

CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

HEARING OFFICER DECISION

PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT ("CSFRA")

Type of Petition	Tenant Petition C – Undue Tenant Hardship
Case No:	22230004
Property Address:	141 Del Medio, Mountain View CA 94040
Affected Unit{s}:	Number [REDACTED]
Petitioner Tenant Name(s):	Sheldon Tanaka
Respondent Landlord Names(s)	Gina Frye, Lydia Sanabria [Calson Property Management]
Hearing Officer:	Martin Eichner
Dates of Hearings:	October 7, 2022
Date Record Closed	October 12, 2022
Date of Mailing:	(See Attached Proof of Service)

I. Statement of the Case and Procedural History to Date

- a. A "Tenant Petition C – Undue Tenant Hardship," hereafter "Petition" was filed on September 9, by the above-named Tenant, hereafter "Tenant." The Petition was filed pursuant to the Community Stabilization and Fair Rent Act, hereafter "CSFRA." The Petition named Calson Property Management as the Landlord, hereafter "Landlord," for the rental property occupied by the Tenant.
- b. The Tenant served a Notice of Submission of Petition on the Landlord on September 9, 2022.
- c. The Landlord did not file a written response.
- d. A Pre-Hearing Conference was held for the parties in the above Petition case, and the related cases at the same rental property, on September 30, 2022, utilizing the Zoom platform. The Conference was conducted by Martin Eichner, the Hearing Officer assigned to decide these Petitions. The Hearing Officer issued a Pre-Hearing Order summarizing the verbal explanation and directives given at this Conference.
- e. After the Pre-Hearing Conference, Tenant Sheldon Tanaka submitted a Request for Production of evidence. In his Request he stated that:

“I have not been able to procure evidence of a rental increase prior to Feb 1st 2016 (the renewal of my lease) whereupon my rent rate moved from \$1275.00/mo to \$1325.00/mo.”

- f. This request was granted by the Hearing Officer. The Landlord was ordered to submit a complete history of rent increases applied to Sheldon Tanaka’s tenancy after his initial lease, no later than October 5, 2022. The Landlord did not submit the history it was ordered to produce.¹
- g. As per the Pre-Hearing Order, the Hearing in this case was noticed for October 7, 2022. It was held and completed on that date, utilizing the Zoom platform. The Hearing record was left open at the end of the October 7, 2022 Hearing for the Landlord to file a Response to the Petition and to submit further evidence verifying that the Landlord had properly registered all the units on this property. The Landlord was given until close of business, October 12, 2022 to do so.
- h. The Landlord did not file any submission in response to this opportunity as of the October 12, deadline. As noted below, the Landlord did register the property as of October 10, 2022.
- i. This Decision became due 30 days after the record closed on October 12.

II. Attendees at the Hearing

The following parties attended the Hearing and provided testimony under oath and other input for the record²:

For the Tenant-Petitioner:

Sheldon Tanaka

For the Landlord Del Medio Manor LLC

Gina Frye and Lydia Sanabria, employees of Calson Property Management

On Behalf of the City of Mountain View Rent Stabilization Program

Patricia Black, Senior Management Analyst

¹ The Landlord did not produce this history. However, this history has not been determined to be necessary for this Decision.

² Joann Pham, City of Mountain View Rent Stabilization Program Staff, also participated to provide administrative support.

III. Evidence

The following documents were marked as exhibits during the hearing and entered into the hearing record:

Hearing Officer Exhibit

HO Ex. 1 – September 22, 2022 Notice of Acceptance of Petition

HO Ex. 2 – September 22, 2022 Notice of Pre-Hearing Conference

HO Ex. 3 – Notice for October 7, 2022 Hearing

HO Ex. 4 – CSFRA Registration Documents for this rental property and email thread between City of Mountain View Rent Stabilization Staff and the Landlord concerning CSFRA property registration status as of September 30, 2022

HO Ex. 5 – – City of Mountain View property inspection records for this rental property for inspections and compliance activities

HO Ex. 6 – October 6, 2022 email from Patricia Black to Del Medio Manor regarding registration status

HO Ex. 7 – October 10, 2022 Email from Andrea Kennedy, City of Mountain View Rent Stabilization Program indicating that the Landlord had registered all units at the property as of that date.

Tenant Exhibits

T Ex. 1 – September 9, 2022 Petition filed by the Tenant

T Ex. 2 – Worksheet Number 1 accompanying the Petition

T Ex. 3 – Worksheet Number 2 accompanying the Petition

T Ex. 4 – Paystub from [REDACTED]

T Ex. 5 – Tenant statement re hardship petition

T Ex. 6 – History of payments from [REDACTED] to Tenant

T Ex. 7 – Excerpts from the Tenant's 2021 federal tax return

T Ex. 8 – 2018 Rent Increase Notice

T Ex. 9 – Tenant's 2013 lease agreement

T Ex. 10 – 2016 Lease Renewal

T Ex. 11 – Rent Increase Notice Raising Rent for September 1, 2022

Landlord Exhibits

LL Ex. 1 – July 29, 2022 Notice of September 1, 2022 Rent Increase

LL Ex. 2 – August 1, 2022 email to the Tenant explaining the Landlord's computation of most recent rent increase

LL Ex. 3 – Database summary of rent history prepared by the Landlord

LL Ex. 4 – Tenant ledger maintained by the Landlord applicable to this Tenant

IV. Summary of Relevant Evidence

The following Summary is based on the hearing testimony, and the exhibits entered into the record at the hearing.

Testimony from Gina Frye on behalf of the Landlord

The Tenant first moved into rental unit [REDACTED] on this property on December 4, 2013 at an initial rate of \$1275. His rent was increased to \$1325 on August 1, 2015, to \$1417 on December 1, 2018, and to \$1487 on December 1, 2019³. His monthly rent as a result of the September 1, 2022 increase became \$1634.

Testimony from the Tenant-Petitioner

His unit is a studio apartment. His girlfriend resides there with him on a "more or less" permanent basis. She does not contribute to the monthly rent, except the "occasional grocery". She is employed part-time, earning approximately \$5000 a year.

His hardship claim is based on the applicable provisions for a household with inadequate income.

He has been employed by [REDACTED] for the entire year 2022. The paystub documentation he has provided for his Petition is accurate. [T Exs. 4 and 6]. He has had no other source of income during this year. He has no significant income from investments or other passive income. He has tax sheltered retirement accounts such as 401k accounts, but he does not withdraw income from them. The approximate value of these accounts is [REDACTED].

He has not received any rent relief benefits for this year from any government agency or charity and he has no pending applications for these benefits.

He has not had any unusual expenses for this year.

³ All monetary amounts have been rounded off to the nearest dollar.

Further Testimony from Gina Frye on behalf of the Landlord

The Landlord does not dispute any of the Tenant's testimony regarding his income or financial status, although the property managers were not aware of the status of the girlfriend.

There are a total of 104 units on the property. Of these, 41 received the September 1, 2022 rent increase notices that included "banked" increases. The amount of this increase was based on the 5% AGA as well as banked increases for 2.0% and 2.9% based on rent increases not imposed on 2020 and 2021.

The Tenant has been paying this rent increase and is current on his rent.

Testimony from Patricia Black

She is a Senior Management Analyst employed by the City of Mountain View Rent Stabilization Program. As such, she is familiar with the CSFRA registration requirements and the resulting landlord registration records. The applicable records show that this rental property at 141 Del Medio Avenue has not been registered as required by the CSFRA, as of the time of this morning's Hearing, and was not registered during the relevant time period going back to July 2022.

The Landlord was notified of its duty to register several times in prior years. Joann Pham sent a follow-up registration reminder on September 30, 2022, HO Ex. 5.⁴

V. Issues Presented

1. Did the Tenant fail to accurately complete the Petition he submitted and how should that failure, and his subsequent correction, affect his right to pursue Undue Tenant Hardship benefits?
2. Does this Tenant qualify under the undue hardship criteria set forth in CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations promulgated thereunder, more specifically under the applicable provisions for a household with inadequate income as alleged in the Tenant's Petition, pursuant to Reg. Chap. 7(C)(2)(a)?
3. Are there "banked increases" applied by the Landlord to this Tenant during the relevant time period pursuant to CSFRA Section 1707(d) that would be subject to reduction under the above undue hardship criteria and if, so, how should they be computed?
4. Did the Landlord raise any issues in this case, such as the right to a fair return or the market rental value of the Tenant's rental unit, that should be considered in this Decision?

⁴ The current status of the property registration is documented in HO Exs. 8 and 9, which indicate that the property registration process was acknowledged by the City to be completed as of October 10, 2022.

5. Is any rent increase subject to this Tenant Petition subject to further modification based on the Landlord's CSFRA registration compliance status before and after October 6, 2022?

VI. Analysis

This Decision addresses one of four undue tenant hardship petitions filed for the same rental property and decided concurrently by the same hearing officer.

The decisions for two of these cases, those for units [REDACTED] and [REDACTED] have already been issued. The decision for the case filed by the tenant in unit [REDACTED] is ready to be issued.

The Decision for this case, involving the Tenant in unit [REDACTED], requires some further explanation, which is set forth in this Analysis.

The evidence, based on the Tenant's own testimony, disclosed that he has a girlfriend who has lived with him and makes some contribution to the household expenses. Both of these facts were not disclosed in this Tenant's Petition.

On the other hand, as noted in the decisions for the three companion cases, the Landlord failed to register this rental property as required by the CSFRA, until correcting that failure as of October 10, 2022. In the other three cases, the Landlord's rent increases for the period between September 1, 2022 and October 9, 2022 were precluded as a result of its failure to register. The Landlord's increases were reinstated as of October 10, 2022 in the decisions for these cases, based on the Landlord becoming fully compliant as of that date.

The challenge in deciding this case arises from the need to balance the Tenant's failure to comply with his obligation to file an accurate Petition with the Landlord's failure to comply with its property registration obligations.

The Decision in this case attempts to provide a balance. In order to achieve a fair balance, the Hearing Officer has used his discretion to withhold consideration of the Tenant's Petition until the point in time when the Tenant voluntarily corrected his omission. That correction occurred at the October 7, 2022 Hearing. This Decision attempts to balance these finding by not considering the Tenant's Petition initially but recognizing it after he corrected the household finances on October 7, 2022.

This approach is viewed as comparable to the approach that disallowed the Landlord's increase initially but reinstated it when the Landlord corrected its registration failure as of October 10, 2022.

VII. Findings of Fact Supporting this Decision

1. Sheldon Tanaka has been a Tenant occupying studio unit number [REDACTED] in the property located at 141 Del Medio Avenue in the City of Mountain View since 2013. His initial monthly rent at that time was \$1275.
2. The 141 Del Medio Avenue rental property is owned by Del Medio Manor, LLP. The property manager during the relevant time period has been Calson Property Management.
3. At all times relevant herein, the monthly rent paid by the Tenant was subject to the CSFRA limits on rent increases. As of December 1, 2019, the Tenant's monthly rent was \$1487.
4. The Landlord did not increase the Tenant's monthly rent during the years 2020 and 2021.
5. The Landlord noticed a rent increase in July 2022 to be implemented as of September 1, 2022. [LL Exs. 1 and 2]. As a result of the September 1, 2022 increase, the Tenant's monthly rent was increased from \$1487 to \$1634, which the tenant has been paying since September 1. The Tenant is current on his monthly rent obligation.
6. The Landlord's witness testified that the Tenant's September 1, 2022 monthly rent increase to \$1634 was based in part on the Landlord's application of "banked" increases, applying those permissible AGA increases that were not imposed on the Tenant in the prior years 2020 and 2021. Specifically, the computation of the September 1, 2022 increase for this unit included banked increases of 2.9% and 2.0%, which when combined with the 5% AGA, resulted in a total increase of 9.9%.
7. Of the 104 total rental units located on this property, 41 received rent increases that became effective as of September 1, 2022. All of those increases included banked amounts. Of those 41, the tenants in 4 of those units filed hardship petitions, which amounts to approximately 10% of the affected units.⁵
8. The Tenant filed his Petition asserting Undue Tenant Hardship on September 9, 2022. [T Ex. 1]. Part II of the Petition form required the Tenant to list all occupants in his rental unit and all household income. In the Petition he filed, the Tenant listed only himself as the occupant and listed only his income in response to this required input.
9. At the October 7, 2022 Hearing, the Tenant voluntarily indicated that his "girlfriend" was also living in the rental unit with him and was contributing a minimal amount to the household income.

⁵ In other cases heard for this property, the Landlord indicated that 39 units were subject to the September 1, 2022 banked increases. The numerical discrepancy is not relevant to the Decision in this case.

10. Even with some minor contribution from his girlfriend, the Tenant's annualized income as of September 2022 was lower than the applicable one hundred percent (100%) of the median household income for Santa Clara County as adjusted for his household size of either 1 or 2 members, according to the California Department of Housing and Community Development. The Tenant's annual income listed in his attachment to his Petition was [REDACTED]. That amount would place his annual income at a level lower than the AMI limit set in Reg. Chap. 7(C)(2)(a) for either a household of one or a household of two. There is no evidence that the girlfriend's income would change this conclusion, especially since if she is counted as a member of the household, the AMI limit is higher.
11. As documented in the Tenant's 2021 tax return, [T Ex. 5], his income for 2021 was [REDACTED]. This tax return indicates that the Tenant's income has been below the applicable AMI for a representative period of time prior to September 2022.
12. Based on his credible testimony at the October 7, 2022 Hearing as verified by his tax return, T Ex. 5, the Tenant has no significant income from other sources such as investments or other passive income.
13. The Landlord did not dispute any of the Tenant's testimony or documentary evidence describing his income.
14. The relevant evidence, based on the testimony of Patricia Black and HO Exs. 7, 8 and 9, demonstrates that the Landlord was notified that it had not complied with the registration requirements of the CSFRA at the time the Petition in this case was filed. The Landlord was non-compliant for a significant period of time prior to October 10, 2022, including July, August and September 2022 when the Landlord implemented the rent increase at issue in this case. The Landlord remained non-compliant with its registration obligation until registration was completed and accepted by the City on October 10, 2022.
15. In the companion undue tenant hardship cases for units [REDACTED] and [REDACTED], the Landlord filed a Landlord Response raising issues on its behalf related to its right to a fair return, but the Landlord did not file a Response prior to the October 7, 2022 Hearing in this case. The Landlord also did not file a Response after the Hearing, despite the Hearing Record being left open to allow a response to be filed.

VIII. CONCLUSIONS OF LAW

- A. At all times relevant herein the rental property and the unit occupied by the Tenant in this case have been subject to the jurisdiction of the CSFRA.
- B. The September 1, 2022 monthly rental increase given to the Tenant by the Landlord was based in part on the Landlord's application of "banked" increases permitted by Section 1707(d) of the CSFRA. This provision of the CSFRA permits the use of banked

increases. However, this same section of the CSFRA along with Chapter 7, Section C of the Regulations, renders any such banked increases subject to the “undue hardship” sections of these same provisions.

- C. The original Petition filed by the Tenant to request a rent reduction based on his undue tenant hardship contained important omissions, including omission of a member of his household and the income of that household member. Accurate input of the number of persons in the Tenant’s household and their combined income is essential to making a determination of undue tenant hardship pursuant to Chapter 7, Section C of the Regulations. As a result of those omissions, the Hearing Officer has exercised the discretion afforded him under the CSFRA and Regulations when determining a tenant undue hardship petition. In the Decision for this case, the Petition is being treated as not suitable for determination at the time it was filed due to the Tenant’s omission of the status of his girlfriend as an occupant of his unit.
- D. However, it is held that once the Tenant corrected his omissions at the October 7, 2022 Hearing, his Petition became suitable for determination and eligible to become the basis for a decision on the substantive merits of the Tenant’s undue hardship claim.
- E. If the Petition did not become suitable for determination until October 7, 2022, the Petition would not be timely within the requirements of Reg. Chap. 7(C)(1)(b). That provision requires that a petition be filed no later than 10 days after the applicable rent increase became “effective.”
- F. However, the Landlord’s failure to comply with its registration requirements under CSFRA Reg. Chap. 11(B)(1) and 11(F), as described in the above Findings of Fact, constituted “substantial noncompliance” with the CSFRA. Under Section 1707(f)(1) “no rent increase shall be effective” where the Landlord is in substantial noncompliance with any provision of the CSFRA or its Regulations. The failure of the Landlord in this case to comply with the registration requirements in the CSFRA Regulations prior to October 10, 2022 precluded the Landlord from instituting any rent increase, including any AGA or any banked increases, that could have been “effective” prior to October 10, 2022.
- G. Since there was no “effective” rent increase until October 10, 2022, the Petition being treated as suitable for determination as of October 7, 2022, would result in it being timely.
- H. Based on the Landlord’s failure to comply with its registration requirements, the Tenant is entitled to a rebate of the entire amount of the rent increase he paid for the dates October 7, 2022, October 8, 2022 and October 9, 2022, including both the AGA and banked components of that increase.

- I. As of October 10, 2022, when the rental property had become registered, the Landlord's rent increase for the Tenant's unit became effective on that day.
- J. Pursuant to Reg. Chap. 7(C)(1)(c), the petitioning Tenant has the burden of proving the undue hardship claim in his Petition, as applied to the banked rent increases that did become effective after October 9, 2022.
- K. Based on his documented annual income as described in the above Findings of Fact, the Tenant has met his burden of proving that his household income during the applicable period has been below the 100% AMI household income for Santa Clara County for either a household with 1 member or a household with 2 members.
- L. Since he has met his burden of proving his eligibility under Reg. Chap. 7(C)(2)(a), the Tenant is presumed to meet the applicable undue hardship criteria set forth in CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations.
- M. There is no basis in the Hearing record for this case that rebuts or refutes this presumption.
- N. The circumstances of the Tenant's income indicate that his household income will continue to meet the same undue hardship criteria for the foreseeable future.
- O. There is no need to address any issue of the Landlord's right to a fair return in this Decision since the Landlord failed to raise any such issue in this case, either prior to the October 7, 2022 Hearing or after.
- P. Based on these conclusions, the Tenant is entitled to relief after October 9, 2022 from the undue hardship he has proven pursuant to Reg. Chap. 7(C)(6). The Tenant is entitled to a reduction in his monthly rent obligation equivalent to the banked increases for his rental unit after October 9, 2022 and continuing thereafter until August 31, 2023.

IX. AWARD

- i. The monthly rental obligation of the Tenant in this case for the days October 7, 2022, October 8, 2022 and October 9, 2022 is reduced for the entire amount of the rent increase imposed by the Landlord. That reduction includes both the amount of the AGA increase for 2022 as well as all banked increases for this time period.
- ii. The rental obligation of the Tenant in this case from October 10, 2022 through August 31, 2023 is reduced by any banked increase amount that exceeds the 5% AGA increase implemented as of September 1, 2022.
- iii. The Tenant will remain obligated to pay the 2022 AGA increase during the October 10, 2022 through August 31, 2023 time period.

- iv. Whether the Landlord can apply any banked increase to the Tenant's rental obligation at any point in time after August 31, 2023 is not within the scope of this Decision.
- v. Any rental amounts that the Tenant has paid since September 1, 2022 for rent increases that exceed the reduced rental obligation under this Award shall be applied as a rent credit to the Tenant's monthly rent obligation for the first monthly rent period that occurs after this Decision become final. If the Tenant has vacated his rental unit prior to the date this credit would be applicable, the Landlord shall pay the amount of the credit to the Tenant directly after this Decision become final.

Dated: November 18, 2022



Martin Eichner
Hearing Officer