

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:	April 13, 2023
Place of Hearing:	Online via Zoom
Date Hearing Record Closed:	April 19, 2023
Date of Decision:	May 19, 2023
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 (“Petitioners” or “Tenants”) filed with the City of Mountain View Rent Stabilization Program (the “City”) a Petition for a downward rent adjustment, specifically Petition A: Downward Rent Adjustment—Unlawful Rent as Defined by the CSFRA (the “Petition”) for 707 Continental Circle [REDACTED] (the “Affected Unit”).

2. Respondent filed a Petition Response Notice on February 28, 2023, with an attached document.
3. A Notice of Acceptance of Petition was served electronically on the parties by the City on March 14, 2023. Attached were a Hearing Information Sheet, Authorized Representative Form and Proof of Service. On that same date, the City also served a Notice of Follow-up Information on Respondent. Attached to the Notice were the Petition, Workbooks, Notice of Submission, Hearing Information Sheet, Response Notice, Authorized Representative Form and Proof of Service.
4. A Notice of Prehearing Meeting and Hearing Date was served electronically by the City on March 15, 2023, setting a Prehearing Meeting date for March 24, 2023 at 2:00 p.m. and a tentative Hearing date of April 13, 2023 at 10:00 a.m.
5. On March 17, 2023, a Revised Notice of Prehearing Meeting and Hearing Date was served on the parties rescheduling the Prehearing Meeting to March 22, 2023 at 2:00 p.m.
6. On March 20, 2023, a Second Revised Notice of Prehearing Meeting and Hearing Date was served on the parties rescheduling the Prehearing Meeting to March 23 at 10:00 a.m.
7. A Prehearing Meeting was held by videoconference on March 23, 2023 at 10:00 a.m., as duly noticed.
8. At the Prehearing Meeting, the Hearing Officer explained hearing procedure, answered the parties' questions, and discussed whether additional evidence would be requested.
9. On March 23, 2023, the Hearing Officer issued an Order, setting a deadline of April 3, 2023 for filing additional documents. A Notice of Hearing Officer's Written Order and Summary of Prehearing Telephone Conference and Notice of Hearing were served electronically on the parties by the City on March 23, 2023. That same day, the Order was corrected to reflect the corrected Hearing date and was served again on the parties.
10. Petitioner filed additional documents on April 3, 2023. Respondent filed additional documents on April 11, 2023
11. A Hearing was held on April 13, 2023 at 10:00 a.m., as duly noticed.
12. At the Hearing, it was discovered that neither the Hearing Officer nor Petitioners had seen the documents submitted by Respondent on April 11; however, Respondent made the Hearing Officer and the parties aware of one of the documents at the Hearing and shared that document with the Hearing Officer and Petitioners at that time.
13. On April 17, 2023, the Hearing Officer issued a Post-Hearing Order setting a deadline for Petitioners to review Respondent's late-submitted documents and to lodge any objections to their admission into evidence by April 24, 2023. A Notice of Hearing Officer Post-Hearing Order and Hearing Officer Post-Hearing Order were served on the parties on April 18, 2023.
14. By email of April 18, 2023, Petitioners communicated that they had no objections to admission of the Respondent's late-submitted documents into evidence. Respondent's Exhibits 3-6 were marked and entered into evidence on April 18, 2023.

15. The Record was closed on April 19, 2023.

II. PARTIES WHO ATTENDED THE HEARING

The following parties attended the Hearing:

(A) Petitioners Lindsay West and James Snow

(B) Appearing for Respondent Landlord Americana I, LLC, were: Corinne Carmody, General Manager, Americana Apartments; Nicole Olsen, Assistant Manager, Americana Apartments, and Susan Song, Bookkeeper, Americana Apartments. Ms. Carmody, Ms. Olsen, and Ms. Song are all employees of Property Manager, Sares Regis Group (“Property Manager”).

(C) Patricia Black and Joann Pham attended on behalf of the City.

III. WITNESSES

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

Lindsay West and James Snow

Ms. West and Mr. Snow testified that they received rent concessions when they signed the lease for the Affected Unit on or about February 7, 2021. They said concessions were not applied in the first month of the lease term, so the calculation of the Base Rent should take the concessions into account. Referring to Petitioner’s Exhibit 3, the Petition A Workbook with pet rent included, they pointed out that for the initial lease term, they paid a prorated amount of rent for February 16-28, 2021. They paid a full month’s rent in March. The concessions were applied in April and May, 2021. Thus, the Base Rent should add all amounts paid in the first 12 months and divide that amount by 12, and add in the averaged amount of utilities and pet rent, which would make the Base Rent \$2,020.51.

Ms. West and Mr. Snow testified that they occupied the Affected Unit as of February 16, 2021 and adopted a dog on March 19, 2021. In order to adopt the dog, they had to submit the dog’s photos and health records to Property Manager, and they filled out a pet addendum to the lease. They were then told by Property Manager that they needed to sign a new lease with a pet addendum. They knew from the original lease that they would have to pay a monthly fee for the dog. They signed a new lease on or about April 12, 2021, which had essentially the same terms as the lease they signed on or about February 7, 2021, except that the new lease increased their security deposit from \$500.00 to \$1,000.00 and added pet rent of \$50.00 per month. They asked Property Manager why the security deposit was increased in the lease rather than listing the payment as a \$500.00 pet deposit, and they were told that the additional \$500.00 was being added to the original security deposit. At the Hearing, they referred to Petitioner’s Exhibit #11, a cancelled check for \$500.00 with “pet deposit” in the memo line. It is their understanding that under the CSFRA, the security deposit from the original lease could not lawfully be increased.

Ms. West and Mr. Snow said that according to the billing statements they received from Respondent's third-party billing agent, Conservice, they started paying pet rent in May 2021.

Ms. West and Mr. Snow also testified that their rent was unlawfully increased in 2022 and 2023 because of the incorrect Base Rent calculation on February 16, 2022 when their rent was increased from \$2,205.00 to \$2,249.00. They allege that the Base Rent should instead have been \$2,020.51.

Additionally, Ms. West and Mr. Snow said that although their rent was increased to \$2,249.00 at the end of the initial term of the lease on February 16, 2022, they were not charged any increased rent for February 2022, but instead starting paying \$2,249.00 per month as of March 1, 2022. The rent for the Affected Unit was subsequently increased to \$2,316.00 as of February 16, 2023, and they pay the \$50.00 pet rent and utilities in addition to that rent.

Susan Song

Ms. Song spoke on behalf of Respondent. She testified that Respondent is not disputing the granting of rent concessions, their amount, or the timing of when they were applied to Petitioners' account. Petitioners were offered two months of rent concessions which were applied in the third month of the tenancy.

She testified that the additional \$500 that Petitioners paid when they acquired the pet was not a pet deposit but a regular security deposit because it reflected a change to the tenancy.

Ms. Song testified that Respondent requires a new lease agreement after a pet is added because there is an additional animal in the apartment. However, the starting date of the original lease was not changed, and each subsequent lease continued to have a start date of February 16. The second lease Petitioners signed was not really a different lease agreement, but instead the second lease agreement simply represented a change to the original lease; adding the pet was the change. The only difference between the two leases is the increase of the security deposit to \$1,000.00 from \$500.00 and the pet fee of \$50.00 per month.

Ms. Song also testified that the first charge for the pet fee occurred on March 25, 2021 in the prorated amount of \$11.29. The \$500.00 increase to the security deposit was credited on March 25, 2021, and there was a charge of \$50.00 for the pet starting on April 1, 2021 and continuing monthly. She said that she did not believe that the fees charged for the dog should be characterized as pet rent because they are not part of rent; they are a fee. She stated that it is standard in the multi-family rental industry to charge pet fees.

Additionally, Ms. Song said that the failure to prorate the rent for February 16 through 28, 2022 was an error and that the amount not charged to Petitioner was owed to Respondent.

The proration was not billed to Petitioners because they signed the lease late, and an invoice for February 2022 had already been paid.

IV. EVIDENCE

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

Hearing Officer's Exhibits

Exhibit 1: Notice of Acceptance of Petition with accompanying CSFRA Hearing Information Sheet and Authorized Representative Form, dated 3/14/2023, with proof of service

Exhibit 2: Follow-up Information for Petition, with accompanying CSFRA Hearing Information Sheet, Response Notice Form, Authorized Representative Form, Filed Copy of Tenant Petition A, Workbook, and Notice of Submission and Proof of Service, dated 3/14/2023

Exhibit 3: Notice of Prehearing Meeting and Hearing Date and accompanying CSFRA Hearing Information Sheet, dated 3/15/2023, with proof of service

Exhibit 4: Revised Notice of Prehearing Meeting and Hearing Date and accompanying CSFRA Hearing Information Sheet, dated 3/17/2023, with proof of service

Exhibit 5: Second Revised Notice of Prehearing Meeting and Hearing Date, dated 3/20/2023, with proof of service

Exhibit 6: Notice of Hearing Officer Prehearing Order and Notice of Hearing, dated 3/23/2023, with proof of service

Exhibit 7: Hearing Officer Order, dated 3/23/2023

Petitioners' Exhibits

Exhibit 1: Petition for Downward Adjustment of Rent, dated 2/09/2023

Exhibit 2: Notice of Submission and Proof of Service to Landlord of Petition Requesting Downward Adjustment of Rent, dated 2/09/2023

Exhibit 3: Two versions of Tenant Petition A: Unlawful Rent Workbook, containing three worksheets each, submitted with Tenant Petition

Exhibit 4: Residential Lease for the Affected Unit, dated 2/07/2021

Exhibit 5: Residential Lease for the Affected Unit, dated 4/12/2021

Exhibit 6: Residential Lease for the Affected Unit, dated 1/29/2022

Exhibit 7: 30-Day Notice of Change of Monthly Rent from Americana to Lindsay West, dated 12/15/2022

Exhibit 8: Email stream between Lindsay West and Nicole Olsen re concessions, dated 1/12/2023

Exhibit 9: Email from Lindsay West to Nicole Olsen re filing of Petition, dated 2/09/2023

Exhibit 10: Cancelled check #141, dated 2/16/2021; payment confirmation from Americana Apartments dated 2/27/2021; Conservice statements dated from 3/19/2021 through 12/23/2022; payment confirmation from Americana Apartments dated 1/29/2023; Conservice statement dated 1/27/2023

Exhibit 11: Proof of payment of pet deposit, cancelled check #142, dated 3/22/2021

Exhibit 12: Conservice statements for dated 2/24/23 and 3/28/23

Exhibit 13: Payment confirmation from Americana Apartments via emails of 1/29/2023, 2/27/2023, and 3/28/2023

Respondent's Exhibits

Exhibit #1: CSFRA Petition Response Notice, dated 2/28/2023

Exhibit #2: First page of Residential Lease Agreement dated 1/29/2022

The following documents were submitted during the Hearing and marked and entered into evidence after the Hearing without objection:

Respondent's Exhibits

Exhibit #3: Residential Lease for the Affected Unit, dated 2/07/2021

Exhibit #4: Residential Lease for the Affected Unit, dated 1/29/2022

Exhibit #5: Residential Lease for the Affected Unit, dated 1/14/2023

Exhibit #6: Resident Ledger dated 4/11/2023, covering the period of 2/5/2021 through 4/1/2023

V. ISSUES PRESENTED

1. Whether Respondent imposed an unlawful rent increase in 2022 because they failed to take rent concessions into account in calculating the Base Rent.
2. Whether pet rent should be included in the Base Rent calculation.
3. Whether collection of the pet deposit was lawful.
4. Whether the rent increase in 2023 was unlawful because of incorrect calculation of the Base Rent in 2022.

VI. FINDINGS OF FACT SUPPORTING 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 was \$2,205.00 per month. The Affected Unit is in a complex known as Americana Apartments (the “Property”).

2. The First Lease provided for \$4,410.00 in rent concessions to be applied in April 2021. The rent concessions were posted as of April 1, 2021 and applied to amounts due from Petitioner in April and May 2021. Respondent stipulated at the Hearing that they did not dispute anything about the rent concessions.
3. The First Lease stated that Petitioners would be billed for gas, water, trash, water heating, and sewer charges by a third-party utility billing service, Conservice. The First Lease also indicated that the billing service would charge a fee of \$4.25 per month.
4. Paragraph 48 of the First Lease prohibited pets without prior written consent. The first page had a box for listing pet rent, which was not filled in. Petitioners testified that they were aware that there would be a monthly charge if they were to acquire a dog.
5. Petitioners acquired a small dog on March 19, 2021. The dog was approved by the Property Manager before it was moved into the Affected Unit.
6. On or about April 12, 2021, Petitioners entered into a second lease for the Affected Unit, with the same rent for the Affected Unit and same term as the First Lease (the “Second Lease”). The Second Lease was identical to the First Lease in all other respects except that it checked off the box on the first page which stated that monthly pet rent would be \$50.00; it increased the security deposit from \$500.00 to \$1,000.00; it authorized the Petitioner’s dog to live in the Affected Unit; and it added a Pet Addendum listing the dog’s particulars, the monthly pet rent, and the rules which apply to pet owners on the Property. The Pet Addendum had a place to include a pet deposit, but that space was left blank.
7. Respondent testified that the Second Lease was not really a different lease agreement but simply represented a change to the original lease agreement.
8. On March 22, 2021, Petitioners issued a check for \$500.00 with “pet deposit [REDACTED]” written on the memo line.
9. The evidence at the Hearing was in dispute as to exactly when Petitioners began paying pet rent of \$50.00 per month. In its Response to the Petition, Respondent wrote that the first payment was on May 1, 2021, and Conservice invoices submitted by Petitioners confirm that date; however, at the Hearing, Respondent testified that their Resident Ledger indicates that the first payment was the prorated amount of \$11.29 on March 25, 2021, with ongoing payments of \$50.00 starting on April 1, 2021. It appears that pet rent was charged on March 25, 2021 and April 1, 2021, and it was taken out of the rent concession balance posted to Petitioners’ account as of April 1, 2021.
10. Petitioners entered into a third lease for the Affected Unit effective February 16, 2022 through February 15, 2023 (the “Third Lease”). Monthly rent for the Affected Unit was listed as \$2,249.00. The \$50.00 per month pet rent was listed as an additional ongoing payment. Respondent failed to prorate the rent increase for the last 12 days in February, so Petitioners started paying the increased rent on March 1, 2022, along with the pet rent and utilities.

11. On December 15, 2022, Property Manager sent Petitioners a document called “30 Day Notice of Change of Monthly Rent/Lease Terms.” It provided that after the Third Lease expired, Petitioners could either pay \$2,366.00 per month for a twelve-month lease or \$2,411.00 for a month-to-month tenancy. Both amounts included pet rent of \$50.00 per month. The rent increase for the Affected Unit, without including the pet rent, would be 3.0 percent for the former option and 5.0 percent for the latter option, although the 30-day Notice did not include the percentages of increase.
12. Petitioners paid \$2,280.11 for rent for the Affected Unit, plus pet rent and utilities, for February 2023. This reflected a proration for increased rent in the amount of \$2,316.00 (exclusive of the pet rent) from February 16-28, 2023.
13. Commencing on March 1, 2023, Petitioners began paying \$2,316.00 for rent for the Affected Unit, plus pet rent and utilities. Respondent submitted a lease dated January 14, 2023 documenting this rent increase (the “Fourth Lease”).
14. Petitioner alleges that the Base Rent at the end of the initial term should have been \$2,020.51, including utilities and pet rent.

VII. DISCUSSION

Pursuant to CSFRA Section 1710(d), a Tenant may file a Petition for a downward rent adjustment if the Tenant believes that a Landlord has demanded or retained rent in excess of the lawful amount set forth in the CSFRA. The Tenant bears the burden of proof by a preponderance of the evidence. See CSFRA Section 1711(h) and Regulations Ch. 5, Section (G)(2) and (3).

Calculation of Base Rent

CSFRA Section 1702(b)(2) defines Base Rent for tenancies commenced after October 19, 2015 as “the initial rental rate charged upon initial occupancy.” It further states that “[t]he term ‘initial rental rate’ means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy.” Regulations Ch. 2, Section (b)(2) elaborates upon this definition, stating that “‘initial rental rate’ means only the amount of Rent actually demanded to be paid and paid by the Tenant for the initial term of the tenancy.” For cases involving temporary rent concessions during the initial term, “the ‘initial rental rate’ shall be the average amount of Rent actually demanded to be paid and paid by the Tenant for the initial term of the tenancy.” See CSFRA Regulations, Ch. 2, Section (b)(2)(i).

Thus, in any case where the amount of the Base Rent is at issue, it is necessary to determine exactly what the initial term of the tenancy was and the actual amounts of Rent, as defined by CSFRA Section 1702(p), demanded by the Landlord and paid by the Tenant for that term.

In the instant case, the initial term of the tenancy was twelve months, from February 16, 2021 through February 15, 2022.

Definition of Rent Under CSFRA

1. Periodic Payments of Premises Rent During the Initial Term

In order to determine “the amount of Rent actually demanded to be paid and paid by the Tenant for the initial term of the tenancy,” it is first necessary to understand what constitutes Rent under the CSFRA. Each month during the initial term, Respondent demanded \$2,205.00 from Petitioner for rent of the Affected Unit (the “premises rent”) and reimbursement for utilities (gas, water heating, water, trash, sewer) the amount of which was calculated by an outside vendor, Conservice. Additionally, starting on March 25, 2021, Respondent demanded \$50.00 a month in pet rent. The definition of Rent under CSFRA Section 1702(p) includes “[a]ll periodic payments...under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets...”. A Rental Housing Agreement is “[a]n agreement, oral, written, or implied, between a Landlord and Tenant for the use or occupancy of a Rental Unit and for Housing Services.” The monthly premises rent charge of \$2,205.00 falls within the definition of periodic payments of Rent because it was paid monthly under the terms of a Rental Housing Agreement for the continued use and occupancy of the Affected Unit.

2. Utilities

Pursuant to CSFRA Section 1702(v), “Utility Charges” includes “[a]ny charges for gas, electricity, water, garbage, sewer..., or other service relating to the use and occupancy of a Rental Unit.” Through the third-party vendor, Conservice, Respondent charged Petitioner for gas, water, garbage, sewer, and water heating (for which gas or electricity was used), all of which fall within the CSFRA’s definition of “Utility Charges.” Additionally, Conservice’s monthly service charge constituted a mandatory fee connected to the payment of utilities and therefore falls within the category of “other service relating to the use and occupancy of a Rental Unit.” Under CSFRA Section 1702(p), all payments “concerning the use or occupancy of a Rental Unit and premises” and all payments for “attendant Housing Services, including all payment and consideration demanded or paid for...Utility Charges” constitute Rent. Because the utility charges and the mandatory monthly service fee each were (1) demanded by Respondent to be paid by Petitioner (2) for the Petitioner’s continued use and occupancy of the Affected Unit, the utility charges and service fee constitute Rent under the CSFRA.

3. Pet Rent

As stated above, the definition of Rent under CSFRA Section 1702(p) includes “[a]ll periodic payments...under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for...pets...” CSFRA Section 1702(p) unambiguously includes as a payment made for Housing Services “all payment and consideration demanded or paid for

...pets". Under that section, payments made by Tenants for Housing Services constitute Rent. CSFRA Section 1702(h) states that Housing Services include "any ...benefit, privilege or facility connected with the use or occupancy of any Rental Unit." Every version of the Lease allowed for Petitioner's privilege to keep a pet in the Affected Unit, provided that Petitioner was granted permission by Respondent and paid pet rent. The payment of pet rent as required by the Lease constitutes "payment and consideration demanded" by Respondent for the privilege of having a pet in connection with Petitioner's "use or occupancy" of the Affected Unit, and thus constitutes Rent.

Base Rent

In order to calculate the Rent actually paid by Petitioners for the first 12 months of the Lease term, one must determine what Petitioners paid out of pocket for the premises rent, utilities, and pet rent. While Respondent billed Petitioners for utilities two months in arrears, it is necessary to look at the utilities amounts as accrued, not as billed, so as to accurately encompass what Petitioners had to pay for the first 12 months of the Lease. The CSFRA states that "[t]he term 'initial rental rate' means only the amount of Rent actually paid by the Tenant **for** the initial term of the tenancy." (CSFRA Section 1702(b)(2) (emphasis added)). In order to calculate what Petitioners actually paid **for** (rather than **during**) the first 12 months, one must consider what utilities they paid for that period regardless of when those utilities were billed. The chart below sets out Petitioners' Rent payments for the initial term, separating out the payments for premises rent, utilities, and pet rent.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Add'l Services Paid	Total Rent Payments	Premises Rent Charged to Petitioners	Utilities Charged to Petitioners	Add'l Services Charged to Petitioners	Concessions Used
2/16/2021-2/28/2021	\$1,023.75	\$68.84	\$0.00	\$1,092.59	\$1,023.75	\$68.84	\$0.00	
3/2021	\$2,205.00	\$151.50	\$11.29	\$2,367.79	\$2,205.00	\$151.50	\$11.29	
4/2021	\$0.00	\$149.07	\$50.00	\$199.07	\$2,205.00	\$149.07	\$50.00	\$2,273.84
5/2021	\$130.13	\$124.31	\$50.00	\$304.44	\$2,205.00	\$124.31	\$50.00	\$2,136.16
6/2021	\$2,205.00	\$133.64	\$50.00	\$2,388.64	\$2,205.00	\$133.64	\$50.00	
7/2021	\$2,205.00	\$129.24	\$50.00	\$2,384.24	\$2,205.00	\$129.24	\$50.00	
8/2021	\$2,205.00	\$130.87	\$50.00	\$2,385.87	\$2,205.00	\$130.87	\$50.00	
9/2021	\$2,205.00	\$125.83	\$50.00	\$2,380.83	\$2,205.00	\$125.83	\$50.00	
10/2021	\$2,205.00	\$133.49	\$50.00	\$2,388.49	\$2,205.00	\$133.49	\$50.00	
11/2021	\$2,205.00	\$141.71	\$50.00	\$2,396.71	\$2,205.00	\$141.71	\$50.00	
12/2021	\$2,205.00	\$136.85	\$50.00	\$2,391.85	\$2,205.00	\$136.85	\$50.00	
1/2022	\$2,205.00	\$147.32	\$50.00	\$2,402.32	\$2,205.00	\$147.32	\$50.00	

2/1/2022 – 2/15/2022	\$1,181.25 ¹	\$77.21 ²	\$26.79 ³	\$1,285.25	\$1,181.25	\$77.21	\$26.79	
Total	\$22,180.13	\$1,649.88	\$538.08	\$24,368.09	\$26,460.00	\$1,649.88	\$538.08	\$4,410.00
12-Month Average	\$1,848.34	\$137.49	\$44.84	\$2,030.67	\$2,205.00	\$137.49	\$44.84	

In addition to calculating the actual rent payments, it is necessary to determine how to factor in rent concessions, particularly if there were rent concessions granted in the first full month of the initial term. CSFRA Regulations Ch. 2, section (b)(2)(i) interprets the definition of “initial rental rate” in order to account for a rent concession granted by the Landlord: “If a temporary rent concession is provided by the Landlord during the initial term of the tenancy, the ‘initial rental rate’ shall be the average amount of Rent actually demanded to be paid and paid by the Tenant during the initial term of the tenancy.” Regulations Ch. 2, Section (b)(2)(ii) further states that in performing the calculation of the initial rental rate, the first full month of free or discounted rent shall not be considered. All other months in which there is free rent or discounted rent are factored into the calculation. The rent concessions granted to Petitioners were credited to their account in April 2021, and they were applied to rent due for April and May 2021. Even though Petitioners signed two leases during the initial term, it is reasonable to conclude that the Second Lease was intended as a modification of the First Lease. All essential terms remained the same as between the First and Second Leases. As Respondent testified, the Second Lease was not intended as a different lease agreement, but instead as a way to incorporate the acquisition of the pet into the First Lease. Even though the Second Lease was signed in April 2021, the lease term set out in the Second Lease remained the same as that of the First Lease, beginning on February 16, 2021 and ending on February 15, 2022. The rent concessions granted by Respondent to Petitioner were applied in April 2021 and were intended to be for the second and third full months of the initial term. Therefore, since the rent concessions were not granted in the first month of the First Lease, the entire rent concession must be included in the Base Rent calculation.

The Base Rent for the initial term would be the total of the averaged premises rent, utilities, and pet rent: $\$1,848.34 + \$137.49 + 44.84 = \$2,030.67$.

Unlawful Rent Increases in 2022 and 2023

CSFRA Section 1706(a) states that “no Landlord shall charge Rent in an amount that exceeds the sum of the Base Rent” plus lawful Annual General Adjustments. On February 16, 2022, after the initial 12-month term of the tenancy ended, when the Base Rent should have been \$2,030.67, including premises rent, utilities, and pet rent, Respondent increased Petitioners’ premises rent from \$2,205.00 to \$2,249.00, in addition to charging for utilities and pet rent.

¹ Calculated as $(2205/28) \times 15$.

² Calculated as $(148.13/28) \times 15$.

³ Calculated as $(50/28) \times 15$

At that point, rather than calculating the Base Rent as required by the CSFRA and using that as the reference point from which to determine the lawful rent, as required by CSFRA Section 1702(b), Respondent instead continued to charge premises rent that was greater than the rent permitted by the CSFRA and added utilities and pet rent onto that already erroneous amount. Had Respondent rolled back the rent to the Base Rent of \$2,030.67 and increased the rent by the allowed Annual General Adjustment of 2.0 percent, the rent would have been \$2,071.28, inclusive of premises rent, utilities, and pet rent. Instead, Respondent increased the premises rent to \$2,249.00 and demanded utilities and pet rent in addition to that. The February 16, 2022 rent increase is unlawful under the CSFRA and must be disallowed.⁴

Because the 2022 rent increase was unlawful, the increase imposed as of February 16, 2023 to \$2,316.00 for premises rent was also unlawful and must be nullified. This rent increase was based on premises rent of \$2,249.00, which it has been established exceeded the lawful amount allowed by the CSFRA.

Calculation of Damages for Unlawful Rent

When it is found that there has been a collection of unlawful rents, an Individual Rent Adjustment is appropriate. (See CSFRA Sections 1702(i); 1714(a)). CSFRA Regulations Ch. 4, Section (G)(6) addresses limitations on Individual Rent Adjustments in the case of rent concessions. Specifically, Section (G)(6)(a) provides: “For rent concessions provided for a Tenancy that commenced before September 1, 2022, a Tenant shall be entitled to a rollback to the Base Rent and a refund of only the Rent that was overpaid within one (1) year prior [to] the date of the filing of the Petition.” The Petition was filed on February 9, 2023, and thus the relevant period for calculating the Individual Rent Adjustment under Section (G)(6)(a) is February 8, 2022 through February 9, 2023. However, since the initial term of the tenancy ended on February 15, 2022, and the Base Rent is calculated using the initial term, the refund is calculated from the overpayments above the Base Rent made by Petitioners since February 16, 2022.

⁴ The increase in the amount Petitioners paid starting in March 2021 due to the pet rent does not constitute an unlawful rent increase. The privilege of keeping a pet in the Affected Unit was an optional Housing Service that Petitioners chose to elect. They knew when they signed the First Lease that should they opt into that Housing Service, they would be charged additional rent just for that Housing Service. A Tenant’s voluntary election to opt into an optional Housing Service for which they know additional Rent will be charged does not constitute an unlawful rent increase on the part of the Landlord. However, should the Housing Service no longer be needed in the future, i.e., the pet is no longer in residence in the Affected Unit, Respondent would be required to deduct the pet rent from the Base Rent. Otherwise, there would be a decrease in a Housing Service, i.e., the privilege of having the pet in the Affected Unit, without a corresponding decrease in Rent, which would be an unlawful rent increase under CSFRA Section 1710(c).

Additionally, while CSFRA Regulations Ch. 2, Section (G)(6)(a) limits how far back the Hearing Officer may go in calculating damages for collection of unlawful rents in cases involving rent concessions, it does not limit damages going forward from the time of filing the Petition until the issuance of the Decision. Thus, a refund for overpayment of Rent between February 9, 2023, when Petitioner filed the Petition, through May 2023 will be included in the calculation of damages.

The chart below shows the premises rent, utilities, and pet rent overpayments for February 16, 2022 through April 2023.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Additional Services Paid	Rent Payments to Landlord (Premises Rent + Utilities + Pet Rent)	Lawful Rent	Payments in Excess of Lawful Rent
2/16 – 2/28/2022	\$1,023.75 ⁵	\$63.54 ⁶	\$23.21 ⁷	\$1,110.50	\$942.81 ⁸	\$167.69
3/1/2022	\$2,249.00	\$147.32	\$50.00	\$2,446.32	\$2,030.67	\$415.65
4/1/2022	\$2,249.00	\$144.13	\$50.00	\$2,443.13	\$2,030.67	\$412.46
5/1/2022	\$2,249.00	\$152.92	\$50.00	\$2,451.92	\$2,030.67	\$421.25
6/1/2022	\$2,249.00	\$136.90	\$50.00	\$2,435.90	\$2,030.67	\$405.23
7/1/2022	\$2,249.00	\$97.31	\$50.00	\$2,396.31	\$2,030.67	\$365.64
8/1/2022	\$2,249.00	\$138.89	\$50.00	\$2,437.89	\$2,030.67	\$407.22
9/1/2022	\$2,249.00	\$134.24	\$50.00	\$2,433.24	\$2,030.67	\$402.57
10/1/2022	\$2,249.00	\$141.72	\$50.00	\$2,440.72	\$2,030.67	\$410.05
11/1/2022	\$2,249.00	\$136.38	\$50.00	\$2,435.38	\$2,030.67	\$404.71
12/1/2022	\$2,249.00	\$141.03	\$50.00	\$2,440.03	\$2,030.67	\$409.36
1/1/2023	\$2,249.00	\$142.43	\$50.00	\$2,441.43	\$2,030.67	\$410.76
2/1/2023	\$2,280.11 ⁹	\$148.92	\$50.00	\$2,479.03	\$2,030.67	\$448.36
3/1/2023	\$2,316.00	\$161.10	\$50.00	\$2,527.10	\$2,030.67	\$496.43
4/1/2023	\$2,316.00	\$159.40	\$50.00	\$2,525.40	\$2,030.67	\$494.73
Total	\$32,674.86	\$2,046.23	\$723.21	\$35,444.30	\$29,372.19	\$6,072.11
Total Overpayment 2/16/2022 – 4/30/2023						\$6,072.11

⁵ Calculated as $(\$2,205.00/28) \times 13$.

⁶ Calculated as $(\$136.85/28) \times 13$.

⁷ Calculated as $(\$50.00/28) \times 13$.

⁸ Calculated as $(\$2030.67/28) \times 13$.

⁹ This amount represents prorated rent based on a rent increase to \$2,316.00 effective 2/16/2023.

For the period of February 16, 2022 through April 30, 2023, Respondent shall refund to Petitioners the total amount of \$6,072.11. For the month of May 2023, Respondent shall refund to Petitioners the difference between the total amount paid to Respondent for that month, including premises rent, utilities, and pet rent and the lawful rent of \$2,030.67.

As discussed herein, Respondent may not collect the unlawful rent increases from February 16, 2022 and February 16, 2023. However, after Respondent has fully refunded Petitioners the amounts stated herein, provided Respondent is in substantial compliance with the CSFRA, as discussed in Section IX (8), below, Respondent may increase the Rent, as long as it is done in a manner consistent with the CSFRA and California law, as discussed in Section IX (7), below. 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.

Respondent's Failure to Prorate Rent for February 2022

At the Hearing, Respondent testified that they had erroneously failed to prorate the premises rent for February 2022 to reflect the rent increase imposed on February 16, 2022. They stated that Petitioners owed them the correct prorated amount for February 16 through 28, 2022. Given that the rent increase was unlawful, Respondent's allegations are without merit.

Pet Deposit

On March 22, 2021, Petitioners paid Respondent an additional deposit of \$500.00 in connection with the acquisition of the dog. Respondent characterized this deposit as an addition to the original security deposit of \$500.00 that Petitioners had paid upon signing the First Lease, not a pet deposit. A security deposit is a refundable deposit used as security in case there is any damage beyond ordinary wear and tear done to the Affected Unit by Petitioners or if Petitioners do not pay the rent. *See* California Civil Code Section 1950.5. A pet deposit is a refundable deposit used as security in case there is any damage done by Petitioners' pet. Petitioners believed that the additional \$500.00 was a pet deposit; however, the Second Lease characterized it as a security deposit, consistent with Respondent's testimony.

Under CSFRA Section 1706(c), "[n]o Landlord shall increase a security or other deposit originally required from a Tenant as a condition of occupancy of a Rental Unit." The deposit demanded by Respondent in March 2022 qualifies as a security deposit. It is not listed as a pet deposit in the Second Lease, but was instead added to the amount of the security deposit required in the First Lease. The collection of the additional \$500.00 by Respondent contravened Section 1706(c), and thus it must be refunded to Petitioners.

VIII. CONCLUSIONS OF LAW


1. Respondent incorrectly calculated the Base Rent by not basing it on the amount of rent actually demanded by Respondent and paid by Petitioners for the initial term of the First Lease, as required by CSFRA Section 1702(b)(2) and Regulations, Ch. 2, Section (b)(2)(i), but instead basing it on the amount stated in the First Lease, which did not take into account rent concessions.
2. Under CSFRA Section 1702(p), pet rent should be considered as part of the Base Rent.
3. The additional deposit paid by Petitioners after acquisition of the pet violates CSFRA Section 1706(c) because Respondent characterized it as an addition to Petitioners' original security deposit.
4. The rent increases in 2022 and 2023 were unlawful under sections 1706(a) and 1702(b) of the CSFRA because Respondent failed to roll back the rent to the correct Base Rent after the initial term of the tenancy and thus increased the rent more than the lawful amount allowed by the CSFRA.
5. Under CSFRA Regulations, Ch. 4, Section (G)(6)(a), the Base Rent for the Affected Unit must be rolled back to the correct amount of \$2,030.67.
6. Under CSFRA Regulations, Ch. 4, Section (G)(6)(a), Petitioners are entitled to a refund for rent overpayment between February 8, 2022 and February 9, 2023. However, since the initial term of tenancy ended February 15, 2022, the refund is calculated from the overpayments made since February 16, 2022. Petitioners are also entitled to a refund for the period from filing the Petition on February 9, 2023 through the rendering of this Decision.

IX. DECISION

1. The Base Rent for the Affected Unit shall be rolled back to \$2,030.67, including premises rent, utilities, and pet rent.
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.
4. 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.

5. The credits and payments to Petitioners as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.
6. 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.
7. 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, 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.
8. 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, 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 7, above, may Respondent issue a rent increase, provided that they do so in a manner consistent with the CSFRA and California law.
9. 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 so as to comply with the CSFRA.
10. 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 IS SO ORDERED.


Barbara M. Anscher, Hearing Officer

Date: May 19, 2023

**Attachment 1
Award Schedule**

707 Continental Cir [REDACTED] - RHC Petition# C22230028

Hearing Officer Decision

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Actual Additional Services Paid	Lawful Rent	Payments in Excess by Petitioner
2/16/2022-2/28/2022	\$ 1,023.75	\$ 63.54	\$ 23.21	\$ 942.81	\$ 167.69
3/2022	\$ 2,249.00	\$ 147.32	\$ 50.00	\$ 2,030.67	\$ 415.65
4/2022	\$ 2,249.00	\$ 144.13	\$ 50.00	\$ 2,030.67	\$ 412.46
5/2022	\$ 2,249.00	\$ 152.92	\$ 50.00	\$ 2,030.67	\$ 421.25
6/2022	\$ 2,249.00	\$ 136.90	\$ 50.00	\$ 2,030.67	\$ 405.23
7/2022	\$ 2,249.00	\$ 97.31	\$ 50.00	\$ 2,030.67	\$ 365.64
8/2022	\$ 2,249.00	\$ 138.89	\$ 50.00	\$ 2,030.67	\$ 407.22
9/2022	\$ 2,249.00	\$ 134.24	\$ 50.00	\$ 2,030.67	\$ 402.57
10/2022	\$ 2,249.00	\$ 141.72	\$ 50.00	\$ 2,030.67	\$ 410.05
11/2022	\$ 2,249.00	\$ 136.38	\$ 50.00	\$ 2,030.67	\$ 404.71
12/2022	\$ 2,249.00	\$ 141.03	\$ 50.00	\$ 2,030.67	\$ 409.36
1/2023	\$ 2,249.00	\$ 142.43	\$ 50.00	\$ 2,030.67	\$ 410.76
2/2023	\$ 2,280.11	\$ 148.92	\$ 50.00	\$ 2,030.67	\$ 448.36
3/2023	\$ 2,316.00	\$ 161.10	\$ 50.00	\$ 2,030.67	\$ 496.43
4/2023	\$ 2,316.00	\$ 159.40	\$ 50.00	\$ 2,030.67	\$ 494.73
5/2023	TBD	TBD	TBD	\$ -	TBD
TOTAL					\$ 6,072.11

Security Deposit

Month/Year	Actual Premises Rent Paid	Payment in Excess by Petitioner
2/2021	\$ 500.00	\$ -
3/2021	\$ 500.00	\$ 500.00
TOTAL		\$ 500.00

Credit Schedule

Month/Year of Rent Payment	Monthly Rent Owed including Utilities and Pet Rent (Base Rent)	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
6/2023	\$ 2,030.67	\$ 759.01	\$ 1,271.66
7/2023	\$ 2,030.67	\$ 759.01	\$ 1,271.66
8/2023	\$ 2,030.67	\$ 759.01	\$ 1,271.66
9/2023	\$ 2,030.67	\$ 759.01	\$ 1,271.66
10/2023	\$ 2,030.67	\$ 759.01	\$ 1,271.66
11/2023	\$ 2,030.67	\$ 759.01	\$ 1,271.66
12/2023	\$ 2,030.67	\$ 759.01	\$ 1,271.66
1/2024	\$ 2,030.67	\$ 759.04	\$ 1,271.63
2/2024	\$ 2,030.67	TBD	TBD
TOTAL		\$ 6,072.11	

Refund Owed

Month/Year	Actual Premises Rent Paid
6/2023	\$ 500.00
TOTAL	500.00