

CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE
HEARING OFFICER DECISION PURSUANT TO
THE COMMUNITY STABILIZATION AND FAIR RENT ACT (“CSFRA”)

RHC Case #(s):	22230009
Address and Unit(s) of Rental Property:	750 Shoreline Blvd [REDACTED], Mountain View, CA 94043
Petitioner Tenant Name(s):	Gary Toepper
Respondent Landlord Name(s):	Avery Shadows I, LP
Property Manager Name:	Christine Hattan, ACCO Management
Date(s) of Hearing:	November 16, 2022
Place of Hearing:	Online via Zoom
Date Hearing Record Closed:	November 17, 2022
Date of Decision:	December 8, 2022
Date of Mailing:	See attached Proof of Service
Hearing Officer:	E. Alexandra DeLateur

I. STATEMENT OF THE CASE *[Procedural history of the case]*

1. The petition in the above case (the “Petition”) was filed by Gary Toepper on September 29, 2022 and was accepted by the City on October 11, 2022.
2. Respondent /Landlord filed a response on October 19, 2022.
3. A Notice of Hearing on Petition was served on October 25 , 2022, setting a Hearing scheduled on November 16, 2022 with a Prehearing Conference on November 9, 2022.
4. A Prehearing Order was issued dated November 9, 2022 which allowed for additional evidentiary submissions prior to the hearing.
5. The matter was heard as scheduled on November 16, 2022 and the Hearing Officer closed the record at the conclusion of the hearing.
6. After the hearing, the Respondent sought to ask a question by email and the Hearing Officer granted the request. The question was sent to the Petitioner who responded by email. This exchange is also included in the record.

II. PARTIES WHO ATTENDED THE HEARING

The following parties attended the Hearing:

Petitioner(s): Gary Toepper (“Tenant” of “Petitioner”)

Respondent(s): Christine Hattan (“Landlord” or “Respondent”)

Joann Pham, Analyst I, Rent Stabilization Program, City of Mountain View

Patricia Black, Senior Management Analyst, City of Mountain View

III. WITNESSES

Both Mr. Toepper and Ms. Hattan were sworn in under oath as witnesses and presented testimony and evidence at the hearing.

IV. SUMMARY OF THE EVIDENCE

Petitioner’s rent prior to the rent increase notice served on August 24, 2022 (“Rent Increase Notice”) was \$2,045.00 per month¹. The Rent Increase Notice included language required by the CSFRA for a banked rent increase, including information on how to petition for relief from the banked increase(s) under the program. The Rent Increase Notice proposed to increase rent to \$2,247.00 per month effective October 1, 2022 which includes a 5.0% 2022 AGA, a banked 2.0% 2021 AGA plus a banked 2.9% increase for 2020, for a total increase of 9.9% or \$202.00 per month. The current AGA plus the two banked increases do not exceed the cap of 10%.

It is uncontested that Petitioner paid the increased monthly rent of \$2,247 for October and November 2022.

Petitioner and Respondent presented evidence that the rental history for this tenant is not linear regarding rent increases. Effective October 1, 2019, Respondent raised the rent from \$2,330 to \$2,409. That rent was in place through 2020 and into 2021. However, the parties voluntarily renegotiated a decrease in rent to help Petitioner which lowered his rent to \$2,045 effective March 1, 2021.

Petitioner provided evidence of the gross household income for the household of one (1) adult in the form of copies of bank statements. He also testified that all his income had been disclosed. Petitioner also presented his California Driver’s License as evidence of his age, showing that he is at least 65 years old.

A list of exhibits is attached as Attachment 1 and incorporated herein. There being no objections to the evidence presented by parties, all evidence that was offered was admitted into the record.

¹ All monthly rents discussed here are the base amounts but the lease between the parties obligates the Petitioner to make additional payments for utilities each month. The amount charged for utilities is not at issue in this decision. Nothing in this decision should be interpreted to prevent the utility charges from being collected.

ISSUES PRESENTED

- A. Did Petitioner receive a notice of rent of increase which included a “banked” rent increase amount as defined in the CSFRA Sec. 1707(d)?
- B. Would the imposition of such a “banked” rent increase amount present an undue hardship to the Petitioner under the CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations promulgated thereunder? *[Check all that apply]*

<input type="checkbox"/>	<p>1. <u>Inadequate Household Income.</u> <i>Reg. Chap. 7(C)(2)(a)</i></p> <p><input type="checkbox"/> Whether the household income of Petitioner does not exceed one hundred percent (100%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development and thus a hardship is presumed;</p> <p><u>or</u></p> <p><input type="checkbox"/> Whether more than fifty percent (50%) of Petitioner’s household income is spent on rent and thus a hardship is presumed.</p>
<input type="checkbox"/>	<p>2. <u>Families with Children.</u> <i>Reg. Chap. 7(C)(2)(b)</i></p> <p><input type="checkbox"/> The Petitioner’s household is the primary residence of one (1) or more dependent children under the age of eighteen (18); <u>and</u></p> <p><input type="checkbox"/> Whether the household income of Petitioner does not exceed one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development and thus a hardship is presumed;</p> <p><u>or</u></p> <p><input type="checkbox"/> Whether more than fifty percent (50%) of Petitioner’s household income is spent on rent and thus a hardship is presumed.</p>
<input checked="" type="checkbox"/>	<p>3. <u>Senior Household.</u> <i>Reg. Chap. 7(C)(2)(c)</i></p> <p><input checked="" type="checkbox"/> The Petitioner’s household is the primary residence for one (1) or more persons who are at least sixty-two (62) years of age; <u>and</u></p> <p><input checked="" type="checkbox"/> Whether the household income of Petitioner does not exceed one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development and thus a hardship is presumed;</p> <p><u>or</u></p> <p><input type="checkbox"/> Whether more than fifty percent (50%) of Petitioner’s household income is spent on rent and thus a hardship is presumed.</p>

<input type="checkbox"/>	<p>4. <u>Persons with Disabilities.</u> <i>Reg. Chap. 7(C)(2)(d)</i></p> <p><input type="checkbox"/> The Petitioner's household is the primary residence of one (1) or more persons with a disability, as defined in Section 12955.3 of the Government Code; <u>and</u></p> <p><input type="checkbox"/> Whether the household income of Petitioner does not exceed one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development and thus a hardship is presumed;</p> <p><u>or</u></p> <p><input type="checkbox"/> Whether more than fifty percent (50%) of Petitioner's household income is spent on rent and thus a hardship is presumed.</p>							
<input type="checkbox"/>	<p>5. <u>Persons who are Terminally Ill.</u> <i>Reg. Chap. 7(C)(2)(e)</i></p> <p><input type="checkbox"/> The Petitioner's household is the primary residence of one (1) or more persons who are terminally ill, as confirmed in writing by the individual's licensed medical care provider; <u>and</u></p> <p><input type="checkbox"/> Whether the household income of Petitioner does not exceed one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development and thus a hardship is presumed;</p> <p><u>or</u></p> <p><input type="checkbox"/> Whether more than fifty percent (50%) of Petitioner's household income is spent on rent and thus a hardship is presumed.</p>							
<input type="checkbox"/>	<p>6. <u>Other Hardship.</u> <i>Reg. Chap. 7(C)(2)(f)</i></p> <table border="1" data-bbox="358 1234 1427 1621"> <tr> <td data-bbox="358 1234 456 1388"> <input type="checkbox"/> </td> <td data-bbox="456 1234 1427 1388"> <p>Whether the household income of Petitioner does not exceed one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development; <u>and</u></p> </td> </tr> <tr> <td data-bbox="358 1388 456 1507"> <input type="checkbox"/> </td> <td data-bbox="456 1388 1427 1507"> <p>Which household does not qualify under the definitions of hardship included in Subsections (C)(2)(a) through (C)(2)(e) of Chapter 7 of the Regulations; <u>and</u></p> </td> </tr> <tr> <td data-bbox="358 1507 456 1621"> <input type="checkbox"/> </td> <td data-bbox="456 1507 1427 1621"> <p>Which household demonstrates other extenuating circumstances may request such circumstances be considered hardship for purposes of Subsection (C)(6) of Chapter 7 of the Regulations.</p> </td> </tr> </table>		<input type="checkbox"/>	<p>Whether the household income of Petitioner does not exceed one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development; <u>and</u></p>	<input type="checkbox"/>	<p>Which household does not qualify under the definitions of hardship included in Subsections (C)(2)(a) through (C)(2)(e) of Chapter 7 of the Regulations; <u>and</u></p>	<input type="checkbox"/>	<p>Which household demonstrates other extenuating circumstances may request such circumstances be considered hardship for purposes of Subsection (C)(6) of Chapter 7 of the Regulations.</p>
<input type="checkbox"/>	<p>Whether the household income of Petitioner does not exceed one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size according to the California Department of Housing and Community Development; <u>and</u></p>							
<input type="checkbox"/>	<p>Which household does not qualify under the definitions of hardship included in Subsections (C)(2)(a) through (C)(2)(e) of Chapter 7 of the Regulations; <u>and</u></p>							
<input type="checkbox"/>	<p>Which household demonstrates other extenuating circumstances may request such circumstances be considered hardship for purposes of Subsection (C)(6) of Chapter 7 of the Regulations.</p>							

V. FINDINGS OF FACT SUPPORTING THIS DECISION

1. Petitioner has resided in the subject unit as his primary residence for many years.
2. Petitioner's currently monthly rent without the disputed rent increase is \$2,045.00.
3. The last rent increase implemented by Respondent was effective on Petitioner on October 1, 2019.
4. As of October 1, 2022, Respondent sought to raise Petitioner's rent to \$2,247.00 which includes the AGA for 2022 and banked AGAs for 2021 and 2020.
5. Petitioner filed his Petition under the CSFRA for relief on September 29, 2022, within ten (10) days of the effective date of the Rent Increase Notice.
6. The AGA for 2022 is 5%.
7. The AGA for 2021 is 2%.
8. The AGA for 2020 is 2.9%.
9. Petitioner's household is comprised of one (1) adult residing in the subject unit.
10. Petitioner is greater than 65 years of age.
11. Petitioner's total gross income for the last twelve months is less than 120% the AMI for a household of one (1) for Santa Clara County which is \$141,550.

VI. LEGAL AUTHORITY

CSFRA Chapter 7 regulates banked rent increases, which are increases for past years which a landlord did not impose at the time but may be "banked" for a later year and added to the current AGA as long as the total amount of the increase does not exceed 10% of the current rent. *CSFRA Sec. 1707(d) and (e)*. A landlord must include specific language in a notice that includes a banked rent increase. *CSFRA Regs. Chapt. 7(B)*. The tenant must be notified of the right to request relief from a banked rent increase by way of a petition if the proposed increase would create an undue hardship on the tenant. There are multiple bases for a tenant to make the case that an undue hardship exists. *CSFRA Regs. Chapt. 7(C)(2)*. Chapt. 7(C)(1)(c) provides that "no relief can be granted to a hardship petition unless it is supported by the preponderance of the evidence supporting the claimed hardship."

"Hardship Conditions Defined. Any Tenant household claiming a hardship must verifiably demonstrate that one (1) or more of the following conditions [a, b, c, d, e, or f] (*text added*) apply to either one (1) or more Tenants in the household, or to the household generally (as specified below). For purposes of defining a hardship,

household income means the gross income received in the previous twelve (12) months from all household members over age eighteen (18).” *CSFRA Regs. Chapt. 7(C)(2)*.

“Relief from Hardship. Upon demonstrating the existence of one (1) or more hardship conditions identified in subsection (C)(2), a Hearing Officer shall consider the Tenant household’s hardship condition as one (1) factor when determining whether and to what extent any of the potential relief identified by this Subsection (C)(6) is appropriate. Any relief granted under this Subsection (C)(6) must be documented by the Decision of a Hearing Officer granting an adequately supported Tenant hardship Petition. No relief granted under this Subsection (C)(6) shall be applied so as to deprive a Landlord from the ability to earn a fair return.” *CSFRA Regs. Chapt. 7(C)(6)*.

VII. DISCUSSION

The Petitioner seeks relief from the banked AGAs for 2020 and 2021 because he is a senior and has limited income as set forth in Chapt. 7(C)(2)(c) of the Regulations. His Petition was filed within the time frame required by the CSFRA.

Petitioner proved by a preponderance of the evidence that he is a senior who is at least 65 years old. The Petition with its accompanying documentation regarding income for the household supports a finding that the petitioner’s household has gross income from all sources for the requisite period that falls below one hundred and twenty percent (120%) of the median household income for Santa Clara County as adjusted for household size of one (1) according to the California Department of Housing and Community Development (\$141,550.00). Therefore, there is a presumption that Petitioner qualifies for relief from the banked AGAs under the CSFRA Sec. 1707(d) and Chapter 7(C) of the Regulations.

Respondent presented evidence that they had been responsive to Petitioner’s request for a reduction in rent earlier last year, in March 2021, and had voluntarily reduced his rent to \$2,045.00 which was a reduction of \$364 per month. This accommodation was kind and provided real relief to Petitioner. Unfortunately, it does not alter the analysis under the CSFRA regarding the current Rent Increase Notice. Petitioner retains his right to seek relief from banked rent increases as an undue hardship if he meets the requirements of the Regulations. Respondent did not dispute the evidence presented by Petitioner regarding his age or his gross income, so the presumption remains that he is entitled to relief.

VIII. DECISION

Based on the evidence presented, the Petitioner has met his burden to show an undue hardship would result if the banked rent increases were implemented this year. He is entitled to relief from the Respondent’s request for the banked 2020 AGA of 2.9% and banked 2021 AGA of 2.0%. Therefore, pursuant to the CSFRA Section 1707(d), the Respondent may not implement the requested banked increases but may implement

the 2022 AGA of 5% for allowable, lawful monthly rent of \$2,147.25 beginning October 1, 2022 and continuing thereafter until there is a lawful change in rent². The evidence is clear that Petitioner has paid rent in the amount of \$2,247.00 for October 1, 2022 and November 1, 2022. He is entitled to a credit of \$199.50 (\$99.75 for each of those two (2) months). If Petitioner has also overpaid rent due for December 1, 2022, he is entitled to a credit for the amount paid in excess of \$2,147.25 as well (see Attachment 2: Decision Award Spreadsheet). Respondent is ordered to issue an appropriate credit to Petitioner based on this decision within thirty (30) days of this decision being final.

IT IS SO ORDERED.

/s/ E. Alexandra DeLateur

E. Alexandra DeLateur, Hearing Officer

Dated: December 8, 2022

² As noted in footnote 1, this Decision does not address utility payments that may be owed by the Petitioner in accordance with the lease.

ATTACHMENT 1

LIST OF DOCUMENTARY EVIDENCE

Exhibit 1—Petitioner’s Petition C: Tenant Hardship and supporting documentation, including a copy of Gary Toepper’s California Driver’s License and copies of two bank account statements for the last twelve months

Exhibit 2—Notice of Acceptance of the Petition dated October 11, 2022

Exhibit 3—Representative Authorization Form appointing Christine Hattan as representative for Avery Shadows I, LP

Exhibit 4—Notice of Prehearing Meeting and Hearing Date under the CSFRA dated October 25, 2022 setting the case for hearing on November 16, 2022

Exhibit 5—Prehearing Order dated November 9, 2022

Exhibit 6—Landlord’s Response to the Petition and attachments dated October 19, 2022

Exhibit 7—Copies of Petitioner’s two rent checks to Respondent for October and November 2022, each in the amount of \$2,247.00

Exhibit 8—Copy of the Respondent’s rent ledger from 2013 to the present

Exhibit 9—Information regarding building code, fire, and safety violations at 750 Shoreline Blvd. with a report showing all was corrected as of October 21, 2022

Exhibit 10—Respondent’s emailed question re Social Security, emailed November 16, 2022

Exhibit 11—Petitioner’s emailed response re Social Security, emailed November 17, 2022

ATTACHMENT 2

Month	Lawful rent	Paid by petitioner	To be credited to Petitioner
October 2022	\$2,147.25	\$2,247.00	\$99.75
November 2022	\$2,147.25	\$2,247.00	\$99.75
December 2022	\$2,147.25	To be determined	To be determined
Total	\$199.50 + any overpayments in December 2022 in excess of the lawful rent		