton, B. Scott

NAY: 0

ABSTAINED:0

The motion carried by consensus.

6. SCHEDULING AND REPORTS

1. Schedule Discussion of Attendance
2. Report on Appeal backlog (could be presented in Annual Report)
3. Reminder to Board of special meeting on October 20, 2016

7. ADJOURNMENT

J. Warner made a motion to adjourn. B. Williams seconded. The meeting was adjourned by consensus at 8:35 p.m.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**Special Meeting  
October 20, 2016  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**DRAFT MINUTES**

1. CALL TO ORDER

The HRRRB was called to order at 7:05 p.m. by Board Chair, Jessie Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Beverly Williams	Homeowner	X		
Ramona Chang	Landlord	X		
Tyfahra Singleton	Tenant	X		
Jessie Warner	Homeowner	X		
Noah Frigault	Tenant	X		
Karen Friedman	Landlord			X
Joann Karchmer	Homeowner	X		

Staff Present

Richard Illgen	Deputy City Attorney
Connie Taylor	Rent Adjustment Program Manager

3. CONSENT ITEMS

None

4. OPEN FORUM

Edward Lai  
James Vann  
Brian Geiser

5. NEW BUSINESS

- i. Discussion and Possible Action on Revisions to Rent and Just Cause Regulations

OPEN FORUM (item 5)

James Vann  
Brian Geiser

Board Discussion

The Board decided to discuss changes to Rent Regulations at this meeting.

J. Karchmer made a motion to extend the meeting beyond 10:00 p.m. N. Frigault seconded. The Board voted as follows:

Aye: R. Chang, J. Warner, N. Frigault, J. Karchmer

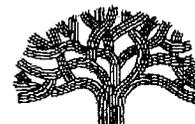
Nay: T. Singleton, B. Williams

Abstained: 0

The meeting concluded without action taken.

6. ADJOURNMENT

B. Williams made motion to adjourn. J. Warner seconded. The meeting was Adjourned by consensus at 10:30 p.m.



# CITY OF OAKLAND

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

Department of Housing and Community Development

Rent Adjustment Program

TEL (510) 2383721

FAX(510)238-6181

TDD(510)238-3254

## HOUSING, RESIDENTIAL, RENT AND RELOCATION BOARD DRAFT APPEAL DECISION

**CASE NUMBER:** T15-0344, Barbalat v. McClain  
 T15-0345, McKinzie v. McClain  
 T15-0349, Carthell v. McClain  
 T15-0350, Schoren v. McClain  
 T15-0351, King v. McClain  
 T15-0353, Sweeny v. McClain  
 T15-0353, Kidolis v. McClain  
 T15-0354, Schacher v. McClain  
 T15-0356, Yoan et al. v. McClain  
 T15-0357, Coleman v. McClain  
 T15-0358, Kleinjan v. McClain  
 T15-0359, Taylor v. McClain

**APPEAL HEARING:** October 13, 2016

**PROPERTY ADDRESS:** 3500 35<sup>th</sup> Avenue  
Oakland, CA

<b>APPEARANCES:</b>	<b>James Vann</b>	<b>Tenant Appellant Representative</b>
	<b>Ann McClain</b>	<b>Owner Appellee</b>

The tenants filed petitions contesting a rent increase. The Hearing Decision determined that the owner complied with the enhanced notice requirements for capital improvement increases, and allowed a 100% pass-through on the basis of a grandparent clause for capital improvements which were substantially completed prior to August 1, 2014. A capital improvement for common areas was granted in the amount of \$94.98 and a unit specific capital improvement was granted as follows:

Tenant Schoren      \$23.58

Tenant King           \$ 8.55  
Tenant Kidolis       \$17.10  
Tenant Schacher     \$40.68  
Tenant Coleman     \$ 7.51  
Tenant Kleinjan     \$16.06

Grounds for Appeal-

The tenants appealed the Hearing Decision on the following grounds:

1. The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior Board decisions;
2. The decision raises a new policy issue that has not been decided by the Board;
3. The decision is not supported by substantial evidence;
4. The Hearing Decision violates the Rent Ordinance as amended in May 2014.

Appeal Decision

After Board discussion and questions to both parties B. Scott moved to affirm the Hearing Officer's decision based on Ordinance No. 13266.

T. Singleton seconded. The Board voted as follows:

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

The motion passed by consensus.

**NOTICE TO PARTIES**

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

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

DATE

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**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**Regular Meeting  
July 28, 2016  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**DRAFT MINUTES**

1. CALL TO ORDER

The HRRRB was called to order at 7:05 p.m. by Board Chair, Jessie Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Beverly Williams	Homeowner	X		
Ramona Chang	Landlord	X		
Tyfahra Singleton	Tenant			X
Jessie Warner	Homeowner	X		
Noah Frigault	Tenant			X
Karen Friedman	Landlord	X		
Joanne Karchmer	Homeowner	X		
Ubaldo Fernandez	Tenant Alt	X		

Staff Present

Jessica Leavitt	Deputy City Attorney
Connie Taylor	Rent Adjustment Program Manager

3. CONSENT ITEMS

i. Approval of consent items:

J. Karchmer made motion to approve consent items. K. Friedman seconded. The Board voted as follows:

AYE: J. Warner; B. Williams; J. Karchmer

NAY: 0

ABSTAINED: U. Fernandez; R. Chang; K. Friedman

The motion failed.

U. Fernandez made a motion to approve consent items. B. Williams seconded. The Board voted as follows:

AYE: J. Warner; B. Williams; J. Karchmer; U. Fernandez; R. Chang; K. Friedman  
NAY: 0  
ABSTAINED: 0

The motion carried.

4. OPEN FORUM

Susan Hill

5. NEW BUSINESS

i. Appeal Hearing in consolidated cases:

a. T15-0202; Rodriguez v. Taplin  
T15-0203; Lopez v. Taplin

Appearances:

Landlord

Vincent Taplin

Tenant Representative

Martina Cucullu Lim

Rebuttal

Vincent Taplin

Martina Cucullu Lim

Board Discussion

After discussion and questions to both parties, B. Williams made a motion to affirm the Hearing Officer's decisions based on the Hearing Officer's rationale. U. Fernandez seconded. The Board voted as follows:

AYE: U. Fernandez, B. Williams, J. Warner, J. Karchmer, R. Chang, K. Friedman  
NAY: 0  
ABSTAINED: 0

The motion carried.

- b. T14-0238; Geiser v. Chandler Properties  
T15-0428; Geiser v. Chandler Properties

Landlord Board member, Ramona Chang recused herself from these case due to conflict of interest.

Appearances:

Tenant

Brian Geiser

Landlord

Samantha Duval

Rebuttal

Brian Geiser

Samantha Duval

Board Discussion

After discussion and questions to both parties, J. Warner made a motion to remand case T15-0428 to Staff or Hearing Officer for correction of base rent to \$882. J. Karchmer seconded. The Board voted as follows:

AYE: J. Warner, B. Williams, U. Fernandez, K. Friedman, J. Karchmer

NAY: 0

ABSTAINED:0

The motion carried.

J. Karchmer made a motion to remand case T14-0238 for the following reasons:

- 1) Review the proof given by owner that notice was given timely;
- 2) Review calculations of capital improvement pass through;
- 3) Change base rent to \$882.

J. Warner seconded the motion.

U. Fernandez offered the following friendly amendment:

- 1) Determine whether a priority 1 or priority 2 condition existed regarding the electrical problems;
- 2) Review the exhibits and checks listed for quantity beginning on page 6 of the decision.

Friendly amendments were accepted.

After further discussion, the Board voted as follows:

AYE: J. Warner, U. Fernandez, J. Karchmer B. Williams

NAY: K. Friedman

ABSTAINED: 0

The motion carried.

- c. T15-0389; Ullman v. Tse  
T15-0390; Hellman et al v. Tse

These cases had to be rescheduled because tenant alternate, U. Fernandez had a conflict of interest and no other tenant members were present on the Board; therefore, there was a lack of quorum. The cases will be rescheduled for next regular Board meeting.

#### 7. ADJOURNMENT

B. Williams made a motion to adjourn. J. Warner seconded. The meeting was adjourned by consensus at 9:05 p.m.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**Regular Meeting  
July 28, 2016  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**DRAFT MINUTES**

1. CALL TO ORDER

The HRRRB was called to order at 7:05 p.m. by Board Chair, Jessie Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Beverly Williams	Homeowner	X		
Ramona Chang	Landlord	X		
Tyfahra Singleton	Tenant			X
Jessie Warner	Homeowner	X		
Noah Frigault	Tenant			X
Karen Friedman	Landlord	X		
Joanne Karchmer	Homeowner	X		
Ubaldo Fernandez	Tenant Alt	X		

Staff Present

Jessica Leavitt	Deputy City Attorney
Connie Taylor	Rent Adjustment Program Manager

3. CONSENT ITEMS

i. Approval of consent items:

J. Karchmer made motion to approve consent items. K. Friedman seconded. The Board voted as follows:

AYE: J. Warner; B. Williams; J. Karchmer

NAY: 0

ABSTAINED: U. Fernandez; R. Chang; K. Friedman

The motion failed.

U. Fernandez made a motion to approve consent items. B. Williams seconded. The Board voted as follows:

AYE: J. Warner; B. Williams; J. Karchmer; U. Fernandez; R. Chang; K. Friedman

NAY: 0

ABSTAINED: 0

The motion carried.

#### 4. OPEN FORUM

Susan Hill

#### 5. NEW BUSINESS

i. Appeal Hearing in consolidated cases:

a. T15-0202; Rodriguez v. Taplin  
T15-0203; Lopez v. Taplin

Appearances:

Landlord

Vincent Taplin

Tenant Representative

Martina Cucullu Lim

Rebuttal

Vincent Taplin

Martina Cucullu Lim

Board Discussion

After discussion and questions to both parties, B. Williams made a motion to affirm the Hearing Officer's decisions based on the Hearing Officer's rationale. U. Fernandez seconded. The Board voted as follows:

AYE: U. Fernandez, B. Williams, J. Warner, J. Karchmer, R. Chang, K. Friedman

NAY: 0

ABSTAINED: 0

The motion carried.

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- b. T14-0238; Geiser v. Chandler Properties  
T15-0428; Geiser v. Chandler Properties

Landlord Board member, Ramona Chang recused herself from these case due to conflict of interest.

Appearances:

Tenant

Brian Geiser

Landlord

Samantha Duval

Rebuttal

Brian Geiser  
Samantha Duval

Board Discussion

After discussion and questions to both parties, J. Warner made a motion to remand case T15-0428 to Staff or Hearing Officer for correction of base rent to \$882. J. Karchmer seconded. The Board voted as follows:

AYE: J. Warner, B. Williams, U. Fernandez, K. Friedman, J. Karchmer

NAY: 0

ABSTAINED:0

The motion carried.

J. Karchmer made a motion to remand case T14-0238 for the following reasons:

- 1) Review the proof given by owner that **the summary of justifications request was given timely;**
- 2) Review calculations of capital improvement pass through;
- 3) Change base rent to \$882.

J. Warner seconded the motion.

U. Fernandez offered the following friendly amendment:

- 1) Determine whether a priority 1 or priority 2 condition existed regarding the electrical problems;
- 2) Review the exhibits and checks listed for the **dollar amount beginning** on page 6 of the decision.

Friendly amendments were accepted.

After further discussion, the Board voted as follows:

AYE: J. Warner, U. Fernandez, J. Karchmer B. Williams

NAY: K. Friedman

ABSTAINED: 0

The motion carried.

- c. T15-0389; Ullman v. Tse  
T15-0390; Hellman et al v. Tse

These cases had to be rescheduled because tenant alternate, U. Fernandez had a conflict of interest and no other tenant members were present on the Board; therefore, there was a lack of quorum. The cases will be rescheduled for next regular Board meeting.

## 7. ADJOURNMENT

B. Williams made a motion to adjourn. J. Warner seconded. The meeting was adjourned by consensus at 9:05 p.m.

## CHRONOLOGICAL CASE REPORT

Case No.: L14-0065

Case Name: 525-655 Hyde Street CNML Properties

Property Address: 3921 Harrison Street, Oakland, CA

Parties: **Tenants:** Alexander M. Taylor; Andrew Simkin  
Cooper Spinelli; Elizabeth Van Lanen  
Jilleun & Lexie Eglin; Alexandru Batnaru  
Alexandru Valisescu; Angelique Johnson-Martinez  
Bianca Penalzoza; Dana Sarvestani; Elena Butnara;  
Fernando Garcia; Jessica Simkin; Julie Amberg;  
Kate Flick Garcia; Lisa Romero; Mari Oda;  
Ria Cruz; Steven Miller; Suzanne Miller;  
Tadeusz Butnaru; Todd McMahon; Zoe Bridges  
Zvetlana Butnaru

**Owner:** 525-655 Hyde St CNML Properties

### LANDLORD APPEAL:

<u>Activity</u>	<u>Date</u>
Landlord filed Petition	November 10, 2014
Tenant Responses filed	December 17, 19, 22, & 23, 2014 & January 13, 2015
Hearing Decision issued	May 29, 2015
Landlord Appeal Filed	June 18, 2015

**NOTE:** The owner petition and tenant responses are not included in the Board Packet due to the volume of documents. The cases will be available at the Appeal hearing. In addition, the documents can be viewed by appointment at the RAP office by contacting Maxine Visaya at (510) 238-3721.

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2015 JUN 18 PM 4:52

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

**APPEAL**

**Appellant's Name**  
525, 655 Hyde St. CNML Properties LLC

**Landlord**       **Tenant**

**Property Address (Include Unit Number)**  
3921 Harrison Street  
Oakland, CA 94611

**Appellant's Mailing Address (For receipt of notices)**  
4844 Telegraph Avenue  
Oakland, CA 94609

**Case Number**      L14-0065

**Date of Decision appealed**      5/29/15

**Name of Representative (if any)**  
Clifford E. Fried Esq.  
Elizabeth Hart

**Representative's Mailing Address (For notices)**  
Fried & Williams LLP  
480 Ninth St.  
Oakland, CA 94607

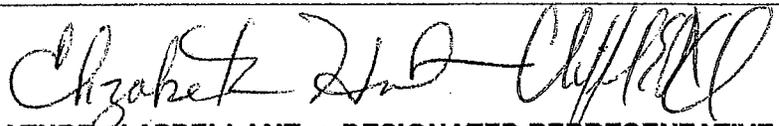
**I appeal the decision issued in the case and on the date written above on the following grounds:**  
*(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)*

- 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 [ 14 ]. 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 June 18, 2015, 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>	See attached list of 25 opposng parties along with their representative.
<b>Address</b>	
<b>City, State Zip</b>	
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

 <b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	June 18, 2015 <b>DATE</b>
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**IMPORTANT INFORMATION:**

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

- 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.

## 3921 Harrison Street, Oakland, CA 94611

## Opposing Parties

Ana Baires Mira, 3022 International Blvd. #410, Oakland, CA 94601

Jilleun Eglin & Lexie Eglin, 3921 Harrison St., #101, Oakland, CA 94611

Alexandru & Elena Butnaru & Tadeusz Butnaru, 3921 Harrison St., #102, Oakland, CA 94611

Angelique Johnson-Martinez, 3921 Harrison St., #103, Oakland, CA 94611

Zvetlana Butnaru, 3921 Harrison St., #104, Oakland, CA 94611

Alexander Michael Taylor & Ria Cruz, 3921 Harrison St., #105, Oakland, CA 94611

Suzanne Miller, 3921 Harrison St., #201, Oakland, CA 94611

Fernando Garcia & Kate Flick Garcia, 3921 Harrison St., #202, Oakland, CA 94611

Cooper Spinelli & Dana Sarvestani, 3921 Harrison St., #203, Oakland, CA 94611

Bianca Penaloza, 3921 Harrison St., #204, Oakland, CA 94611

Lisa Romero, 3921 Harrison St., #205, Oakland, CA 94611

Alexandru Vasilescu & Zoe Bridges, 3921 Harrison St., #301, Oakland, CA 94611

Julie Amberg, 3921 Harrison St., #302, Oakland, CA 94611

Tyler Ritter, 3921 Harrison St., #303, Oakland, CA 94611

Mari Oda & Todd McMahon, 3921 Harrison St., #304, Oakland, CA 94611

Andrew Simkin & Jessica Simkin, 3921 Harrison St., #305, Oakland, CA 94611

Steven Miller & Elizabeth VanLanen 3921 Harrison St. PH, Oakland, CA 94611

## The Detailed Grounds for Appeal

### INTRODUCTION

This is a Landlord Petition for a Certificate of Exemption based upon substantial rehabilitation to a building located at 3921 Harrison Street, Oakland. Prior to the hearing, Landlord submitted a relevant table issued by the Building Services agency of the City of Oakland. This table was marked as Landlord's Exhibit 76/203 and was admitted into evidence at the hearing. Landlord's Exhibit 76/203 is commonly referred to as "Table 'A'" by the Rent Board. A copy of Table A is attached to this Appeal.

After all testimony concluded at the hearing, and all evidence of the parties was admitted into evidence, closing arguments were made by the parties. During the closing argument of Ana Baires Mira, attorney for some of the Tenants, reference was made to a new piece of evidence which the hearing officer took notice of. This new piece of evidence is entitled "Quarterly Cost Indexes (1926 = 100)." This evidence was provided to the Hearing Officer but not the Landlord. Objection to the use and introduction of this new evidence was made at the hearing. A copy of Quarterly Cost Indexes (1926 = 100) is attached to this brief and called Table B.

#### 1. The Decision is inconsistent with the Ordinance, the Rules & Regulations or prior Board decisions

Per 8.22.030 (B) 2 a & b

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

When calculating the average basic cost for new construction in the decision, Hearing Officer Kasdin used a table that was not allowed as evidence into the record nor issued from the Chief Building Inspector for the time period when the substantial rehabilitation was completed.

The Tenants called as a witness David Harlan, the Engineering Manager of the Bureau of Buildings, to testify specifically on how the City calculates the value of new construction. Mr. Harlan testified that the City currently uses a table from 2009 (hereafter referred to as Table A). This table was presented as evidence by the Landlord.

Prior to the 2009 table, the City Building Department had issued a 2007 table (hereafter called Table E) and a 2001 table (hereafter called Table C) to calculate construction values. In this decision, the Hearing Officer used the 2001 Table C to establish the property was constructed of wood frame. All of these tables are obviously issued from the City of Oakland. They are all on letterhead from the City of Oakland, they each have a date establishing when they are to take effect and the 2001 Table C is actually signed by Calvin Wong, the City of Oakland's Building Official.

Yet Mr. Kasdin used a third table called Quarterly Cost Indexes (1926 = 100) (hereafter referred to as Table B) to calculate the cost for new construction. The attorney for the tenants cited 3 cases (L13-0028, T13-0196 and T07-0287) to introduce the Table B and bring it to the Hearing Officer's attention. However the table used in those 3 cases is not the Table B introduced at the hearing. Those cases cited by the Tenant's Attorney used a completely different document – one labeled Cost Indexes (1926 = 100) hereafter referred to as Table D. Neither Table B introduced by the Tenant Attorney or Table D cited by the Tenant's Attorney are on City letterhead, have a date when it was to take effect or is signed by anyone. Furthermore these 'Cost Indexes' Tables B and D have never been authenticated as having come from the City of Oakland. Only tables formally issued by the City of Oakland should be used in the calculations for construction values. Only Tables A, C and E meet that standard.

## **2. The Decision is not consistent with other hearing officers.**

Other hearings have established square footage with owner testimony, data from the County of Alameda's Assessor's Office, general contractor testimony, architectural or engineering plans and property reports such as FastWeb Property Profile, DataQuik and RealQuest.com. Evidence of square footage entered into the record at the hearings included a FastWeb Property Profile, an architectural plan of the building, a property characteristics report from the Assessor's office and testimony from the General Contractor - all of which provided the same figure of 13,336 for square footage.

However in the decision, the Hearing Officer added in the area of the balconies which inflated the correct 13,336 sf figure by an additional 1000 square feet. The Hearing Officer's reasoning was that as the cost of the repairs to the balconies were included as expenses, so the square footage of the balconies should be as well. But by that logic, the new roof, which cost \$50,000, should also have been included in the square footage, since it was included as an expense. But the Hearing Officer did not include the roof's area, and prior decisions do not include roof area - see 09-0001, 11-0004, 11-0018 and 12-0196. Each of these cases add the costs of a new roof to expenses without adding the roof's area to the square footage. More importantly, neither Roofs nor Balconies are habitable living spaces. Each is exposed to the elements, have no running water and have no source of heat. Neither the balconies nor the roof should be added to the square footage

## **3. The Decision is not supported by substantial evidence**

The Hearing Officer miscalculated the eligible expense amount for the General Contractor by \$25,999. The Hearing Officer only counted 3 of 4 separate \$26,000 invoices for kitchen and bathroom remodels.

On page 3 of the Decision, the Hearing Officer tallies the construction expenses provided as evidence by the landlord including \$831,597 in payments to Martin Gallagher Construction. However the Landlord provided evidence that this vendor, Martin Gallagher Construction was actually paid \$857,596. The difference between the two amounts is exactly \$25,999. Among the evidence provided by the Landlord were 4 invoices for kitchen and bathroom remodels to units 203, 204, 303 and 304; each for \$26,000. We believe the Hearing Officer failed to count one of the 4 \$26,000 invoices.

**4. The Petitioner was denied a sufficient opportunity to present his claims or respond to petitioner's claims.**

Per OMC 8.22.110 (E) 3 e which covers Conduct of Hearing before the Hearing Officer, Section 3 specifically states that "each party shall the right to rebut the evidence against him or her."

During closing arguments and after the period when evidence would be allowed and entered into the record, the tenant's attorney, Ana Baires Mira presented the document Table B. Hearing Officer Kasdin accepted and took formal notice of this document, Table B and then used it when calculating the cost of new construction in his decision. Table B was not made available to the Landlord representative before or even during the hearing, it was not allowed into the record as evidence and as it was presented during closing arguments, the Landlord representative had no opportunity to rebut or challenge it or its usage in the hearing or the decision.

A tenant is required to file a response to an owner's petition within 30 days of service of the notice by the Rent Adjustment Program that an owner petition was filed. OMC Sec. 8.22.090.A.4. The Landlord and Tenants in this case were ordered to produce all proposed tangible evidence "not less than seven (7) days prior to the Hearing." See Notice of Hearing in this case served on all Tenants on November 19, 2015. By not filing the Quarterly Index and serving a copy on the Landlord, the document should not have been considered by the Hearing Officer.

The Rent Board has a strict policy of not considering evidence and other documents that the parties will rely on unless those items were submitted to the Rent Board and served on the opposing party before the hearing. There is no reason to ignore past precedent in this case. It came as a total surprise to Landlord that evidence of construction costs, not contained in Table A, would be used and argued by the Tenant. Or that it could be noticed or used by the Hearing Officer. It is a violation of due process to allow the Quarterly Cost Indexes (1926 = 100) to be used in this case because Landlord was deprived of notice that it would be used.

Had Respondent Tenant and the Hearing Officer complied with the Rent Board rules and the law, Petitioner Landlord would have presented evidence on how Table B was not a table issued by the chief building inspector applicable for the time period for which Petitioner made repairs.

6

000024

**City of Oakland  
Building Services  
Construction Valuation<sup>1</sup>  
For Building Permits<sup>4</sup>  
Effective Aug. 1, 2009**

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

2009-18-09  
MAY 7 AM 9:46

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 7'09
			New	Remodel	New	Remodel	
R3	Custom-Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 28 (CDS/g)
	Finished/Habitable-Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/e)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 25 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6" wall)
	Foundation Upgrade (L.F.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R24x72.)
	Patio/Porch/Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.61	\$27.82	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12" inf./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (D/mil/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/e)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG-527 C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.86	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (C/mil/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (L.F. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)

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

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

<sup>5</sup> Separate fees assessed for E/PM permits, R.O.W. Improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

TABLE "A" 000025

2014

# QUARTERLY COST INDEXES (1926 = 100)

## BUILDINGS - EASTERN DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	1/2009		
<b>BUILDING CLASSES</b>	3069.4	3064.4	3051.0	3026.5	3005.5	2977.5	2954.3	2921.4	2898.0	2884.0	2873.2	2864.0	2854.1	2845.1	2836.5	2828.2	2820.5	2813.2	2806.3	2799.5	2792.6	2785.7	2778.8	2771.9	2765.0	
A: Fireproofed steel frame	3069.4	3064.4	3051.0	3026.5	3005.5	2977.5	2954.3	2921.4	2898.0	2884.0	2873.2	2864.0	2854.1	2845.1	2836.5	2828.2	2820.5	2813.2	2806.3	2799.5	2792.6	2785.7	2778.8	2771.9	2765.0	
B: Reinforced concrete frame	3053.1	3041.4	3035.7	3007.5	2987.5	2964.8	2941.5	2918.2	2894.9	2880.9	2870.2	2861.0	2851.8	2842.6	2833.4	2824.2	2815.0	2805.8	2796.6	2787.4	2778.2	2769.0	2760.0	2751.0	2742.0	2733.0
C: Masonry bearing walls	3060.3	3044.3	3027.6	2997.5	2975.0	2952.5	2929.0	2905.5	2882.0	2868.5	2855.0	2841.5	2828.0	2814.5	2801.0	2787.5	2774.0	2760.5	2747.0	2733.5	2720.0	2706.5	2693.0	2679.5	2666.0	2652.5
D: Wood frame	2708.1	2701.2	2718.3	2769.2	2793.6	2818.0	2842.4	2866.8	2891.2	2915.6	2940.0	2964.4	2988.8	3013.2	3037.6	3062.0	3086.4	3110.8	3135.2	3159.6	3184.0	3208.4	3232.8	3257.2	3281.6	3306.0
S: Metal frame and walls	2708.1	2701.2	2718.3	2769.2	2793.6	2818.0	2842.4	2866.8	2891.2	2915.6	2940.0	2964.4	2988.8	3013.2	3037.6	3062.0	3086.4	3110.8	3135.2	3159.6	3184.0	3208.4	3232.8	3257.2	3281.6	3306.0

## BUILDINGS - CENTRAL DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	1/2009	
<b>BUILDING CLASSES</b>	2700.6	2751.8	2751.8	2728.6	2725.6	2717.0	2695.1	2677.7	2660.6	2648.0	2636.0	2624.0	2611.9	2600.0	2588.0	2576.0	2564.0	2552.0	2540.0	2528.0	2516.0	2504.0	2492.0	2480.0	2468.0
A: Fireproofed steel frame	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
B: Reinforced concrete frame	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
C: Masonry bearing walls	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
D: Wood frame	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
S: Metal frame and walls	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0

## BUILDINGS - WESTERN DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	1/2009	
<b>BUILDING CLASSES</b>	2700.6	2751.8	2751.8	2728.6	2725.6	2717.0	2695.1	2677.7	2660.6	2648.0	2636.0	2624.0	2611.9	2600.0	2588.0	2576.0	2564.0	2552.0	2540.0	2528.0	2516.0	2504.0	2492.0	2480.0	2468.0
A: Fireproofed steel frame	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
B: Reinforced concrete frame	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
C: Masonry bearing walls	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
D: Wood frame	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0
S: Metal frame and walls	2759.0	2747.9	2752.5	2743.9	2725.9	2715.9	2697.9	2680.9	2663.9	2651.9	2640.0	2628.0	2616.0	2604.0	2592.0	2580.0	2568.0	2556.0	2544.0	2532.0	2520.0	2508.0	2496.0	2484.0	2472.0

## EQUIPMENT - NATIONAL AVERAGE

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	1/2009	
<b>INDUSTRY</b>	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Average of all	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Apprentice	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Apprentice	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Bakery	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Bank	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Boatbuilding	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Brewery & distillery	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Butchery	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Cannery (fish)	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Cannery (meat)	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Cannery (other)	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Cement mfg.	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Chemical	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Church	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Construction	1693.7	1585.7	1529.0	1466.9	1405.9	1344.9	1283.9	1222.9	1161.9	1100.9	1039.9	978.9	917.9	856.9	795.9	734.9	673.9	612.9	551.9	490.9	429.9	368.9	307.9	246.9	185.9
Contractor's equip.	1693.7																								

Residential Building Minimum Valuation Data

Approved by Calvin N. Wong to be effective February 1, 2001  
 Building Official

2015 MAY - 7

The following building valuation data are based on cost and value reported by "Marshall Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

Calculated Method * (\$/sf)		Segregated Cost Method	
Level ground construction (caisson found'n @ \$11.50/sf not included in this column)	Hillside construction Based on 20% slope (retaining wall not included)	Deck (\$/sf of area)	
		Ground level (< 6')	\$ 22.44/sf
		Terrace level	\$ 30.29/sf
Apartment	Apartment	Fence ((\$/sf surface)	
Type I & II	Type I & II	-wood	\$ 4.18/sf
Type III	Type III	-chain link	\$ 2.64/sf
Type V	Type V	-masonry	\$ 10.30/sf
Basement	Basement	Fireplace	\$6,270/ea
Garage	Garage	Fire sprinkler	\$ 3.28/sf
Type I Garage	Type I Garage	Kitchen Appliance	\$ 4983/set
Custom Residences	Custom Residences	Patio Enclosure	\$ 22.18/sf
Type III	Type III	Solarium	\$129.53/sf
Type V	Type V	Stair	
Basement	Basement	- prefab	\$149.16/Tread
Garage	Garage	- wood	\$125.07/Tread
Semi-Custom Residences	Semi-Custom Residences	Wall - non-bearing	
Type III	Type III	- wood (footing extra)	\$15.00/lf
Type V	Type V	Wall - retaining (\$/sf surface)	
Basement	Basement	- concrete	
Garage	Garage	< 6' tall	\$ 23.10/sf
Single Family Residences	Single Family and Residences	< 10' tall	\$ 27.05/sf
Type III	Type III	< 20' tall	\$ 36.30/sf
Type V	Type V	- masonry	
Basement	Basement	< 6' tall	\$23.17/sf
Garage	Garage	< 10' tall	\$31.09/sf
Starter Home	Starter Home	- wood	
Type V	Type V	< 6' tall	\$ 17.66/sf
Basement	Basement	<10' tall	\$22.44/sf
Garage	Garage		

STEEL/CONCRETE FRAME =  
 MASONRY WALLS =  
 WOOD FRAME =  
 STEEL/CONCRETE FRAME =

\* Calculator method includes typical built-in appliance and one fireplace only

~~TABLE "B"~~

TABLE "C"



74

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	18-452
INVOICE DATE	April 3, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 203

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	6747 → 51900 6791 → <del>24000</del>	51900	\$44,900.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	6627	6660 → 2000	\$9,800.00
			SUBTOTAL	21,700.00

PROP # 1P-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AMT \_\_\_\_\_  
 DATE \_\_\_\_\_

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$21,700.00  
 PAY THIS  
 AMOUNT

THANK YOU FOR YOUR BUSINESS!

PAID  
 APR 15 2014  
 CK# 120986

45

# Martin Gallagher Const. Inc.

# SUPPLEMENTAL INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

SUPPLEMENTAL INVOICE NUMBER	64-452
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 203

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 → \$2500	\$3,600.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6660 → \$300 6624 → \$800 6627 → \$700.00	\$700.00
PLEASE REFER TO INVOICE NUMBER 18				
			PROP # <u>IP-452</u> VENDOR # _____ GL CODE _____ AUTH <u>[Signature]</u> DATE <u>6-17-14</u>	
			SUBTOTAL	4,300.00
				\$4,300.00
DIRECT ALL INQUIRIES TO: Martin Gallagher (415) 246-8539 <a href="mailto:martingallagher85@gmail.com">martingallagher85@gmail.com</a>				PAY THIS AMOUNT
MAKE ALL CHECKS PAYABLE TO: Martin Gallagher Construction Inc.  1558 Mizzen Lane Half Moon Bay, CA 94019				

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 124652  
 CK# 103937

066

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	65
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 204

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			SUBTOTAL	26,000.00

PROP # 1P-452  
 VENUE OR # \_\_\_\_\_  
 G. CODE 6619  
 AUTH MD  
 DATE 6-17-14

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher65@gmail.com](mailto:martingallagher65@gmail.com)

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$26,000.00  
 PAY THIS  
 AMOUNT

PAID

JUN 17 2014

CK#123868

THANK YOU FOR YOUR BUSINESS!

73

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	67-452
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 304

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6741 → 6,500 6747 → 3,500 6660 → 2,300 6624 → 3,200	\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00

PROJ # 18-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH AA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$26,000.00  
 PAY THIS  
 AMOUNT

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 20 2014

CK# ~~124052~~ 124052  
 000032

74

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	66-452
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 303

6791 → 6,500

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6747 → 6660 → 6624 →	3,500 2,300 3,200 \$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00

PROP# LP-452  
 VERSION# \_\_\_\_\_  
 GLOUSE \_\_\_\_\_  
 AUTH MA  
 DATE 6-17-14

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

PAID

JUN 20 2014

CK# 124052

THANK YOU FOR YOUR BUSINESS!

**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective February 5, 2007**

Community Economic Development Agency  
 Dalziel Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 510-238-3441

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction <sup>2</sup>	
			New	Remodel	New	Remodel
R3	Custom Residence	V	\$183.35	\$95.34	\$238.36	\$123.94
	Single Family Residence	V	\$137.19	\$71.34	\$178.35	\$92.74
	Manufactured home	V	\$35.00	\$18.20	\$45.50	\$23.66
	Convert non-hab to hab	V	\$101.11	NA	\$131.44	NA
	Foundation Upgrade (l.f.)	V	\$103.61	NA	\$134.69	NA
	Deck	V	\$26.93	NA	\$36.35	NA
U1	Garage	V	\$36.08	\$18.76	\$46.90	\$24.39
	Carport	V	\$24.65	\$12.82	\$32.05	\$16.66
	Retaining wall (s.f.)	III	\$27.80	NA	\$36.15	NA
R1	Apartment	I & II	\$162.14	\$84.31	\$210.78	\$109.61
		III	\$131.70	\$68.48	\$171.21	\$89.03
		V	\$121.75	\$63.31	\$158.28	\$82.30
S3	Garage	I & II	\$55.53	\$28.88	\$72.19	\$37.54
A	Church/Auditorium	I & II	\$221.65	\$115.26	\$288.15	\$149.84
		III	\$165.64	\$86.13	\$215.33	\$111.97
		V	\$158.36	\$82.35	\$205.87	\$107.05
A	Restaurant	I & II	\$193.43	\$100.58	\$251.46	\$130.76
		III	\$144.62	\$75.20	\$188.01	\$97.76
		V	\$132.44	\$68.87	\$172.17	\$89.53
B	Bank	I & II	\$219.90	\$114.35	\$285.87	\$148.65
		III	\$178.77	\$92.96	\$232.40	\$120.85
		V	\$161.99	\$84.23	\$210.59	\$109.51
B	Market (Retail sales)	I & II	\$122.35	\$63.62	\$159.06	\$82.71
		III	\$91.02	\$47.33	\$118.33	\$61.53
		V	\$87.25	\$45.37	\$113.43	\$58.98
B	Medical Office	I & II	\$249.42	\$129.70	\$324.25	\$168.61
		III	\$204.78	\$106.49	\$266.21	\$138.43
		V	\$200.23	\$104.12	\$260.30	\$135.36
B	Office	I & II	\$158.58	\$82.46	\$206.15	\$107.20
		III	\$114.63	\$59.61	\$149.02	\$77.49
		V	\$112.00	\$58.24	\$145.60	\$75.71
E	School	I & II	\$165.11	\$85.86	\$214.64	\$111.61
		III	\$146.52	\$76.19	\$190.48	\$99.05
		V	\$141.91	\$73.79	\$184.49	\$95.93
H	Repair garage	I & II	\$108.71	\$56.53	\$141.32	\$73.49
		III	\$89.23	\$46.40	\$116.00	\$60.32
		V	\$88.64	\$46.09	\$115.23	\$59.92
I	Care Facilities	I & II	\$153.97	\$80.06	\$200.16	\$104.08
		III	\$130.22	\$67.71	\$169.29	\$88.03
		V	\$125.76	\$65.40	\$163.49	\$85.01
S	Industrial plant	I & II	\$84.49	\$43.93	\$109.84	\$57.12
		III	\$81.00	\$42.12	\$105.30	\$54.76
		V	\$68.03	\$35.38	\$88.44	\$45.99
S	Warehouse	I & II	\$73.35	\$38.14	\$95.36	\$49.58
		III	\$69.30	\$36.04	\$90.09	\$46.85
		V	\$68.50	\$35.62	\$89.05	\$46.31

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot)

<sup>2</sup> Hillside construction = slope >20%

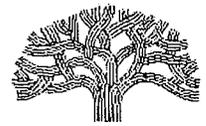
<sup>3</sup> Separate structures or occupancies valued separately.

<sup>4</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, etc.

~~TABLE "A"~~

16

TABLE "E" 000034



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:** L14-0065, 525, 655 Hyde St. CNML Properties LLC v. Tenants

**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**DATE OF HEARING:** April 27, 2015

**DATE OF DECISION:** May 29, 2015

**APPEARANCES:**

- Elizabeth Hart (Owner Representative)
- Clifford E. Fried (Attorney for Owner)
- Michael Bykhovshy (Witness for Owner)
- Tsegab Assefa (Witness for Owner)
- Martin Gallagher (Witness for Owner)
- Tyler Ritter (Tenant)
- Svetlana Butnaro (Tenant)
- Jessica Simkin (Tenant)
- Andrew Simkin (Tenant)
- Alex Vasilesco (Tenant)
- Suzanne Miller (Tenant)
- Zoe Bridges (Tenant)
- Mari Oda (Tenant)
- Angelique Johnson (Tenant)
- Alexandro Butnaro (Tenant)
- Elena Butnaro (Tenant)
- Fernando Garcia (Witness for Tenants)
- Kate Flick Garcia (Witness for Tenants)
- David Harlan (Witness for Tenants)
- Ana Baires Mira (Attorney for Tenants)
- Ruth Holtzman (Interpreter)

000035

## SUMMARY OF DECISION

The owner's petition is denied.

### CONTENTIONS OF THE PARTIES

The owner filed a petition for a Certificate of Exemption for a residential building on the ground that it is a "substantially rehabilitated" building, pursuant to Oakland Municipal Code (O.M.C.) Section 8.22. Twelve tenants filed responses which contest the owner's claim of exemption.

### THE ISSUE

Is the subject building exempt from the Rent Adjustment Ordinance as being a "substantially rehabilitated" building?

### EVIDENCE

Building Services Evaluation Tables: The tenant requested the attendance of the City Building Services supervisor to testify with regard to how the City determines the present cost of new construction for the issuance of building permits. David Harlan, the Engineering Manager of the Bureau of Building appeared and testified at the Hearing. Mr. Harlan testified that his duties include oversight of all permit issuance, records management, and plan checking. He further testified that the City currently uses the table that was effective on August 1, 2009.<sup>1</sup> A copy of this document is attached as Table "A." Official Notice is taken of two other documents issued by the City Building Services agency: "Quarterly Cost Indexes (1926=100), a copy of which is attached as Table "B," and "Residential Building Minimum Evaluation Data," a copy of which is attached as Table "C."

Square Footage: The owners submitted a document on the letterhead of the Alameda County Assessor regarding the subject property, entitled "Property Characteristics Printed on 10/31/14."<sup>2</sup> This document states that the building area is 13,336 square feet. Martin Gallagher, a general contractor whose firm did most of the work on the construction project, testified that this figure does not include the 16 decks on the building, which were part of the construction expense. He further testified that 15 of the decks are 12 by 4 ½ feet, and the penthouse deck is approximately 16 by 12 feet.

Type of Construction: The owners also submitted a document entitled Certificate of Occupancy for the subject building, which was issued by the City Building Department on January 9, 1963.<sup>3</sup> This document states that the building type is "V-1." Martin Gallagher testified that the subject building is of wood frame construction.

---

<sup>1</sup> Exhibit No. 138. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection.

<sup>2</sup> Exhibit No. 5.

<sup>3</sup> Exhibit No. 6.

Expenses: The owner submitted into evidence invoices and proof of payment for work on the subject building in the year 2014, as follows:

Martin Gallagher Construction, Inc.	\$831,597 <sup>4</sup>
Kelly-Moore Paint	740 <sup>5</sup>
Bay Area Carpets	1,620 <sup>6</sup>
Craig Bull Construction	2,964 <sup>7</sup>
Advocate Painting	2,032 <sup>8</sup>
Raynard's Appliance Repair	194 <sup>9</sup>
Just Plumbing	9,660 <sup>10</sup>
Globe Plumbing Supply	439 <sup>11</sup>
Oak Leaf Painting	<u>1,195<sup>12</sup></u>
TOTAL	\$850,441

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.

b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.<sup>13</sup>

Eligible Expenses: It is found that the owner's eligible expenses total \$846,847. The owner also provided evidence of expenses for routine maintenance of the building such as replacement of light bulbs and a shower curtain liner, tree trimming, and the purchase of a dishwasher, ranges and draperies. The cost of these items totals \$6,693.<sup>14</sup> These costs do not enhance the structure, and the costs are not allowed.

<sup>4</sup> Exhibit Nos. 18,19, 28,29, 43-54; 57-81, 96-98, 117-129; 132; & 133

<sup>5</sup> Exhibit Nos. 20, 23, 90-92, & 107-109

<sup>6</sup> Exhibit Nos. 24, 25, 84, & 85.

<sup>7</sup> Exhibit Nos. 37 & 38

<sup>8</sup> Exhibit Nos. 41 & 42

<sup>9</sup> Exhibit Nos. 86 & 87

<sup>10</sup> Exhibit Nos. 89, 99, 100, 112-114, 130, & 131

<sup>11</sup> Exhibit Nos. 101, 102, 110, & 111

<sup>12</sup> Exhibit Nos. 105 & 106

<sup>13</sup> O.M.C. Section 8.22.030(B)(2)

<sup>14</sup> Exhibit Nos. 26, 30-32, 35, 39-40, 55-56, 82-83, 93, 99-100, 103-104, 112-114, 115-116,103-131, 134-135, & 136-137

Square Footage: The building proper contains 13,336 square feet. However, since the owner has included the cost of balcony work in its documentation, the area of the balconies must be included in the calculation. Mr. Gallagher testified that the building has 15 balconies which are 12 x 4 ½ feet (810 total) plus the penthouse balcony which is 16 x 12 feet (192). Therefore, the balconies contain a total of 1002 square feet, and the building contains 14,338 square feet.

The Calculation: “The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”<sup>15</sup> The construction in this case took place in the year 2014. The Tables referenced in this Decision were all issued by the City Building Services agency.

Table “A” lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown on the 2009 Table. The Building Services agency has recognized this fact, and therefore issued a document entitled “Quarterly Cost Indexes (1926 = 100)” (Table “B”).

These tables are used as follows: (1) On Table “B,” determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2009. The resulting fraction is then multiplied by the number derived when the square foot cost shown on Table “A” is multiplied by the number of square feet in the building.

The Certificate of Occupancy for the subject building states that the building is of “V-1” construction. The attached Table “C,” being the prior valuation table issued by the City of Oakland, states that “Type V” is wood frame construction. This is consistent with the testimony of Martin Gallagher. If the work were done in the year 2009, the square foot cost would be \$127 (Apartment Building more than 2 units; new construction; Type V). This amount multiplied by 14,338 total square feet equals \$1,820,926. This figure is then increased, using Table “B,” as follows:

October 2014	3004.3
	1.18%
October 2009	2550.2

One and 18/100 percent of \$1,820,926 is \$2,148,694; fifty per cent of \$2,148,694 is \$1,074,347. Therefore, if the owner spent at least \$1,074,347 on the construction project, the building is exempt from the Rent Ordinance.

Discussion: The owner spent \$850,441, which is far less than the required amount for the building to be declared “substantially rehabilitated.” Furthermore, even if the square footage cost on the 2009 Table were used, the owner would not meet the required expense threshold.

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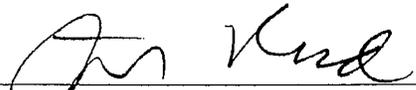
<sup>15</sup> O.M.C. Section 8.22.030(B)

The square footage of 14,338 multiplied by \$127 equals \$1,820,926; one-half of this amount is \$910,463. Therefore, the owner's petition is denied.

**ORDER**

1. Petition L14-0065 is denied.
2. The subject building has not been substantially rehabilitated.
3. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: May 29, 2015



---

Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

000039

**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective Aug. 1, 2009**

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

12-18-09

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 7'09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6" wall)
	Foundation Upgrade (l.f.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch/Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.81	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a800)
	Garport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12"rein.f.h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (Dmill/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$228.48	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.89	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$318.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.88	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.18	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (Cmill/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

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

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

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

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

000040

TABLE "A" 138

# QUARTERLY COST INDEXES (1926 = 100)

SECTION 98 PAGE 7  
October 2014

## BUILDINGS - EASTERN DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
<b>BUILDING CLASSES</b>																								
A: Fireproofed steel frame	2760.6	2757.6	2751.8	2728.5	2726.6	2717.0	2695.1	2677.7	2668.0	2648.8	2630.6	2614.6	2601.6	2580.7	2551.9	2536.1	2527.0	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
B: Reinforced concrete frame	2758.0	2752.9	2743.8	2729.9	2726.3	2710.9	2696.2	2683.7	2670.0	2652.4	2635.0	2618.7	2602.3	2585.9	2557.2	2541.5	2527.0	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
C: Masonry bearing walls	2755.3	2749.2	2740.1	2726.2	2722.6	2707.2	2692.5	2680.0	2667.4	2650.0	2632.6	2616.3	2600.0	2583.6	2554.9	2539.2	2524.7	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
D: Wood frame	2477.0	2470.9	2466.2	2452.4	2455.1	2450.9	2439.3	2429.1	2425.8	2411.4	2395.5	2385.1	2374.7	2365.5	2331.9	2318.3	2311.8	2303.9	2269.7	2258.1	2258.1	2258.1	2343.3	2446.6
S: Metal frame and walls																								
A: Fireproofed steel frame	2760.6	2757.6	2751.8	2728.5	2726.6	2717.0	2695.1	2677.7	2668.0	2648.8	2630.6	2614.6	2601.6	2580.7	2551.9	2536.1	2527.0	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
B: Reinforced concrete frame	2758.0	2752.9	2743.8	2729.9	2726.3	2710.9	2696.2	2683.7	2670.0	2652.4	2635.0	2618.7	2602.3	2585.9	2557.2	2541.5	2527.0	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
C: Masonry bearing walls	2755.3	2749.2	2740.1	2726.2	2722.6	2707.2	2692.5	2680.0	2667.4	2650.0	2632.6	2616.3	2600.0	2583.6	2554.9	2539.2	2524.7	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
D: Wood frame	2477.0	2470.9	2466.2	2452.4	2455.1	2450.9	2439.3	2429.1	2425.8	2411.4	2395.5	2385.1	2374.7	2365.5	2331.9	2318.3	2311.8	2303.9	2269.7	2258.1	2258.1	2258.1	2343.3	2446.6
S: Metal frame and walls																								

## BUILDINGS - WESTERN DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
<b>BUILDING CLASSES</b>																								
A: Fireproofed steel frame	2760.6	2757.6	2751.8	2728.5	2726.6	2717.0	2695.1	2677.7	2668.0	2648.8	2630.6	2614.6	2601.6	2580.7	2551.9	2536.1	2527.0	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
B: Reinforced concrete frame	2758.0	2752.9	2743.8	2729.9	2726.3	2710.9	2696.2	2683.7	2670.0	2652.4	2635.0	2618.7	2602.3	2585.9	2557.2	2541.5	2527.0	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
C: Masonry bearing walls	2755.3	2749.2	2740.1	2726.2	2722.6	2707.2	2692.5	2680.0	2667.4	2650.0	2632.6	2616.3	2600.0	2583.6	2554.9	2539.2	2524.7	2499.3	2461.2	2446.9	2442.9	2442.9	2520.6	2610.0
D: Wood frame	2477.0	2470.9	2466.2	2452.4	2455.1	2450.9	2439.3	2429.1	2425.8	2411.4	2395.5	2385.1	2374.7	2365.5	2331.9	2318.3	2311.8	2303.9	2269.7	2258.1	2258.1	2258.1	2343.3	2446.6
S: Metal frame and walls																								

## EQUIPMENT - NATIONAL AVERAGE

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
<b>INDUSTRY</b>																								
Average of all	1593.7	1585.7	1569.0	1566.9	1563.7	1551.6	1534.2	1521.2	1504.1	1487.0	1470.2	1453.4	1436.7	1420.0	1403.3	1386.6	1370.0	1353.4	1336.7	1320.0	1303.4	1286.7	1270.0	1253.4
Automotive	1893.2	1886.1	1868.5	1866.4	1863.2	1851.1	1833.6	1820.6	1803.5	1786.4	1769.3	1752.2	1735.1	1718.0	1700.9	1683.8	1666.7	1649.6	1632.5	1615.4	1598.3	1581.2	1564.1	1547.0
Bakery	1552.5	1545.5	1527.3	1523.8	1520.2	1518.5	1514.4	1509.7	1505.0	1490.3	1475.6	1460.9	1446.2	1431.5	1416.8	1402.1	1387.4	1372.7	1358.0	1343.3	1328.6	1313.9	1299.2	1284.5
Bank	1164.2	1156.5	1145.3	1144.0	1140.5	1136.3	1133.8	1130.3	1126.8	1122.5	1118.0	1113.7	1109.4	1105.1	1100.8	1096.5	1092.2	1087.9	1083.6	1079.3	1075.0	1070.7	1066.4	1062.1
Brewing	1639.6	1630.8	1610.9	1608.6	1605.1	1599.3	1591.4	1583.5	1575.6	1567.7	1559.8	1551.9	1544.0	1536.1	1528.2	1520.3	1512.4	1504.5	1496.6	1488.7	1480.8	1472.9	1465.0	1457.1
Brewing & distillery	2014.5	2003.7	1979.2	1976.6	1971.4	1970.2	1964.0	1959.6	1955.2	1940.8	1926.4	1912.0	1897.6	1883.2	1868.8	1854.4	1840.0	1825.6	1811.2	1796.8	1782.4	1768.0	1753.6	1739.2
Cannery	2003.8	1993.9	1968.5	1964.3	1960.3	1958.0	1951.8	1945.8	1942.5	1928.1	1913.7	1899.3	1884.9	1870.5	1856.1	1841.7	1827.3	1812.9	1798.5	1784.1	1769.7	1755.3	1740.9	1726.5
Cannery (fruit)	1962.9	1953.2	1928.7	1923.9	1920.5	1917.9	1912.0	1904.8	1903.3	1890.0	1876.7	1863.4	1850.1	1836.8	1823.5	1810.2	1796.9	1783.6	1770.3	1757.0	1743.7	1730.4	1717.1	1703.8
Cannery (fruit)	1943.0	1933.9	1908.9	1904.3	1901.2	1896.0	1891.6	1887.2	1882.8	1869.5	1856.2	1842.9	1829.6	1816.3	1803.0	1789.7	1776.4	1763.1	1749.8	1736.5	1723.2	1709.9	1696.6	1683.3
Cement mfg.	1609.9	1605.9	1583.6	1581.0	1576.6	1572.2	1567.8	1563.4	1559.0	1544.6	1530.2	1515.8	1501.4	1487.0	1472.6	1458.2	1443.8	1429.4	1415.0	1400.6	1386.2	1371.8	1357.4	1343.0
Chemical	1307.1	1296.9	1283.0	1281.9	1279.3	1273.2	1269.1	1265.0	1260.9	1246.8	1232.7	1218.6	1204.5	1190.4	1176.3	1162.2	1148.1	1134.0	1119.9	1105.8	1091.7	1077.6	1063.5	1049.4
Church	1652.8	1644.6	1631.1	1628.9	1626.7	1620.5	1616.4	1612.3	1608.2	1594.1	1579.9	1565.8	1551.7	1537.6	1523.5	1509.4	1495.3	1481.2	1467.1	1453.0	1438.9	1424.8	1410.7	1396.6
Clay products	1826.6	1822.0	1801.9	1799.4	1796.3	1783.7	1776.8	1773.0	1769.2	1756.6	1749.7	1742.8	1735.9	1729.0	1722.1	1715.2	1708.3	1701.4	1694.5	1687.6	1680.7	1673.8	1666.9	1660.0
Contractor's equip.	1721.0	1711.6	1690.1	1687.2	1684.3	1681.5	1677.4	1673.3	1669.2	1655.1	1641.0	1626.9	1612.8	1598.7	1584.6	1570.5	1556.4	1542.3	1528.2	1514.1	1500.0	1485.9	1471.8	1457.7
Creamery & dairy	1091.6	1085.4	1076.9	1075.9	1073.3	1066.6	1062.7	1058.8	1054.9	1041.0	1027.1	1013.2	1000.0	986.8	973.6	960.4	947.2	934.0	920.8	907.6	894.4	881.2	868.0	854.8
Dwelling equip.	1542.7	1534.7	1518.9	1515.2	1511.2	1508.9	1505.7	1501.8	1497.9	1484.0	1470.1	1456.2	1442.3	1428.4	1414.5	1400.6	1386.7	1372.8	1358.9	1345.0	1331.1	1317.2	1303.3	1289.4
Glass mfg.	1471.9	1462.4	1447.0	1443.5	1440.0	1435.8	1431.6	1427.4	1423.2	1409.1	1395.0	1380.9	1366.8	1352.7	1338.6	1324.5	1310.4	1296.3	1282.2	1268.1	1254.0	1239.9	1225.8	1211.7
Hotel	1376.6	1369.4	1358.4	1356.6	1353.6	1346.1	1339.6	1333.2	1326.7	1310.2	1293.7	1277.2	1260.7	1244.2	1227.7	1211.2	1194.7	1178.2	1161.7	1145.2	1128.7	1112.2	1095.7	1079.2
Hotel	1376.6	1369.4	1358.4	1356.6	1353.6	1346.1	1339.6	1333.2	1326.7	1310.2	1293.7	1277.2	1260.7	1244.2	1227.7	1211.2	1194.7	1178.2	1161.7	1145.2	1128.7	1112.2	1095.7	1079.2
Laundry & cleaning	1495.3	1484.3	1468.9	1467.7	1463.8	1455.0	1443.8	1432.6	1421.4	1410.2	1399.0	1387.8	1376.6	1365.4	1354.2	1343.0	1331.8	1320.6	1309.4	1298.2	1287.0	1275.8	1264.6	1253.4
Library	1624.3	1620.1	1605.0	1600.6	1598.9	1595.5	1592.5	1589.5	1586.5	1572.4	1558.3	1544.2	1530.1	1516.0	1501.9	1487.8	1473.7	1459.6	1445.5	1431.4	1417.3	1403.2	1389.1	1375.0
Logging equip.	1761.7	1753.8	1736.9	1734.4	1730.9	1722.7	1715.5	1708.3	1701.1	1687.0	1672.9	1658.8	1644.7	1630.6	1616.5	1602.4	1588.3	1574.2	1560.1	1546.0	1531.9	1517.8	1503.7	1489.6
Metalworking	1752.7	1748.5	1734.3	1730.9	1729.0	1723.8	1715.5	1708.3	1701.1	1687.0	1672.9	1658.8	1644.7	1630.6	1616.5	1602.4	1588.3	1574.2	1560.1	1546.0	1531.9	1517.8	1503.7	1489.6
Mining & milling	1733.4	1728.9	1714.5	1711.0	1707.2	1702.1	1697.2	1692.3	1687.4	1672.5	1657.6	1642.7	1627.8	1612.9	1598.0	1583.1	1568.2	1553.3	1538.4	1523.5	1508.6	1493.7	1478.8	1463.9
Motion picture																								
Office equip.	1250.0	1239.3	1228.4	1226.2	1223.6	1219.4	1215.2	1211.0	1206.8	1192.6	1178.4	1												

Approved by Calvin N. Wong Building Official to be effective February 1, 2001  
JN 06A

The following building valuation data are based on cost and value reported in "Marshal Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

Calculated Method * (\$/sf)		Segregated Cost Method	
Level ground construction (caisson found'n @ \$11.50/sf not included in this column)		Hillside construction Based on 20% slope (retaining wall not included)	Deck (\$/sf of area)
			Ground level (< 6') \$ 22.44/sf
			Terrace level \$ 30.29/sf
Apartment		Apartment	Fence ((\$/sf surface)
Type I & II	1892.1 \$146.67	Type I & II	\$190.67 -wood \$ 4.18/sf
Type III	1911.5 \$113.27	Type III	\$147.25 -chain link \$ 2.64/sf
Type V	1892.1 \$ 92.25	Type V	\$119.93 - masonry \$10.30/sf
Basement	\$ 35.07	Basement	\$ 58.77 Fireplace \$6,270/ea
Garage	\$ 31.24	Garage	\$ 50.14 Fire sprinkler \$ 3.28/sf
Type I Garage	\$ 39.71	Type I Garage	\$ 63.82 Kitchen Appliance \$ 4983/set
Custom Residences		Custom Residences	Patio Enclosure \$ 22.18/sf
Type III	\$184.23	Type III	\$239.50 Solarium \$129.53/sf
Type V	\$178.35	Type V	\$231.86 Stair
Basement	\$ 69.63	Basement	\$ 74.02 - prefab \$149.16/Tread
Garage	\$ 64.78	Garage	\$ 84.21 - wood \$125.07/Tread
Semi-Custom Residences		Semi-Custom Residences	Wall - non-bearing
Type III	\$151.14	Type III	\$196.48 - wood (footing extra) \$15.00/lf
Type V	\$142.67	Type V	\$185.47 Wall - retaining (\$/sf surface)
Basement	\$ 49.56	Basement	\$ 64.43 - concrete
Garage	\$ 51.43	Garage	\$ 66.86 < 6' tall \$ 23.10/sf
Single Family Residences		Single Family and Residences	< 10' tall \$ 27.05/sf
Type III	\$118.05	Type III	\$153.47 < 20' tall \$ 36.30/sf
Type V	\$106.99	Type V	\$139.09 - masonry
Basement	\$ 29.49	Basement	\$ 51.21 < 6' tall \$23.17/sf
Garage	\$ 38.07	Garage	\$ 52.12 < 10' tall \$31.09/sf
Starter Home		Starter Home	- wood
Type V	\$ 76.59	Type V	\$ 99.57 < 6' tall \$ 17.66/sf
Basement	\$ 24.74	Basement	\$32.17 <10' tall \$22.44/sf
Garage	\$ 28.11	Garage	\$36.54

\* Calculator method includes typical built-in appliance and one fireplace only.

000042

TABLE "C"

**PROOF OF SERVICE**

**Case Number L14-0065**

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

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

**Tenants**

Alexander Michael Taylor  
3921 Harrison St #104  
Oakland, CA 94611

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant Representative**

Ana Baires Mira  
3022 International Blvd #410  
Oakland, CA 94601

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Elizabeth VanLanen  
3921 Harrison St Penhouse  
Oakland, CA 94611

Fernando Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

Kate Flick Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

Steven Miller  
3921 Harrison St Penhouse  
Oakland, CA 94611

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Todd McMahan  
3921 Harrison St #304  
Oakland, CA 94611

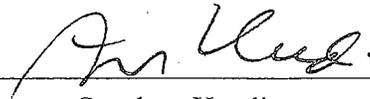
Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 29, 2015 in Oakland, CA.



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Stephen Kasdin  
Oakland Rent Adjustment Program

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**PROOF OF SERVICE**

**Case Number L14-0065**

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

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

**Owner Representative**

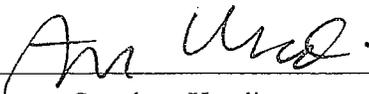
525-655 Hyde Street CNML Tsegab Asse  
4844 Telegraph Ave  
Oakland, CA 94609

Clifford E. Fried, Esq.  
480 9th St.  
Oakland, CA 94607

Liz Hart  
480 9th St  
Oakland, CA 94607

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 29, 2015 in Oakland, CA.

  
\_\_\_\_\_

Stephen Kasdin

Oakland Rent Adjustment Program

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COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
RENT ADJUSTMENT PROGRAM  
2015 MAY -7 AM 9:46

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Clifford E. Fried, Esq. SBN 118288  
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Oakland, CA 94607  
Telephone: 510-625-0100

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COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
RENT ADJUSTMENT PROGRAM  
CITY OF OAKLAND

525-655 Hyde St. CNML Props., LLP,  
Landlord,  
v.  
Tenants, et al.,  
Tenants.

CASE NO: L14-0065

**LANDLORD 525-655 HYDE ST.  
CNML PROPS., LLP's  
POST HEARING BRIEF ON  
BUILDING SERVICES  
TABLES**

Hearing Date: April 27, 2015  
Time: 10:00 a.m.  
Suite: 5313  
Hearing Officer Stephen Kasdin

**INTRODUCTION**

This is a Landlord Petition for a Certificate of Exemption based upon substantial rehabilitation to a building located at 3921 Harrison Street, Oakland. Prior to the hearing, Landlord submitted a relevant table issued by the Building Services agency of the City of Oakland. This table was marked as Landlord's Exhibit 76/203 and was admitted into evidence at the hearing. Landlord's Exhibit 76/203 is commonly referred to as "Table 'A'" by the the Rent Board. A copy of Table A is attached to this brief.

After all testimony concluded at the hearing, and all evidence of the parties was admitted into evidence, closing arguments were made by the parties. During the closing

1 argument of Ana Baires Mira, attorney for some of the Tenants, reference was made to a  
2 new piece of evidence which the hearing officer took notice of. This new piece of  
3 evidence is entitled "Quarterly Cost Indexes (1926 = 100)." This evidence was provided  
4 to the Hearing Officer but not the Landlord. Objection to the use and introduction of this  
5 new evidence was made at the hearing. A copy of Quarterly Cost Indexes (1926 = 100) is  
6 attached to this brief.

7 Following the hearing, Landlord requested a copy of the Quarterly Cost Indexes  
8 (1926 = 100). Landlord now submits this post hearing brief to address the Quarterly Cost  
9 Indexes (1926 = 100) and to further argue why the evidence should not be considered by  
10 the Hearing Officer in arriving at a Decision.

## 11 ARGUMENTS

### 12 **A. Table A Should Be Used In Calculating Construction Costs In This Case** 13 **and Not the Quarterly Cost Indexes (1926 = 100).**

14 OMC Section 8.22.030.B.2.b. states that "[t]he average basic cost for new construction  
15 *shall* be determined using *tables issued by the chief building inspector* applicable for the time  
16 period when the substantial rehabilitation was completed." [Emphasis added.]

17 The only table issued by the chief building inspector that is in evidence is Table A, which  
18 is Landlord's Exhibit 76/203. This is a Table which has been used by Hearing Officers in prior  
19 Rent Board Decisions involving Certificates of Exemption for Substantial Rehabilitation. Table  
20 A, on its face, is a table issued by the City of Oakland, Building Services, Community Economic  
21 Development Agency. This was the table used in Case Decisions T13-0196 and L13-0028, cited  
22 by Tenants in their closing argument.

23 Case Decisions T13-0196 and L13-0028 also cited Table B. A copy of Table B is  
24 attached to this brief. Table B, unlike the Quarterly Index noticed by the hearing officer in this  
25 case, is a table issued by Calvin N. Wong, Building Official. It would be improper to use the  
26 Quarterly Cost Indexes (1926 = 100) noticed by the hearing officer because that table was  
27 never issued by the City of Oakland.

28

1           When evaluating a construction project and a Petition such as the one filed by Landlord,  
2 everyone should be able to rely on data and calculation *published* by the Building Department of  
3 the City of Oakland. Using a vague index that is unclear as to the date of its application makes no  
4 sense and deprives the parties of their right to know the law regarding substantial rehabilitation.

5           Table A clearly states “Construction Valuation for Building Permits Effective August 1,  
6 2009.” No other valuations have been published by the City of Oakland since that time and so it  
7 is the only table that can be relied upon. If the Building Department felt that these numbers and  
8 data weren’t proper, it could have easily updated them. But it did replace Table A.

9           We simply don’t know what the Quarterly Cost Indexes (1926 = 100) is because no  
10 evidence was submitted to authenticate the document or to lay a foundation showing that the  
11 document is what Tenants say it is. Tenants brought in a witness (David Harlan, Planning and  
12 Building Department of the City of Oakland) to the hearing who possibly could have  
13 authenticated the document and laid the proper foundation. However, Tenants’ counsel chose  
14 not to question the witness about the document. Instead, Tenant’s counsel chose a strategy which  
15 sprung the document on the Landlord and the Hearing Officer during closing argument, after the  
16 close of evidence and where no cross-examination was possible. For this reason, the Hearing  
17 Officer should consider this brief in arriving at its Decision.

18 **B. Quarterly Cost Indexes (1926 = 100) Should Not Be Considered Because It Was**  
19 **Not Submitted to the Rent Board or Served on Landlord Before the Hearing.**

20           A tenant is required to file a response to an owner’s petition within 30 days of service of  
21 the notice by the Rent Adjustment Program that an owner petition was filed. OMC Sec.  
22 8.22.090.A.4. The Landlord and Tenants in this case were ordered to produce all proposed  
23 tangible evidence “not less than seven (7) days prior to the Hearing.” See Notice of  
24 Hearing in this case served on all Tenants on November 19, 2015. By not filing the  
25 Quarterly Index and serving a copy on the Landlord, the document must not be considered by the  
26 Hearing Officer.

1 The Rent Board has a strict policy of not considering evidence and other  
2 documents that the parties will rely on unless those items were submitted to the Rent  
3 Board and served on the opposing party before the hearing. There is no reason to ignore  
4 past precedent in this case. It came as a total surprise to Landlord that evidence of  
5 construction costs, not contained in Table A, would be used and argued by the Tenant. Or  
6 that it could be noticed or used by the Hearing Officer. It is a violation of due process to  
7 allow the Quarterly Cost Indexes (1926 = 100) to be used in this case because Landlord  
8 was deprived of notice that it would be used. And it would be a violation of due process  
9 to not allow Landlord to submit this brief because it would be a denial of the Landlord's  
10 right to be heard on the  
11 matter.

12 **C. Notice Cannot Be Taken of The Quarterly Cost Indexes (1926 = 100).**

13 The Hearing Officer Cannot Take Judicial Notice of the Quarterly Cost Indexes  
14 (1926 = 100) because it is not a fact or matter that is commonly agreed upon basic  
15 information. While a Hearing Officer may have the power to take notice of certain  
16 matters, upon proper request, it cannot take judicial notice of documents for which no  
17 foundation has been laid and which no one has personal knowledge of except perhaps for  
18 Tenant's counsel.

19 Judicial notice can be taken of things like the fact that Oakland has a Rent  
20 Adjustment Ordinance, or that May 5, 2015 is a Tuesday, or that Landlord was  
21 represented by legal counsel at the Hearing, or that the Rent Board is located at 250 Frank  
22 Ogawa Plaza, or that Libby Shaff is the Mayor of Oakland. These are factual matters that  
23 are not subject to debate and is basic information that is commonly agreed upon by  
24 reasonable people.

25 The Quarterly Cost Indexes (1926 = 100) is a piece of paper that only Tenant's  
26 counsel is privy to. We don't know where it came from, or who issued it if anyone, how is is  
27 supposed to be used, or whether it was altered in any way before noticed by the Hearing Officer.

28

1 There was no witness at the hearing to authenticate the document. It is not the kind of basic  
2 information that reasonable people can agree to and should be disregarded in this case.

3 **CONCLUSION**

4 Table A from the Building Services Agency, and possibly Table B, are the only  
5 Tables that the Rent Board can rely on in issuing a Decision in this case. No one really  
6 knows what the Quarterly Cost Indexes (1926 = 100) is or whether it is in fact a Table  
7 issued by the Chief Building Inspector. Until the a new Table is issued by the Chief  
8 Building Inspector, there is a presumption that Table A is the Table to use for determining  
9 the average basic cost of new construction. The Hearing Officer is not at liberty to adopt a  
10 new Table to use. The Decision in this case must be based on the current rent laws.

11  
12 Respectfully Submitted on May 7, 2015

13 by FRIED & WILLIAMS LLP

14 

15 Clifford E. Fried  
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**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective Aug. 1, 2009**

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

12-18-09

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 7'09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished/Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6" wall)
	Foundation Upgrade (L.F.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x7.2)
	Patio/Porch/Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12" reinf./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (D/mil/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
<b>Non-Residential Occupancy</b>							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (C/mil/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

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

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

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

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

TABLE "A"

# QUARTERLY COST INDEXES (1926 = 100)

## BUILDINGS - EASTERN DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
<b>BUILDING CLASSES</b>	3069.4	3000.0	3051.0	3026.5	3006.2	2991.8	2953.8	2954.9	2940.3	2921.4	2899.0	2864.0	2872.1	2810.5	2766.3	2723.3	2703.6	2696.2	2696.2	2696.2	2696.2	2696.2	2696.2	2696.2
A : Fireproofed steel frame	3053.1	3027.5	3035.0	3010.9	2995.3	2981.3	2943.6	2946.6	2931.6	2912.4	2890.2	2855.0	2863.0	2801.5	2757.3	2715.3	2703.3	2695.8	2695.8	2695.8	2695.8	2695.8	2695.8	2695.8
B : Reinforced concrete frame	3041.3	3017.5	3024.5	2999.3	2983.7	2969.1	2970.0	2961.1	2946.1	2927.0	2904.8	2869.4	2877.2	2815.5	2771.2	2729.2	2717.2	2709.7	2709.7	2709.7	2709.7	2709.7	2709.7	2709.7
C : Masonry bearing walls	3041.3	3017.5	3024.5	2999.3	2983.7	2969.1	2970.0	2961.1	2946.1	2927.0	2904.8	2869.4	2877.2	2815.5	2771.2	2729.2	2717.2	2709.7	2709.7	2709.7	2709.7	2709.7	2709.7	2709.7
D : Wood frame	2786.7	2778.3	2773.5	2759.2	2746.4	2733.6	2713.9	2708.1	2695.3	2682.5	2669.7	2656.9	2644.1	2580.9	2559.6	2522.8	2506.7	2503.6	2503.6	2503.6	2503.6	2503.6	2503.6	2503.6
S : Metal frame and walls	2786.7	2778.3	2773.5	2759.2	2746.4	2733.6	2713.9	2708.1	2695.3	2682.5	2669.7	2656.9	2644.1	2580.9	2559.6	2522.8	2506.7	2503.6	2503.6	2503.6	2503.6	2503.6	2503.6	2503.6

## BUILDINGS - CENTRAL DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
<b>BUILDING CLASSES</b>	2780.6	2752.5	2747.9	2723.9	2706.8	2691.6	2677.2	2668.0	2650.5	2633.2	2615.8	2598.3	2581.1	2515.9	2499.3	2481.2	2465.9	2446.9	2446.9	2446.9	2446.9	2446.9	2446.9	2446.9
A : Fireproofed steel frame	2750.6	2722.5	2717.9	2693.9	2676.8	2661.6	2647.2	2638.0	2620.5	2603.2	2585.8	2568.3	2551.1	2485.9	2469.3	2451.2	2435.9	2416.9	2416.9	2416.9	2416.9	2416.9	2416.9	2416.9
B : Reinforced concrete frame	2739.3	2711.2	2706.6	2682.6	2665.5	2650.3	2635.9	2626.3	2608.8	2591.3	2573.8	2556.3	2539.1	2473.9	2457.3	2439.2	2423.9	2404.9	2404.9	2404.9	2404.9	2404.9	2404.9	2404.9
C : Masonry bearing walls	2739.3	2711.2	2706.6	2682.6	2665.5	2650.3	2635.9	2626.3	2608.8	2591.3	2573.8	2556.3	2539.1	2473.9	2457.3	2439.2	2423.9	2404.9	2404.9	2404.9	2404.9	2404.9	2404.9	2404.9
D : Wood frame	2477.0	2470.9	2465.2	2451.4	2438.6	2425.8	2411.0	2401.4	2383.9	2366.4	2348.9	2331.4	2314.2	2249.0	2232.4	2214.9	2199.6	2180.6	2180.6	2180.6	2180.6	2180.6	2180.6	2180.6
S : Metal frame and walls	2477.0	2470.9	2465.2	2451.4	2438.6	2425.8	2411.0	2401.4	2383.9	2366.4	2348.9	2331.4	2314.2	2249.0	2232.4	2214.9	2199.6	2180.6	2180.6	2180.6	2180.6	2180.6	2180.6	2180.6

## BUILDINGS - WESTERN DISTRICT

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
<b>BUILDING CLASSES</b>	3033.4	3008.5	3002.5	2987.4	2972.6	2957.8	2942.9	2933.0	2918.1	2903.2	2888.3	2873.4	2858.5	2793.3	2768.4	2753.5	2738.6	2723.7	2723.7	2723.7	2723.7	2723.7	2723.7	2723.7
A : Fireproofed steel frame	3008.5	3000.0	2994.0	2979.1	2964.3	2949.5	2934.6	2924.7	2909.8	2894.9	2880.0	2865.1	2850.2	2785.1	2760.2	2745.3	2730.4	2715.5	2715.5	2715.5	2715.5	2715.5	2715.5	2715.5
B : Reinforced concrete frame	3028.3	3011.8	3005.8	2990.9	2976.0	2961.1	2946.2	2936.3	2921.4	2906.5	2891.6	2876.7	2861.8	2796.7	2771.8	2756.9	2742.0	2727.1	2727.1	2727.1	2727.1	2727.1	2727.1	2727.1
C : Masonry bearing walls	2980.3	2971.9	2965.9	2951.0	2936.1	2921.2	2906.3	2896.4	2881.5	2866.6	2851.7	2836.8	2821.9	2756.8	2731.9	2717.0	2702.1	2687.2	2687.2	2687.2	2687.2	2687.2	2687.2	2687.2
D : Wood frame	2706.5	2699.4	2693.4	2678.5	2663.6	2648.7	2633.8	2623.9	2609.0	2594.1	2579.2	2564.3	2549.4	2484.3	2459.4	2444.5	2429.6	2414.7	2414.7	2414.7	2414.7	2414.7	2414.7	2414.7
S : Metal frame and walls	2706.5	2699.4	2693.4	2678.5	2663.6	2648.7	2633.8	2623.9	2609.0	2594.1	2579.2	2564.3	2549.4	2484.3	2459.4	2444.5	2429.6	2414.7	2414.7	2414.7	2414.7	2414.7	2414.7	2414.7

## EQUIPMENT - NATIONAL AVERAGE

	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
<b>INDUSTRY</b>	1593.7	1585.7	1580.0	1565.8	1551.6	1537.4	1523.2	1513.1	1498.9	1484.7	1470.5	1456.3	1442.1	1377.0	1362.8	1348.6	1334.4	1320.2	1306.0	1291.8	1277.6	1263.4	1249.2	1235.0
Average of all	1593.7	1585.7	1580.0	1565.8	1551.6	1537.4	1523.2	1513.1	1498.9	1484.7	1470.5	1456.3	1442.1	1377.0	1362.8	1348.6	1334.4	1320.2	1306.0	1291.8	1277.6	1263.4	1249.2	1235.0
Apparel	1893.2	1886.1	1880.0	1865.8	1851.6	1837.4	1823.2	1813.1	1798.9	1784.7	1770.5	1756.3	1742.1	1677.0	1662.8	1648.6	1634.4	1620.2	1606.0	1591.8	1577.6	1563.4	1549.2	1535.0
Automotive	1133.0	1128.8	1124.6	1110.5	1106.3	1102.1	1097.9	1093.7	1079.5	1075.3	1071.1	1066.9	1062.7	1007.6	1003.4	1003.4	1003.4	1003.4	1003.4	1003.4	1003.4	1003.4	1003.4	1003.4
Bakery	1552.5	1545.5	1538.5	1523.5	1508.5	1493.5	1478.5	1463.5	1448.5	1433.5	1418.5	1403.5	1388.5	1323.5	1318.5	1318.5	1318.5	1318.5	1318.5	1318.5	1318.5	1318.5	1318.5	1318.5
Bank	1164.2	1158.5	1152.8	1137.8	1122.8	1107.8	1092.8	1077.8	1062.8	1047.8	1032.8	1017.8	1002.8	937.8	932.8	932.8	932.8	932.8	932.8	932.8	932.8	932.8	932.8	932.8
Bottling	1639.6	1630.8	1622.0	1607.0	1592.0	1577.0	1562.0	1547.0	1532.0	1517.0	1502.0	1487.0	1472.0	1407.0	1402.0	1402.0	1402.0	1402.0	1402.0	1402.0	1402.0	1402.0	1402.0	1402.0
Brewery & distillery	2014.5	2007.0	1999.5	1984.5	1969.5	1954.5	1939.5	1924.5	1909.5	1894.5	1879.5	1864.5	1849.5	1784.5	1779.5	1779.5	1779.5	1779.5	1779.5	1779.5	1779.5	1779.5	1779.5	1779.5
Candy	2003.8	1995.3	1987.8	1972.8	1957.8	1942.8	1927.8	1912.8	1897.8	1882.8	1867.8	1852.8	1837.8	1772.8	1767.8	1767.8	1767.8	1767.8	1767.8	1767.8	1767.8	1767.8	1767.8	1767.8
Cannery (fish)	1824.3	1815.8	1807.3	1792.3	1777.3	1762.3	1747.3	1732.3	1717.3	1702.3	1687.3	1672.3	1657.3	1592.3	1587.3	1587.3	1587.3	1587.3	1587.3	1587.3	1587.3	1587.3	1587.3	1587.3
Cannery (fruit)	1943.0	1934.5	1926.0	1911.0	1896.0	1881.0	1866.0	1851.0	1836.0	1821.0	1806.0	1791.0	1776.0	1711.0	1706.0	1706.0	1706.0	1706.0	1706.0	1706.0	1706.0	1706.0	1706.0	1706.0
Cement mfg.	1660.0	1655.0	1650.0	1635.0	1620.0	1605.0	1590.0	1575.0	1560.0	1545.0	1530.0	1515.0	1500.0	1435.0	1430.0	1430.0	1430.0	1430.0	1430.0	1430.0	1430.0	1430.0	1430.0	1430.0
Ceramics	1609.9	1601.9	1593.9	1578.9	1563.9	1548.9	1533.9	1518.9	1503.9	1488.9	1473.9	1458.9	1443.9	1378.9	1373.9	1373.9	1373.9	1373.9	1373.9	1373.9	1373.9	1373.9	1373.9	1373.9
Chemical	1307.1	1296.9	1286.7	1271.5	1256.3	1241.1	1225.9	1210.7	1195.5	1180.3	1165.1	1149.9	1134.7	1069.7	1064.5	1064.5	1064.5	1064.5	1064.5	1064.5	1064.5	1064.5	1064.5	1064.5
Clay products	1622.6	1614.6	1606.6	1591.6	1576.6	1561.6	1546.6	1531.6	1516.6	1501.6	1486.6	1471.6	1456.6	1391.6	1386.6	1386.6	1386.6	1386.6	1386.6	1386.6	1386.6	1386.6	1386.6	1386.6
Contractor's equip.	1711.5	1701.5	1691.5	1676.5	1661.5	1646.5	1631.5	1616.5	1601.5	1586.5	1571.5	1556.5	1541.5	1476.5	1471.5	1471.5	1471.5	1471.5	1471.5	1471.5	1471.5	1471.5	1471.5	1471.5
Creamery & dairy	1020.0	1015.0	1010.0	995.0	980.0	965.0	950.0	935.0	920.0	905.0	890.0	875.0	860.0	795.0	790.0	790.0	790.0	790.0	790.0	790.0	790.0	790.0	790.0	790.0
Dwelling	1725.5	171																						

Residential Building Minimum Valuation Data

Approved by Calvin N. Wong Building Official to be effective February 1, 2001

The following building valuation data are based on cost and value reported in "Marshall Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

STEEL/CONC FRAME =  
 MASONRY WALLS =  
 WOOD FRAME =  
 STEEL/CONC FRAME =

Calculated Method * (\$/sf)		Segregated Cost Method	
Level ground construction (caisson found'n @ \$11.50/sf not included in this column)	Hillside construction Based on 20% slope (retaining wall not included)	Deck (\$/sf of area)	
		Ground level (< 6')	\$ 22.44/sf
		Terrace level	\$ 30.29/sf
Apartment	Apartment	Fence ((\$/sf surface)	
Type I & II \$146.67	Type I & II \$190.67	-wood	\$ 4.18/sf
Type III \$113.27	Type III \$147.25	-chain link	\$ 2.64/sf
Type V \$ 92.25	Type V \$119.93	-masonry	\$10.30/sf
Basement \$ 35.07	Basement \$ 58.77	Fireplace	\$6,270/ea
Garage \$ 31.24	Garage \$ 50.14	Fire sprinkler	\$ 3.28/sf
Type I Garage \$ 39.71	Type I Garage \$ 63.82	Kitchen Appliance	\$ 4983/set
Custom Residences	Custom Residences	Patio Enclosure	\$ 22.18/sf
Type III \$184.23	Type III \$239.50	Solarium	\$129.53/sf
Type V \$178.35	Type V \$231.86	Stair	
Basement \$ 69.63	Basement \$ 74.02	- prefab	\$149.16/Tread
Garage \$ 64.78	Garage \$ 84.21	- wood	\$125.07/Tread
Semi-Custom Residences	Semi-Custom Residences	Wall - non-bearing	
Type III \$151.14	Type III \$196.48	- wood (footing extra)	\$15.00/lf
Type V \$142.67	Type V \$185.47	Wall - retaining (\$/sf surface)	
Basement \$ 49.56	Basement \$ 64.43	- concrete	
Garage \$ 51.43	Garage \$ 66.86	< 6' tall	\$ 23.10/sf
Single Family Residences	Single Family and Residences	< 10' tall	\$ 27.05/sf
Type III \$118.05	Type III \$153.47	< 20' tall	\$ 36.30/sf
Type V \$106.99	Type V \$139.09	- masonry	
Basement \$ 29.49	Basement \$ 51.21	< 6' tall	\$21.17/sf
Garage \$ 38.07	Garage \$ 52.12	< 10' tall	\$31.09/sf
Starter Home	Starter Home	- wood	
Type V \$ 76.59	Type V \$ 99.57	< 6' tall	\$ 17.66/sf
Basement \$ 24.74	Basement \$ 52.17	< 10' tall	\$22.44/sf
Garage \$ 28.11	Garage \$ 36.54		

\* Calculator method includes typical built-in appliance and one fireplace only

TABLE "B"

000054



2016 NOV 17 PM 4:21

**RENT ADJUSTMENT PROGRAM CASE L-14-0065  
525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS**

**TENANT AMBERG RESPONSE BRIEF ON APPEAL**

**INTRODUCTION**

This brief is respectfully submitted by Julie E. Amberg who is the tenant, along with her young child, residing in unit 302, 3921 Harrison Street, Oakland, CA 94611. Ms. Amberg has been a tenant in unit 302 since 1996. The building at 3921 Harrison Street is the property that the owner 525, 655 Hyde St., CNML Properties LLC (“Landlord”) seeks to exempt from rent regulation. This brief responds to Landlord’s Appeal filed June 18, 2015 (“Landlord Appeal brief”).

Exempting the entire building at 3921 Harrison Street from rent regulation, and immediately charging all tenants full market-rate rent, will cause extreme hardship on tenants. For example, Tenant Amberg who is submitting this brief is a single parent. It is respectfully requested that the Board take great care before granting the exemption.

The Board may wish to take official notice, as has the Oakland City Council, of the harmful effects of high rent on tenant displacement. A recent Oakland City Council Ordinance warns that:

“WHEREAS, the City of Oakland is experiencing a severe housing supply and affordability crisis; and

“WHEREAS, the housing affordability crisis threatens the public health, safety and/or welfare of our residents; and

“WHEREAS, 60 percent of Oakland residents are renters, who would not be able to locate comparably priced housing within the city if displaced (U.S. Census Bureau, ACS 2014 Table S1101); ...”

Oakland City Council Ordinance No. 13391 (Sept. 20, 2016).

Turning to the Hearing Decision in the present case, the decision is both fair and reasonable. It denied the exemption from rent regulation because the Landlord’s purported rehabilitation expenses were less than fifty percent of the “average basic cost for new construction” *at the time – 2014 – when the rehab work was done.*

The methodology used in the Hearing Decision determined that the “average basic cost” of the property was \$2,148,694 in 2014. This is a fair and reasonable value.

We know this to be true because the current owner of the property bought it on November 14, 2013 for \$2,051,000. (Exhibit 4)<sup>1</sup> Thus, in the real world, the actual value of the property when the owner bought it in 2013 (\$2,051,000), was very close to the value calculated by the Hearing Decision for 2014 (\$2,148,694) when the rehab work was done.

Lest the Board be concerned that denying the owner an exemption from rent regulation in this proceeding would leave the owner empty-handed, we note that in RAP case L15-0073 the same owner has petitioned to recover, as capital improvements, the same expenses that the owner is asserting in this exemption proceeding. L15-0073 is scheduled for hearing on January 12, 2017.<sup>2</sup>

## ARGUMENT

### 1.

#### The Hearing Decision Complied With The Oakland Municipal Code Requirement That The Construction Cost Must Be For The Time Period When The Substantial Rehabilitation Was Completed

Oakland Municipal Code requires that in order for a building owner to remove the building from rent regulation, the owner must spend at least fifty percent of the building’s “average basic cost” and requires that such cost must be determined “*for the time period when the substantial rehabilitation was completed.*”

The Hearing Decision herein complied with that statutory command.

Oakland Municipal Code § 8.22.030(A)(6) exempts “substantially rehabilitated buildings” from rent regulation.

Oakland Municipal Code § 8.22.030(B) states the requirements to obtain a certificate of exemption. They are:

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<sup>1</sup> All of the exhibits identified in this brief were introduced in evidence by Landlord. The numbering of the exhibits was by the Hearing Officer.

<sup>2</sup> For the avoidance of doubt, Tenant Amberg reserves and preserves all rights to assert, in L15-0073, that that case is improper and that Landlord’s purported expenses are not legally-cognizable capital improvements.

“2. Exemptions for Substantially Rehabilitated Buildings.

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

It is undisputed that the rehab work in the present case was completed in 2014. Thus, 2014 is the proper time period for determining the “average basic cost for new construction.”

A core issue in Landlord’s appeal is whether it was proper for the Hearing Decision to use data from a 2014 table of “Quarterly Cost Indexes (1926 = 100)” in determining the average basic cost. That table is “Table B” in the Hearing Decision. The table bears the printed date “October 2014” in the top right corner and “10/2014” in the bottom right corner.

The Hearing Decision used the 2014 data in the table in order to ensure that the determination of “average basic cost for new construction for a rehabilitation project” complied with the statutory requirement that the cost must be “for the time period when the substantial rehabilitation was completed.”

The methodology used by the Hearing Decision was this. The “average basic cost” was initially determined from data in a table of “Construction Valuation For Building Permits”. The data in that table, however, were for the year 2009.<sup>3</sup>

The Hearing Decision then used data from the table of “Quarterly Cost Indexes (1926 = 100)”, “Table B” in the Hearing Decision, to adjust the cost derived from the 2009 table. The purpose of the adjustment was to recognize that costs had risen from the time of the 2009 table to the 2014 time when the rehab work was completed.

The Hearing Decision specifically recognized that construction costs had risen between 2009 and 2014, saying, at page 4, emphasis added:

“The construction in this case took place in the year 2014. The Tables referenced in this Decision were all issued by the City Building Services agency.

“Table “A” lists square foot construction costs, effective August 1, 2009. *However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table.* The Building Services agency has recognized this fact, and therefore issued a document entitled “Quarterly Cost Indexes (1926 = 100)” (Table “B”).”

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<sup>3</sup> Landlord does not object to the Hearing Decision’s use of that table.

Using data from the Table B “Quarterly Cost Indexes” table, the Hearing Decision multiplied the initial 2009 construction cost from Table A by 1.18 in order to take into account that construction costs had risen from 2009 to 2014, the year when the rehab work was actually done. In the words of the Hearing Decision, quoted above, “However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table [Table A].”

***The Hearing Decision thus complied with the statutory requirement that the construction cost must be “for the time period when the substantial rehabilitation was completed.”*** As stated above, it is undisputed that the rehab work was completed in 2014.

In its appeal, Landlord does not object to the way the Hearing Decision used the data in Table B to derive the 1.18 multiplier. Rather, Landlord objects to any use at all of the “Quarterly Cost Indexes” Table B. (Landlord Appeal brief, section 1, pages 2-3 of 4) Landlord bases its objection on its assertions that the table is not on City letterhead, does not have a date when it is to take effect, and was not authenticated as having come from the City of Oakland. Landlord stops just short of saying the table is a forgery and its use is a fraud.

The short, and sufficient, response is that those objections were raised in Landlord’s post-hearing brief to the Hearing Officer, who then specifically held that the “Quarterly Cost Indexes” Table B was “issued by the City Building Services agency.”

Here is the chronology:

On May 7, 2015 – twenty-two days *before* the May 29, 2015 date when *the Hearing Decision* was issued – Landlord filed a five-page brief titled “Post Hearing Brief On Building Services Tables”.<sup>4</sup> In that brief, Landlord challenged the bona fides of the Quarterly Cost Indexes table and argued, “We don’t know where it [the table] came from, or who issued it if anyone, how it is supposed to be used, or whether it was altered in any way before noticed by the Hearing Officer.” (Landlord’s Post Hearing Brief, at page 4)

In response to Landlord’s arguments, the Hearing Decision specifically said the table was issued by the City Building Services agency.

***“The Tables referenced in this Decision were all issued by the City Building Services agency.***

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<sup>4</sup> A copy of that brief is Attachment 1 to this Tenant Amberg Response Brief On Appeal.

“Table “A” lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table. The *Building Services agency* has recognized this fact, and therefore *issued a document entitled “Quarterly Cost Indexes (1926 = 100)” (Table “B”).*”

Hearing Decision, at page 4, emphasis added.

There is no mystery, no forgery, no fraud. All of that lies in Landlord’s imagination. The Quarterly Cost Indexes table is genuine and was issued by the City of Oakland Building Services agency.

The Hearing Decision in the present case is consistent with at least three prior RAP hearing decisions which used similar cost index tables to adjust the average basic cost of new construction so that the cost would be applicable for the time period when the rehab was completed.<sup>5</sup>

The Hearing Decision in the present case should be sustained.

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<sup>5</sup> In *Young v. Beasley*, T07-0287 (Hearing Decision on remand, June 13, 2008), rehab construction work was completed in 1998. The average basic cost for new construction was initially determined from a 2007 table of construction costs, but the cost was then adjusted by using 1998 inflation data from a table of “Cost Indexes (1926 = 100)”.

In *Weinberg v. Tenant*, L13-0028 (Hearing Decision, Dec. 3, 2013), rehab construction work was in 1991-1992. The average basic cost for new construction was initially determined from a 2009 table of construction costs, but the cost was then adjusted by using 1991 inflation data from a table of “Cost Indexes (1926 = 100)”. When it adjusted the cost, the Hearing Decision said, at pages 2-3:

“Table “A” lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the years 1991-1992 and costs have risen considerably since that time, it would be unfair to an owner if current costs were used. For this reason, the Building Services agency has also issued a document entitled “Cost Indexes (1926 = 100)” (Table B).”

In *Promes v. Fehr*, T13-0196 (Hearing Decision, Dec. 16, 2013), rehab construction work was done in 2003. The average basic cost for new construction was initially determined from a 2007 table of construction costs, but the cost was then adjusted by using data from a 2003 table of “Cost Indexes (1926 = 100)”.

Use of the Cost Indexes tables in those hearing decisions, as well as in the Hearing Decision in the present case, served the statutory purpose of insuring that the “average basic cost for new construction for a rehabilitation project” was the cost “for the time period when the substantial rehabilitation was completed.”

2.

The Hearing Decision Properly  
Included The Living Room Balconies In The Relevant Square Footage

Erroneously equating a building's roof to an apartment's living-room balcony, Landlord argues, "Neither the balconies nor the roof should be added to the square footage." (Appeal brief, section 2, at page 3 of 4).

The Hearing Decision properly excluded the building's roof from the calculation of the building's square footage. Landlord asserts, however, that because the Hearing Decision excluded the roof's square footage, the decision should likewise have excluded the balconies' area.

Landlord is not correct. A building roof is not an apartment balcony.

The Hearing Decision, consistent with prior RAP decisions, did not include the area of the roof in the calculation of the average basic cost of new construction. The roof of 3921 Harrison Street is not used by tenants. It is off limits to tenants.

Quite the opposite is true for the apartments' balconies. The balconies at 3921 Harrison Street are intended to be used by tenants, and they are used by tenants.<sup>6</sup> They are entered through a sliding glass door in the apartment's living room. They function as an extension of the living room. Tenants occupy the balconies. If the balconies were as useless and superfluous to tenants as Landlord implies, they would not have been replaced, and the sliding doors leading to them would have been omitted and replaced by wall with a window in it.

But, the balconies were replaced and so were the sliding glass doors. And, Landlord included the cost of both the balconies and the doors in Landlord's documentation of rehabilitation expenses. The total cost for the balconies and doors was \$224,200. By contrast, the cost of the roof was \$50,000. The cost of just the balconies (\$180,000) was over three times the cost of the roof (\$50,000)<sup>7</sup>

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<sup>6</sup> The Board is invited to take notice of a recent Internet ad for an apartment at 3921 Harrison Street, which is the property in this appeal. The ad lists "Private balcony" as a feature of the apartment. <https://www.laphamcompany.com/node/6314> accessed on November 6, 2016. For the convenience of the Board, a screen capture of the ad is enclosed with this brief.

<sup>7</sup> The invoiced cost of the balconies was \$180,000 (Exhibits 96 and 121)  
The invoiced cost of the sliding glass doors was \$44,200 (Exhibits 60-72, 74, 75)  
The invoiced cost of the new roof was \$50,000 (Exhibit 132)

The Hearing Decision held that “since the owner has included the cost of the balcony work in its documentation, the area of the balconies must be included in the calculation.” (Hearing Decision, at page 4) That is a fair and reasonable conclusion. If the Landlord here wants to reap the benefit of including the large cost of the balcony work as part of Landlord’s rehabilitation expense, in order to remove the building from rent regulation, then Landlord ought to bear the burden of including the area of those same balconies in the building’s square footage.

3.

The Hearing Decision Did Not Miscalculate Expenses

Landlord speculates that the Hearing Decision failed to count one of the four \$26,000 invoices from Gallagher Construction for the remodeling of four units: 203, 204, 303 and 304. “We believe the Hearing Officer failed to count one of the 4 \$26,000 invoices.” (Landlord Appeal brief, section 3, at page 3 of 4)

Landlord is *not* correct, and speculation is no substitute for the proof required of an owner in a substantial rehabilitation proceeding. Oakland Municipal Code § 8.22.030(B)(1)(b) requires that, “For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner.” As will now be shown, Landlord fails to satisfy that burden.

The Gallagher invoices for remodeling those four units are Exhibits 77, 80, 118, 127, and 128.

The Hearing Decision specifically identified the Gallagher invoices that were considered as part of the expenses for work on the building. (Hearing Decision, at page 3) Footnote 4 of the Hearing Decision lists the Exhibit numbers of the Gallagher invoices. The Exhibits listed in footnote 4 are: 18, 19, 28, 29, 43-54, 57-81 (which includes Exhibits 77 and 80), 96-98, 117-129 (which includes Exhibits 118, 127 and 128), 132, 133.

Thus, the Gallagher invoices for remodeling the four units (Exhibits 77, 80, 118, 127, and 128) *are included* in the Exhibits identified in footnote 4, and therefore *were considered* in the Hearing Decision as part of the Landlord’s expenses for work on the building.

By responding to Landlord's argument concerning the Gallagher invoices, Tenant Amberg does not agree or concede that any expense for remodeling in units 203, 204, 303, or 304 is a proper rehabilitation expense under the Oakland Municipal Code.<sup>8</sup>

4.

Landlord Was Not Denied Due Process

Landlord argues the Hearing Decision's use of the Quarterly Cost Indexes table "is a violation of due process" because Landlord was deprived of an opportunity to "rebut or challenge it [the table] or its usage in the hearing or the decision." (Appeal brief, section 4, at page 4 of 4)

Landlord is *not* correct. Landlord was *not* deprived of due process. Landlord was *not* deprived of an opportunity to rebut or challenge use of the Quarterly Cost Indexes table.

Landlord's appeal brief omits a critical fact that destroys Landlord's due process argument.

The critical fact (which Landlord chose not to reveal to the Board) is that on May 7, 2015, *twenty-two days before the Hearing Decision was issued*, Landlord filed a five-page brief

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<sup>8</sup> For the avoidance of doubt, Tenant Amberg reserves and preserves all rights, including but not limited to contending, in this proceeding as well as in RAP Case No. L15-0073 and elsewhere, that:

- Oakland Municipal Code, sections 8.22.020, 8.22.030A.6., 8.22.030B.2. and Rent Adjustment Program Regulations 8.22.20, 8.22.30B.3. require that a rehabilitation capital improvement must primarily benefit all tenants rather than the building owner.
- The Gallagher invoices for remodeling in units 203, 204, 303 and 304 state that the work was: "Installation of new kitchen cabinets and appliances and tile on the floor; installation of new vanity cabinet with sink & tile on shower walls". Only units 203, 204, 303 and 304 received that remodeling.
- Gallagher Construction charged \$26,000 for that remodeling in each of those four units, for a total charge of \$104,000 for remodeling in just those four units.
- No tenants, other than those who would occupy units 203, 204, 303 and 304, benefitted from that \$104,000 remodeling expense.
- Tenant Amberg's unit 302 did not receive any of the remodeling that was given to units 203, 204, 303 and 304.
- Tenant Amberg did not and does not receive any benefit from the remodeling in units 203, 204, 303 and 304.

titled "Post Hearing Brief On Building Services Tables".<sup>9</sup> A copy of that brief is Attachment 1 to this Tenant Amberg Response Brief On Appeal.

In Landlord's May 7<sup>th</sup> brief, Landlord had a full opportunity to make, and did make, the same arguments against use of the Cost Indexes Table that Landlord now raises in section 1 of its Appeal brief.

Landlord's May 7<sup>th</sup> brief stated, at page 2:

"Landlord now submits this post hearing brief to address the Quarterly Cost Indexes (1926 = 100) and to further argue why the evidence should not be considered by the Hearing Officer in arriving at a Decision."

Landlord *was heard* in full on the cost-indexes-table issue well before the date of the Hearing Decision. Landlord was not deprived of due process.

### CONCLUSION

The Hearing Decision complied with the Oakland Municipal Code requirement that construction cost must be for the time period when the substantial rehabilitation was completed.

The Hearing Decision properly included the living room balconies in the relevant square footage.

The Hearing Decision did not miscalculate expenses.

Landlord was not denied due process.

The Hearing Decision in this case should be affirmed.

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RENT ADJUDICATION PROGRAM  
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<sup>9</sup> The Hearing Decision was issued on May 29, 2015.

1 Clifford E. Fried, Esq. SBN 118288  
2 Fried & Williams LLP  
3 480 9<sup>th</sup> Street  
4 Oakland, CA 94607  
5 Telephone: 510-625-0100

6 Attorneys for Landlord  
7 525-655 Hyde St. CNML Props., LLP

ARBITRATION  
2015 MAY -7 AM 9:46

8 Attachment 1 to  
9 Tenant Amberg Response Brief in L14-0065  
10 (This Attachment has five pages.)

11 COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
12 RENT ADJUSTMENT PROGRAM  
13 CITY OF OAKLAND

14 525-655 Hyde St. CNML Props., LLP,  
15 Landlord,  
16 v.  
17 Tenants, et al.,  
18 Tenants.

CASE NO: L14-0065

**LANDLORD 525-655 HYDE ST.  
CNML PROPS., LLP's  
POST HEARING BRIEF ON  
BUILDING SERVICES  
TABLES.**

Hearing Date: April 27, 2015  
Time: 10:00 a.m.  
Suite: 5313  
Hearing Officer Stephen Kasdin

19 INTRODUCTION

20 This is a Landlord Petition for a Certificate of Exemption based upon substantial  
21 rehabilitation to a building located at 3921 Harrison Street, Oakland. Prior to the hearing,  
22 Landlord submitted a relevant table issued by the Building Services agency of the City of  
23 Oakland. This table was marked as Landlord's Exhibit 76/203 and was admitted into  
24 evidence at the hearing. Landlord's Exhibit 76/203 is commonly referred to as "Table  
25 'A'" by the the Rent Board. A copy of Table A is attached to this brief.

26 After all testimony concluded at the hearing, and all evidence of the parties was  
27 admitted into evidence, closing arguments were made by the parties. During the closing  
28

1 argument of Ana Baires Mira, attorney for some of the Tenants, reference was made to a  
2 new piece of evidence which the hearing officer took notice of. This new piece of  
3 evidence is entitled "Quarterly Cost Indexes (1926 = 100)." This evidence was provided  
4 to the Hearing Officer but not the Landlord. Objection to the use and introduction of this  
5 new evidence was made at the hearing. A copy of Quarterly Cost Indexes (1926 = 100) is  
6 attached to this brief.

7 Following the hearing, Landlord requested a copy of the Quarterly Cost Indexes  
8 (1926 = 100). Landlord now submits this post hearing brief to address the Quarterly Cost  
9 Indexes (1926 = 100) and to further argue why the evidence should not be considered by  
10 the Hearing Officer in arriving at a Decision.

## 11 ARGUMENTS

### 12 **A. Table A Should Be Used In Calculating Construction Costs In This Case** 13 **and Not the Quarterly Cost Indexes (1926 = 100).**

14 OMC Section 8.22.030.B.2.b. states that "[t]he average basic cost for new construction  
15 *shall* be determined using *tables issued by the chief building inspector* applicable for the time  
16 period when the substantial rehabilitation was completed." [Emphasis added.]

17 The only table issued by the chief building inspector that is in evidence is Table A, which  
18 is Landlord's Exhibit 76/203. This is a Table which has been used by Hearing Officers in prior  
19 Rent Board Decisions involving Certificates of Exemption for Substantial Rehabilitation. Table  
20 A, on its face, is a table issued by the City of Oakland, Building Services, Community Economic  
21 Development Agency. This was the table used in Case Decisions T13-0196 and L13-0028, cited  
22 by Tenants in their closing argument.

23 Case Decisions T13-0196 and L13-0028 also cited Table B. A copy of Table B is  
24 attached to this brief. Table B, unlike the Quarterly Index noticed by the hearing officer in this  
25 case, is a table issued by Calvin N. Wong, Building Official. It would be improper to use the  
26 Quarterly Cost Indexes (1926 = 100) noticed by the hearing officer because that table was  
27 never issued by the City of Oakland.

28

1           When evaluating a construction project and a Petition such as the one filed by Landlord,  
2 everyone should be able to rely on data and calculation *published* by the Building Department of  
3 the City of Oakland. Using a vague index that is unclear as to the date of its application makes no  
4 sense and deprives the parties of their right to know the law regarding substantial rehabilitation.

5           Table A clearly states "Construction Valuation for Building Permits Effective August 1,  
6 2009." No other valuations have been published by the City of Oakland since that time and so it  
7 is the only table that can be relied upon. If the Building Department felt that these numbers and  
8 data weren't proper, it could have easily updated them. But it did replace Table A.

9           We simply don't know what the Quarterly Cost Indexes (1926 = 100) is because no  
10 evidence was submitted to authenticate the document or to lay a foundation showing that the  
11 document is what Tenants say it is. Tenants brought in a witness (David Harlan, Planning and  
12 Building Department of the City of Oakland) to the hearing who possibly could have  
13 authenticated the document and laid the proper foundation. However, Tenants' counsel chose  
14 not to question the witness about the document. Instead, Tenant's counsel chose a strategy which  
15 sprung the document on the Landlord and the Hearing Officer during closing argument, after the  
16 close of evidence and where no cross-examination was possible. For this reason, the Hearing  
17 Officer should consider this brief in arriving at its Decision.

18 **B. Quarterly Cost Indexes (1926 = 100) Should Not Be Considered Because It Was**  
19 **Not Submitted to the Rent Board or Served on Landlord Before the Hearing.**

20           A tenant is required to file a response to an owner's petition within 30 days of service of  
21 the notice by the Rent Adjustment Program that an owner petition was filed. OMC Sec.  
22 8.22.090.A.4. The Landlord and Tenants in this case were ordered to produce all proposed  
23 tangible evidence "not less than seven (7) days prior to the Hearing." See Notice of  
24 Hearing in this case served on all Tenants on November 19, 2015. By not filing the  
25 Quarterly Index and serving a copy on the Landlord, the document must not be considered by the  
26 Hearing Officer.

1 The Rent Board has a strict policy of not considering evidence and other  
2 documents that the parties will rely on unless those items were submitted to the Rent  
3 Board and served on the opposing party before the hearing. There is no reason to ignore  
4 past precedent in this case. It came as a total surprise to Landlord that evidence of  
5 construction costs, not contained in Table A, would be used and argued by the Tenant. Or  
6 that it could be noticed or used by the Hearing Officer. It is a violation of due process to  
7 allow the Quarterly Cost Indexes (1926 = 100) to be used in this case because Landlord  
8 was deprived of notice that it would be used. And it would be a violation of due process  
9 to not allow Landlord to submit this brief because it would be a denial of the Landlord's  
10 right to be heard on the  
11 matter.

12 **C. Notice Cannot Be Taken of The Quarterly Cost Indexes (1926 = 100).**

13 The Hearing Officer Cannot Take Judicial Notice of the Quarterly Cost Indexes  
14 (1926 = 100) because it is not a fact or matter that is commonly agreed upon basic  
15 information. While a Hearing Officer may have the power to take notice of certain  
16 matters, upon proper request, it cannot take judicial notice of documents for which no  
17 foundation has been laid and which no one has personal knowledge of except perhaps for  
18 Tenant's counsel.

19 Judicial notice can be taken of things like the fact that Oakland has a Rent  
20 Adjustment Ordinance, or that May 5, 2015 is a Tuesday, or that Landlord was  
21 represented by legal counsel at the Hearing, or that the Rent Board is located at 250 Frank  
22 Ogawa Plaza, or that Libby Shaff is the Mayor of Oakland. These are factual matters that  
23 are not subject to debate and is basic information that is commonly agreed upon by  
24 reasonable people.

25 The Quarterly Cost Indexes (1926 = 100) is a piece of paper that only Tenant's  
26 counsel is privy to. We don't know where it came from, or who issued it if anyone, how is is  
27 supposed to be used, or whether it was altered in any way before noticed by the Hearing Officer.  
28

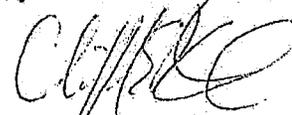
1 There was no witness at the hearing to authenticate the document. It is not the kind of basic  
2 information that reasonable people can agree to and should be disregarded in this case.

3 **CONCLUSION**

4 Table A from the Building Services Agency, and possibly Table B, are the only  
5 Tables that the Rent Board can rely on in issuing a Decision in this case. No one really  
6 knows what the Quarterly Cost Indexes (1926 = 100) is or whether it is in fact a Table  
7 issued by the Chief Building Inspector. Until the a new Table is issued by the Chief  
8 Building Inspector, there is a presumption that Table A is the Table to use for determining  
9 the average basic cost of new construction. The Hearing Officer is not at liberty to adopt a  
10 new Table to use. The Decision in this case must be based on the current rent laws.

11  
12 Respectfully Submitted on May 7, 2015

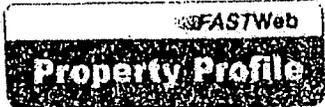
13 by FRIED & WILLIAMS LLP

14 

15 Clifford E. Fried  
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50N

3921 Harrison St  
Oakland CA 94611



**Property Information**

<b>Owner(s)</b>	525 655 Hyde Street Cnml Props	<b>Parcel #</b>	012-0929-011
<b>Property</b>	3921 Harrison St Oakland, CA 94611	<b>Map Coord</b>	9-D2; 649-J1
<b>Mailing Addr</b>	2350 Broadway St San Francisco, CA 94115	<b>Census Tract</b>	4040.00
		<b>County</b>	Alameda
		<b>Owner Phone</b>	
<b>Legal</b>	OFFICIAL RECS 15 PG 44 BLK B PART OF LOT 7.		
<b>Lot Number</b>	7	<b>Tract Number</b>	
<b>Block</b>	B	<b>Subdivision</b>	Linda Vista Terrace Map 02

**Characteristics**

<b>Use</b>	Multi Family Dwelling	<b>Year Built</b>	1963	<b>Sq. Feet</b>	13336
<b>Zoning</b>		<b>Lot Size</b>	.2583 / 11250	<b># of units</b>	16
<b>Bedrooms</b>	23	<b>Bathrooms</b>	18	<b>Fireplace</b>	
<b>#Rooms</b>	71	<b>Quality</b>	Average	<b>Heating</b>	
<b>Pool/Spa</b>	N	<b>Air</b>		<b>Style</b>	
<b>Stories</b>	4	<b>Improvements</b>		<b>Parking</b>	Garage-20
<b>Flood</b>		<b>Gross Area</b>	13336	<b>Garage Area</b>	
<b>Basement Area</b>					

**Attributes  
Other**

**Property Sale Information**

<b>Sale Date</b>	11/14/2013	<b>\$/Sq. Ft.</b>	\$153.79	<b>2nd Mtg.</b>	
<b>Sale Price</b>	\$2,051,000.00	<b>1st Loan</b>		<b>Prior Sale Amt.</b>	
<b>Doc No.</b>	364187	<b>Loan Type</b>		<b>Prior Sale Dt.</b>	
<b>Doc Type</b>	Grant Deed	<b>Xfer Date</b>	11/19/2013	<b>Prior Doc No.</b>	229178
<b>Seller</b>	Elison Family Lp	<b>Lender</b>		<b>Prior Doc Type</b>	Quit Claim Deed
*\$/Sq. Ft. is a calculation of Sales Price divided by Sq. Feet					

**Tax Information**

<b>Imp Value</b>	\$285,832.00	<b>Exemption</b>	
<b>Land Value</b>	\$255,752.00	<b>Tax Year/Area</b>	2013/17001
<b>Total Value</b>	\$541,584.00	<b>Tax Value</b>	\$541,584.00
<b>Tax Amount</b>	\$12,522.68	<b>Improved</b>	53%

Information compiled from various sources and is deemed reliable but not guaranteed.

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 18-452  
 INVOICE DATE April 3, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	67417 → 51900 16791 → <del>41000</del>	51900	\$44,900.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	6627	6660 → 2,000	\$9,800.00
			SUBTOTAL	21,700.00
				\$21,700.00 PAY THIS AMOUNT

PROJ # 1P-452  
 VERSION #  
 GL CODE  
 AUTH [Signature]  
 DATE

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

APR 15 2014

3921 Harrison 136 of 203

Hearing Officer Exhibit 77

CK# 120986

245

# Martin Gallagher Const. Inc.

# SUPPLEMENTAL INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

SUPPLEMENTAL INVOICE NUMBER 64-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 → \$2500	\$3,600.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6660 → \$700 6624 → \$800 6627 → \$700.00	\$700.00
PLEASE REFER TO INVOICE NUMBER 18				
			PROP # 1P-452 VENDOR # _____ GL CODE _____ AUTH _____ DATE 6-17-14	
			SUBTOTAL	4,300.00
				\$4,300.00
				PAY THIS AMOUNT

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 CK# 124652  
 103937  
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# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 65  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

**UNIT # 204**

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>
				<b>\$26,000.00</b>
				<b>PAY THIS AMOUNT</b>

PROP # 1P-452  
 VENDOR # \_\_\_\_\_  
 GL CODE 6609  
 AUTH AD  
 DATE 6-17-14

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher65@gmail.com](mailto:martingallagher65@gmail.com)

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

**PAID**

JUN 17 2014

CK#123808

Hearing Officer Exhibit 118

118

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 67-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 304

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 → 6,500 6747 → 3,500 6660 → 2,300 6624 → 3,200	\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00 PAY THIS AMOUNT

PROJ # 18-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH: AA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher25@gmail.com](mailto:martingallagher25@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 20 2014

Hearing Officer Exhibit 127

CK# ~~127~~ 127

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 66-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 303

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6747 → 3.500 6660 → 2.300 6624 → 3.200	\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>
				<b>\$26,000.00</b>

6791 → 6,500

PROP # 1P-452  
 VERSION #  
 BL CODE  
 ACCT #  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

PAID

JUN 20 2014

THANK YOU FOR YOUR BUSINESS!

CK# 124052



apartment for rent  
 3921 Harrison St Unit 301, Oakland, CA 94611.

REQUEST MORE INFORMATION

SEND TO FRIEND

CONTACT TYLER OFFICE 510-878-4691

Brand new photos up! Available now!

3921 Harrison, Walk to Pied Ave, Grand Ave, + Rose Garden

For an Appointment to View, Contact:

Contact: Tyler Office 510-878-4691

Unit Description:

Unit Description:

- 2bedroom/1bath near the city of Piedmont
- Granite counter tops in kitchen with dishwasher
- Brand new closed loop quality carpeting throughout
- Tons of closet space
- Forced air heat
- Very spacious living room
- Gets good light
- Private balcony
- An absolute must see!
- Modern Construction
- Coin operated laundry on-site
- 16 units in building
- On-site manager
- Well maintained landscaping
- Single intercom entry building



"Private balcony"

<https://www.laphamcompany.com/node/6314>  
 November 6, 2016  
 Annotation and arrow are added.

UNIT INFO	
Type	: Apartment
Bedrooms	: 2
Bathrooms	: 1
Rent	: \$2,625/month
Deposit	: \$600
Parking	: None
Pets	: Cats Allowed (Extra deposit may be required), No Dogs
Utilities	: Water and Garbage Included
Kitchen	: Electric stove, Dishwasher, Garbage disposal
Laundry	: In Building
Total Units	: 16
Lease Term	: Year

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 CITY OF OAKLAND  
 RENT REGISTRATION PROGRAM  
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## CHRONOLOGICAL CASE REPORT

Case No.: T15-0263  
Case Name: Panganiban v. Chang  
Property Address: 338 Lenox Ave., Apt. 2, Oakland, CA  
Parties: Kim Panganiban (Tenant)  
Symon and Patty Chang (Property Owners)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	May 20, 2015
Landlord Response filed	June 24, 2015
Hearing Decision issued	December 8, 2015
Tenant Appeal filed	December 23, 2015

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2315 L0003 PM 2:14  <p style="text-align: center;"><b>APPEAL</b></p>	
<b>Appellant's Name</b> KIM PANIGANIBAN		<b>Landlord</b> <input type="checkbox"/>	<b>Tenant</b> <input checked="" type="checkbox"/>
<b>Property Address (Include Unit Number)</b> 338 LENOX AVE #2 OAKLAND, CA 94610			
<b>Appellant's Mailing Address (For receipt of notices)</b> 338 LENOX AVE #2 OAKLAND, CA 94610		<b>Case Number</b> T-15-0263 <b>Date of Decision appealed</b> 12/8/15	
<b>Name of Representative (if any)</b> ANDREW WOLFF, ESQ		<b>Representative's Mailing Address (For notices)</b> LAW OFFICES OF ANDREW WOLFF 1970 BROADWAY, #210 OAKLAND, CA 94612	

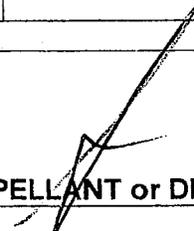
I appeal the decision issued in the case and on the date written above on the following grounds:  
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

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 15. 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 Dec 23, 2005, 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>	SYMON CHANG + PATTY CHANG
<b><u>Address</u></b>	1088 DOHENY TERRACE
<b><u>City, State Zip</u></b>	SUNNYVALE, CA 94085
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

 SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	12-23-05 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.

Kim Panganiban  
338 Lenox Ave #2  
Oakland, CA 94610

Case No. T-15-0263

**ATTACHMENT TO APPEAL**

Ms. Kim Panganiban (“Tenant”) appeals the decision in the above mentioned case that was issued on or around December 8, 2015. A true and correct copy of the Hearing Decision issued December 8, 2015 is attached hereto as **Exhibit A**.

Within that decision it was ruled that the tenants claims of decreased housing services was not timely filed (See page 7 of Exhibit A). However, Ms. Panganiban appeals this decision on the basis that she gave the Changs (the “Landlord”) notice of various defects after which the Changs informed her that they would make the repairs. Ms. Panganiban relied the Chang’s assertions that the repairs would be made and therefore did not file a Rent Board Petition within the 60 day deadline.

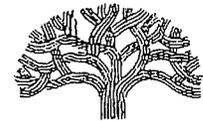
Attached hereto as **Exhibit B** are true and correct copies of e-mails between Symon Chang and Andrew Wolff, Esq, Ms. Panganiban’s attorney in a related matter. On or around December 5, 2014, Mr. Wolff informed Mr. Chang of the repairs that needed to be made to the unit including but not limited the heater, front door gap, door locks, the shower rod, blinds, holes in the wall, cable wiring, and bedroom door. Then, on or around December 8, 2014, Mr. Chang responded stating that most of the items would be addressed as soon as possible. However the items were not addressed therefore Ms. Panganiban filed the Rent Board Petition on or around May 20, 2015.

For the above referenced reason the Rent Board should reconsider their decision as it is clear that Ms. Panganiban’s petition was not untimely filed because of neglect but instead because she justifiably relied on Mr. Chang’s assertions that the repairs would be made.

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EXHIBIT A

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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## HEARING DECISION

**CASE NUMBER:** 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.

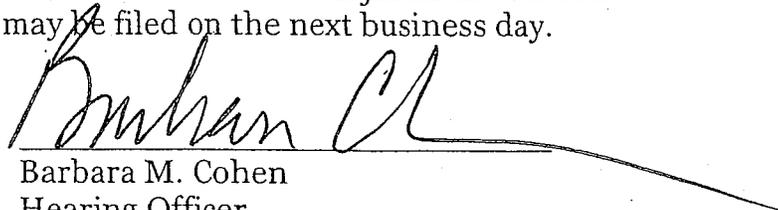
**If restitution is owed, what is the tenant's rent?**

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:

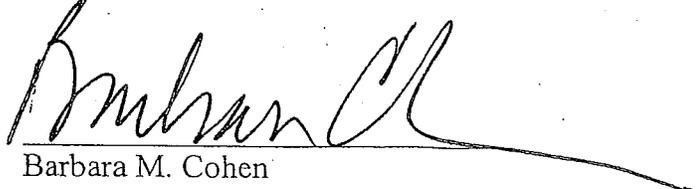
Kim Panganiban  
338 Lenox Ave, Apt 2  
Oakland, CA 94610

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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**EXHIBIT B**

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Andrew Wolff <andrew@awolfflaw.com>

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**Kim P**

10 messages

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**Andrew Wolff** <andrew@awolfflaw.com>

Fri, Dec 5, 2014 at 11:25 AM

To: "symonchang@gmail.com" <symonchang@gmail.com>

Sent from my iPhone

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**Andrew Wolff** <andrew@awolfflaw.com>

Fri, Dec 5, 2014 at 12:30 PM

To: "symonchang@gmail.com" <symonchang@gmail.com>

We will be at your apartment building on Wednesday, December 10 at 9 AM.

The three items that my client requires before signing the lease and taking possession back are:

1. heater must work
2. front door gap must be code compliant without draft. See Civil Code Section 1941 et seq.
3. the front and back door must have locks changed for security purposes.

The items that my client believes you have a contractual obligation to address are as follows:

1. Permanent shower rod and cover or reinstall the shower door installation.
2. Most of the blinds are not functioning properly (no top bracket on at least one of them), and all were filthy so they must function and be clean
3. Holes must be professionally patched or screens and/or screen doors must be replaced.
4. The bedroom door has paint and debris caked on it which is unsightly and evidence of unprofessional repair. Please repaint it.
5. The screen door in the back slams, and does not function properly.
6. The comcast cable needs to be installed so the cord where the TV is located does not cross the hallway, it needs to be moved.

Thank you.

On Fri, Dec 5, 2014 at 11:25 AM, Andrew Wolff <andrew@awolfflaw.com> wrote:

Sent from my iPhone

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Andrew Wolff, Esq.  
The Law Office of Andrew Wolff, P.C.  
1970 Broadway, Ste 210  
Oakland, CA 94612  
510-834-3300  
FAX 510-834-3377

**\*\*PLEASE NOTE\*\*** This email and any documents attached to this transmission may contain privileged and/or confidential information, and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this email information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission, and immediately delete/destroy the message and any 000072

accompanying documents. Thank , u.

**Symon Chang** <symonchang@gmail.com>  
To: Andrew Wolff <andrew@awolfflaw.com>

Mon, Dec 8, 2014 at 4:06 PM

Andrew,

I have fixed the three items that you client requires before signing the lease and taking possession back, though those items should not be used as the reason for delaying to move-back. They are:

1. heater must work
2. front door gap must be code compliant without draft. See Civil Code Section 1941 et seq.
3. the front and back door must have locks changed for security purposes.

In addition, other items on your list have been addressed as many as possible. The unit is ready for move-in, and any deference in conditions between move-out and move-in can be documented on the move-in/move-out check list. Our appointment is confirmed with the following:

When: Wednesday, December 10 at 9 AM

Where: 338 Lenox Ave. Apt2 Oakland

What: To sign the lease agreement, take the check amount \$2,558.52 and turn over the key for possession.

Attached please find the move-in cost estimate. It is calculated with move-in date of 12/10/2014 with the old rent of \$1,167 per Oakland "RENT ADJUSTMENT ORDINANCE", subsection 8.22.070.D.1. Unless you can cite any ORDINANCE or Regulation for the parking fee charge, and/or security deposit increase payment, please have your client pay \$2,558.52 on Wednesday when signing the lease for the moving back. The actual amount charged will be adjusted after the hearing with the effective date of 12/10/2014. If the Rent Board denies the rent increase, parking fee charge, or the security deposit increase, I will adjust the overpayment accordingly.

Please let me know if you have any questions on these, and looking forward to seeing your client and you on Wednesday 9:00 AM.

Best regards,

Symon Chang  
510-798-1712

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