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CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

**PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT
("CSFRA") AS CODIFIED IN CITY OF MOUNTAIN VIEW CITY CHARTER ARTICLE
XVII**

**IN RE 1260 MONTECITO AVENUE,
UNIT ■, MOUNTAIN VIEW,
CALIFORNIA**

NO: C22230030

DECISION AFTER HEARING

SIAMACK YAGHOUBZADEH,

Petitioner,

vs.

TFT INVESTMENTS,

Respondents.

Hearing Date: May 3, 2023
Hearing Time: 9:30 A.M.

Pursuant to written notice, on May 3, 2023 an administrative hearing was held via Zoom on the February 13, 2023 petition for rent adjustment ("Petition") filed by Siamack Yaghoubzadeh ("Petitioner" or "Mr. Yaghoubzadeh") in connection with his tenancy at 1260 Montecito Avenue Unit ■, Mountain View, CA ("Unit"). In attendance were Mr. Yaghoubzadeh as well as Respondent TFT Investments ("Respondent" or "TFT") through its representatives Juan Solis ("Mr. Solis") and Winnie Tai ("Ms. Tai"). (Jointly, Petitioner and Respondent are referred to as the "Parties.")

1 In addition to the Parties, JoAnn Pham, from the Rent Stabilization Program, also attended
2 the Hearing.

3 **QUESTIONS PRESENTED:**

4 1. Was there one or more conditions in the Unit, arising through no fault of the
5 Petitioner, which resulted in the Unit's falling below the standards for habitability set forth in the
6 CSFRA and its regulations (including but not limited to those defined by the California Civil
7 Code and/or the California Health and Safety Code?)

8 2. If so, is a downward adjustment of rent for the Unit authorized by the CSFRA and,
9 if so, in what amount?

10 **DOCUMENTARY EVIDENCE:** Each party to this proceeding submitted documents
11 which it wished to have considered as evidence supporting their respective positions and
12 arguments in this matter. All documents submitted by the parties were numbered by the hearing
13 officer as set forth below and admitted as evidence, except for LL-6A (Security Deposit
14 Disposition Form); they are all therefore part of the administrative record.

15 In addition, following an inspection of the Unit conducted by the City of Mountain View
16 on May 15, 2023, the written report of that inspection was also admitted into evidence as a
17 hearing officer's exhibit. The evidentiary record for this hearing was subsequently closed on May
18 18, 2023, following receipt of the inspection report.

19 **Petitioner's Exhibits:**

20 T-1 Petition for Rent Adjustment – Failure to Maintain Habitable Premises (2/13/2023)

21 T-2 Notice of Submission and Proof of Service (2/13/2023)

22 T-3 E-Mail (& Attachments): "Mac Jacobsen" to "Montecito Apartment" (12/12/2022)

23 T-4 E-Mail: Juan Solis to [REDACTED] (12/13/2022)

24 T-5 E-Mail Thread (& Attachments) from "Mac Jacobsen" to

25 [REDACTED] (12/30/2022)

26 T-5A E-Mail [Re: Notice of Rent Increase and Offer of 12M Lease] (12/30/2022)

27 T-6 Text Message to "Apt MG" (12/27/2022)

1 T-7 Printout: "Weather in Mountain View California for December 2022" [from
2 https://world-weather.info/forecast/usa/mountain_view/tdecember-2022] (1/7/2023)¹

3 T-8 Compilation: Photographs (1260 Montecito Ave. Unit [REDACTED])

4 T-9 Video (Montecito_1260 Montecito# [REDACTED] Garage 1) – 1m, 3s.

5 T-10 Video (Montecito_1260 Montecito# [REDACTED] Garage 2) – 45s

6 T-11 30-Day Notice (January 26, 2023)

7 T-12 Defendant's Notice of Claim and Order to Go to Small Claims Court (Santa Clara
8 County Small Claims Case No. 238CO89123)

9 T-13 E-Mail Thread between "Montecito Apartment" to [REDACTED] dated
10 from 5/4/2022 through 5/12/2022 (4/26/2023)

11 **Respondent's Exhibits:**

12 LL-1 Response to Petition [Via E-Mail to Patricia Black, City of Mountain View dated
13 2/17/23 with the subject "Re: 1260 Montecito Ave., Apt. 1"]

14 LL-2 Rental Agreement (Month to Month) (8/8/2011)

15 LL-3 Compilation: Photographs (1260 Montecito Ave. Unit 1)

16 LL-4 Further Response to Petition (4/18/2023) [Via E-mail to Patricia Black, City of
17 Mountain View, with the subject "Re: 1260 Montecito Ave., Apt. 1"]

18 LL-5 Further Response to Petition (4/26/23) [Via E-Mail to Patricia Black, City of
19 Mountain View with the subject "Re: 1260 Montecito Ave., Apt. 1"]

20 LL-5A Security Deposit Disposition Form (3/6/2023)

21 LL-5B Three Day Notice to Pay Rent or Quit (2/22/2017)

22
23 ¹ This exhibit, despite being hearsay, was admitted into the record in this proceeding
24 because (1) the hearing officer had previously advised the parties that the hearsay rule would not
25 fully apply to this administrative proceeding; (2) the exhibit qualifies for an exception to the
26 hearsay rule because the facts contained therein were not reasonably subject to dispute; the
27 compilation was done by a disinterested party to this proceeding; and this type of compilation of
28 publicly-available data is generally used and relied upon as accurate to prove facts of general
public interest; *see* Evidence Code §§1340, 1341; and (3) the petitioner testified at the hearing
that there were days in December 2022 that were not rainy after December 12, 2022 and that
testimony was consistent with this exhibit, such that the exhibit was not the only evidence of the
facts being asserted by Petitioner on this issue. -3-

1 LL-6 Photographs of Unit – Various [Post-Hearing Submission]

2 LL-7 Text Message – Estimate [From Augustine Contractor to Juan Solis] (3/14/2023)

3 Treatment of Exhibit LL-5A: This document (“Security Deposit Deposition Form”),
4 proffered by TFT, was not admitted into evidence, for two reasons. First, and crucially, the
5 underlying accuracy and credibility of this document was not sufficiently established by the party
6 (TFT) proffering it. Testimony adduced during the hearing from the person responsible for its
7 preparation (Ms. Tai) was that the document reflected only estimates of charges, other than the
8 rent due for February 2023, that were owed by Mr. Yaghoubzadeh upon the termination of his
9 tenancy. Second, there are serious questions about the authenticity of this document and about
10 whether this document was ever delivered to Mr. Yaghoubzadeh (as required by law.) He testified
11 that he had never received it; Ms. Tai testified that it had been delivered to Mr. Yaghoubzadeh in
12 early March shortly after his departure from the Unit. Upon review of the document’s metadata,
13 this document was last edited on April 26, 2023 – the deadline for pre-hearing submissions in this
14 proceeding and the same date Ms. Tai submitted for consideration by the hearing officer.

15 Setting aside the dispute about whether Mr. Yaghoubzadeh ever received any version of
16 the “Security Deposit Disposition Form”, there was no legitimate reason for Ms. Tai to have
17 needed to edit this document after it had allegedly been prepared and delivered to her former
18 tenant. This hearing officer cannot conclude with reasonable certainty that LL-5A is, in fact, a
19 copy of what it purports to be: an unaltered accounting as of March 6, 2023 of the disposition of
20 Mr. Yaghoubzadeh’s security deposit. It was therefore excluded from evidence as having not
21 been authenticated. *See* Evidence Code §1400 [document inadmissible without evidence that
22 permits a finding that the document is what it is purported to be].

23 **Hearing Officer Exhibits:**

24 HO-1 Notice of Follow-Up Notice and Proof of Service (3/20/2023)

25 HO-2 Notice of Acceptance of Petition and Proof of Service (3/20/2023)

26 HO-3 Summary of Prehearing Conference and Order (4/21/2023)

27 HO-4 City of Mountain View Inspection Report (5/15/2023)

1 **SUMMARY OF TESTIMONY**

2 **Summary of Petitioner's Testimony:** On December 12, 2022, Mr. Yaghoubzadeh
3 discovered upon returning home from work that a picture frame hanging on a wall in the Unit's
4 living room had fallen and that the wall was wet. He noticed that paint was coming off the wall
5 and had a "bump", and that plaster was falling. He took a photograph of the wall. Mr.
6 Yaghoubzadeh e-mailed Mr. Solis, the apartment manager, the same day about the leak. He was
7 told the next day that Mr. Solis would come on the upcoming Saturday to look at the leak and that
8 he could not come earlier due to scheduling.

9 On December 14, 2022, Mr. Yaghoubzadeh noticed that the garage was also leaking. He
10 again e-mailed Mr. Solis. On Saturday, Mr. Solis came to look at the leak. At that time, Mr.
11 Yaghoubzadeh showed Mr. Solis the mold on the garage walls. Mr. Solis said that he would need
12 to get someone out to look at the roof.

13 Mr. Yaghoubzadeh testified that, when Mr. Solis became property manager a couple of
14 years earlier, he told Mr. Solis that they needed to trim trees from the roof of the building because
15 it was going to clog water drainage. He also testified that, several years previous, the same water
16 leak problem happened with the garage because of clogged gutters and resulted in the electric
17 meter shorting out because water intruded into it. The meter is in the same location where some
18 of the garage mold appeared. After that earlier incident, Mr. Yaghoubzadeh told Respondent to
19 clean the gutters, but this was not done.

20 Mr. Yaghoubzadeh testified that there was no further communication with TFT until
21 December 27, 2022, although the weather report for December 2022 shows that there were days
22 that month with no rain after December 12 that would have allowed someone to take care of the
23 leak. On December 27, Mr. Yaghoubzadeh sent a text message to Mr. Solis asking for an update
24 about the repairs for the leaks. Mr. Solis responded that someone would be coming out on
25 Saturday December 31, 2022.

26 On December 30, 2022 Mr. Yaghoubzadeh e-mailed TFT in response to its offer to renew
27 his lease for a twelve month period. In that e-mail, he argued that his rent should be reduced until
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1 the leaks and the mold, which had not yet been addressed by TFT, were repaired. He noted that he
2 no longer had full use of the Unit. He also suggested that TFT could put him in a hotel, or another
3 rental unit, until the repairs were completed.

4 According to Mr. Yaghoubzadeh, he heard nothing in response to his e-mail until January
5 7, 2023. On that date, Mr. Solis called him and said that he wanted to see the inside of the Unit
6 right away that same day. Since Mr. Yaghoubzadeh was at work and had not received at least 24
7 hours' notice, he declined to have Mr. Solis come. In rebuttal to testimony provided by Ms. Tai
8 (see below), he testified that except for this date, he had never denied a request from his landlord
9 to enter the Unit if there was at least 24 hours' notice. He noted that the landlord had a key and
10 could enter the Unit in his absence if there was an emergency.

11 On January 23, 2023, Mr. Solis again called Mr. Yaghoubzadeh; he wanted someone to
12 come out and look at the Unit at 5:00 PM that day. Mr. Yaghoubzadeh left early to be at home
13 when the person arrived, but the contractor did not show up. He called Mr. Solis at approximately
14 6:00 after the person didn't show up to tell him. Mr. Solis said that the gentleman had been
15 delayed for reasons including traffic but would come at 9:00 AM the next day. Although Mr.
16 Yaghoubzadeh delayed going to work to accommodate this schedule, the contractor again did not
17 show up to see the Unit.

18 As a result of the mold in the garage, the possible mold developing in the living room (and
19 what Mr. Yaghoubzadeh testified was a risk of falling because of the floor damage in the living
20 room), Mr. Yaghoubzadeh's mother, Ms. Shaheen Jacobsen (who is over 80 years old), could not
21 come into the living room and could not go into the garage. Mr. Yaghoubzadeh testified that he
22 talked to his mother's doctors and was told it was unsafe for his mother.

23 Mr. Yaghoubzadeh did not obtain any mold/environmental hazards' testing for the Unit.
24 He testified that "it is obvious" that if there is uncorrected moisture in a wall, eventually there
25 will be mold development. He also testified that because the property containing the Unit is not
26 his property, he did not feel he should have to pay the cost of testing out of his own pocket.

27 Mr. Yaghoubzadeh eventually decided that "she" (presumably, Winnie Tai) did not want
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1 to fix the leaks and mold and did not intend to fix them. He then told Mr. Solis and Ms. Tai that
2 he was not going to stay in the Unit. He sent TFT a 30-day notice on January 26, 2023.

3 Mr. Yaghoubzadeh fully vacated the Unit on February 28, 2023; his mother had vacated
4 several weeks before. He testified that the first time that Respondent discussed the possibility of
5 an alternative rental unit for him was on February 28, 2023, the day he and Mr. Solis did the
6 move out inspection. According to Mr. Yaghoubzadeh, Mr. Solis mentioned towards the end of
7 the inspection that “we” (presumably, Mr. Solis and Ms. Tai) were considering moving Mr.
8 Yaghoubzadeh and his mother to 1260 Montecito Avenue, Unit [REDACTED], but had concluded that because
9 it was an upstairs unit, there were concerns about Mr. Yaghoubzadeh’s mother going up and
10 down stairs.

11 Mr. Yaghoubzadeh testified, in rebuttal to the testimony of Ms. Tai, that none of the
12 windows in the Unit were broken to his knowledge, but that he always had the windows closed so
13 it is possible he did not notice the damage. He does not know anything about how any window
14 damage might have been caused.

15 **Summary of Respondent’s Testimony:**

16 Winnie Tai: Ms. Tai testified that there was constant monitoring of the roof after a tarp
17 was put on it, although this was a temporary state. Even though it did not rain every day in
18 December 2022, there was still dampness on the roof creating a safety risk to anyone walking on
19 it while it was still wet. Ms. Tai testified that since safety was the most important thing, she did
20 not have anyone come out to address the roof problem at that time.

21 Later, Ms. Tai had the situation in the Unit’s garage assessed by different vendors. There
22 was no mold testing done on the Unit. Ms. Tai testified that, in her opinion, there was no mold in
23 the garage. According to Ms. Tai, there was just “superficial and cosmetic” “discoloration” and
24 not actual mold. The basis for her opinion was that Ms. Tai used to work in “that kind of
25 industry.” She testified that she had previously been a drug company analyst who worked in a
26 clean room analyzing samples including mold samples, so she knew what type of testing was
27 required to determine the presence of mold. Ms. Tai testified that, since (in her opinion) mold is

1 easily cleaned, Mr. Yaghoubzadeh should have complied with the instructions included in his
2 rental agreement (Page 10) about how to clean mold and notify management, but he did not.
3 However, because nobody lived in the garage it should not have been a problem. Ms. Tai also
4 testified that since in the Petition Mr. Yaghoubzadeh indicated that there had been indications of
5 water damage and mold “from years ago”, it raised the question of whether he had been properly
6 cleaning and maintaining the Unit as required by his lease.

7 According to Ms. Tai, TFT took care of “the situation” (the leaks) “as soon as we could.”
8 She testified that there were things done behind the scenes that Mr. Yaghoubzadeh did not know
9 about (i.e., inspecting the leak from the outside of the Unit, the roof at the garage wall, and
10 obtaining opinions from others to decide which options made the most sense about what should
11 be done to fix the roof.)

12 Ms. Tai received at least one verbal estimate for roof repairs. According to Ms. Tai, the
13 person who provided the estimate said that debris on the roof needed to be cleared and then,
14 afterward, a determination could be made about what roof tiles needed to be replaced and what
15 other repairs needed to be done. Ms. Tai later testified that she obtained more than one verbal
16 estimate, and that all were essentially the same, in stating that first debris had to be cleared, and
17 the roof then power-washed, so that the source of leaks could be found. Ms. Tai testified that a
18 contractor was not hired to do this work; it was done by Ms. Tai and a retired contractor
19 personally. Afterward, according to Ms. Tai they tested the roof and found no leaks.

20 Ms. Tai testified that TFT has regular tree maintenance scheduled. The property’s gutters
21 are cleaned annually, but this was skipped during the few years of the drought (such as in 2020).
22 After this, the COVID pandemic emerged, so there was no one around to help. Ms. Tai testified
23 that gutters at the complex were cleaned in 2022 but that gutter above the Unit’s patio was not
24 because it would have required entry into the Unit (it’s curtilage) to do so. According to Ms. Tai,
25 the Unit’s patio was full of leaves that were never cleaned (which she said could be observed
26 from outside.) Ms. Tai testified that Mr. Yaghoubzadeh never “notified us about [the] annual,” so
27 most of the responsibility should be “on his part.”

1 Ms. Tai testified that, in the Unit's living room, the damage from the leak was minor.
2 There was no mold in the living room and no discoloration. There was only bubbling/warping of
3 the wall. In Ms. Tai's opinion, the Unit's living room floor was not unsafe for walking.
4 According to Ms. Tai, she walked on it and while it gave way slightly underfoot, the floor was
5 "fine", and a person would not fall through it. Ms. Tai did not see the floor damage until after the
6 Unit was vacant. Ms. Tai testified that the damage to the living room flooring occurred because
7 Mr. Yaghoubzadeh did not wipe the water from the leak, causing water damage to the floor.

8 According to Ms. Tai, TFT has always responded to maintenance requests during Mr.
9 Yaghoubzadeh's tenancy and "did the best they could" to "accommodate" and "work with" him.
10 However, neither she nor Mr. Solis would enter the Unit without Mr. Yaghoubzadeh's
11 permission, even if allowed, because he did not want them to and had refused to give them
12 permission when he was not present without 24 hours' notice. Ms. Tai testified that, in her
13 opinion, if Mr. Yaghoubzadeh needed 24 hours' notice of entry to address the situation with
14 leaks, then "obviously he doesn't think it is an emergency."

15 According to Ms. Tai, multiple vacant units (at 1260 Montecito Avenue # [REDACTED] and # [REDACTED]
16 Montecito Avenue # [REDACTED]) were offered to Mr. Yaghoubzadeh, which he declined. In response to Mr.
17 Solis' testimony that the offer was made in February 2023, Ms. Tai stated that the offer was made
18 before February 2023, probably in January. Later, Ms. Tai testified that the offer was made in
19 December "when he [Mr. Yaghoubzadeh] e-mailed about a hotel." Ms. Tai did not make the offer
20 herself. She testified that she instructed Mr. Solis to make the offer and then later confirmed with
21 him that he had done so. According to Ms. Tai, Mr. Solis advised her that Mr. Yaghoubzadeh
22 "would not prefer [REDACTED]."

23 After Mr. Yaghoubzadeh's departure, Ms. Tai applied his \$1000 security deposit to rent
24 due for February 2023. Ms. Tai fills out the security deposit disposition forms and sends them to
25 tenants after they move out. According to Ms. Tai, this form provides an estimate of charges for
26 damages that the tenant owes.

27 Ms. Tai testified that, as it related to Mr. Yaghoubzadeh's security deposit, her office had
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1 sent him the required post-move out accounting [LL-6A] showing the charges, including rent
2 charges for February 2023, which TFT contended Mr. Yaghoubzadeh owed at the end of his
3 tenancy at the Unit. Ms. Tai testified that Mr. Yaghoubzadeh did not clean the Unit before he
4 moved out. She also testified that after the Unit was vacant, she discovered cracks in the Unit's
5 bathroom tiles, cracks in the kitchen tiles and damage to the kitchen and bedroom floors of the
6 Unit. Ms. Tai also testified that there was a broken window in one of the Unit's bedrooms.

7 According to Ms. Tai, the security deposit disposition form provided Mr. Yaghoubzadeh
8 with estimates which she had obtained for the damage repairs as of March 6, 2023 (including
9 from the same person Mr. Solis had contacted about the roof). Ms. Tai did not provide any further
10 details about the costs of repairs to Mr. Yaghoubzadeh and did not send him receipts for any
11 repairs which had been done to the Unit whose cost exceeded \$150.00. Ms. Tai did not know
12 how the cost of repairing damage to the Unit floors was estimated. According to Ms. Tai, she had
13 not included the cost of repairing the broken window on the deposit disposition form. There is a
14 pending small claims case between the parties about the cost of damages and the handling of Mr.
15 Yaghoubzadeh's security deposit.

16 Ms. Tai testified that Mr. Yaghoubzadeh had been delinquent with his rent in the past and
17 that she had assisted him, including during the COVID pandemic. She testified that she believed
18 that Mr. Yaghoubzadeh had filed his petition only to "get out of paying rent" and to avoid a rent
19 increase. Ms. Tai testified that Mr. Yaghoubzadeh had experienced financial difficulties at around
20 the same time frame in previous years (December through February). She said that, during those
21 times, he had regularly paid his rent late or complained. Ms. Tai testified that Mr. Yaghoubzadeh
22 was creating "false accusations" to justify nonpayment of rent and his relocation costs, that he
23 was "taking advantage of what happened," and that this behavior was "just part of his profile."

24 Testimony of Juan Solis: Mr. Yaghoubzadeh notified Mr. Solis about the leak in
25 December. He came out to the Unit and looked at the leak a few days later. Mr. Solis told Mr.
26 Yaghoubzadeh that he would have to have someone come out and look at the roof. Mr. Solis
27 contacted several people. One person promised to come but did not show up despite his promise.

1 He contacted four (4) different contractors to come out and look at the roof to get different
2 estimates. One handyman gave him a bid, but he did not choose that person to do the work.
3 Another company gave him a verbal bid of what needed to be done. One estimate he received was
4 rejected because the cost was in Mr. Solis' opinion "too low" for the work that the contractor said
5 needed to be done (which included clearing leaves and pulling up the roof's plywood to assess the
6 damage.) Another contractor came out and agreed with the scope of work that would be required.

7 Mr. Solis testified that there was so much debris accumulated in the gutters that the water
8 from the rain was flowing over them and the roof flashing. Mr. Solis did not recall Mr.
9 Yaghoubzadeh ever telling him that trees needed to be cut back from the roof to avoid the
10 possibility of leaks. However, in 2022 Mr. Solis did have some trees cut back away from the
11 building in which the Unit is situated. The leaves in the gutters were still there afterward.

12 Mr. Solis testified that he did see discoloration in the garage when he inspected it, and he
13 tried to address it as soon as possible. He did tell Mr. Yaghoubzadeh that he needed to have
14 someone come out and look at the garage roof because he (Mr. Solis) "didn't want to have
15 anything to do with it." The weather affected the timing of the work that needed to be done. In
16 February 2023, Mr. Solis went up on the roof and covered it with a tarp in the hopes that it would
17 slow down any leaks. A licensed contractor was not involved in any roof repairs for the property.

18 Mr. Yaghoubzadeh did eventually put in a 30-day notice to leave. Mr. Solis later made a
19 verbal offer of an alternate rental units to Mr. Yaghoubzadeh in February 2023, but he does not
20 remember the exact day. Mr. Solis testified that they (presumably he and Ms. Tai) also decided
21 Unit # [REDACTED] was not suitable to offer Mr. Yaghoubzadeh because of the stairs. According to Mr. Solis,
22 Mr. Yaghoubzadeh only mentioned his mother and that her doctors said she could not live there
23 "at the last moment."

24 Mr. Solis did not know about any damage to the Unit's floor until the move out
25 inspection, after there was no furniture remaining in the apartment. He testified that there was no
26 "broken window" in the Unit, but there was a small crack (approximately 3 inches) in the corner
27 of one window to the front yard, which he did not see during the inspection. Mr. Solis testified

1 that when he saw the living room floor, he knew the top of the flooring had to be replaced.

2 Mr. Solis was not involved in the handling of Mr. Yaghoubzadeh's security deposit and
3 did not know anything about it. He testified that Mr. Yaghoubzadeh did not clean the Unit when
4 he moved out and that he took photographs of the condition.

5 **INSPECTION EVIDENCE**

6 On May 15, 2023, the City of Mountain View performed a code inspection of the
7 apartment complex in which the Unit is located, including of the Unit itself. The report disclosed
8 as it related to Unit ■ that cracked tiles in the front bathroom "may have been due to concealed
9 water damage." It also disclosed possibly concealed water damage in other portions of the
10 apartment complex in which the Unit is situated. (*See* HO-3)

11 The Hearing Officer attended the inspection of the Unit and observed that a small section
12 of the wood flooring in the living room had been replaced with wood which was slightly different
13 than the rest of the floor. Although the area of the floor which had previously suffered flooring
14 damage had clearly been repaired, upon direct inquiry Ms. Tai (who was present at the
15 inspection) denied to the hearing officer that any portion of the Unit's living room floor had been
16 replaced. The hearing officer also observed that bubbling was still visible on the main living room
17 wall, which Ms. Tai admitted both during the hearing and at the inspection had been repainted.

18 **ANALYSIS**

19 The CSFRA permits a tenant to file a petition seeking a downward adjustment of rent if
20 his or her landlord has failed "to maintain a Rental Unit in compliance with governing health and
21 safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and
22 Health and Safety Code Sections 17920.3 and 17920.10..." *See* CSFRA §1710 subd. (b)(1). A
23 failure to maintain these conditions is deemed a rent increase for the purposes of the CSFRA. *Id.*
24 To prevail on such a petition, a tenant must show that the landlord had received reasonable notice
25 of the conditions rendering the rental noncompliant with the requirements for habitability. *See*
26 CSFRA §1710 subd. (b)(2).

27 Mr. Yaghoubzadeh has satisfied his burden of proof to establish by a preponderance of the
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1 evidence that between December 12, 2022 and his departure on February 28, 2023 there were
2 conditions in the Unit that resulted in it falling below the standards of habitability because of
3 water leaks affecting the living room and mold affecting the garage of the Unit.

4 For the period of December 12, 2022 until the date Mr. Yaghoubzadeh fully vacated the
5 Unit on February 28, 2023, TFT failed to maintain the condition of the Unit in substantial
6 compliance with laws requiring effective weatherproofing, including after notice from the tenant
7 of the existence of leaks and mold. The evidence establishes that the likely cause of the leaks at
8 the Unit was, at a minimum, the failure of TFT to ensure that the roof gutters and flashings for the
9 Unit (and the roof of the complex as a whole) were free of debris. Mr. Yaghoubzadeh, the tenant,
10 was not responsible for this type of maintenance and, therefore, not responsible for the damage to
11 his Unit caused by TFT's failure to undertake it.

12 The Unit failed to satisfy the requirement that habitable rooms not have dampness "to an
13 extent that endangers the life, limb, health, property, safety, or welfare of the public or the
14 occupants thereof." Civil Code §1941.1 subd. (a)(1); Health and Safety Code §17920.3 subd.
15 (a)(11). Mr. Yaghoubzadeh established, through his undisputed testimony, that his vacation of the
16 Unit was necessary to protect the health of his elderly mother upon the advice of her doctors
17 because of the presence of mold. The preponderance of the evidence therefore establishes that
18 conditions in the Unit were a danger to her health if she occupied the Unit.

19 Mr. Yaghoubzadeh also established by a preponderance of the evidence that the Unit
20 lacked, in the living room, "flooring in good repair" and "faulty weather protection" to the extent
21 that structural hazards had begun to develop, albeit in early stages. This too violates the dictates
22 of law. Civil Code §1941.1(a)(8); Health and Safety Code 17920.3 subd. (b)(2) and subd. (g). The
23 photographs of the garage admitted into evidence showed significant mold growth on the garage
24 walls. Photographs also confirmed the damaged condition of the living room wall (which Ms. Tai
25 admitted only after the hearing officer's inquiry had been repainted; in support of its response to
26 the Petition, TFT had submitted photos of the same wall that showed no damage without
27 disclosing that the picture did not reflect the condition of the Unit at the time of Mr.

1 Yaghoubzadeh's tenancy. Photographs also showed damage and warping on the living room floor
2 as well.

3 While Ms. Tai testified that the mold in the garage was just "discoloration" and
4 complained that Mr. Yaghoubzadeh had not had the Unit tested for mold, she presented no expert
5 testimony or inspection report to rebut the tenant's testimony or the reasonable conclusion to be
6 drawn from viewing the photographs (which appear to reflect significant mold development in the
7 garage). Ms. Tai's prior experience working in a laboratory clean room testing samples is not
8 transferable to, and does not support, her conclusion that mold did not exist *in situ* at the Unit. As
9 she admitted during her testimony, she knows testing is required to establish (and therefore also
10 required to rebut the visual appearance of) the presence of mold. TFT did not, however, either
11 undertake such testing itself or hire someone to do so, despite the known risk of mold spores to
12 human health. Given its appearance visually, and the cause of its existence being what undisputed
13 testimony established was a history of intrusive moisture in the garage (whether in December
14 2022 or, as Mr. Yaghoubzadeh testified, a few years earlier), it is reasonable to place the burden
15 for a failure to test for mold squarely upon the landlord, TFT.

16 As it relates to the leak inside the Unit and the mold in the garage, Mr. Yaghoubzadeh has
17 also satisfied his obligation to demonstrate that his landlord, TFT, had reasonable notice of the
18 leaks and mold prior to the filing of his Petition. There was no dispute that he made reports to
19 TFT (directed to Mr. Solis) in writing about the leaks on December 12, 2022 and the mold on
20 December 17, 2022. These reports were repeated on December 30, 2022, again in writing, to Ms.
21 Tai. Despite these notices, there was no dispute in the testimony that, other than a temporary tarp
22 being placed on the roof by Mr. Solis, there was no repair (including cleaning to remove
23 gutter/roof flashing debris) to address the leaks until after Mr. Yaghoubzadeh filed his petition on
24 February 13, 2023. Given the nature of the conditions (water leak during rain and indicia of
25 mold), TFT had more than a reasonable time (2 months) to address each habitability concern
26 before the petition was filed.² It did not.

27 _____
28 ² Indeed, because it received written notice, TFT should have inspected and, if necessary,
remediated the mold condition in the garage within 30 days of receiving written notice from Mr.

1 Instead, TFT responded to the petition by contending that any mold growth was likely due
2 to Mr. Yaghoubzadeh's alleged failure to "take care of" the Unit or follow written instructions in
3 his rental agreement as they related to cleaning of mold. However, contrary to Ms. Tai's
4 assertions at the hearing, it is not reasonable to expect any tenant to test for mold and/or attempt
5 remediate that hazardous condition in his or her rental unit through "cleaning." The duty to ensure
6 habitability, including the absence of mold spores in the Unit, remained firmly with the
7 landlord—TFT—even if TFT had included provisions in its rental agreement purporting to shift
8 this responsibility away from itself as landlord.

9 Mr. Yaghoubzadeh is therefore entitled to a reduction in rent for the water leak in his
10 living room. He is also entitled to a reduction in rent for the existence of mold, following a
11 reasonable inference that the extensive black staining to the garage walls was the result of mold
12 development. The evidence also established that there was water intrusion in the living room wall
13 and, therefore a strong possibility of mold development in the living room wall as well because
14 warping, bubbling, cracking, or any surface abnormalities on plaster or wallpaper indicates that
15 mold may be present due to water intrusion. The warping of the living room wall also gives rise
16 to a reasonable inference that mold was beginning to affect that room as well. Given the severe
17 risk to human health caused by mold conditions, TFT's failure to immediately test the Unit for,
18 and as necessary remediate, mold upon receiving the December 17, 2022 notice of mold from Mr.
19 Yaghoubzadeh is inexcusable.

20 The amount of rent reduction awarded for the Petition reflects that at least one tenant (Ms.
21 Jacobson) was unable to use two different locations in the Unit because of the risk to her health.
22 Therefore, the maximum lawful rent for the Unit shall be reduced by 20% to account for the mold
23 conditions, and an additional 5% for the water intrusion caused by the leak in the Unit's living
24 room, for the period of December 12, 2022 until Mr. Yaghoubzadeh vacated the Unit on February
25 28, 2023.

26
27 _____
28 Yaghoubzadeh of a possible mold condition. Civil Code §1941.7. It did neither. Indeed, there is
no testimony indicating that any serious effort was made at all prior to January 17, 2023 (30 days
after notice of a possible mold condition) -15-

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

As it relates to the existence of a garage leak, the photographs and video submitted by Mr. Yaghoubzadeh of the garage disclose that while there was ceiling damage in that room and a puddle on the floor, in notable contrast to the mold that existed none of this damage or water was severe enough to prevent use of the garage for either parking of an automobile or storage of the tenant's personal belongings (which are shown in the photographs as being undisturbed. Additionally, a garage is not a habitable room and, thus, does not fall within the prohibition against dampness contained in the Health and Safety Code. *See* Health and Safety Code §17920.3 subd. (a). Therefore, although Mr. Yaghoubzadeh met his burden of proof to establish that there was a water leak in the garage, he did not establish that this leak, in a non-habitable room, rose to the level of severity where it constituted a breach of the warranty of habitability. Civil Code

1 §1941.1. Mr. Yaghoubzadeh therefore did not sustain his burden of proof to establish that he
2 should receive a reduction of rent under the CSFRA for the garage leak.

3
4 **ORDER**

5 Good cause appearing, it is hereby **ORDERED** as follows:

6 1. This hearing officer **FINDS** that Petitioner has satisfied his burden of proof to
7 demonstrate a failure to provide habitable premises for the period of December 12, 2022 to
8 February 28, 2023.

9 2. This hearing officer **FINDS** that a 25% total reduction of the monthly maximum
10 lawful rent for the Unit is appropriate for the period of December 12, 2022 through February 28,
11 2023 [78 days] under the CSFRA. This reduction reflects an awarded reduction of 20% for the
12 presence of mold in the garage and likely presence in the Unit's living room and a 5% reduction
13 for the intrusion of water into the Unit's living room.

14 3. This hearing officer **FINDS** that, for the 78 day period at issue in the Petition, the
15 maximum monthly lawful rent for the Unit should be deemed reduced from the contract rent of
16 \$3,104.00 to \$2,328.00 (a reduction of \$776.00 per month) because of TFT's partial failure to
17 provide habitable premises. The *per diem* rent shall be deemed reduced from \$103.47 to \$77.60.

18 4. It is **FOUND** that Mr. Yaghoubzadeh is entitled to recover from TFT the excess
19 rents he paid for the period of December 12, 2022 through January 31, 2023 [50 days], in a total
20 amount of \$1,293.00.

21 5. It is further **FOUND** that, while the maximum lawful rent for the Unit for the
22 month of February 2023 was \$2,328.00, Mr. Yaghoubzadeh did not pay rent to TFT Investments
23 for that period and, Mr. Yaghoubzadeh is not entitled to any refund of rent for that month.

24 6. It is hereby **ORDERED** that TFT refund to Mr. Yaghoubzadeh, without offset for
25 any claims asserted by TFT Investments in any pending or completed court proceeding, the sum
26 of \$1,293.00 on or before August 1, 2023. Attached to this Decision as Attachment 1 is an outline
27 of the award for Petitioner's habitability claims and refund schedule.

1 7. It is further ORDERED that if a dispute arises as to whether any party has failed to
2 comply with this Decision, any party may request a Compliance Hearing pursuant to CSFRA
3 Regulations, CH. 5, section J(1).

4 8. It is further **FOUND** that, although Mr. Yaghoubzadeh remained in possession of
5 the Unit for the month of February 2023, he did not tender rent to TFT for that month. It is further
6 **FOUND** TFT subsequently withheld Mr. Yaghoubzadeh's \$1,000 security deposit for the
7 purpose of recovering rent due for that month. This hearing officer makes no decision on whether
8 TFT's withholding of the deposit was lawful under the statutes governing the diversion of
9 security deposits in California (including because of the questionable authenticity of the "Security
10 Deposit Disposition Form" that TFT contended was sent timely to Mr. Yaghoubzadeh after his
11 departure, a contention that itself is disputed between the parties). However, to the extent that any
12 future court or administrative proceedings between the parties adjudicate the question of what, if
13 any, rent was due and payable from Mr. Yaghoubzadeh for the month of February, 2023, that
14 adjudication should reflect both the reduction of rent ordered here for that month as well as grant
15 Mr. Yaghoubzadeh an offset of \$1,000 against any past-due rent awarded in those proceedings for
16 the month of February 2023.

17 **IT IS SO ORDERED.**

18 Date: June 30, 2023



Renee Glover Chantler
Hearing Officer

**Attachment 1
Award Schedule**

1260 Montecito Ave # [REDACTED] - RHC Petition# C22230030

Hearing Officer Decision

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Percentage Reduction of Rent	Number of Days of Condition	Per Diem Rate (including % reduction)	Rent Reduction Awarded for Days Condition Persisted
Presence of mold in garage*	12/12/2022	2/28/2023	20%	50.0	\$ 20.69	\$ 1,034.50
Intrusion of water in living room**	12/12/2022	2/28/2023	5%	50.0	\$ 5.17	\$ 258.50
Floor caved in	12/12/2022	2/28/2023	0%	50.0	\$ -	\$ -
TOTAL						\$ 1,293.00

Refund Schedule

Deadline	Total Due to Petitioner
August 1, 2023	\$ 1,293.00
TOTAL	\$ 1,293.00

* Calculation: \$3,104 * 20% = \$620.80 / 30 days = \$20.69 per diem rate * 50 days = \$1,034.67

** Calculation: \$3,104 * 5% = \$155.20 / 30 days = \$5.17 per diem rate * 50 days = \$258.50