

CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

HEARING OFFICER DECISION PURSUANT TO

THE COMMUNITY STABILIZATION AND FAIR RENT ACT (“CSFRA”)

RHC Case #(s):	22230011 (Petition A-Unlawful Rent)
Address and Unit(s) of Rental Property:	429 N. Rengstorff Ave. ■■■■■, Mountain View, CA 94041
Petitioner Tenant Name(s):	Ozkan Altuner
Respondent Landlord Name(s):	Fairview Townhomes, WRL, LLC
Property Manager Name:	Rebeca Zuleta
Date(s) of Hearing:	January 13, 2023
Place of Hearing:	Online via Zoom
Date Hearing Record Closed:	January 20, 2023
Date of Decision:	February 21, 2023
Date of Mailing:	See attached Proof of Service
Hearing Officer:	E. Alexandra DeLateur

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

1. The petition in the above case (the “Petition”) under the City of Mountain View’s Community Stabilization and Fair Rent Act (“CSFRA”) was filed by Ozkan Altuner on or about September 30, 2022 and was accepted by the City on October 28, 2022.
2. A Notice was served on October 28, 2022, setting a tentative Hearing on November 10, 2022 with a Prehearing Conference on November 28, 2022.
3. Respondent /Landlord filed a response dated October 26, 2022 wherein they stated that the rent increase notice that was intended to be effective November 1, 2022 was rescinded.
4. On or about November 18, 2022, the assigned hearing officer, Karen Lapinski, issued an order that the City’s Fire and Environmental Protection Division conduct an inspection of

the Fairview Townhomes property. The inspection was ultimately scheduled for January 20, 2023.

5. At the Prehearing on November 10, 2022, Petitioner, his co-tenant/wife, and the property manager, Ms. Zuleta, appeared. On November 11, 2022, an Order and Summary issued after the Prehearing.
6. On November 11, 2022, an Order issued continuing the hearing scheduled for November 28, 2022 to allow for the inspection to be scheduled.
7. Sandra DeLateur was re-assigned as the hearing officer for this matter in place of Karen Lapinski.
8. A new hearing date was noticed to the parties on December 30, 2022 setting the Hearing on January 13, 2023.
9. The matter was heard as scheduled on January 13, 2023 and the Hearing Officer announced that she would close the record at the conclusion of the City's inspection on January 20, 2023. There were no objections.

II. PARTIES WHO ATTENDED THE HEARING

The following parties attended the Hearing:

Petitioner(s): Ozkan Altuner ("Tenant" or "Petitioner")

Co-Tenant(s): Asma Ben Mansour, Petitioner's wife and co-tenant

Respondent(s): Rebeca Zuleta, property manager for WRL LLC

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

Patricia Black, Senior Management Analyst, Rent Stabilization Program, City of Mountain View

III. TESTIMONY

Mr. Altuner, Ms. Mansour, and Ms. Zuleta were sworn in under oath as witnesses and presented testimony and evidence at the hearing.

IV. SUMMARY OF THE EVIDENCE

Petitioner asserted three grounds for relief in his Petition: (1) an unlawful rent increase greater than the AGA for 2021, (2) an unlawful rent increase because the Respondent is not

eligible to increase rents under the CSFRA, and (3) more than one rent increase within a twelve-month period.

Petitioner and his wife, Ms. Mansour, testified that they moved into unit [REDACTED] of the property ("Unit") on March 8, 2021. Their initial rent as stated in their Lease dated March 11, 2021¹ was \$2,795.00 per month, but they received a concession of \$240 per month for the first 11 months for a rent obligation of \$2,555.00 per month for 11 months and \$2,795.00 for the twelfth month ("Lease").²

Petitioner provided a copy of a letter dated January 29, 2022 from Respondent. Prior to the expiration of the Lease, Respondent's letter offered to renew the tenancy as a 12-month lease at a monthly rent of \$2,850.00 even though the "market rate" was described as \$2,950 per month. Furthermore, the letter offered a \$55 per month concession for 6 months so the rent would be \$2,795.00 for 6 months and \$2,850.00 for the remaining 6 months of the lease. It appears that a new lease would be effective March 1, 2022, since the original Lease was set to expire on February 28, 2022.

Petitioner entered into a 6-month lease ("Second Lease") at the monthly rental rate of \$2,850.00 effective March 1, 2022 through August 31, 2022. A copy of the first page of the Second Lease was provided by Petitioner. There were no concessions included in the Second Lease.

Petitioner provided a copy of a letter dated September 20, 2022 from Respondent. The letter offered two options to renew the tenancy effective November 1, 2022: a 12-month lease at \$2,950.00 rent per month or a month-to-month tenancy at \$3,150.00 rent per month. The letter asserted that the "market rent" for this Unit was \$3,395.00 per month. There were no concessions in this offer to renew.

Around the time of the second renewal of the tenancy, Petitioner testified that he learned about the CSFRA, researched his situation, and filed a Petition. He testified that the Respondent never provided notices regarding tenant protections under the CSFRA or any other tenant protection laws. The Tenants testified that they are currently paying rent of \$2,646.00 per month, rather than the \$2,850.00 stated in the Second Lease or the higher amounts in the September 2022 renewal letter. Petitioner provided a copy of the email that Respondent, Ms. Zuleta, had emailed the Petitioner to explain that the monthly rent had

¹ The Lease states that it is dated March 11, 2021; however, the 11th is scribbled over and an 8 was substituted in one blank. The parties appear to agree that Petitioner moved into the Unit on March 8, 2021.

² The copies of checks provided by Petitioner show that he paid only \$2,550 (not \$2,555) for July 2021 through January 2022. Technically, he owes Respondent \$35 (\$5 per month for 7 months) that was not paid per the Lease.

been adjusted downward to \$2,646.00 for the period November 1, 2022 through February 28, 2023. This supports the Respondent's Response that the rent increase which was intended to be effective November 1, 2022 was rescinded. Ms. Zuleta testified that Respondent agreed to accept \$2,646.00 as monthly rent from November 1, 2022 until February 2023. On October 31, 2022, Petitioner received a credit for overpayment of rent from November 1, 2022 to the date of the Petition in the amount of \$1,784.00.

Petitioner testified that the utilities for his Unit are included in the rent, and he does not pay any shared utility costs to the Respondent landlord.

The City of Mountain View Rent Stabilization Program staff provided information that the Respondent paid the required fees, but had not registered the property with the program.

The City of Mountain View Fire and Environmental Protection Division performed an inspection of the entire property and issued a report which includes some necessary maintenance and repairs. For Unit [REDACTED], the report indicates four (4) items that the Respondent must address: (1) replace the smoke/carbon monoxide detector on the first floor, (2) replace window seals, (3) replace kitchen vent hood filter, and (4) hire a professional contractor to inspect and clean the ducting system.

See Attachment 1 to this Written Decision for a list of the exhibits for the Hearing Officer, Petitioner-Tenant, and Respondent-Landlord.

V. ISSUES PRESENTED

- A.** What is Petitioner's Base Rent under the CSFRA from which one calculates a rent increase?
- B.** Is Respondent permitted to raise the rent under the CSFRA?
- C.** If so, was there a legal rent increase for Petitioner?
- D.** Was the rent raised more than once in a 12-month period?

V. FINDINGS OF FACT SUPPORTING THIS DECISION

1. On or about March 11, 2021 (see footnote 1), Petitioner and his wife entered into a 12-month Lease with Respondent landlord for 429 N. Rengstorff Ave. [REDACTED], Mountain View, California ("Lease") and occupied the property starting March 8, 2021.

2. The Lease stated that Petitioner's monthly rent was \$2,795.00 per month, but tenants received a concession of \$240 per month for the first 11 months for a rent obligation of \$2,555.00 per month for 11 months and \$2,795.00 for the twelfth month.
3. The Lease was not accompanied by any information on the applicability of the City of Mountain View's CSFRA or state tenant protections.
4. Respondent has registered this property with the Rent Stabilization Program staff for the 2023 cycle, but was not registered for 2022 or any other year prior. The property has paid the mandatory fees for the Rent Stabilization Program for 2023 and all prior years.
5. On January 29, 2022, Respondent issued a letter to Petitioner, offering to renew the tenancy as a 12-month lease at a monthly rent of \$2,850.00. Furthermore, the letter offered a \$55 per month concession for 6 months so the rent would be \$2,795.00 for 6 months and \$2,850.00 for the remaining 6 months of the lease.
6. Petitioner entered into a 6-month lease ("Second Lease") at the monthly rental rate of \$2,850.00 effective March 1, 2022 through August 31, 2022. The entire Second Lease was not submitted into evidence, so the date of execution is unknown.
7. On September 20, 2022, Respondent sent Petitioner a letter with two options to renew the tenancy effective November 1, 2022: a 12-month lease at \$2,950.00 rent per month or a month-to-month tenancy at \$3,150.00 rent per month.
8. The Tenants testified that they are currently paying rent of \$2,646.00 per month pursuant to an email from Ms. Zuleta, explaining a) that the noticed rent increase for November 1, 2022 was rescinded and b) that the monthly rent had been adjusted downward to \$2,646.00 for the period November 1, 2022 through February 28, 2023.
9. On October 31, 2022, Petitioner received a credit for overpayment of rent from November 1, 2022 to the present in the amount of \$1,784.00.
10. The Annual General Adjustment ("AGA") for 2021 (applicable from September 1, 2021 through August 31, 2022) is 2%.

11. The Annual General Adjustment (“AGA”) for 2022 (applicable from September 1, 2022 through August 31, 2023) is 5%.

12. On January 20, 2023, the City of Mountain View Fire and Environmental Protection Division performed an inspection of the entire property and issued a report which includes some necessary maintenance and repairs. For Unit [REDACTED], the report indicates four (4) items that the Respondent must address: (1) replace the smoke/carbon monoxide detector on the first floor, (2) replace window seals, (3) replace kitchen vent hood filter, and (4) hire a professional contractor to inspect and clean the ducting system.

VI. **LEGAL AUTHORITY**

CSFRA Sec. 1710(d), CSFRA Regs. Chapt. 4(B) and CSFRA Regs. Chapt. 4(G) permit a tenant to file a petition for a downward adjustment of rent if a Landlord demands or retains rent in excess of the lawful rents allowed by the CSFRA. The burden of proof in a Petition A-unlawful rent petition is on the tenant Petitioner. *CSFRA Regs. Chapt. 5(G)(2)*

Definition of Rent

“Rent” is defined in *CSFRA Chapt. 2(p)* as, “all periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord 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, furniture, and/or subletting.”

Definition of Base Rent related to Concessions

“Base Rent” for tenancies post-October 19, 2015 is defined as “the initial rent charged upon initial occupancy, provided that amount is not in violation of the Act or any provision of State law. The term ‘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. *CSFRA Chapt. 2(b)(2)*”

“(i) Rent Concession. 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. A ‘rent concession’ includes, but is not limited to, any of the following:

- One (1) or more months' free Rent, except as specified in subparagraph (ii) below; or
- A dollar or percentage amount reduction of the Rent provided over the course of the initial term of the tenancy.

(ii) Exclusions. The following shall not be considered in the calculation of "Base Rent" for any Tenancy:

- First month's free or discounted Rent, where the 'first month' refers to the first full month following the start date of the Rental Agreement. For instance, if the Rental Agreement begins on September 15, then the 'first month' would refer to the period from October 1 to October 31; or
- The Tenant's withholding of or failure to pay Rent in violation of the Rental Agreement, the Act, or State law; or
- Any reduction in Rent imposed pursuant to the final Decision of a Hearing Officer or the Rental Housing Committee....

(iii) Initial Term of Tenancy. The 'initial term of the tenancy' refers to either the initial term as agreed upon by the Landlord and Tenant in the Rental Agreement...." *CSFRA Chapt. 2(b)(2)*

The Regulations address the remedies available to tenants filing unlawful rent petitions based on rent concessions. The relevant portion of Chapter 4(G)(6) is subsection (a) which states, "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 the date of the filing of the Petition."

Allowed Rent Increases

CSFRA Section 1707 describes the Rent Increase process, including how the AGA (Annual General Adjustment) is determined and applied. Subsection (b) states "No more than one Rent increase per twelve-month period may be imposed on a Tenant."

In certain circumstances described in CSFRA Section 1707(f), a Rent Increase is not allowed. "Conditions Under Which Rent Increase Not Permitted. No Rent increase shall be effective if the Landlord:...(1) Has failed to *substantially comply* [emphasis supplied] with all provisions of this Article and all rules and regulations promulgated by the Committee;..."

VII. DISCUSSION

In this matter, the facts are largely agreed. It is the application of the CSFRA to these facts that may be in dispute between the Petitioner and the Respondent.

- A. What is the Petitioner's Base Rent? The base rent is calculated using the formula for concessions as follows: The concession for the first full month of rent is not counted so April 2021 rent is considered \$2,795.00, plus ten months of rent at \$2,555.00 for months with the concession, plus \$2,795.00 for February 2022 which was the 12th month of the Lease and which called for full rent. The sum is \$31,140.00 which is then divided by 12 months. Therefore, the monthly Base Rent in this case is \$2,595.00.¹
- B. Is Respondent entitled to increase Petitioner's rent? The evidence, including the City's inspection, show that the Fairview Townhomes is an older property and generally maintained in good condition. There are no glaring issues although some maintenance issues need to be addressed. Therefore, there is substantial compliance with the building and safety codes and the condition of the property is not an obstacle to the Respondent issuing a rent increase.

There are, however, issues with the Respondent landlord failing to comply with the requirements regarding a) notifying tenants of their rights under the CSFRA at the commencement of the tenancies and b) providing the required notices and information to tenants that the CSFRA requires for legal rent increases. Petitioner testified that he was not provided with any notices of the existence and applicability of the CSFRA at the time he entered into any of the Leases or when he was given a rent increase. The CSFRA requires landlords to notify tenants about the ordinance and the Rent Stabilization Program even provides a sample information sheet on their website for convenience. Similarly, if a landlord chooses to increase rent, there are required notices to tenants about their rights which need to accompany that notice of rent increase. None of this was satisfied in the instant case. Petitioner testified that he ultimately discovered the CSFRA through his own research. However, failure to comply with the important notices to tenants about the existence and applicability of the CSFRA to this property does not amount to substantial noncompliance with the law rendering the Respondent ineligible to raise rents.

Respondent failed to register the property under the Rent Stabilization Program until well after the Petition was filed in this case. Failure to register the property means that the Respondent was NOT in substantial compliance with the CSFRA at the time that the rent increases were imposed and, therefore was NOT permitted to raise rents under the CSFRA.

- C. If so, was there a legal rent increase for Petitioner? If Respondent had been eligible to give a rent increase under the CSFRA, Respondent would have been eligible to raise rent

¹ The base rent includes utilities that were included in lease.

once per twelve-month period in an amount not to exceed the AGA set by the Rental Housing Committee under the Regulations. For a rent increase to be valid, both 1) the amount of the increase must be proper, and 2) the timing has to be proper. Although the Respondent is not eligible to raise rent, the following addresses the questions posed by the Petitioner regarding proper rent increases.

1. Amount of the increase:

Base Rent in this case is \$2,595.00. Due to the failure to register the property, no rent increase was lawful and the subsequent attempts to increase rent above the Base Rent are unlawful.

However, even if the property had been properly registered with the Rent Stabilization Program, the rent increases were unlawful because they exceeded the Annual General Adjustment (AGA). When the Second Lease was signed, it called for rent of \$2,850.00 per month for six (6) months (an increase of \$255 or 9.8%), which exceeds the allowable rent increase under the CSFRA. At the expiration of the Second Lease, Respondent offered to renew the tenancy at \$2,950 (13.7% increase from Base Rent) or \$3,150 (21.4% increase from Base Rent) which would exceed the allowable rent increase under the CSFRA. Petitioner has not paid either of these amounts due to filing the petition and the voluntary downward adjustment of rent by Respondent.

2. Timing of the increase:

Assuming that Respondent had issued a proper rent increase in March 2022, Respondent would not have been entitled to raise the rent again for 12 months, until March 1, 2023. Therefore, any additional increase during this period of March 1, 2022 through February 28, 2023 would violate the CSFRA's limit of one increase per 12-month period. *CSFRA Section 1707(b)*. When the Second Lease was signed, it called for an increase in rent. At the expiration of the Second Lease, Respondent attempted to increase the rent again, to \$2,950.00 or \$3,150.00 depending on the type of tenancy. This latter attempt to increase rent within 12 months of the increase in the Second Lease violates the CSFRA.

As set forth above, no rent increases were lawful in this case due to the amount of the increases and the timing of the increases. Although the Respondent has acknowledged a problem and made a partial repayment of overcharged rent, there is more owed to the Petitioner. The rent of \$2,595.00 is the maximum allowable monthly rent until Respondent complies with all the requirements of the CSFRA.

Respondent has refunded overpayments of rent from November 2022 and agreed to accept \$2,646.00 in rent from November 1, 2022 through February 2023.

- 1) Petitioner has overpaid more than the \$1,784.00, which has been refunded to date. The unlawful rent collected from March 2022 through October must be returned to Petitioner. The Respondent collected \$2,850.00 each month rather than the Base Rent amount of \$2,595.00 so Petitioner is entitled to a rent refund of \$255.00 per month for eight (8) months or \$2,040.00.
- 2) Petitioner has overpaid for the period November 2022 through the present even though the rent was adjusted downward by the Respondent to \$2,646.00 per month. The Base Rent was \$2,595.00 and there was no lawful rent increase, so the lawful rent remains \$2,595.00. Therefore, the Petitioner is entitled to an additional rent refund of \$51.00 for four (4) months or \$204.00.

The outstanding amount which Petitioner has overpaid for rent and which Respondent must refund is \$2,244.00.

D. Was the rent raised more than once in a 12-month period? Petitioner asserts that his rent was increased more than once within a 12-month period because Respondent charged \$2,850.00 per month from March 2022 through October 2022, and attempted to raise the rent again effective November 2022. As discussed above in section C.1., the CSFRA does not permit two rent increases within this time frame. The rescission of the second rent increase attempted to solve the issue, but Respondent did attempt to raise the rents twice within a 12-month period.

VIII. DECISION

Based on the above discussion applying the law to the facts of this matter, IT IS HEREBY ORDERED that:

1. The lawful monthly Base Rent for Petitioner's unit is \$2,595.00;
2. Since the rent has not been legally increased through the date of the hearing, the Base Rent remains the current lawful rent;
3. Respondent shall credit or pay to Petitioner the rent overpayments in the amount of \$2,209.00 [subtracting \$35.00 owed to Respondent for underpayments of rent for July 2021 through January 2022 from the overpayment of \$2,244.00] as well as additional

overpayments made for payment of February 2023 which exceeds the Base Rent. If

Respondent elects to credit the tenant, they must notify the Petitioner in writing within ten (10) days of the decision becoming final (see Attachment 2). If Respondent elects to make a lump sum payment to Petitioner, it must be made within thirty (30) days of this Decision becoming final;

4. If the tenant has vacated the rental unit prior to the date this credit has been applied in full, the Landlord shall immediately pay the amount of the credit due to the tenant, to the Petitioner directly; and
5. Once Respondent has credited or paid Petitioner for all overpayments and is in full compliance with the CSFRA, and after giving a property thirty-day notice, Respondent may properly notice an increase for the overall rent (including premises rent and utilities) and
6. Respondent shall make the necessary repairs and take actions as outlined in the inspection report as to all units on the property.

Dated: 2/21/2023_____

E. Alexandra DeLateur

E. Alexandra DeLateur,
Hearing Officer

ATTACHMENT 1

LIST OF DOCUMENTARY EVIDENCE

Hearing Officer Exhibits

1. Notice of Acceptance and Follow-up Information for Petition, served October 28, 2022, setting the Prehearing Conference for, November 10, 2022 and Hearing for November 28, 2022
2. CSFRA Hearing Information Sheet
3. Hearing Officer Written Order and Summary of Prehearing Telephone Conference and Notice of Hearing, served November 10, 2022
4. Workbook A
5. Information Reports regarding building code, fire, and safety violations at 429 N. Rengstorff Ave. ("Fairview Townhomes"), Mountain View, California
6. Correspondence between the City of Mountain View Rent Stabilization Program staff (Joann Pham and Andrea Kennedy) regarding registration of the property with the CSFRA program and payment of program fees
7. Notice of Hearing Officer's Inspection Order served November 18, 2022
8. Notice of Hearing Postponement served November 23, 2022
9. Notice of Hearing setting the matter for January 13, 2023, dated December 30, 2022
10. Report of inspection of all units of the property on January 20, 2023 by James Olsen, Mountain View Fire Department
11. Information on past building inspections

Petitioner Exhibits

1. Petition A for Unlawful Rent, submitted September 30, 2022
2. Workbook A
3. Notice of Submission and Proof of Service, served September 29, 2022
4. Original Lease, fully executed dated March 11, 2021 (or possibly March 8, 2021)

5. Second Lease for the tenancy from March 1, 2022 through August 31, 2022 (first page)
6. Portal message to Petitioner dated February 1, 2022 regarding rent of \$2,795.00
7. Information on past building inspections
8. Renewal letter to Petitioner dated January 29, 2022
9. Renewal letter to Petitioner dated September 20, 2022
10. Copies of Petitioner's checks to Respondent for the application, security deposit and rent from March 2021 to January 2023

Respondent Exhibits

1. Landlord's Response to the Petition, dated October 26, 2022

ATTACHMENT 2
AWARD SCHEDULE

429 N Rengstorff Ave [REDACTED] - RHC Petition# 22230011

Hearing Officer Decision

Month/Year of Rent Payment	Actual Rent Paid	Lawful Rent	Payments in Excess by Petitioner
3/2021	\$ 2,043.84	\$ 2,043.84	\$ -
4/2021	\$ 2,555.00	\$ 2,555.00	\$ -
5/2021	\$ 2,555.00	\$ 2,555.00	\$ -
6/2021	\$ 2,555.00	\$ 2,555.00	\$ -
7/2021	\$ 2,550.00	\$ 2,555.00	\$ 5.00
8/2021	\$ 2,550.00	\$ 2,555.00	\$ 5.00
9/2021	\$ 2,550.00	\$ 2,555.00	\$ 5.00
10/2021	\$ 2,550.00	\$ 2,555.00	\$ 5.00
11/2021	\$ 2,550.00	\$ 2,555.00	\$ 5.00
12/2021	\$ 2,550.00	\$ 2,555.00	\$ 5.00
1/2022	\$ 2,550.00	\$ 2,555.00	\$ 5.00
2/2022	\$ 2,795.00	\$ 2,795.00	\$ -
3/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
4/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
5/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
6/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
7/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
8/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
9/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
10/2022	\$ 2,850.00	\$ 2,595.00	\$ (255.00)
11/2022	\$ 2,646.00	\$ 2,595.00	\$ (51.00)
12/2022	\$ 2,646.00	\$ 2,595.00	\$ (51.00)
1/2023	\$ 2,646.00	\$ 2,595.00	\$ (51.00)
2/2023	\$ 2,646.00	\$ 2,595.00	\$ (51.00)
TOTAL			\$ (2,209.00)

Credit Schedule

Month/Year of Rent Payment	Monthly Rent Owed (Base Rent)	Rent Credited or Refunded to Petitioner	Total Payment to be Paid by Petitioner
March 2023	\$ 2,595.00	\$ 2,209.00	\$ 386.00
TOTAL		\$ 2,209.00	