

Rental Housing Committee
Appeal Decision

Petition C22230030

The Rental Housing Committee of the City of Mountain View (the "**RHC**") finds and concludes the following:

I. Summary of Proceedings

On February 13, 2023, Tenant Siamack Yaghoubzadeh (("**Petitioner**") filed a petition for a downward adjustment of rent based on failure to maintain a habitable premises (the "**Petition**") (Petitioner's Exhibit #1) related to the property located at 1260 Montecito Avenue, Unit ■, Mountain View ("**Property**"). The Property is owned by TFT Investments, which has been represented in the petition proceedings by its representatives, apartment manager Juan Solis and property manager Elaine Tai, ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On March 20, 2023, a notice of hearing was issued with a hearing date scheduled for May 3, 2023 at 9:30 a.m.

The Petition requested a downward adjustment of rent and rent refund on the basis that the Respondent had failed to maintain a habitable premises due to a water leak and mold at the Property, in violation of the Community Stabilization and Fair Rent Act ("**CSFRA**"). Specifically, the Petition alleged that in beginning in December 2022, there was a leak in the garage and the living room of the Property, resulting in mold and other related issues.

On April 18, 2023, a pre-hearing conference was conducted by the Hearing Officer via telephone. Petitioner and Respondent (through its authorized representatives Mr. Solis and Ms. Tai) were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing. In addition, the Parties were instructed to submit any additional documentation by close of business on April 26, 2023. A Notice of Hearing Officer's Written Order and Summary of Pre-Hearing Conference and Notice of the Hearing were served on the Parties on April 21, 2023. (Hearing Officer's Exhibit #3).

The hearing was held on May 3, 2023. The hearing record was left open to allow for a report to be submitted from the May 15, 2023 inspection of the Property by the City of Mountain View. After the inspection report was admitted as Hearing Officer's Exhibit #4, the hearing record was closed on May 18, 2023. The Hearing Officer issued a decision on June 30, 2023 ("**HO Decision**"). The HO's Decision was served on the parties on June 30, 2023.

A timely appeal of the Decision was received from the Respondent on July 7, 2023 ("**Appeal**").

Procedural Posture

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or

remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

II. Summary of Hearing Officer Decision.

The Hearing Officer issued a detailed decision on the Petition summarizing the evidence and making findings of fact and conclusions of law. The Hearing Officer found the following:

1. Between December 12, 2022 and February 28, 2023, Respondent failed to maintain the condition of the Property in substantial compliance with laws requiring effective weatherproofing, even after Petitioner notified Respondent of the existence of leaks and mold at the Property. There was sufficient evidence in the record to establish that:

- (a) Respondent failed to ensure that the roof gutters and flashings for the Property were free of debris;
- (b) Respondent failed to satisfy the requirement that habitable rooms not have dampness "to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof" in violation of Civil Code Section 1941.1(a)(1) and Health & Safety Code Section 17920.3(a)(11);
- (c) the Property lacked "flooring in good repair" and had "faulty weather protection" in violation of Civil Code Section 1941.1(a)(8) and Health & Safety Code Sections 17920.3 subd. (b)(2) and subd. (g).

2. As it relates to the existence of mold at the Property, Respondent did not undertake any testing or present any expert testimony or inspection report to rebut Petitioner's testimony regarding the existence of mold or to rebut the reasonable conclusion to be drawn from the photographs submitted by Petitioner.

3. Petitioner also met his burden of proof by a preponderance of the evidence that Respondent had reasonable notice of the leaks and mold prior to the filing of the Petition, and that outside of placing a temporary tarp on the roof, Respondent failed to take timely action to address either the leaks or the resulting mold prior to the filing of the Petition. Respondent had more than reasonable time – two (2) months – to address each habitability issue and it did not.

4. Petitioner met his burden of proof to establish by a preponderance of the evidence that between December 12, 2022 and February 28, 2023, there were conditions at the Property related to water leaks affecting the living room and mold affecting the garage and living room that amounted to Respondent's failure to maintain a habitable premises.

5. Petitioner did not meet his burden of proof about the damaged condition of the living room floor because the evidence established that Petitioner did not inform Respondent of this condition before filing his petition. Petitioner also did not meet his burden of proof regarding the leak in the garage because (i) the leak did not prevent the use of the garage for either parking or

storage of personal belongings and (ii) the garage is not a habitable room and thus does not fall within the prohibition against dampness in Health & Safety Code Section 17920.3(a).

6. Based on the foregoing, for the period between December 12, 2022, and February 28, 2023, Petitioner was entitled to a twenty percent (20%) rent reduction for the mold conditions and a five percent (5%) rent reduction for the water intrusion caused by the leak in the living room. The reduction awarded reflects that at least one tenant – the Petitioner's elderly mother – was unable to use two different locations in the Property due to a risk to her health.

7. The Petitioner is entitled to rent refund of \$1,293.00 for the excess Rent he paid to Respondent between December 12, 2022, through January 31, 2023. Petitioner is not entitled to a rent refund for the period from February 1, 2023 through February 28, 2023 because he did not pay rent for that month.

III. Appealed Elements of Hearing Officer Decision

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section III of this Appeal Decision identifies the elements of the Decision that are subject to appeal by the Respondent. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Respondent raises the following issues on appeal:

A. **The Hearing Officer erred in holding that the roof leak was not dealt with in a timely manner.** A tarp was placed on the roof while waiting for the roofing contractor.

B. **The Hearing Officer abused her discretion in awarding a rent reduction for the presence of mold.** The presence of mold was neither established nor tested. If the award for the mold was based on visual discoloration, then repairs and cleaning costs, or their estimates, should have been taken into consideration from the pictures submitted. Further, Respondent did not submit any evidence of symptoms of mold exposure, such as a report from a treating physician.

C. **The Hearing Officer erred in holding that the floor in the living room was affected by the leak.** The flooring was not affected by the water leak in the living room wall, and the variations in the flooring were not due to any repairs performed on the flooring. The flooring in the middle of the living room has variations from the manufacturer.

D. **The Hearing Officer erred or abused her discretion in holding that the Property was rendered uninhabitable by the leak and/or that the leak interfered with the Petitioners' ability to live in the Property to any meaningful extent.** There was not sufficient evidence presented by the Petitioner to support these holdings. Petitioner continued to live at the Property.

E. **The Hearing Officer erred or abused her discretion in holding that Petitioner was entitled to rent reduction due to the conditions in the garage at the Property.** The

Petitioner had his boat parked in the garage during the entire period covered by the Petition. Therefore, the reduction of rent from the garage was unjustified and should not be deducted.

F. **The Hearing Officer erred or abused her discretion in holding that Petitioner was entitled to rent reduction based on the leak in the living room wall.** The small spot in earlier photos submitted by Petitioner disappeared in subsequent photos, indicating no growth or uninhabitable condition. Therefore, a reduction in rent was not justified.

IV. Decision Regarding Appealed Elements

A. Hearing Officer Properly Held that Respondent Did Not Address the Roof Leak in a Timely Manner.

First, Respondent argues that the Hearing Officer erred or abused her discretion in holding that the roof leak was not addressed in a reasonable amount of time because a tarp was placed on the roof while awaiting a roofing contractor.

There is sufficient evidence in the record to support Hearing Officer's conclusion that the roof leak was not addressed in a timely manner. Petitioner provided documentation of at least four occasions – December 12, 2022, December 13, 2022, December 27, 2022, and December 30, 2022 - on which he notified Respondent of the roof leak and requested information about whether and how Respondent intended to address the issue. In addition, Mr. Solis's testimony established that he went to the Property on December 14, 2022 to determine the cause of the leak, and that he tried to have the problem addressed by a contractor in late January 2023 (January 23, 2023 and January 24, 2023) but that the contractor failed to show up.

Mr. Solis then testified that he went to the Property in February 2023 to put up the tarp to slow down any leaks. Testimony from both Mr. Solis and Ms. Tai indicated that during this time, they contacted a few contractors to request quotes for the work to the roof but things did not pan out with any of these contractors. The only written evidence of a quote or estimate submitted by Respondent is a text from a contractor dated March 14, 2023, after Petitioner had already vacated the Property. Petitioner submitted evidence that there were numerous days between December 13, 2022, and the filing of the petition that the weather would have either allowed Respondent to lay the tarp or allowed a contractor to perform the work necessary on the roof. At the hearing, Respondent failed to present any evidence to rebut the Petitioner's evidence about the weather. Respondent also fails to advance any arguments in the Appeal as to why two months was not a reasonable amount of time to address the leak. As such, Hearing Officer did not err or abuse her discretion in concluding that two months was a reasonable amount of time for Respondent to address the leak and that Respondent failed to do so.

B. There is Sufficient Evidence in the Record to Support the Hearing Officer's Conclusion that There Was Mold in the Property.

Next, Respondent argues the Hearing Officer abused her discretion in awarding a rent reduction for the presence of mold at the Property.

Specifically, Respondent alleges that Hearing Officer should not have presumed there was mold based solely on the visual discoloration seen in the photos submitted by Petitioner; rather, Petitioner should have had to establish the presence of mold by other means, such as testing.

Based on the evidence in the record, the Hearing Officer reasonably concluded there was mold at the Property. In addition to the photos and videos submitted by Petitioner showing visual discoloration resembling mold in the garage and a leak in the living room (Pet. Exhs. #8-10), Petitioner also testified that he showed the mold in the garage to Mr. Solis on December 14, 2022, and Mr. Solis confirmed during his testimony that he had witnessed the discoloration when he inspected the Property. While Ms. Tai testified that in her opinion there was no mold in the garage, but merely “superficial and cosmetic” discoloration, the Hearing Officer found that “she [Ms. Tai] had presented no expert testimony or inspection report to rebut the tenant’s testimony or the reasonable conclusion to be drawn from viewing the photographs (which appear to reflect significant mold development in the garage).” (HO Decision, pp. 14:3-6.) The Hearing Officer further concluded that because Ms. Tai knew “testing is required to establish (and therefore also rebut the visual appearance of) the presence of mold and had been informed about the visual discoloration by Petitioner, “it is reasonable to place the burden for failure to test for mold squarely upon the landlord....” (*Id.* at pp. 14:8-15.)

As the Hearing Officer concludes, Petitioner met his burden of proof by providing photographic evidence and testimony of the conditions at the Property. Once Petitioner established, by a preponderance of the evidence, that there was mold at the Property, the burden shifted to Respondent to rebut this evidence. Outside of a unsupported statement that the discoloration was “superficial and cosmetic,” Respondent failed to do so. Therefore, the Hearing Officer properly concluded that there was mold at the Property, that Respondent knew about the mold, and that Respondent failed to take timely action to remedy this condition.

Respondent further asserts Petitioner did not provide any documentation, such as a report from a treating physician, to establish alleged symptoms of mold exposure. For one, Respondent’s argument misstates Petitioner’s testimony. At no time during his testimony or through the documentary evidence submitted did Petitioner allege that symptoms of mold exposure. Rather, Petitioner testified that his elderly mother was unable to use the living room and could not go into the garage because of the mold. (HO Decision, pp. 6:20-21.) He further testified that he had talked to his mother’s doctors, who had told him such conditions were unsafe for his mother. (*Id.* at pp. 6:21-22.) During the hearing, Respondent did not call into question Petitioner’s testimony regarding these facts or suggest that further documentation was required to verify his testimony. Therefore, given the photographic evidence submitted of the conditions in the Property and Petitioner’s mother’s age, it was reasonable for the Hearing Officer reach the conclusion that the conditions had in fact prevented her from using multiple sections of the Property.

Ultimately, there was sufficient evidence in the record to support the Hearing Officer’s conclusions that there was mold in the garage and likely in the living room and that the presence of this condition impacted at least one tenant’s ability to use the entire Property.

C. Hearing Officer Did Not Award Petitioner a Rent Reduction for the Condition of the Living Room Flooring.

In the Appeal, Respondent next alleges that the Hearing Officer erred in holding that the floor in the living room was affected by the roof leak. Respondent asserts that the flooring in the living room was not affected by the water leak Petitioner established in the living room wall. Rather, Respondent states that the variations in the flooring observed by the Hearing Officer during the City's inspection of the Property were variations from the manufacturer, not from any repairs performed by Respondent to the flooring in the living room.

While the Hearing Officer did conclude that Petitioner "established by a preponderance of the evidence that the Unit lacked, in the living room, 'flooring in good repair' . . .," (HO Decision, pp. 13:19-20), this finding ultimately did not affect the Hearing Officer's final decision or the award that the Hearing Officer authorized to Petitioner. On the issue of the condition of the living room floor, Hearing Officer concluded as follows:

"However, Mr. Yaghoubzadeh did not establish through a preponderance of the evidence that TFT received reasonable notice of the damaged condition of the living room floor before he filed his petition. In contrast with his conduct in connection with reporting the mold and leak, Mr. Yaghoubzadeh did not deliver any written notice of damage to the floor to TFT. While he testified at hearing about the type and severity of the condition of the floor damage, he also did not testify that he had given any notice, written or oral, to either Ms. Tai or Mr. Solis about the floor damage or ask that it be repaired before he moved out. Additionally, photographs of the wall damage submitted by Mr. Yaghoubzadeh in support of his petition indicate that a couch or sofa was placed up against the wall where the plaster was damaged/bubbling and water was coming into the Unit. This would have likely obscured the floor damage from view until such time as that couch was moved. Given that both Ms. Tai and Mr. Solis testified, without dispute, that they had no knowledge of the floor's condition until Mr. Yaghoubzadeh moved out and the move out inspection was conducted (after the Unit was emptied of furniture), the weight of the evidence indicates that TFT did not have a reasonable time to address the floor's deterioration until prior to the February 13, 2023 filing of the Petition. ***Mr. Yaghoubzadeh therefore did not satisfy his burden of proof to establish reasonable notice prior to filing his petition, such that a reduction in rent for the living room floor's condition is not appropriate.*** See CSFRA §1710 subd. (b)(2)." (HO Decision, pp. 16:1-17 (emphasis added).)

Since the HO Decision did not authorize any award for the condition of the living room floor, this Appeal Decision does not reach the merits of Respondent's argument about whether the Hearing Officer erred or abused her discretion in concluding the living room floor had been damaged by the water leak.

D. Hearing Officer Did Not Err or Abuse Her Discretion in Holding the Property Was Rendered Uninhabitable by the Roof Leak.

Respondent asserts that there is not sufficient evidence in the record to support Hearing Officer's holding that the roof leak rendered the property uninhabitable. In particular, Respondent points to Petitioner's continued occupancy of the Property as support for the assertion that the leak did not affect Petitioner's ability to use and enjoy the unit.

Respondent's argument relies on an incorrect understanding of "habitability." As noted in the HO Decision, the CSFRA provides that "failure to maintain a habitable premises" means "[f]ailure to maintain a Rental Unit in compliance with governing health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10..." (CSFRA § 1710(b).) For the purposes of the Civil Code, a unit "is deemed untenable" if it substantially lacks "[e]ffective weatherproofing and weather protection of roof and exterior walls..." (Civ. Code § 1941.1(a)(1).) Similarly, the Health and Safety Code provides that a dwelling unit shall be considered substandard if there exists "[d]ampness of habitable rooms" "to an extent that endangers the life, limb, health, property, safety, or welfare...of the occupants thereof..." (Health & Safety Code § 17920.3(a)(11).) Neither the CSFRA nor the state health and safety laws on which it relies require that the occupants vacate the unit for the unit to be considered uninhabitable or substandard.

As such, Respondent cannot merely point to Petitioner's continued occupancy of the Property as evidence that the Property was maintained in a habitable condition. At the hearing, Petitioner testified to the impact of the leak on his and his mother's ability to use the Property. At no time during the hearing did Respondent introduce evidence to contradict this portion of Petitioner's testimony nor did Respondent question the validity of Petitioner's testimony. Moreover, even in the Appeal, Respondent fails to address the evidence in the record that Petitioner and his mother did eventually vacate the Property due to Respondent's failure to timely address the untenable conditions.

The Hearing Officer's determination that the roof leak affected Petitioner's use and enjoyment of the Property is sufficiently supported by evidence in the record.

E. Hearing Officer Properly Concluded Petitioner was Entitled to a Rent Reduction Due to Mold in the Garage.

Respondent's fifth argument on Appeal is that the Hearing Officer erred or abused her discretion in holding that the Petitioner was entitled to a rent reduction due to the conditions in the garage at the Property. Respondent alleges Petitioner's boat was parked in the garage throughout the period from December 12, 2022 through February 28, 2023 and therefore the portion of the reduction of rent based on the conditions in the garage was unjustified.

As previously noted, the Hearing Officer awarded a twenty percent (20%) reduction in rent based on the mold in both the garage and the living room. In doing so, the Hearing Officer noted that the amount of the rent reduction "reflects that at least one tenant (Ms. Jacobson) was unable to use the two different locations in the Unit because of the risk to her health." (HO Decision, pp. 15:20-21.) On the other hand, the Hearing Officer did not award Petitioner any rent reduction based on the leak in the garage. (*Id.* at pp. 16:25-27.) The decision provides that while

Petitioner's evidence demonstrated "there was ceiling damage in that room [the garage] and a puddle on the floor, in notable contrast to the mold that existed none of this damage or water was severe enough to prevent use of the garage for either parking of an automobile or storage of the tenant's personal belongings." (*Id.* at 16:19-22.)

Based on this explanation in the HO Decision, it appears that the Hearing Officer awarded the twenty percent (20%) reduction based on Petitioner's testimony that his mother was unable to enter the garage or use the living room. The information Respondent raises about Petitioner parking his boat (or his automobile or storing his personal belongings) in the garage was already taken into consideration by the Hearing Officer in her decision. The Hearing Officer reached the same conclusion as Respondent that Petitioner was not entitled to a rent reduction based on the leak in the garage. However, the HO Decision cites to evidence in the record that Petitioner's mother was unable to enter the garage due to the mold growth. Thus, the Hearing Officer exercised appropriate discretion in awarding a rent reduction for the mold in the garage based on Petitioner's mother's inability to enter the garage.

F. Hearing Officer's Holding that Petitioner was Entitled to a Rent Reduction Based on the Leak in the Living Room is Sufficiently Supported.

Finally, Respondent claims that the Hearing Officer erred or abused her discretion in holding Petitioner was entitled to a five percent (5%) rent reduction for the leak in the living room wall. Respondent's argument is based on the assertion that the "small spot" in the earlier photos submitted by Petitioner "disappeared in subsequent photos."

It is not entirely clear to which photos Respondent is referring in making this argument because all of the photos of the living room submitted by Petitioner show warping, bubbling, or cracking. (*See* Pet.'s Exhs. #7 and #9.) The Hearing Officer cited to these photos in reaching her conclusion. (HO Decision, pp. 13:24.) As the decision also outlines, Ms. Tai admitted after the hearing officer's inquiry that the living room had been repainted, and concluded that the photos submitted by Respondent "of the same wall that showed no damage...did not reflect the condition of the Unit at the time of Mr. Yaghoubzadeh's tenancy." (*Id.* at pp. 13:24-14:1.) Finally, the decision notes that at the time of the City's inspection of the Property, "[t]he hearing officer also observed that the bubbling was still visible on the main living room wall, which Ms. Tai admitted both during the hearing and at the inspection had been painted." (*Id.* at 12:16-17.)

Based on the Respondent's failure to call into question at the time of the hearing the alleged "inconsistencies" in the photos submitted by Petition and the significant evidence in the record demonstrating warping and bubbling of the living room wall, it was reasonable for the Hearing Officer to conclude that such condition existed at the Property during Petitioner's tenancy. Respondent does not put forth any argument challenging Hearing Officer's holding regarding the rent reduction based on the living room leak. As such, it was also appropriate for Hearing Officer to conclude Petitioner was entitled to said rent reduction.

V. Conclusion

As detailed above, the RHC denies the appeal in its entirety and affirms the Decision in its entirety:

1. The Petitioner satisfied his burden of proof to demonstrate failure to provide a habitable premises for the period from December 12, 2022 to February 28, 2023, and is entitled to a twenty-five percent (25%) total reduction of the monthly maximum lawful rent for the Property for that period. The reduction reflects an awarded reduction of twenty percent (20%) for the presence of mold in the garage and the likely presence in the living room and a five percent (5%) reduction for the intrusion of water into the living room.

2. The Petitioner is entitled to a rent refund of \$1,293.00 for the excess Rent he paid to Respondent between December 12, 2022, through January 31, 2023. Petitioner is not entitled to a rent refund for the period from February 1, 2023 through February 28, 2023 because he did not pay rent for that month.

3. To the extent that any future court or administrative proceedings between the parties adjudicate the question of what, if any, rent was due and payable from Petitioner for the period from February 1, 2023 through February 28, 2023, that adjudication should reflect both the reduction of rent ordered in the HO Decision as well as grant Petitioner an offset of \$1,000.00 against any past-due rent awarded in those proceedings for the period from February 1, 2023 through February 28, 2023.