

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

Rental Housing Committee Case No.:	C22230028
Address and Unit(s) of Rental Property:	707 Continental Circle [REDACTED] Mountain View, CA 94040
Petitioner Tenant Name(s):	Lindsay West, James Snow
Respondent Landlord Name(s):	Americana I, LLC
Property Manager Name:	Sares Regis Group, Corinne Carmody, General Manager, Americana Apartments
Date(s) of Hearing:	January 29, 2024
Place of Hearing:	Online via Zoom
Date Hearing Record Closed:	February 12, 2024
Date of Decision:	March 4, 2024
Date of Mailing:	See attached Proof of Service.
Hearing Officer:	Barbara M. Anscher

I. PROCEDURAL HISTORY

1. On February 9, 2023, Petitioners Lindsay West and James Snow (individually, “Ms. West” or “Mr. Snow,” and collectively “Petitioners” or “Tenants”) filed with the City of Mountain View Rent Stabilization Division (the “Rent Stabilization Division”) a Petition for a downward rent adjustment (the “Petition”) for 707 Continental Circle [REDACTED] (the “Affected Unit”).
2. A hearing was held on the Petition on April 13, 2023, and a Decision was issued on May 19, 2023 (the “Decision”).

3. On November 28, 2023, Petitioner filed a Compliance Petition with supporting documents, alleging that Respondent had not complied with the Decision concerning the Petition (the "Compliance Petition").
4. On December 13, 2023, the Rent Stabilization Division served a Notice of Acceptance of Compliance Petition.
5. On December 13, 2023, the Rent Stabilization Division also served a Follow-up Information for Compliance Petition Form, with the filed Compliance Petition and supporting documents, a CSFRA Hearing Information Sheet, a Response Notice Form and an Authorized Representative Form.
6. In addition, the Rent Stabilization Division served a Notice of Compliance Hearing on the parties on December 13, 2023, setting the date for the Compliance Hearing on January 29, 2024. The Notice was sent to Corinne Carmody, General Manager of Americana Apartments, Nicole Olsen, Assistant Manager of Americana Apartments, and Susan Song, bookkeeper for the Americana Apartments, as well as Petitioners Lindsay West and James Snow.
7. Respondent did not file a Petition Response Form but filed other documents in response to the Petition on November 29, 2023 and December 22, 2023.
8. A Compliance Hearing was held on January 29, 2024, as duly noticed.
9. After the Compliance Hearing on January 29, 2024, the Hearing Officer issued an Order requesting the submission of additional documents by the parties on or before February 5, 2024. The Rent Stabilization Division served a Notice of Hearing Officer Post-Hearing Order, with proof of service, on January 29, 2024.
10. Respondent submitted two of the four additional documents that were requested from them by the Hearing Officer on January 30, 2024, and Petitioner submitted all additional documents requested from them by the Hearing Officer on January 31, 2024. Petitioner submitted four more documents on February 3, 2024 and February 6, 2024.
11. The Hearing Officer issued a Post-Hearing Order on February 12, 2024, closing the Record, which the Rent Stabilization Division served on the parties by Notice of Hearing Officer Post-Hearing Order, with proof of service, dated February 13, 2024.
12. The Record was closed on February 12, 2024.

II. HEARING ATTENDANCE

The following parties attended the Compliance Hearing:

Petitioners Lindsay West and James Snow; Corinne Carmody, General Manager, Americana Apartments ("Ms. Carmody" or "Property Manager"), appearing on behalf of Respondent Landlord Americana I, LLC ("Respondent" or "Landlord").

Joann Pham also attended the Compliance Hearing on behalf of the Rent Stabilization Division.

III. WITNESSES

The following persons, duly sworn, testified at the Compliance Hearing and presented the following testimony:

Lindsay West and James Snow

Ms. West testified that Petitioners filed the Compliance Petition because the dates and numbers set out in the Decision were not followed by Respondent. Additionally, Petitioners have never paid the amount of the Base Rent--\$2,030.67—set out in the Decision but have continually paid more than that amount, although not large amounts more. It is Petitioners' understanding that Respondent should have accurately calculated the Base Rent so that the total amount charged each month complied with the Decision and that Respondent should have been responsible for any amounts charged over the Base Rent. Respondent issued a series of credits, but that did not occur until after Petitioners filed the Compliance Petition.

Mr. Snow testified that the Decision was written in such a way that the amount owed to the Petitioners would have been paid back prior to the time when Petitioners would have to sign their next Lease. He questioned whether the amounts that were to be refunded under the Decision were paid back in full prior to the recent rent increase.

Ms. West said that paragraph 4 of the Decision requires a payment, not a credit, of \$500.00 for a security deposit refund to be paid within 30 days of the date of the Decision. Petitioners did not receive a check for that amount. It looks to her like the \$500.00 was credited to their account and is being used by Respondent to pay rent. Mr. Snow stated that the credit for the \$500.00 was not made until after Petitioners filed the Compliance Petition. Also, according to the rent ledger, the \$500.00 was applied to their account, then removed, then applied again, then removed.

Ms. West testified that the Petitioners had just signed a new lease for the Affected Unit. It is their understanding that the total amount that the rent could be increased is five percent of \$2,030.67, including utilities and pet rent. Respondent has thus far not been taking into account all of the things that are included in rent under the CSFRA. It is Petitioners' understanding that the correct amount of rent after the recent rent increase is \$2,132.00, including utilities and pet rent.

Ms. West stated that the correct current balance in their account should be the total owed to them from the Decision and any overpayments Petitioners made, less \$2,030.67 monthly for May 2023 through December 2023. Additionally, the issue of the \$500.00 security deposit would have to be resolved. The amount that Petitioners paid in excess of lawful rent for May 2023 through December 2023 is \$1,509.49, plus an excess of \$20.84 for January 2024.

Mr. Snow testified that on December 22, 2023, they were given a credit of \$6,072.11, which was the refund amount set forth in the Decision for the period of February 8, 2022 through April 30, 2023. They were also given a credit for the \$1,509.49 in unlawful rent that they paid for May 2023 through December 2023. The current issue is that they continue to be charged more for rent each month than they are supposed to be charged, which is then deducted from the balance that is currently in their account due to the refunds on December 22, 2023. They would like to know what the correct Base Rent is going forward. They want to know whether there will end up being a correction at the end of each year, as there was in 2023, because of overpayments.

Petitioners also want to know whether the rent increase under the new lease that they recently signed complies with the CSFRA in that they are not sure that all the refunds due to them were paid prior to their signing the lease. The notice of rent increase was served on December 23, 2023, one day after the credits to their account.

Mr. Snow said that Petitioners also want to confirm that the Base Rent under the new lease would be \$2,132.20, based on a five percent increase over the old Base Rent of \$2,030.67. There was no percentage of rent increase listed in the notice of increase they received.

Petitioners also testified that the lease that they recently signed includes a charge for pet rent.

Corinne Carmody

Ms. Carmody testified that Respondent followed the chart attached to the Decision. She said that under the Decision, Respondent had the opportunity to refrain from paying any of the rent refunds until February 2024. Respondent instructed Property Manager to pay the refunds in December 2023.

Ms. Carmody said that a check for \$500.00 had been sent to Petitioners as a refund of the unlawful security deposit. The check number, 8267, is noted in the resident ledger.

Ms. Carmody testified that Petitioners were charged a Base Rent of \$1,843.18, which with utilities comes out to approximately \$2,002.52

Ms. Carmody stated that Petitioners are not paying pet rent anymore as of February 2024 under their new lease, which Petitioners did not know. Ms. Carmody said that the inclusion of pet rent in the new lease was an oversight and that it can be corrected.

Ms. Carmody testified that Respondent arrived at the calculation of premises rent for June 2023 through December 2023 by calculating backwards based on the information in the Decision. She reiterated that they followed everything that was in the Decision.

Ms. Carmody said that she could not give any details about whether Respondent's payments differed from the Decision or how the rent increase was calculated because Nicole Olsen, the assistant manager of Americana Apartments, was not present at the Compliance Hearing. Ms. Carmody said that Ms. Olsen and Susan Song, the bookkeeper for the Americana Apartments,

received notice of the Compliance Hearing, but she did not. Ms. Carmody said that all rent-controlled rental units would be subject to no more than a five percent increase. The increase amount for the new lease for the Affected Unit was not a banked increase; it was supposed to be five percent.

Ms. Carmody testified that Petitioners should be charged \$2,002.52 each month, give or take a few cents, depending on utilities charges. Then she clarified that she was not saying that Petitioners would pay no more than \$2,002.52 each month. She also said that starting in February, Petitioners will pay \$1,985.00 in what she called Base Rent each month, plus the full amount of their utilities invoice, and they will not pay any pet rent.

Ms. Carmody also stated that the Rental Housing Fee was paid by Respondent on January 22, 2023 by check number #8393.

IV. EVIDENCE

The following documents were submitted prior to the Compliance Hearing and marked and entered into evidence without objection:

Hearing Officer's Exhibits

Exhibit #1: Notice of Acceptance of Compliance Petition, with proof of service, CSFRA Hearing Information Sheet and Representative Authorization Form attached, dated 12/13/2023

Exhibit #2: Follow-up Information for Compliance Petition, with proof of service, and Compliance Petition, Supporting Documents for Compliance Petition, CSFRA Hearing Information Sheet, Response Notice Form, and Representative Authorization Form attached, dated 12/13/2023

Exhibit #3: Notice of Compliance Hearing, with proof of service to Corinne Carmody, Nicole Olsen, Susan Song, Lindsay West and James Snow, dated 12/13/2023

Petitioners' Exhibits

Exhibit #1: Compliance Petition, dated 11/28/2023

Exhibit #2: Notice of Submission and Proof of Service, dated 11/28/2023

Exhibit #3: Conservice Invoices, dated 4/25/2023 through 11/24/2023

Exhibit #4: 30 Day Notice of Change of Monthly Rent/Lease Terms, dated 12/23/2023

Exhibit #5: Rent Payment Confirmation Emails, dated 6/1/2023, 6/3/2023, 6/29/2023, 7/30/2023, 8/30/2023, 9/29/2023, 10/30/2023, 11/27/2023

Exhibit #6: Calculations of Rent Overpayments 2/16/2022 through 12/2023

Exhibit #7: Conservice Invoice, dated 12/20/2023

Exhibit #8: Record of Rent Rollbacks, dated 12/21/2023

Exhibit #9: 11/28/2023 Email from Lindsay West to Nicole Olsen attaching Compliance Petition, with response from Nicole Olsen dated 11/29/2023

Respondent's Exhibits

Exhibit #1: Email from Nicole Olsen to Lindsay West, dated 11/29/2023

Exhibit #2: Email from Nicole Olsen to Joann Pham et al, dated 12/22/2023

Exhibit #3: Rent Ledger dated 12/22/2023

The following documents were submitted post-Compliance Hearing and marked and entered into evidence without objection:

Hearing Officer's Exhibits

Exhibit # 4: Post-Hearing Order, dated January 29, 2024

Exhibit #5: Notice of Hearing Officer Post-Hearing Order, with proof of service, on January 29, 2024

Exhibit #6: Post-Hearing Order re Closing the Record, dated 2/12/2024

Exhibit #7: Notice of Hearing Officer Post-Hearing Order, with proof of service, dated 2/13/2024

Petitioner's Exhibits

Exhibit #10: Account Statement, dated 1/31/2024

Exhibit #11: Conservice Statement, dated 1/23/2024

Exhibit #12: Residential Lease/Rental Agreement, dated 1/14/2024

Exhibit #13: Email to J. Pham re security deposit, dated 2/3/2024

Exhibit #14: Email to J. Pham re security deposit, dated 2/6/2024

Exhibit #15: Rent Payments Record for 9/29/2023 through 12/1/2023

Exhibit #16: Portion of Tenant Rent Ledger for 11/27/2023 through 2/1/2024

Respondent's Exhibits

Exhibit #4: Email from Corinne Carmody to J. Pham et al., re security deposit refund, dated 1/30/2024

Exhibit #5: Record of security deposit refund check, dated 11/30/2023

V. ISSUES PRESENTED

1. Whether Respondent failed to comply with the Decision in this case, specifically:
 - A. Whether Respondent did not issue a refund according to the timeline in the Decision.
 - B. Whether Respondent did not issue credits for rent overpayments according to the award schedule issued with the Decision.
 - C. Whether Respondent did not roll back rent to the Base Rent level determined by the Decision.
 - D. Whether Respondent charged monthly utilities above the Base Rent level determined by the Decision.
 - E. Whether Respondent refunded the security deposit as ordered by the Decision.

VI. FINDINGS OF FACT IN SUPPORT OF THIS DECISION

1. On February 7, 2021, Petitioners entered into a lease for the Affected Unit, with a term of 12 months, commencing on February 16, 2021 and ending on February 15, 2022 (the “First Lease”). The rent under the First Lease was \$2,205.00 per month. The Affected Unit is in a complex known as the Americana Apartments (the “Property”).
2. On or about April 12, 2021, Petitioners entered into a second lease for the Affected Unit with the same rent and the same term as the First Lease (the “Second Lease”). The Second Lease was identical to the First Lease except that it added pet rent of \$50.00 per month and an additional security deposit of \$500.00.
3. On February 9, 2023, Petitioners filed a Petition for a downward adjustment of rent. After a hearing on the Petition on April 13, 2023, the Hearing Officer issued a Decision in favor of Petitioners on May 19, 2023.
4. The Decision ordered the Base Rent rolled back to \$2,030.67, inclusive of premises rent, utilities, and pet rent. It also ordered that Respondent pay to Petitioners (a) \$6,072.11 in unlawfully collected Rent for the period of February 8, 2022 through April 30, 2023, and (b) for May 2023, the difference between the amount collected in Rent that month and the lawful rent of \$2,030.67. The term “Rent” was ruled to include premises rent, pet rent, and utilities payments.
5. The Decision ordered that the rent refund of \$6,072.11 was allowed to be paid in eight monthly rent credits of \$759.01 per month for June 2023 through December 2023 and \$759.04 for the month of January 2024. The amount owed for May 2023 was to be paid as a rent credit on or before February 1, 2024.
6. The specific language of the Decision is as follows: “(2) For the period of February 8, 2022 through April 30, 2023, Respondent shall pay to Petitioners a refund in the amount of

\$6,072.11. This amount may be paid in eight monthly credits. This means that the monthly rent for June 2023 through December 2023 shall be reduced by \$759.01 per month to \$1,271.66, and the monthly rent for January 2024 shall be reduced by \$759.04 per month to \$1,271.63. These amounts include premises rent, utilities, and pet rent. (3) For May 1 through 31, 2023, Respondent shall refund to Petitioners the difference between the total amount paid by Petitioners to Respondent for that month, including premises rent, utilities, and pet rent, and the lawful rent of \$2,030.67. That refunded amount shall be credited to Petitioners' monthly rental payments on or before February 1, 2024."

7. Petitioners were awarded \$500.00 for an unlawfully collected security deposit, which Respondent was ordered to refund to Petitioners as a payment, not a rent credit, within 30 days of the date the Decision became final. Respondent presented evidence that the \$500.00 security deposit was refunded by check on or about November 30, 2023, but was sent to the incorrect address. Petitioners submitted evidence that the \$500.00 refund was received on or about February 6, 2024, while the Record of the Compliance Hearing was still open.

8. The Decision stated in pertinent part that "Pursuant to CSFRA Sections 1706(a), (b) and 1707(c), (f), Respondent may not issue a Rent increase for the Affected Unit until (1) the refund due to Petitioners is fully paid..." The Decision stated that "[a]dditionally, Respondent may not issue a rent increase for the Affected Unit if Respondent is in violation of any of the provisions set forth in CSFRA Section 1707(1)-(3) and CSFRA Regs. Ch. 12, Section (B)..." The Decision also stated that "[w]hen Respondent issues rent increases in the future, they must keep in mind that Rent as defined by the CSFRA includes amounts demanded by and paid to Respondent for premises rent, utilities, and Housing Services, such as pet rent or parking or any other benefit, privilege, or facility that falls within CSFRA Section 1702(h). Thus, when issuing a rent increase, the increase in premises rent, utilities, and pet rent combined may not exceed the amount of the lawful Annual General Adjustment. This may mean that Respondent will have to adjust its utilities calculation so as to comply with the CSFRA."

9. In May 2023, Petitioners paid \$2,316.00 for premises rent, \$50.00 for pet rent, and \$162.74 for utilities. This amount was \$498.07 more than the lawful Base Rent of \$2,030.67.

10. In June 2023, Petitioners paid \$2,316.00 for premises rent, \$50.00 for pet rent, and \$126.92 for utilities, \$462.25 more than the lawful Base Rent.

11. In July 2023, Petitioners paid \$2,316.00 for premises rent, \$50.00 for pet rent, and \$153.48 for utilities, \$488.81 more than the lawful Base Rent.

12. In August 2023, Petitioners paid \$1,843.18 for premises rent, \$50.00 for pet rent, and \$144.25 for utilities, \$6.76 more than the lawful Base Rent.

13. In September 2023, Petitioners paid \$1,843.18 for premises rent, \$50.00 for pet rent, and \$140.94 for utilities, \$3.45 more than the lawful Base Rent.

14. In October 2023, Petitioners paid \$1,843.18 for premises rent, \$50.00 for pet rent, and \$152.86 for utilities, \$15.37 more than the lawful Base Rent.
15. In November 2023, Petitioners paid \$1,843.18 for premises rent, \$50.00 for pet rent, and \$151.18 for utilities, \$13.69 more than the lawful Base Rent.
16. In December 2023, Petitioners paid \$1,843.18 for premises rent, \$50.00 for pet rent, and \$158.58 for utilities, \$21.09 more than the lawful Base Rent.
17. The total amount that Petitioners paid above the lawful Base Rent for May 2023 through December 2023 was \$1,509.49.
18. On December 20, 2023, Petitioners received an invoice via email for \$1,843.18 in premises rent, \$50.00 for pet rent, and \$158.33 for utilities. Payment was due January 1, 2024.
19. The Tenant Rent Ledger for the Affected Unit indicates that on December 22, 2023, Respondent credited Petitioners' account with the amounts of \$6,072.11, \$498.07, \$462.25, \$488.81, \$6.76, \$3.45, \$15.37, \$13.69, and \$21.09.
20. The Tenant Rent Ledger indicates that Respondent deducted the amount of \$2,051.51 from Petitioners' credit balance for payment of rent for January 2024, including premises rent utilities, and pet rent.
21. The January 2024 rent, which was deducted by Respondent on January 1, 2024, was \$20.84 more than the lawful Base Rent.
22. On December 23, 2023, Respondent sent a letter to Petitioners titled "30 Day Notice of Change of Monthly Rent/Lease Terms" which stated that effective February 16, 2024, the monthly rent for the Affected Unit would be \$1,985.00. There is no mention of utilities or pet rent or of the specific amount of the increase or the percentage increase.
23. Petitioners signed a new lease dated January 14, 2024, for a one-year term commencing on February 16, 2024 (the "Third Lease"). The Third Lease stated that the "Base Rent" would be \$1,935.00 and that Petitioners would pay \$50.00 a month for pet rent. It also stated that all utilities except electricity would be billed to Petitioners through a ratio utility billing system ("RUBS"), as with the prior two leases that Petitioners had signed.
24. Petitioners received an invoice from Conservice, Respondent's third-party billing vendor, dated January 23, 2024 for the period of February 1, 2024 through February 29, 2024, which billed them \$1,887.51 for premises rent, \$50.00 for pet rent, and \$159.34 for utilities, a total of \$2,096.85.
25. The Tenant Rent Ledger shows that Petitioners were charged \$953.37 for premises rent for February 1 through 15, and they were charged \$934.14 for premises rent for February 16 through 29, totaling \$1,887.51, as stated in the Conservice invoice. The charges for February 1 through 15 are based on \$1,843.18 per month for premises rent, and the charges for February

16 through 29 are based on \$1,935.00 per month for premises rent, the amount stated in the Third Lease. Petitioners were charged \$25.86 for pet rent for 15 days, an additional \$1.72 for pet rent for one day, and were then given a credit of \$50.00 for pet rent, so they were actually reimbursed an additional \$22.42 for pet rent. For the entire month of February 2024, Petitioners paid the premises rent of \$1,887.51, utilities of \$159.34, and pet rent of \$27.58, plus a credit of \$50.00 for pet rent, a total of \$2,024.43.

26. For the last two weeks of the Second Lease, from February 1 through February 15, 2024, Petitioners paid \$953.37 for premises rent, a prorated amount of \$82.42 for utilities, a prorated amount of \$25.86 for pet rent, less a prorated amount of the \$22.42 credit for the pet rent, which equals \$11.60, a total of \$1,024.19. The lawful Base Rent of \$2,030.67, prorated for that period, including pet rent and utilities, was \$1,050.35.

27. The Notice of Compliance Hearing was served on all parties, including Ms. Carmody, Ms. Olsen, and Ms. Song.

VII. DISCUSSION

Pursuant to CSFRA Regulations Ch. 5, Section J(1), “[i]f there is an ongoing dispute among the parties as to whether there has been compliance with a previously issued decision on an Individual Rent Adjustment petition, any of the parties to the original proceeding may request that a compliance hearing be noticed and held.” Under Regulations Ch. 5, J(3), the Landlord “who was originally ordered to...pay back rent..., or otherwise comply with an order of the Hearing Officer” bears the burden of proof and must “demonstrate compliance by a preponderance of the evidence submitted at the compliance hearing.”

Failure to Issue Refund for Overpayments as Ordered

Section IX, paragraphs (2) and (3) of the Decision states:

“2. For the period of February 8, 2022 through April 20, 2023, Respondent **shall** pay to Petitioners a refund in the amount of \$6,072.11. This amount **may** be paid in eight monthly credits. This means that the monthly rent for June 2023 through December 2023 **shall** be reduced by \$759.01 per month to \$1,271.66, and the monthly rent for January 2024 **shall** be reduced by \$759.04 per month to \$1,271.63. These amounts include premises rent, utilities, and pet rent.

3. For May 1 through 31, 2023, Respondent **shall** refund to Petitioners the difference between the total amount paid by Petitioners to Respondent for that month, including premises rent, utilities, and pet rent, and the lawful rent of \$2,030.67. That refunded amount **shall** be credited to Petitioners’ monthly rental payments on or before February 1, 2024.” (*Emphasis added.*)

The Decision had an attachment, titled “Attachment 1, Award Schedule,” which set out the credits to be issued to Petitioners each month (the “Attachment 1”).

Respondent interpreted the refund plan set forth in the Decision and Attachment 1 thereto as meaning that the \$6,072.11 need not be refunded to Petitioners at all, whether in a lump sum or in monthly credits, until February 1, 2024. Thus, while they did in fact issue a refund of \$6,072.11, they did not do so until December 22, 2023, after the Compliance Petition was filed, and they ignored the schedule for issuing monthly credits set out in the Decision and in Attachment 1 to the Decision.

It appears that Respondent did not comprehend the use of the word “shall” in the Decision. Black’s Law Dictionary says about the word “shall” that “in common or ordinary parlance, and in its ordinary signification, the term ‘shall’ is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation.” (5th ed., 1979 at 1233). For those not educated in legal terminology, one can refer to Merriam-Webster’s dictionary, which says that “shall” is “used in laws, regulations or **directives** to express what is mandatory.” (*Emphasis added.*)¹ A Hearing Officer’s Decision would be considered a directive. “Shall” can be distinguished from “may”: “‘May’ as opposed to ‘shall’ is indicative of discretion or choice between two or more alternatives.” (Black’s Law Dictionary, *id.* at 883.) Merriam-Webster states that “may” is “used to indicate possibility or probability.”²

A reasonable interpretation of the Decision and Attachment 1 thereto is that Respondent was *allowed* to pay the \$6,072.11 over the course of eight months, and if it chose to do so, it was *required* to follow the payment schedule set out in the Decision and Attachment 1 thereto. If Respondent chose to pay out in a lump sum, it was required to do so immediately upon the Decision becoming final. The payment plan was offered as an accommodation. It did not give Respondent permission to sit on Petitioners’ money for seven months while continuing to overcharge Petitioners for rent.

Respondent decided to hold onto \$6,072.11 owed to Petitioners for seven months before crediting it to their account. Thus, Respondent enjoyed the interest on the money while at the same time continuing to overcharge Petitioners for rent from May 2023 through January 2024. Pursuant to CSFRA Regulations Ch. 5, Section (J)(4)(a), a reasonable remedy for this problem is for Respondent to disgorge the equivalent of interest that Petitioners could have made on the \$6,072.11 from June 2023 through December 2023. Petitioners could have invested the \$6,072.11 in a certificate of deposit paying five percent interest. Calculating compound interest for a year shows that they would earn \$303.61. Seven months of that is \$177.11.³ Respondent shall pay \$177.11 by check to Petitioners immediately upon this Decision becoming final.

¹ See, <https://www.merriam-webster.com/dictionary/shall>.

² See, <https://www.merriam-webster.com/dictionary/may>.

³ See, <https://www.investor.gov/financial-tools-calculators/calculators/compound-interest-calculator>); seven months of interest is calculated as $(\$303.61/12) \times 7$.

Non-Compliance with Rent Rollback

Section IX, paragraph 1 of the Decision states that “[t]he Base Rent for the Affected Unit shall be rolled back to \$2,030.67, **including** premises rent, utilities, and pet rent.” (*Emphasis added.*) The evidence shows that Respondent did not roll back the rent as directed. From May 2023 through January 2024, Respondent continued to charge Petitioners more than \$2,030.67 for rent each month. The total amount of the overcharge for May 2023 through December 2023 was \$1,509.49, which Respondent ultimately credited to Petitioners’ account on December 22, 2023. The overcharge for January 2024 was \$20.84, which Respondent had not credited to Petitioners’ account as of the date of the Compliance Hearing.

Pursuant to CSFRA Sections 1706 and 1707, a Landlord may not charge more than the Base Rent plus any lawful rent increases. The Base Rent was established by the Decision, and Respondent for months charged more than that amount. The overcharges for May 2023 through December 2023 have been refunded; however, that for January 2024 has not.

Pursuant to CSFRA Section 1714(a), “[a] Landlord who demands, accepts, receives or retains any payment of Rent in excess of the lawful Rent shall be liable to the Tenant in the amount by which the payment or payments have exceeded the lawful Rent.”

Respondent thus must refund \$20.84 in overpayments to Petitioners, which it shall pay as a credit against Petitioners’ rent immediately upon this Decision becoming final.

Failure to Refund Utilities Overcharges

As set forth in Section IX, Paragraph 1 of the Decision, the Base Rent was to include utilities charges. From May 2023 through January 2024, the Petitioners paid their full utilities invoices, even though in doing so, they were paying more than lawful rent. As discussed above, Respondent refunded the \$1,509.49 in overpayments for May 2023 through December 2023 on December 22, 2023 but failed to refund the overpayment for January 2024. Once again, Respondents were earning interest on Petitioners’ money while continuing to overcharge Petitioners for eight months, in contravention of the Decision and the CSFRA. Using compound interest at five percent, Petitioners would have earned \$50.31 if they had not overpaid rent between May 2023 and December 2023.⁴ Respondent shall pay this amount by check to Petitioners immediately upon this Decision becoming final.

Demand of Unlawful Rent/Unlawful Rent Increase

The Decision stated in Section IX, paragraph (7) that “[p]ursuant to CSFRA Sections 1706(a),(b) and 1707(c),(f), Respondent may not issue a Rent increase for the Affected Unit until (1) the refund due to Petitioner is fully paid...”. Section IX, paragraph (8) of the Decision states that “Respondent may not issue a rent increase for the Affected Unit if Respondent is in violation of

⁴ Using the compound interest calculator, see footnote 2 above, one year of compound interest is \$75.47. Eight months of interest is calculated as $(\$75.47/12) \times 8$.

any of the provisions set forth in CSFRA Section 1707(f)(1)-(3) and CSFRA Regs. Ch. 12, Section (B)...”.

As discussed above, Sections 1706(a) and (b) provide that a Landlord “shall not charge Rent in an amount that exceeds the sum of the Base Rent” and any lawful Annual General Adjustments as determined under CSFRA Section 1707(a). Section 1707(c) governs notice requirements.

Section 1707(f) states that “No rent increase shall be effective if the Landlord (1) [h]as failed to substantially comply with all provisions of this Article and all rules and regulations promulgated by [the Rental Housing] Committee.” Pursuant to CSFRA Regs. Ch. 12(B), if a Landlord has ever charged more than the rent allowed under the CSFRA and has not refunded the unlawful rent, that Landlord is not in substantial compliance with the CSFRA. If a Landlord is not in substantial compliance with the CSFRA, that Landlord may not raise rents.

The evidence shows that as of December 20, 2023 and continuing through the date of the Compliance Hearing, Respondent was not in substantial compliance with the CSFRA because Respondent charged unlawful rent to Petitioners in contravention of CSFRA Sections 1706 and 1707 and did not refund the unlawful amount. On December 20, 2023, Petitioners received an email with the subject line: “Monthly Conserve Statement for Americana Apartments.” The “e-bill” indicated that they owed \$1,843.18 for premises rent, \$50.00 for pet rent, and \$158.33 for utilities, a total of \$2,051.51. This total amount is \$20.84 over the Base Rent of \$2,030.67. The payment was due on January 1, 2024, and on that date, Respondent deducted it from the credit balance in Petitioners’ account. The evidence shows that (1) as of December 20, 2023, Respondent demanded unlawful rent from Petitioners, (2) on January 1, 2024, Respondent paid itself the unlawful rent by deducting it from the credit balance in Petitioners’ account, and (3) Respondent did not refund the unlawful amount to Petitioners. Three days after demanding unlawful rent, on December 23, 2023, Respondent served a notice of rent increase, effective February 16, 2024. Under Section IX, paragraph (8) of the Decision and CSFRA Sections 1706(a), (b) and 1707(f), Respondent was not in substantial compliance with the CSFRA when it demanded and collected unlawful rent from Petitioners, and thus the rent increase imposed after the demand for and collection of unlawful rent must be invalidated. The Base Rent is therefore rolled back to \$2,030.67, including premises rent, utilities and pet rent.

According to documents submitted by Petitioners, they were charged \$2,024.43 in rent for the month of February 2024. Therefore, no refund is required for that month. If in March 2024 or any month thereafter, rent in an amount greater than \$2,030.67 is charged, the difference between the lawful Base Rent and the rent charged shall be refunded to Petitioners immediately after this Decision becomes final.

Validity of Rent Increase Effective February 16, 2024

While it has already been established that the rent increase noticed on December 23, 2023 and effective February 16, 2024 was invalid due to Respondent demanding and accepting unlawful

rent for January 2024, there remains the question of whether the rent increase in and of itself was valid. Petitioner has requested guidance on this issue.

The total stated amount of rent in the 30-Day Notice of Change of Monthly Rent (the “Notice”) is \$1,985.00. The Notice does not mention utilities or pet rent, nor does it indicate the amount or percentage of the rent increase. The Third Lease, which is effective February 16, 2024, states that the “Base Rent” is \$1,935.00 and pet rent is \$50.00. While Ms. Carmody testified that Petitioners would no longer be charged for pet rent beginning on renewal of their lease in February, she also stated that the Base Rent going forward would be \$1,985.00.

The Post-Hearing Order issued and served on January 29, 2024 after the Compliance Hearing requested that Respondent submit an amended lease reflecting Ms. Carmody’s assertion that pet rent would no longer be charged, but no such document was submitted. Thus, an inference will be drawn that the Third Lease is the lease in effect beginning on February 16, 2024 and that Respondent will be demanding premises rent of \$1,935.00 and pet rent of \$50.00, plus utilities.

The Base Rent established by the Decision is \$2,030.67, inclusive of premises rent, pet rent and utilities. The allowed Annual General Adjustment (“AGA”) for September 1, 2023 through August 31, 2024 is five percent. Thus, were Respondent not currently in contravention of the CSFRA, it could raise the Base Rent by five percent to \$2,132.20, inclusive of premises rent, pet rent and utilities. From the utilities invoices that Petitioner submitted, their average monthly utilities payment from May 5, 2023 through January 5, 2024 was approximately \$150.00. Pet rent is \$50.00 per month. Adding the proposed increased premises rent of \$1,935.00 plus the average utilities cost of \$150.00 plus pet rent of \$50.00 totals \$2,135.00, an amount \$2.80 above the lawful AGA.⁵ If it turns out that Petitioners end up paying more than the Base Rent of \$2,132.20 each month, inclusive of premises rent, pet rent, and utilities, regardless of how small the amount, Respondent would be in contravention of the CSFRA. In other words, it is not lawful for Respondent to do what it did from June 2023 through December 2023, i.e., overcharging the Petitioners for rent each month and then giving them a credit for those overcharges at the end of the year. Under the CSFRA, Respondent may **never** overcharge for rent, regardless of the amount of the overcharge, and regardless of whether it intends to credit the Petitioner six or 12 months later. If Respondent does overcharge Petitioners for Base Rent and does not immediately refund the overcharge, Petitioners may file yet another Compliance Petition.

Additionally, Respondent testified that it was their intention to increase the rent five percent as allowed under the CSFRA, yet Ms. Carmody kept referring to the premises rent as the Base

⁵ If in fact, as represented by Ms. Carmody, Respondent does not charge Petitioners for pet rent starting on February 16, 2024, and the Base Rent becomes \$1,935.00 plus utilities, the rent charged would most likely be less than \$2,132.20 per month. However, if in any month, utilities charges bring the rent over that amount, the rent for that month would be unlawful unless the excess were immediately refunded. If, however, the premises rent charged is \$1,985.00 without pet rent, as Ms. Carmody testified, then that amount plus utilities would most likely be over the lawful amount of rent.

Rent. Once again, it must be remembered that the Base Rent under the CSFRA is not just the premises rent but also includes pet rent and utilities. Because Base Rent includes premises rent, pet rent and utilities, a lawful rent increase cannot be based only on premises rent. As set forth in CSFRA Sections 1702(a), (b), and (p), and 1706(a) and (b), and 1707(a), a lawful rent increase must start with the Base Rent, as defined in the CSFRA, not as defined in the First, Second, or Third Lease, which all refer to the premises rent as the “Base Rent”.

After Respondent has brought itself into compliance with the CSFRA, it will need to consider how to word the notice of rent increase it serves on Petitioners and how to draft the lease so as not to run afoul of the CSFRA again. It is suggested that Respondent begin by considering the Base Rent as the premises rent plus utilities plus pet rent, rather than simply the premises rent, and then applying the AGA. It should be noted that CSFRA Regulations Ch. 7, Section (B)(1) **requires** that a notice in substantially the same form as that promulgated by the Rental Housing Committee must be served on Tenants for all rent increases.

Failure to Refund Security Deposit

Section IX, Paragraph 4 of the Decision states, “Respondent shall refund to Petitioners \$500.00 which represents the additional security deposit collected in March 2021. This amount may not be credited as a rent refund and **shall** be paid within 30 days of the date this Decision becomes final” (*emphasis added*). The Decision was issued May 19, 2023, so Respondent was required to deliver a refund check to Petitioners on or before June 19, 2023. Petitioners testified at the Compliance Hearing that they never received the \$500.00 check, and Respondent testified that it was sent. On January 30, 2024, while the Record was still open, Respondent sent an email explaining that the check was sent to the wrong address. The documentation attached to that email showed that the check was issued on November 30, 2023. Subsequently, Petitioners sent an email confirming that they received the \$500.00 refund on or about February 6, 2024.

While Respondent sent the replacement check in a timely manner after the Compliance Hearing, once again, Respondent failed to comply with the Decision by issuing the original check over four months after the deadline set out in the Decision.

Compound interest calculated on an annual basis at five percent for Respondent’s delay in issuing and mailing the check four months late is \$8.33,⁶ which it shall pay to Petitioners by check immediately upon this Decision becoming final.

Follow-Up with Rent Stabilization Division

Pursuant to CSFRA Rent Regulations Ch. 5, Section (J)(4)(a), because it appears that Respondent has difficulty following the Hearing Officer’s orders, it shall be required that Respondent submit a Tenant Rent Ledger to the Rent Stabilization Division no later than April 30, 2024, showing

⁶ Using the compound interest calculator, see footnote 2 above, compound interest for one year is \$25.00. The total for four months is arrived at as follows: $(\$25.00/12) \times 4$.

that Respondent has paid and/or credited to Petitioners all amounts awarded in this Compliance Decision.

VIII. CONCLUSIONS OF LAW

1. Respondent did not properly refund the amount of \$6,072.11 according to the schedule ordered by the Decision, thus depriving Petitioners for seven months of money owed to them.
2. Respondent did not properly roll back the rent to the Base Rent set forth in the Decision and thus continued to collect unlawful rent for nine months in contravention of CSFRA Sections 1706 and 1707, until it finally refunded rent overcharges for May through December 2023.
3. Respondent demanded and received unlawful rent for January 2024 and failed to refund said unlawful rent in contravention of CSFRA Sections 1706(a) and (b) and 1707(f) and CSFRA Regulations Ch. 12, Section (B).
4. Respondent failed to credit Petitioners for overpayments of utilities charges, thus resulting in the collection of unlawful rent over the course of nine months.
5. Because Respondent demanded and received and did not refund unlawful rent for January 2024, Respondent was not in substantial compliance with the CSFRA, and the rent increase demanded by Respondent effective February 16, 2024 is nullified, pursuant to CSFRA Sections 1706(a) and (b) and 1707(f).
6. Respondent failed to refund the security deposit within the time period ordered by the Decision.

IX. DECISION

1. The Base Rent, which includes premises rent, pet rent, and utilities, is rolled back to \$2,030.67. As discussed in paragraphs 10 and 11 below, Respondent may not raise the rent until all payments and refunds awarded to Petitioners by this Compliance Decision are made in the time and manner ordered by this Compliance Decision.
2. Respondent shall refund to Petitioners any amounts charged above the Base Rent of \$2,030.67 for March 2024 and April 2024 and any additional months when Respondent charged Petitioners more than \$2,030.67 in monthly rent. Said refunds shall be issued as a credit against rent immediately after the date that this Compliance Decision becomes final.
3. For failure to issue a refund to Petitioners within the time and manner set forth in the Decision, Respondent shall pay to Petitioners the amount of \$177.11. This amount shall be paid immediately upon this Compliance Decision becoming final. Payment shall be by check and not as a credit against rent.
4. Respondent shall refund to Petitioners the amount of \$20.84 for unlawfully demanded and accepted rent for January 2024. This amount shall be credited to Petitioners' account immediately upon this Compliance Decision becoming final.

5. Respondent shall refund to Petitioner the amount of \$50.31 for Respondent's failure to refund rent overcharges between June 2023 and December 2023 in a timely manner. This amount shall be paid immediately upon this Compliance Decision becoming final. This amount shall be paid by check and not as a credit against rent.
6. For failure to timely issue the \$500.00 security deposit refund, Respondent shall pay to Petitioners the amount of \$8.33. This payment shall be paid immediately upon this Compliance Decision becoming final. This payment shall be made by check and not as a credit against rent.
7. On or before April 30, 2024, Respondent shall submit to the Rent Stabilization Program a Tenant Rent Ledger for the Affected Unit showing that Respondent has complied fully with this Compliance Decision.
8. The credits and payments to Petitioners as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.
9. In the event that either Petitioners or Respondent terminates Petitioners' tenancy prior to application of the rent credits or delivery of the payments ordered by this Decision, the total amount then owed shall become due and payable to Petitioners immediately and if said amount is not paid, Petitioners shall be entitled to a money judgment in the amount of the unapplied rent credits and/or unpaid payments in an action in Small Claims court or any other administrative or judicial or quasi-judicial proceeding.
10. Pursuant to CSFRA Sections 1706(a), (b) and 1707(c), (f), Respondent may not issue a Rent increase for the Affected Unit until (1) the refunds and payments due to Petitioners as set forth in this Compliance Decision are fully paid, and (2) Respondent has provided written notice to Petitioners of the rent increase at least 30 days in advance of such increase in the manner prescribed by the CSFRA and California law. It should be noted that CSFRA Regulations Ch. 7, Section (B)(1) **requires** that a notice in substantially the same form as that promulgated by the Rental Housing Committee must be served on Tenants for all rent increases. This form is available from the Rent Stabilization Division.
11. Additionally, Respondent may not issue a rent increase for the Affected Unit if Respondent is in violation of any of the provisions set forth in CSFRA Section 1707(f)(1)-(3) and CSFRA Regs. Ch. 12, Section (B), which include, among other things, being in compliance with respect to the amount of rent charged, registering the Property annually with the Rent Stabilization Program (see CSFRA Regs. Ch. 11), and maintaining the Property in habitable condition according to state law and the CSFRA, including making all repairs required by the City Building Department or other department of the City of Mountain View as a result of Multi-Family Housing Program Inspections. Only when Respondent has complied with all of the provisions of this paragraph and paragraph 10, above, may Respondent issue a rent increase, provided that they do so in a manner consistent with the CSFRA and California law.

12. When Respondent issues rent increases in the future, they must keep in mind that Rent as defined by the CSFRA includes amounts demanded by and paid to Respondent for premises rent, utilities, and Housing Services, such as pet rent or parking or any other benefit, privilege, or facility that falls within CSFRA Section 1702(h). Thus, when issuing a rent increase, the increase in premises rent, utilities, and pet rent combined may not exceed the amount of the lawful Annual General Adjustment. This may mean that Respondent will have to adjust its utilities calculation and immediately refund some amounts of utilities paid so as to comply with the CSFRA.

13. If a dispute arises as to whether any party has failed to comply with this Decision, any party may request a Compliance Hearing pursuant to CSFRA Regulations, CH. 5, section J(1). It should be noted that the Rent Stabilization Division provides workshops and other information for Landlords and Tenants to help them understand their rights and responsibilities under the CSFRA.⁷

IT IS SO ORDERED.



Barbara M. Anscher, Hearing Officer

Date: March 4, 2024

⁷ See, mountainview.gov/our-city/departments/housing/rent-stabilization.

**Attachment 1
Award Schedule**

707 Continental Cir [REDACTED] - RHC Petition# C22230028 (Compliance Petition)

Hearing Officer Decision re Base Rent

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Actual Additional Services Paid
2/16/2021-2/28/2021	\$ 1,023.75	\$ 68.84	\$ -
3/2021	\$ 2,205.00	\$ 151.50	\$ 11.29
4/2021	\$ -	\$ 149.07	\$ 50.00
5/2021	\$ 130.13	\$ 124.31	\$ 50.00
6/2021	\$ 2,205.00	\$ 133.64	\$ 50.00
7/2021	\$ 2,205.00	\$ 129.24	\$ 50.00
8/2021	\$ 2,205.00	\$ 130.87	\$ 50.00
9/2021	\$ 2,205.00	\$ 125.83	\$ 50.00
10/2021	\$ 2,205.00	\$ 133.49	\$ 50.00
11/2021	\$ 2,205.00	\$ 141.71	\$ 50.00
12/2021	\$ 2,205.00	\$ 136.85	\$ 50.00
1/2022	\$ 2,205.00	\$ 147.32	\$ 50.00
2/1/2022-2/15/2022	\$ 1,181.25	\$ 77.21	\$ 26.79
Totals	\$ 22,180.13	\$ 1,649.88	\$ 538.08
12-month average	\$ 1,848.34	\$ 137.49	\$ 44.84
BASE RENT		\$ 2,030.67	

Hearing Officer Compliance Decision

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Actual Additional Services Paid	Lawful Rent	Rent Payments in Excess by Petitioner
5/2023	\$ 2,316.00	\$ 162.74	\$ 50.00	\$ 2,030.67	\$ 498.07
6/2023	\$ 2,316.00	\$ 126.92	\$ 50.00	\$ 2,030.67	\$ 462.25
7/2023	\$ 2,316.00	\$ 153.48	\$ 50.00	\$ 2,030.67	\$ 488.81
8/2023	\$ 1,843.18	\$ 144.25	\$ 50.00	\$ 2,030.67	\$ 6.76
9/2023	\$ 1,843.18	\$ 140.94	\$ 50.00	\$ 2,030.67	\$ 3.45
10/2023	\$ 1,843.18	\$ 152.86	\$ 50.00	\$ 2,030.67	\$ 15.37
11/2023	\$ 1,843.18	\$ 151.18	\$ 50.00	\$ 2,030.67	\$ 13.69
12/2023	\$ 1,843.18	\$ 158.58	\$ 50.00	\$ 2,030.67	\$ 21.09
12/2023	\$ (1,509.49)	\$ -	\$ -	\$ -	\$ (1,509.49)
1/2024	\$ 2,051.51	\$ -	\$ -	\$ 2,030.67	\$ 20.84
2/1/2024-2/15/2024	\$ 953.37	\$ 82.42	\$ (11.60)	\$ 1,050.35	\$ (26.16)
2/16/2024-2/29/2024	\$ 934.14	\$ 76.92	\$ (10.82)	\$ 980.32	\$ 19.92
Interest (failure to refund overpayments decided in original Decision)*	\$ 177.11	\$ -	\$ -	\$ -	\$ 177.11
Interest (failure to refund utility overcharges)*	\$ 50.31	\$ -	\$ -	\$ -	\$ 50.31
Interest (failure to refund security deposit)*	\$ 8.33	\$ -	\$ -	\$ -	\$ 8.33
TOTAL				\$	\$ 250.35

* This refund must be paid by check and cannot be credited against rent.