

Landlord's Guide To Rent Adjustment

INTRODUCTION

It is the policy of the City of Oakland to encourage investment in local residential rental housing while also protecting the welfare of its citizens who are its tenants. Accordingly, the City of Oakland RAP (RAP) allows for a landlord to make a reasonable profit on his or her real estate investments while protecting tenants from many sudden, large rent increases. The Residential Rent Adjustment Ordinance (OMC Chapter 8.22) places limits on rent increases and provides a process to resolve disputes regarding rent increases.

This Guide is a brief summary of the Rent Adjustment process and the law that applies to it. It is not intended to be a complete description or a substitute for the laws themselves. For authoritative materials, please consult the text of the Rent Adjustment Ordinance and Regulations, the Housing, Residential Rent and Relocation Board (Rent Board) decisions and opinion issued by the Courts applicable to your case.

BASIC RULES

EXEMPTIONS:

All real property used for residential rental housing is covered by the Rent Adjustment Ordinance except those units exempted by OMC Section 8.22.030 or some other law. If a property is exempt from application of the Rent Adjustment Ordinance none of the rules regarding Rent Adjustment apply, but the rules regarding eviction controls may still apply. The exemptions from rent limits are found in the Residential Rent Adjustment Ordinance (OMC Section 8.22.030). The exemptions from eviction controls are different and are found in the Just Cause for Eviction Ordinance (OMC Section 8.22.350).

The most common exemption from Rent Adjustment is that the unit is government subsidized housing. Other common exemptions are for units constructed after January 1, 1983 (new construction) and single family houses exempt under the Costa Hawkins Rental Housing Act (Cal. Govt. C. §1954.50, et seq.). Please refer to the Act itself for coverage and exceptions.

RENT INCREASES:

Giving Notice to Tenants-The Rent Adjustment Ordinance requires that a landlord provide a written notice of the existence of the RAP to tenants at the start of the tenancy. The landlord must use the RAP form titled "Notice to Tenants." The Ordinance also requires that you serve another "Notice to Tenants" together with a notice of rent increase or notice of change in terms of tenancy.

One Increase each Year-A landlord may increase a tenant's rent only once in any twelve (12) month period. Some landlords might prefer to give several small increases in a year as their

costs rise rather than a single increase for the year. However, all increases given in any 12 month period after the initial increase are invalid.

Annual General Increase (CPI) and Justified Increases-Rent increases less than, or equal to, the annual CPI increase need not be justified. Rent increases in excess of the annual CPI increase may be justified on one or more of the grounds listed below. More than one justification may be used to increase the rent at the same time, but the annual CPI increase may not be imposed in the same year as any justified increase except banking. A landlord may increase a continuing tenant's rent once in a twelve (12) month period at the CPI Rent Adjustment rate without justifying the increase. CPI Rent Adjustment rate is published each year in March, and is effective July 1, of each year.

If the tenant makes a written request for a summary of the owner's justification for the rent increase within 30 days of the notice of increase, the landlord must provide the requested information within 15 days of the tenant's request. The landlord has 35 days from the notice that the tenant filed a petition to submit the landlord response on the proper form, which is included in this packet.

Notices of increase must also comply with the time limits and form requirements found in California Civil Code Section 827.

If a landlord does not comply with the above rules, a notice of rent increase is invalid.

FEES AND TAXES: The property owner must also have a current Oakland Business License and be current on payment of the RAP's Service Fee. If paid on time, the landlord may charge the tenant one-half of this \$30 per-unit fee (\$15). If either the \$30 per unit fee, or the Business License tax is not paid, a landlord Petition or Response to a tenant petition may not be considered, in a rent adjustment proceeding.

INCREASES GREATER THAN THE ANNUAL CPI RATE: Following are summaries of the grounds on which to justify a rent increase greater than the CPI increase. They are summaries ONLY. For complete information, please see Oakland Rent Adjustment Ordinance¹ and the Rent Adjustment Regulations.² **Please call the Rent Program Office to have your questions answered (510) 238 3721.**

- **Capital Improvement/Uninsured Repair Costs:** Capital improvements increases may be taken to reimburse the landlord for improvements that have been completed and paid for during any 12 month period within the 24 months immediately before the effective date of the proposed rent increase. To justify a rent increase for capital improvements expenditures or uninsured repair expense the landlord must submit copies of receipts, invoices, bid

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

² <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

contracts or other documentation showing the costs were incurred to improve the property and benefit the tenants, and evidence to show that the incurred costs were paid.

Uninsured repair costs are casualty losses that are not reimbursed to the landlord. See the Regulations for details. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

- **Increased Housing Service Costs:** Housing Service Costs are expenses for services provided by the landlord related to the use or occupancy of a rental unit, also called "operating expenses". In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent two years are compared. If Year Two costs exceed Year One costs by more than the current annual CPI increase, the landlord may impose the increase in expenses, rather than the annual CPI. The expenses considered include property taxes, business license/taxes, and insurance, P.G. & E., water, garbage, maintenance and repairs, managerial costs and other legitimate annually recurring expenses to operate the rental property, except debt service.

You may not isolate any single expense. The calculation in both years must provide a reasonable comparison of all of the expenses. If the increase is challenged by a tenant before the Rent Program, evidence, usually in the form of documents, is required to prove each of the claimed expenses.

- **Debt Service Costs:** Debt service costs are the payments on a purchase-money loan or on a loan to make improvements to the property that primarily benefit the tenants, secured by a Deed of Trust on the same rental property. Eligible debt service costs are the actual principal and interest on a qualifying loan. No more than 95% of the eligible debt service may be passed on to the tenants. That allowed percentage may be less depending on what part of the financing arrangement qualifies for a debt service increase. An increase in rent based on debt service costs may only be granted when the total income is insufficient to cover the combined housing service and debt service costs.

If challenged before the RAP, evidence of the following is required to justify a rent increase based on Debt Service Costs:

- Proof of the gross operating income from the property, including, but not limited to, rents received for all units, laundry income, and parking charges;
- Deed of trust, promissory note and closing statement;
- Invoices, bills, or other evidence of payment of operating expenses such as property taxes, water and sewer costs, City of Oakland business license tax, garbage and refuse service, insurance, maintenance, utilities, legal and accounting fees, cost of on-site manager.

If the current owner and the immediate prior owner have owned the property for a combined period of less than twelve months, an increase in rent for increased debt service

is not available. There are other requirements for a debt service pass through. Please see the Rent Adjustment Regulations, Appendix, Section 10.4 and after.

- **Banking/Rental History:** "Banking" refers to deferred annual general rent increases (CPI increases) that were not imposed, or were not imposed in full, and carried forward to future years. Subject to certain limitations, imposition of annual general increases may be deferred up to 10 years. General increases that were not imposed within ten years expire. If challenged, evidence of the rental history of the subject unit is required.

- **Necessary to Meet Constitutional Fair Return Requirements:** A landlord may submit evidence to show that without the requested increase he or she is being denied a fair return on the investment in violation of the Constitution. To prove entitlement to this increase, a landlord must show that the return on the investment is less than the return that would have been received for an investment of similar risk. At a minimum, proof of the amount of investment, evidence of the return from other investments of similar risk and an analysis of the rate of return from the rental property, including any appreciation in the value of the property, are required.

Calculating Justified Rent Increases:

You must calculate the exact amount of rent you may charge a tenant when increasing the rent based on justification. Forms and some sample calculations for the various justifications for rent increases are attached. There are also electronic spreadsheets in Excel format that can be downloaded from the City of Oakland web site that will help you to perform the calculations.

These spreadsheets are found at

<http://www.oaktandnet.com/government/hcd/rentboard/landlord.html>. Written forms and help understanding the calculations are available from the Rent Adjustment Staff at (510) 238-3721.

Questioning the Basis for a Rent Increase: A tenant has the right to request a written summary of the landlord's justifications for the rent increase within 30 days of being served with a rent increase notice. The landlord must respond within 15 days of a tenant's serving the request for a summary or the noticed increase is invalid.

Filing Fees: Landlords are required, by law, to pay a \$30 per rental unit service fee for each unit covered by the City of Oakland RAP. There is no additional fee for filing, responding to a petition, filing an appeal or having Rent Program Staff mediate a dispute.

Time to File a Challenge to a Rent Increase: Usually, a tenant must file a petition within 60 days after receiving a notice of rent increase from his or her landlord or within 60 days after a decrease in services. These time limits are extended under some circumstances. The time limits for filing a petition are stated in the "Notice to Tenants regarding Oakland's RAP."

Landlord Petition Form: When increasing rent above the annual permissible CPI amount, the landlord may file a Landlord Petition form for pre-approval of a rent increase. The landlord can

request the proper forms from the Residential Rent Adjustment Office, 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612; telephone (510) 238-3721. Pre-approval of a rent increase is not required under the law. In certain situations, landlords find getting pre-approval convenient.

Landlords can submit the completed form by mail or in person. There is no fee or charge to either party for filing a petition, having a Rent Program staff member mediate a case, or for going to a hearing.

HOW TO RESPOND TO A TENANT PETITION:

What is the Process? The Residential Rent Adjustment Ordinance provides a process to resolve disputes regarding rent increases and other landlord-tenant disputes. Landlords (by filing a petition, requesting mediation or going to hearing) may be able to resolve disputes with your tenant.

If a tenant files a petition with the RAP, a copy will be mailed to the landlord, together with an informational packet and a blank Response form. A landlord is required to file a Response to the petition within the time limit stated in the notice of tenant petition filing. You have the option of trying to resolve a tenant complaint by agreement with your tenant through mediation or having the dispute resolved by the Hearing Officer through a hearing. Included on the Response Form is a separate section for you to request mediation. Look at the Tenant Petition section requesting mediation to see if your tenant has signed the request for mediation. If your tenant has signed the request and you also sign the request and file the Response form, a mediation session will be scheduled.

Mediation is a voluntary meeting with the landlord and tenant and a trained mediator to discuss the problem and possible solutions. The parties have the option of choosing their own outside mediator or using an assigned mediator who is a member of the RAP staff. There is no charge for a RAP staff mediator. An outside mediator may charge a fee. That is a matter of agreement between the tenant, the landlord and the mediator.

If the mediation is successful, the case ends at that point with a written Settlement Agreement. If you don't reach an agreement with your tenant, the case will go to hearing on the date originally set in the Notice of Hearing mailed to you with the Response packet.

A hearing is like a landlord-tenant small claims court, but limited to issues that arise under the Rent Adjustment Ordinance. In a hearing, the Hearing Officer will apply the rules in the Rent Adjustment Ordinance and Regulations and certain other laws to your situation and issue a written decision. Hearings are held in person at the RAP office, 250 Frank H. Ogawa Plaza, Suite 5313, in Oakland, California. If there is good cause, a hearing may also be conducted over the telephone. At the hearing, you can present evidence, and bring witnesses. The Hearing

Officer will decide whether to approve the increase or not, after applying the law to the facts of the situation as presented in the hearing.

How to Complete a Landlord Response Form: Each blank on the Landlord Response form should be filled. If a specific section does not apply, you should indicate "not applicable" in that area. Please make sure the rental history is completed. A copy of the Notice to Tenants regarding the RAP along with your supporting documents should be filed with the response form in addition to your supporting documents. The documents should be submitted in an organized manner so that staff and the Hearing Officer can understand them. For example: When claiming capital improvements as the justification for the increase, the invoices/contract/bills should have a copy of the method of payment, also included. An original signature is required in order for the Landlord Response to be validly filed.

How to File a Landlord Response to a Tenant Petition: The completed Landlord Response form must be **received** in the RAP office located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612, by 5:00 p.m. on the 35th day after the tenant petition is mailed to you. There is a drop box with a time stamp in the lobby for filing documents in person. The mailing address is P.O. Box 70243, Oakland, CA 94612-0243. The response can be submitted by mail or in person.

The landlord must submit the applicable supporting documents to substantiate each claimed justification for the increase in dispute. The exact documentation will vary depending on the claimed justification(s) for the increase. You need to submit only the RAP worksheets and supporting documents that are applicable to the claimed justifications for increase.

Group Petitions: If more than one of your tenants from the same property files petitions contesting contemporaneous rent increases, the cases will be processed together under the number of the first case filed. A Landlord Response form must be received for each tenant petition. One form may be submitted for multiple cases if it references the cases to which it responds and the response is identical for all the cases referenced. In every other situation, you must submit an individual response form for each petition. The information contained in the response should only relate to that specific petition. If you are responding to several petitions at the same time, only one set of supporting documents is required. The documents should be attached to the lowest numbered response. Only one hearing will be held for all the consolidated cases.

Serving Your Response on the Tenant: The RAP will mail a copy of the completed landlord response form to the tenant. Only a copy of the landlord response form will be forwarded to the tenant, without the attachments. Documents that are filed by you and your tenant will be placed in the case file. Anyone, including parties or party representatives, has the right to review the entire file, including all of the documentation. Copies of these documents will not be mailed to the parties.

Naming Someone to Represent You: If you wish to appoint someone to act as your representative before or during mediation or hearing you can list them on your Response Form or send the RAP a signed letter naming them as your representative. You are not required to be

represented and you can un-name or change your representative at any time. If your representative appears at the hearing you are not required to be present. However, generally you as the landlord may have information that will not be available to support your case if you are not present to testify at the hearing.

Interpreters: If you like, you can bring someone to interpret for you. The interpreter can be a friend. There are also non-profit organizations that are available to assist you with language difficulties, including the City of Oakland Equal Access Office; their telephone number is (510) 238-2368.

Proving Justification for a Rent Increase: One of the most time consuming parts of the process for a landlord is collecting and organizing the documentary proof of expenses when justifying an increase. A summary of the expenses should reference the source document(s) that prove each expense. The usual source documents are canceled checks and/or invoices for each expense. Consider each justification separately to see if you have all of the evidence needed. Note that the Debt Service increase by Regulation requires specific documentary proof

Serving Your Response on the Tenant: When your response is filed, the RAP will mail a copy of it to the tenant. At that time, the file will be reviewed. If the facts necessary to make a decision are not in dispute, the RAP may make an Administrative Decision without holding a hearing.

If both the landlord and the tenant sign a request for mediation (Tenant Petition and the Landlord Response packet both include a request for mediation), a mediation session will be scheduled before the hearing. Both the petitioner and respondent will get a written notice of the date, time, and place of the mediation conference. If the parties cannot reach an agreement through mediation, a hearing will be held after the mediation session and a Hearing Officer will issue a written decision.

How to Prepare for a Hearing: In order to make a fair decision, the Hearing Officer will make sure that all parties get a chance to present their cases. It is important for the parties to prepare their cases well and have all their evidence at hand.

Here are some tips on the preparation to present your case:

Get Assistance-

If you need legal help, you can go to one of the landlord organizations or to a lawyer or consultant. If you need an explanation of the process for hearing or mediation or the applicable law, you can call or visit the Rent Adjustment office.

Get Organized-

Make a list of the most important points you want to make at the hearing. Organize these points in the order in which they happened.

Get Evidence-

If you have witnesses, it is best if they come to the hearing. If they can't come in person, get a sworn statement. This is your witness' description of what happened, and can be sworn by adding the following language to the statement "I declare the foregoing to be true and correct under penalty of perjury under the laws of the State of California." The statement must be signed and dated by the witness. However, testimony by declaration is not as good as testimony in person and will not be enough to prove a point if it is the only evidence on that point. Make sure that you talk to your witnesses before the hearing. They need to know what questions you are going to ask them. And you need to know what answers they are going to give!

You must submit any letters, receipts, photographs, audio, video tapes, and other tangible evidence to the RAP at least 7 days prior to the hearing. If your evidence is only made available at the hearing, the Hearing Officer may refuse to consider it, unless you have a valid excuse for not providing it on time. If you need equipment to play a video or audio tape, you must advise the RAP Office in advance. Your tenant must do the same.

You can ask the Hearing Officer to "take notice" of public records or facts that sensible people don't argue about, like what month it is or in what direction the sun rises in the morning.

Look through the Tenant's evidence

Just like you, the tenant must submit his or her written evidence to the RAP at least 7 days before the hearing. You can look at it, by making an appointment with a RAP staff member. Remember that you will have an opportunity to ask each witness questions. Plan what questions you may want to have them answer.

Practice presenting your case

Once you have gathered the facts and evidence, practice telling your side of the story. Present your case to a friend who can ask questions if some of your points are confusing. You may need to explain something in a different way to make your point clear.

Look for examples of previous hearing decisions

All hearing decisions are public information. The RAP office keeps copies of actual decisions for public viewing. You can make an appointment to review them. This may give you an idea of what to expect at your hearing and what your decision might look like.

Avoid asking for a postponement, unless it really is necessary

A postponement of a RAP hearing will only be granted for good cause shown and in the interests of justice. More than one postponement will not be granted to the same party unless the party shows extraordinary circumstances. Requests for postponement must be made in writing as early as possible.

An agreement by all of the parties to a postponement does not guarantee that it will be granted by the RAP. The parties still need to show good cause for the postponement. When the parties have agreed to postponement, the RAP must be notified in writing as early as possible. All parties, or their representatives, must sign any agreement for postponement form. Before submitting a request for postponement, the person asking for a postponement must try to reach an agreement with the other party or parties for two alternate hearing dates.

AT THE HEARING:

Bring your evidence-

You should have the originals of the documents you previously submitted. Make sure your witnesses can get to the hearing. Make sure your papers are in the order that you want to present them so you can find them. Keep your answers short and to the point. You should only talk about things related to your case.

Only testify to what you know for sure-

It's okay to say that you don't understand a question. It's also okay to say that you don't know or that you've forgotten something. Just tell the truth, and don't make guesses.

Wait your turn-

If your tenant is talking to the Hearing Officer first, you can write down any questions you may want to ask. When it's your turn, you can make your points and you should make all of them.

Don't get angry-

Even if you think your tenant is rude or lying, try to stay calm. If you don't make logical arguments, it will be very difficult for the Hearing Officer to understand what you are trying to say. Your behavior in the hearing can influence the Hearing Officer's decision. Don't interrupt, but make sure you state your case vigorously when it is your turn.

Bring an interpreter-

If you have trouble speaking or understanding English, bring a friend who can interpret for you.

Don't be late!-

Rent Adjustment hearings are often very brief. If you're late, they will start the hearing without you and may finish before you arrive.

THE DECISION:

A hearing decision is normally issued within 30 days after the close of the hearing. If the Hearing Officer's decision is in your favor, the decision may include an order for your tenant to pay an increased rent for a certain period of time to compensate you for rent that was not

paid during the time it took to hold the hearing. If the decision is in favor of the tenant, the decision may include an order reducing the rent the tenant has to pay. A Hearing Officer's order is as serious as a court order. If an owner doesn't obey the order of the Hearing Officer, the tenant can report this to the RAP, which has authority to enforce its orders by levying fines.

Errors in the Hearing Officer's Decision:

If you feel that there are any clerical errors in the Hearing Officer's decision, you can request the Hearing Officer to correct the decision within 15 days of receiving it. For example, if you won at the hearing but there is no mention of the correct rent, it may be a clerical error. A hearing officer cannot change a decision except to correct a clerical error. Other errors must be corrected by the Rent Board on appeal. You must write to the Hearing Officer asking for an explanation or for a correction in the decision. The Hearing Officer may or may not correct the decision. However, writing such a letter does **NOT** extend the time for filing an appeal.

Appeal of a Hearing Officer's Decision:

You cannot apply for another hearing because you do not like the decision. But you can appeal the decision to the Housing Residential Rent and Relocation Board (Rent Board).

Reasons For Appeal - The reasons allowed for appeal to the Board are listed in the Rent Board Regulations. Most decisions are appealed for the following reasons:

1. The decision does not follow the applicable law, including OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. In order for the Board to understand your appeal, you have to be specific about what Ordinance section, Regulation or prior Board decision is involved.
2. The decision is inconsistent with decisions issued by other Hearing Officers. You must explain how the decision is inconsistent and identify both decisions.
3. The decision raises a new policy issue that has not been decided by the Board. You must state the issue in detail and your reasons as to how the issue should be decided.
4. The decision is not supported by substantial evidence. You are responsible for making sure that a sufficient record (not new evidence) is before the Board to support your position.
5. You were denied a sufficient opportunity to present your claim or respond to the landlord's claims. You must explain how you were denied a sufficient opportunity. Note: A hearing is not required in every case. An administrative decision may be appropriate.

THE APPEAL PROCESS:

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Your appeal must be filed within 20 days of the date a hearing decision is mailed to you (15 days, plus 5 days for mailing). If your appeal is late, you must request a hearing to explain to the Board why it was late. By Board instructions, Rent Adjustment staff dismisses late appeals. If you have a good excuse for the late filing, you must ask, in writing, for a hearing to present your excuse to the Board.

You do not have to pay a fee for filing an appeal. You can request an appeal form from the RAP. The appeal forms can also be located online at <http://www.oaktandnet.com/government/hcd/rentboard/landlord.html>. It is important to fill out the form completely and explain your reasons for filing the appeal. You can attach an explanation of your appeal to the form. The Board has adopted a rule limiting the appeal and attachments to 25 pages.

Who Will Review My Appeal?

Usually, the Hearing Officer who made the original decision will review the appeal. The Hearing Officer will consider only the information contained in the appeal, and the records from the original hearing, and may issue a corrected decision only to correct a clerical error. A corrected decision begins the time limit for filing an appeal all over again. You will not be able to speak to the Hearing Officer about your appeal.

What Happens to the Original Decision?

The hearing decision is automatically suspended if an appeal is filed. For example, if the original hearing decision allowed the tenant to pay a lesser amount, the decrease in the rent does not go into effect until after the Board issues a final written decision.

Serving notice to your tenant - When filing your appeal, you must serve a complete copy of your appeal on the tenant. You must fill out the proof of service form on the appeal certifying under penalty of perjury that you served the tenant a copy.

You will receive a written notice of the date, time, and place of your appeal hearing by mail.

You may submit additional written argument as late as 3:00 p.m. of the eighth day before the appeal hearing. Usually, the Board will not accept evidence that was not presented to the Hearing Officer, but you may describe to the Board what evidence you have that you did not present.

REVIEW OF A HEARING DECISION:

The Board can: (a) make a decision based on the record as presented; (b) hold an evidentiary hearing setting forth the issues on which the parties may present evidence; or (c) send back “remand” the case to the RAP for further hearing.

The Board's decision is the final decision by the City. Parties cannot appeal to the City Council, but you may petition the Superior Court to review the decision within 90 days after the date the appeal decision is mailed to you.

If you have any questions that were not covered in this information packet, please contact the Residential Rent Adjustment Office at (510) 238-3721 between the hours of 8:30 a.m. and 5:00 p.m.