

**CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE**

**HEARING OFFICER DECISION**

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

<b>Rental Housing Committee Case No:</b>	Petition B – Failure to Maintain Habitable Premises
<b>Petition Number:</b>	C22230046
<b>Property Address:</b>	1050 Crestview Drive, Mountain View CA 94040
<b>Affected Unit(s):</b>	Number [REDACTED]
<b>Petitioner Tenant Name(s):</b>	Milton Saravia
<b>Respondent Landlord Names(s):</b>	Solano Apartments LP
<b>Hearing Officer:</b>	Martin Eichner
<b>Date of Hearing:</b>	July 12, 2023
<b>Date of Mailing:</b>	(See Attached Proof of Service)

**I. STATEMENT OF THE CASE AND PROCEDURAL HISTORY TO DATE**

- a. A Tenant "Petition B – Failure to Maintain Habitable Premises," with various attachments and exhibits, hereafter "Petition," was filed by the above-named Tenant Milton Saravia, hereafter "Tenant" on April 21, 2023. The Petition was filed pursuant to the Community Stabilization and Fair Rent Act, hereafter "CSFRA." The Petition named [REDACTED] as the Landlord for the Solano Apartments rental property where the Tenant lived, located at 1050 Crestview Drive in the City of Mountain View, hereafter "City." Based on subsequent information obtained from the parties and testimony at the Hearing, Solano Apartments LP was identified as the legal owner of the rental property. Vintage Property Management was identified as the property management company serving the Solano Apartments community as an agent of the owner. As used herein, the term "Landlord" refers to Solano Apartments and Vintage Property Management.
- b. The Tenant served a Notice of Submission of Petition on the Landlord, and the Landlord thereafter filed a Landlord Response to Petition with various exhibits on June 12, 2023.
- c. A Pre-Hearing Conference was held on June 15, 2023, utilizing the Zoom platform. The Conference was conducted by Martin Eichner, the Hearing Officer assigned to decide the Petition. The Tenant, Milton Saravia, participated as did Ronit Bodner, a principal in the rental property's ownership group. The Hearing Officer issued a Pre-Hearing Conference Summary and Order describing the discussions, explanations and directives given at this Conference.
- d. As per the date set at the Pre-Hearing Conference, the substantive evidentiary Hearing, hereafter "Hearing," for this case was held and recorded on July 12, 2023 utilizing the Zoom platform. The Hearing Officer again explained the process that would be applied during the Hearing. He also

marked various documents as exhibits for the Hearing record. The Tenant participated and presented testimony under oath, translated by interpreter Flavia Toledo, who is employed by the City. Ronit Bodner participated in the Hearing on behalf of the Landlord. Ms. Bodner presented legal argument and testimony under oath, along with the testimony of [REDACTED], the Maintenance Supervisor employed by Vintage Property Management. JoAnn Pham, Analyst I for the City of Mountain View Rent Stabilization Program staff, participated in the Hearing to provide administrative support.

- e. During the course of the July 12 Hearing, a concern was raised about whether the parties had received certain documents that were marked as exhibits. Also, certain documents were identified during the Landlord's testimony that had not previously been submitted and served as exhibits. At the close of the July 12 Hearing, the Hearing Officer indicated that he was closing the Hearing record except for these unsubmitted documents that would be addressed in a Post-Hearing Order served July 19, 2023. The resulting Post-Hearing Order from the Hearing Officer provided for City staff to serve certain documents on the parties that had been marked as exhibits. The Order provided for the Landlord to submit certain documents discussed during the Hearing but not produced at the Hearing. The Order further provided that except for these specific documents, the Hearing record would be deemed to be closed as of July 27, 2023. Thereafter, the documents identified in the Post-Hearing Order were served as directed.
- f. After the Post-Hearing Order was served, City Staff indicated that the Petitioner-Tenant contacted the City Staff on July 21, 2023 to request an opportunity to present additional documentary and testimonial evidence not offered at the Hearing. The Tenant did not make this request at the Hearing when the Hearing Record was closed, except as noted above. In response to this action by the Tenant, a Second Post-Hearing Order was issued to address the Tenant's request. Under that Order, the Tenant was instructed to file a motion to re-open the Hearing Record, pursuant to Chapter 6, Section E.10 of the CSFRA Regulations. The Order stated that any such motion should address:
  - The nature of the evidence, in terms of testimony or documents, the Tenant wishes to offer;
  - Why that evidence is relevant to the issues in the case;
  - Why the evidence wasn't offered at the time of the Hearing.
- g. The Order also provided an opportunity for the Landlord to respond in the event the Tenant filed a motion to reopen.
- h. The City staff subsequently received an email communication on July 27, 2023 from the Tenant that was treated as a motion to re-open [see T Ex. 7 below]. That communication was served on the Landlord on July 27, 2023. The Landlord filed an Objection to the Tenant's Motion on August 2, 2023 [see LL Ex. 6 below].
- i. The Hearing Officer issued an Order on August 8, 2023 in response to the Tenant's motion [see HO Ex. 11 below]. In summary, the motion was denied because the Tenant sought primarily to present legal argument rather than new evidence and because he did not explain why he failed to present any asserted new facts at the July 12 Hearing.

## **II. EVIDENCE<sup>1</sup>**

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

### **Hearing Officer Exhibits**

HO Ex. 1 – 4/21/2023 Notice of Submission and POS to Landlord of Petition – Failure to Maintain Habitable Premises

HO Ex. 2 – CSFRA Petition Hearing Information Sheet

HO Ex. 3 – 5/17/2023 Follow-Up Information and Notice of Pre-Hearing Conference

HO Ex. 4 – 6/8/2023 Notice of Prehearing Meeting and Hearing Date

HO Ex. 5 – 6/19/2023 Pre-Hearing Summary of Conference and Pre-Hearing Order

HO Ex. 6 – 6/20/2023 Notice of Hearing Officer Pre- Hearing Order and Notice of Hearing

HO Ex. 7 – 7/3/2018 – 4/20/2023 City of Mountain View Inspection Reports

HO Ex. 8 – 7/19/2023 Notice of Post-Hearing Order and Post-Hearing Order

HO Ex. 9 – 7/25/2023 Notice of Second Post-Hearing Order and Second Post-Hearing Order

HO Ex. 10 – 7/12/2023 Recording of July 12, 2023 Hearing

HO Ex. 11 – 8/8/2023 Order in Response to Tenant’s Motion to Re-Open Hearing Record

### **Tenant Exhibits**

T Ex. 1 – 4/21/2023 Petition B : Failure to Maintain Habitable Premises

T Ex. 2 – Worksheet B Attached to Petition

T Ex. 3 – 4/21/2023 Narrative Summary Accompanying Petition

T Ex. 4 – 4/21/2023 Petition Exhibits B-K

T Ex. 5 – December 2022 – April 2023 emails Between Tenant and Landlord

T Ex. 6 – 11/9/2022 Lease

T Ex. 7 – 7/27/2023 Motion to Re-Open Hearing Record

T Ex. 8 – October 2022 – March 2023 PG&E Statements

T Ex. 9 – 3/31/2023 Email from Property Manager to Tenant with the subject line, “Heat Credit”

### **Landlord Exhibits**

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<sup>1</sup> For purposes of better organization, the exhibit numbers assigned herein may differ from the tentative numbers assigned during the course of the hearing.

LL Ex. 1 – 6/12/2023 Landlord Response to Petition with Attached Exhibits Including email Exchanges Between Tenant and Landlord, Photos, email with Jim Olson (Code Enforcement), Tenant Ledger

LL Ex. 2 – 6/30/2023 Preliminary Landlord Witness List

LL Ex. 3 – 10/13/2022 Rental Application Submitted by Tenant

LL Ex. 4 – 10/17/2022 – 2/10/2023 Invoice and Work Order for Window Replacement Generated by Multi-Family Window Replacement Services Company

LL Ex. 5 – Diagram of Tenant’s Rental Unit Prepared by Witness [REDACTED] to Illustrate his Testimony

LL Ex. 6 – 8/2/2023 Objection to Tenant’s Motion to Re-Open the Hearing Record

### **III. SUMMARY OF RELEVANT TESTIMONY**

The following Summary is based on the hearing testimony deemed relevant to this Decision:

#### **Testimony from the Tenant-Petitioner**

##### General

He first became a tenant in unit [REDACTED] at this rental property on November 13, 2022. This rental unit has two bedrooms. He lives there with his wife and son. His monthly rent since then has been \$3195.

##### Habitability Conditions

##### The Windows

When he applied to become a tenant in rental unit [REDACTED], the local manager [REDACTED] told him the windows in the unit would be “changed” within “ten days” because they were “not in good condition.” This conversation occurred before he actually occupied the rental unit. This promise is not documented in writing. It is based on a verbal conversation between him and [REDACTED].

After he and his family began living in unit [REDACTED], they noticed their utility bills were surprisingly high. The windows were quite old. They began to feel cold air coming into the unit’s bedrooms during the cold winter weather that began soon after they took occupancy of the unit. This problem was aggravated because the heating system was not working properly.

The windows were metal sliding windows. They closed properly but somehow the bedrooms were very cold. The windows did not leak water during periods of rain.

The only communication with any representative of the Landlord about the windows occurred during the already described pre-occupancy walk-through with [REDACTED]. This occasion was when Mr. [REDACTED] promised that the windows were going to be replaced within 10 days.

These bedroom windows were not actually replaced until February 10, 2023, 89 days after he occupied unit [REDACTED]. No Landlord representative came to his unit to inspect the windows prior to the date the new windows were installed in the bedrooms.

No City Code Enforcement Inspector has come to his rental unit to inspect the windows or the heating system, except that Jim Olson from Code Enforcement did come to his unit on April 18, 2023 after the new windows had been installed. He went to Jim Olson’s office prior to that date, but Mr. Olson did not come to his rental unit until April 18.

The new windows are very high quality. He has not encountered any problems with the new windows. On those occasions when he talked to [REDACTED] about the windows, he did not complain about cold air coming in through the windows. He would just ask Mr. [REDACTED] when the new windows were going to be installed.

He did not complain to any other Landlord representative about the cold air coming in through the old windows or about any other problem with the old windows.

[cross-examination by Ronit Bodner on behalf of the Landlord.]

Before occupying his current two-bedroom unit, he and his family lived in a one-bedroom unit at the same property.

He doesn't remember the exact date he submitted his application for the current unit, but it was around October 13, 2022.

He doesn't remember being offered a specific upgrade from single pane to double pane windows. He just remembers being told by [REDACTED] that the current windows were old. He doesn't remember Mr. [REDACTED] telling him that the upgrade would cost an additional \$50 a month. He doesn't remember if the windows in his prior one-bedroom unit were single pane or double pane, but they worked "fine." He later spoke with [REDACTED] about five or six times about when the new windows would be installed, but Mr. [REDACTED] never mentioned an additional charge for the window replacement.

He denies that [REDACTED] said he would only order the windows within ten days, not that they would install them within ten days. Mr. [REDACTED] very clearly said they would "change" the windows in ten days. He speaks English well; there was no confusion about his conversations with [REDACTED] due to language differences.

He had not seen the invoice for the new windows, [LL Ex. 4], before the Hearing today.

He did receive a rent credit of \$139.25 for the delay in the window installation, but he "hasn't used it."

His prior one-bedroom unit at this same property faced south; his current two-bedroom unit faces north. His prior unit was warm from the sun; his current unit does not get any sun, which made the winter cold worse. He did notice an improvement after the new dual pane windows were installed.

[Rebuttal to the Landlord window testimony]

Nothing was said to him about any "amenities." He was simply told what the monthly rent would be and that the windows would be changed in ten days.

[REDACTED] was always respectful toward him and careful to ask permission before entering the Tenant's unit.

### The Heating System

The heating system was a problem as soon as they moved into the unit in November 2022. As he has already noted, the poor weather protection from the old windows contributed to the cold temperature in their unit. The heating in the kitchen and living room was adequate. However, the heat coming into the two bedrooms and the two bathrooms, which represented 65% of the overall space in the unit, did not provide sufficient warmth. Since the weather this winter was especially harsh, the bedrooms and the bathrooms during the winter were "like a freezer."

The heating system consists of warm air coming from outside through vents<sup>2</sup> in the various rooms. He realized there was a problem with the lack of adequate heat a few days after he and his family moved into this unit.

He called PG&E when he saw that his monthly bill was \$350. They told him to lower the temperature on his thermostat, which he did. However, that change did not increase the amount of heat in the bedrooms and bathrooms.

Initially he spoke to [REDACTED] about the problem, but on [REDACTED]'s recommendation, he began to send emails to the Landlord. He first sent the Landlord an email to complain about the inadequate heat on December 19, 2022. The maintenance man, [REDACTED], came to respond to his email soon after it was sent. When [REDACTED] came to his unit, he opened and closed each of the vents and inspected them externally. There was no improvement after [REDACTED] took these steps.

[REDACTED] returned on another occasion with an additional person to check the vents. They came several times. He doesn't remember how much time passed between these visits, but not a lot of time passed. On these occasions, they told him they were changing the vent openings so that hot air from the living room would be "pushed" to the bedrooms, but he doesn't know if they made any actual changes.

On one occasion, the maintenance staff told him they put some cardboard in the system to change the flow to the bedroom, but that action did not improve the heat functioning.

Here is a more specific timeline. On January 26, 2023, Mr. [REDACTED] visited his apartment after he sent an email. [REDACTED] said they were going to install a new heating system. On February 10, the new windows were installed. On February 23, he told [REDACTED] he was going to file a petition with the City to get the system fixed. [REDACTED] replied that he couldn't do anything and told him that he should write to the Landlord. On February 24, the area supervisor, [REDACTED] came to his unit with [REDACTED] and the two maintenance men. On that occasion, [REDACTED] was very rude to him. On these occasions, no repairs were made by any of these persons: they just opened and closed the vents. On February 27, [REDACTED] and another maintenance worker came to his unit to once again just check the system. The heat function did not improve after any of these visits by Landlord staff.

On March 23, there was a visit from the manager Mr. [REDACTED] and Mr. [REDACTED] on behalf of "the owner." They told the Tenant's wife that there was nothing more they could do. They said that if the Tenant and his wife were not happy, they should find another apartment to live in. On that same day, they placed a larger piece of cardboard to totally block any heat from the living room vent so that the heat would be sent to the bedrooms. This change did improve the heat in the bedrooms. It did not improve the lack of heat to the main bathroom.

The Landlord staff never came back to make repairs after that date.

He has never moved or changed the vents because that is not his responsibility. He denies the assertions by the Landlord witnesses that he changed the vent settings. He never touched them.

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<sup>2</sup> Some witnesses used the term "vent" to describe the mechanism generating heated air to individual rooms in the rental unit. Others used the term "register." For purposes of this Decision, either term refers to the same mechanism providing heat to individual rooms, which might accurately be described as vented registers. These different terms do not include the different mechanism in the rental unit described as the "outlet" or "return" in the testimony of Mr. [REDACTED].

There was a total of 130 days without adequate heat in the bedrooms or bathrooms. He paid the full rent for this entire period, which amounts to \$13,845. The credit of \$139 they gave him was inadequate.

When Jim Olson from the City came to his unit on April 18 with Mr. [REDACTED] and the maintenance man, they removed the cardboard from the vents. He did not mention the problems with the heat to Mr. Olson on that occasion because “the problem was already fixed.” He said this to Mr. Olson because by that time, the winter was over and the temperature was no longer cold.

[cross-examination on behalf of the Landlord]

His first email notice to the Landlord was on December 19, 2022. As per Tenant Exhibit 3, p. 2, he indicates that as of March 23, the heater is better. The actual range of time is from November 13 to March 23, which is the 130 days total.

The Landlord made an appointment to check the heat on the same day he first notified the Landlord, December 19. The Landlord maintenance staff did respond quickly, but they never fixed the problem. He also never received any explanation or instructions from the maintenance staff about the vent system when they came to his unit.

As per his February 23 email<sup>3</sup>, [which is page 8 of LL Ex. 1], he stated “they send the handyman around five times, they just open the vents.” However, he never closed the vents; doing so would result in even less heat in his unit.

Regarding the March 23 laser measurement of heat coming from the vents that maintenance staff conducted as indicated in LL Ex. 1, he remembers Mr. [REDACTED] coming to his unit with a tool. However, Mr. [REDACTED] was very rude to him and did not tell him anything.

He always kept the thermostat at 68 degrees based on instructions from PG&E after he received the \$350 utility bill.

## **Testimony on behalf of the Landlord**

### General testimony from Ronit Bodner

There are a total of 124 units at the Solano Apartments property. The building and rental units were constructed in approximately 1968. The legal name of the property owner is Solano Apartments LP. She is a principal in the general partnership that is the ownership group for this property. [REDACTED] is employed by the separate property management company, Vintage Property Management.

### Testimony about the windows from [REDACTED]

He is the chief maintenance employee for the property management company.

Any person applying to become a tenant at this property is given the option of upgrading to double pane windows as an amenity to be paid at an additional cost of \$50 per month. The advantage of the double panel window is that there is better insulation and therefore lower utility bills for the tenant.

Based on the window company records, [LL Ex. 4], October 17 is the date the window installation company measured four windows in unit [REDACTED]. Measurements were necessary because each window has to be custom-made, with a different size for each. This action means to him that the local resident

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<sup>3</sup> In this email, the Tenant indicates he first notified the Landlord on December 14, not December 19. Based on the Tenant’s Hearing testimony, December 19 has been used as the start date for notification to the Landlord.

manager must have ordered double pane windows for unit [REDACTED] prior to October 17. He knows this because the window company would not have measured the windows unless they had already been specifically ordered. It would not be possible to have these custom windows installed within 10 days after they were ordered. Normally, it takes six to eight weeks for the windows to be manufactured, although once the manufacturing is completed, the company generally installs them quickly, within approximately 24 hours. The local managers would not be authorized to offer installation within ten days. They are only authorized to say that windows would be ordered within ten days.

Looking at the records, it appears that his company paid a deposit for the order for the unit [REDACTED] double pane windows on or about October 24. This is the same day his company received the estimate from the window company.

The normal six-to-eight-week time period for receiving and installing the windows was extended in this case due to the intervening holiday period as well as the number of rainy days this winter. The windows cannot be installed when it is raining. The window company doesn't receive payment for the remainder of its invoiced cost until the windows have been received and fully installed.

The single pane windows in unit [REDACTED] were working "perfectly," but they are inherently less weatherproof than double pane windows. Unit [REDACTED] does not get enough sun because it faces north. He does not recall inspecting the single pane windows in unit [REDACTED]. He would have personally inspected windows in a unit only if "there is a problem" such as leaking rainwater. He is not aware of any complaint about "wind coming in." Maintenance requests are made in writing. They need permission before entering an apartment. He would be personally called in if [REDACTED], the maintenance employee at the property, could not handle a problem. He valued the window amenity for purposes of the credit given the Tenant by dividing the \$50 monthly rate by 30, to obtain the daily value.

The lease doesn't specifically reference the \$50 payment for the window upgrade, but it would have been part of the discussion when the rental amount was set.

#### Testimony about the heating system from [REDACTED]

Before he personally became involved, the maintenance staff told him they would find the vents in different positions from the positions they should have been in when they went to the Tenant's unit. When the vents are in the proper position, heat should be sent to all locations in the unit.

He then decided to go to the unit itself. He recalls that he personally went to the unit two times, the last of which was with the City inspector.<sup>4</sup> When he was in the unit he himself found the vents in the wrong positions. On each such occasion, he and his staff adjusted the vent settings. On the last occasion, the City Inspector told the Tenant to leave the kitchen and living room vents closed because the heat coming from the dining room would warm the living room.

Landlord Exhibit 5 is his hand-drawn diagram of the heating system in each room of the rental unit. The heating outlet in the living room shown on his diagram must be closed in order to send heat into the other rooms. The thermostat is on the living room wall. There is approximately 30 feet of ductwork. If the return outlet in the living room is left open, all the heat will stay in the living room and that amount of heat will trigger the thermostat to shut off the system. They shut the vents in the living room and the kitchen.

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<sup>4</sup> In his testimony a few minutes later, Mr. [REDACTED] says he "was there" five or six times.



In all the units, they shut the vents in the living room and kitchen. When this is done, the flow from the dining room heats the living room and all the other rooms. The building inspector agreed that they were using the correct approach.

When he was there on March 23 with the other maintenance staff, he took photos showing the temperature of the heat that was coming out of the vents in every room, as was being shown on his laser measurement tool. The temperature of the heat in the living room showed "125 to 129" degrees. Every time he was in the unit, though he doesn't know specifically which person he spoke to, he "begged" someone there, maybe the Tenant's wife, not to touch the vents. Every time he was there, he found the "things" were changed. On March 23, he closed the vents in the living room and the kitchen. He took photos of all the registers after he made these changes, using the laser temperature measurement tool on March 23 [LL Ex. 1]. His measurements showed adequate heat in all the rooms. He asked that none of the settings be changed again. The Tenant never complained about the heating system after March 23.

When the City Inspector came in April, the Inspector tested everything. By the time he arrived, he found the settings changed again. He changed the settings again, and after he did so, all the temperature readings with his laser measurement tool were correct, including the bathrooms. He told the Inspector they had been to the unit six or seven times and changed the vent settings each time. The Inspector confirmed that correct vent settings were very important.

Nothing else was ever changed with the heating system and no other parts of the system were repaired or changed. Everything, including the unit's thermostat was functioning correctly. The incorrect settings of the register vents was the sole cause of the heating problems in the Tenant's unit.

Everyone, including him, had big heating bills this winter due to the harsh weather. The Inspector told the Tenant that he was also receiving high utility bills.

#### Rebuttal from the Tenant

I am 66 years old and my wife is 63. My son is 31 years old. We are all responsible adults. We never touched or closed the vents. It is a lie to say that he or his family did. Several maintenance men came to the unit to fix and move the vents. When Mr. Olson was there in the unit, the system was fixed. Mr. Olson did make recommendations. However, they lived without adequate heating for 130 days before that, even though they never touched the vents.

He has no way of knowing if the Landlord staff fixed anything in the heating system outside of the unit. They are not using the heating system now because the weather is warm.

#### Further Testimony from [REDACTED]

Each apartment has its own dedicated heating unit, outside the apartment on the corner of each balcony, near the return outlet. It was functioning properly. It can be tested by measuring the heat from the closest register, which should be the highest temperature, which they confirmed was occurring.

Mr. Olson suggested changing the filter in the heating unit, which they did.

When he tested the bathrooms, they were getting adequate heat.

#### Further from the Tenant

When the maintenance staff came to his unit to check the heating, they never looked at the unit on the balcony, just the vents inside the unit. [REDACTED] offered a new heater to him. [REDACTED] told him "the

machine” had to be changed, but they couldn’t do it now because they were working in another apartment. He is thankful for the technical explanation today, but he still lived without heat for 130 days.

He knows that [REDACTED] is not the person to make decisions about the heating, but [REDACTED] did make this comment.

Further on behalf of the Landlord

[REDACTED] is not authorized to make decisions about repairs to the heating system, only members of the maintenance staff have the ability to do so.

#### **IV. ISSUES TO BE DETERMINED**

1. Did the Tenant-Petitioner meet his burden of proving the existence of one or both of the following conditions in his rental unit, which violated the applicable habitability standards:
  - A. Failure to provide properly functioning windows and adequate window ventilation;
  - B. Failure to provide a properly functioning heating system.
2. If the Tenant met his burden of proving the existence of one or both of the above conditions, did he prove that the Landlord-Respondent was aware of the condition?
3. Did the Tenant also prove that the Landlord failed to take adequate and timely remedial action to correct that condition after becoming aware of the condition?
4. Did the Landlord prove that the Tenant’s actions or some other factor outside its control was responsible for creating or continuing the condition that violated habitability standards?
5. If the answers to the above questions are in favor of the Tenant, what is the appropriate downward adjustment of rent?

#### **V. ANALYSIS OF KEY ISSUES**

##### **A. The Windows in the Tenant’s Unit Did Not Meet Habitability Standards When He Took Possession of that Unit.**

The Tenant-Petitioner has asserted that he was subject to two conditions that would justify a downward adjustment of rent under CSFRA Section 1710(b). Each condition is asserted to be a violation of the applicable habitability standards under California Law.

The first condition asserted by the Tenant to support his Petition is based on the single pane windows in his unit when he first took possession. The Tenant asserts that the single pane windows in his unit failed to provide him and his family with adequate weather protection from cold winter air.

The primary California statute establishing standards for habitability is California Civil Code Section 1941.1. California Civil Code Section 1941.1(1) requires a landlord to provide “Effective waterproofing and weather protection ...including unbroken windows and doors.”

It is important to understand that the issue in this case is not whether the Landlord broke a promise to install new windows on a timely basis. The issue is also not whether the double pane windows are better or more energy efficient than the older single pane versions. The issue is whether the Tenant proved that the older windows failed to meet the adequate weather protection habitability standard in Civil Code Section 1941.1(1).

The Tenant testified that the Landlord's local resident manager, [REDACTED], told him at the time he applied for his unit in October 2022 that the current windows were "not in good condition," but that they were going to be replaced with new windows within ten days after he took occupancy of his unit. The Tenant testified that when he did become an occupant, cold air entered the unit through the single pane windows, particularly the bedrooms. The Tenant further testified that the windows were not replaced until 89 days after he took occupancy.

The Tenant also testified that cold air intrusion through the windows stopped once the new windows were finally installed.

The Landlord asserted that the windows were upgraded from single pane to double panel merely as an amenity. However, if the double pane windows were necessary to ensure adequate weather protection, they were not an amenity, they were a requirement to meet the Landlord's habitability obligation.

The Landlord's position on these issues is weakened by its failure to produce [REDACTED] to directly deny or explain the "ten days" promise, as well as to deny the "not in good condition" admission made to the Tenant. The Landlord's position is further weakened by its failure to document the asserted amenity characterization, and the associated extra charge, with appropriate language in the lease. [ T Ex. 6].

Other points raised by the Landlord do not affect its duty to provide windows that meet habitability standards.

The Landlord asserts that the single pane windows in the Tenant's prior unit on the same property provided adequate weatherproofing. It asserts that Tenant's new unit faced north, where it received less sunlight and therefore less natural heating from the sun compared to his prior unit. However, the Landlord's duty to provide adequate weather protection is not conditional or subject to revision based on natural conditions. The duty to provide a habitable rental is absolute. If the northern-facing windows require greater weather protection, the Landlord is required to take steps to provide the greater weather protection. The fact that single pane windows in other units were adequate is not determinative.

Based on weighing this evidence, the below Conclusions of Law hold that the Tenant met his burden of proving that the inadequate weather protection of the single pane windows violated the applicable habitability requirement.

**B. The Tenant Failed to Prove that the Landlord was Aware that the Single Pane Windows Were a Habitability Violation.**

In order to sustain his Petition, the Tenant must also prove that the Landlord was on notice that the windows were not meeting the applicable habitability standards.

The Tenant's testimony that [REDACTED] told him the windows were not in good condition is insufficient. This admission by Mr. [REDACTED] was inadequate to prove the Landlord's knowledge that the deficiency in the weather protection afforded by the single pane windows rose to the level of being a habitability violation.

The Tenant testified that after he began to occupy his rental unit, he repeatedly asked [REDACTED] when the new windows were going to be installed. However, he failed to verbally notify [REDACTED] or any other Landlord representative that he was suffering exposure to freezing temperatures in his unit due to the failure of the old single pane windows to provide adequate weather protection.

The emails the Tenant sent to the Landlord about the heating system demonstrate that he knew how to lodge a complaint and that the Landlord would respond when he did so. In his December 19, 2022 email to the Landlord, [T Ex. 5], the Tenant provided a list of conditions in his unit that required attention, including the bedroom heat. This list does not include a reference to cold air coming into the unit from the bedroom single pane windows. It also does not generally complain about inadequate weather protection resulting from the old windows. On February 23, 2023, the Tenant complained in another email about the delay installing the new windows, but he again did not mention cold air intrusion or inadequate weather protection. [T Ex. 5].

There is no evidence in this case from any other source documenting that the Landlord knew the old windows violated the applicable habitability standard. Landlord witness [REDACTED] testified that he never inspected the condition of the single pane windows unit [REDACTED] because he was not aware of any complaint about them being deficient. This testimony supports the conclusion that the Landlord was not independently aware of the inadequacy of the windows.

**C. The Tenant Also Failed to Prove the Delay in Replacing the Old Windows Was Untimely; The Landlord Proved the Delay Was Due to Factors Beyond Its Control.**

The Tenant is also obligated to prove the Landlord failed to take timely remedial action after becoming aware of the habitability violation. Even if the Landlord had been aware of the habitability violation, its efforts to replace the old windows were timely under the circumstances.

The Landlord denies that the local manager had the authority to promise new windows within ten days because the new windows needed to be custom measured and ordered. The Landlord asserts its Exhibit 4 shows that the installation process began in October 2022, immediately after the Tenant was set to take occupancy. This process began with the window contractor taking measurements for the custom manufacture of the new windows. The Landlord asserts that its Exhibit 4 shows the subsequent timing of the manufacture and installation process. The Landlord witnesses testified that the delay until February in completing the installation was to be expected in light of the intervening holiday season as well as supply chain issues. The installation was further delayed because of the numerous rainy days during early 2023, during which the installation could not be performed.

As noted in the below Findings, these reasons were beyond the control of the Landlord. They are held to provide credible explanations for its delay in completing the window replacement.<sup>5</sup>

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<sup>5</sup> Although the Tenant did not meet his burden of proof to justify a rent reduction based on the Section 1710(b)(1) habitability violation, there is a potential remaining issue about the validity of the \$50 monthly fee charged the Tenant

**D. The Heating System in the Tenant's Bedrooms and Bathrooms Did Not Meet the Applicable Habitability Standard During the Winter of 2022-2023.**

The other condition listed in the Tenant's Petition as a habitability violation was the failure to provide adequate heat in his rental unit. California Civil Code Section 1941.1(4) requires a Landlord to provide "heating facilities that conformed with applicable law at the time of installation, maintained in good working order."

The Tenant testified credibly that the bedrooms and bathrooms in his rental unit were "freezing" from the time he began occupancy until March 23, 2023.

The Landlord's responsibility to provide adequate heat pursuant to California Civil Code Section 1941.1(4) is unconditional. The Landlord made the point that the Tenant's new unit faced the north, which made it more difficult to heat, particularly during the harsh winter of 2022-2023. However, the Landlord's unconditional duty to provide adequate heat applies regardless of the challenges from environmental conditions.

There is also no dispute that the Tenant notified the Landlord on multiple occasions about the cold temperature in his unit due to lack of adequate heat. [T Ex. 5]. There is also no dispute that the Landlord responded promptly on multiple occasions to the Tenant's complaints about the heating.

The Landlord did not contest the Tenant's testimony about the lack of heat. The Landlord response was to instead blame the deficiency on the Tenant's incorrect adjustments to the register vents in the individual rooms of the unit. The Landlord correctly asserts that there would be an exception to the Landlord's duty, if the lack of adequate heat resulted from tenant negligence or interference, such as changing the vent settings.

**E. The Landlord is Responsible for the Deficiency in the Heating System; The Deficiency was not the Fault of the Tenant.**

The Landlord testimony asserted that the lack of sufficient heat in these rooms was due to the improper adjustments of the individual room vents. More specifically, the Landlord testimony asserted that the vents in the living room and kitchen should have been closed, but they were open

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for the window upgrade. Based on the finding against the Tenant under 1710(b)(1), the \$50 monthly charge cannot be refunded under this provision. There is a separate potential argument that the \$50 monthly fee constituted "unlawful rent" within the meaning of CSFRA Section 1710(d). It could be argued that a tenant cannot be subject to an extra charge for a modification for this unit that was necessary for the windows to meet habitability standards. However, the Tenant in this case did not raise an "unlawful rent" issue in his Petition. Since the allegation of unlawful rent was not raised in the Petition, the record was not fully developed for determining whether the \$50 fee has been unlawful rent. For example, it is unclear under the current record if the Tenant was actually charged an additional \$50 for the window upgrade. According to the Landlord witnesses, he was charged this additional amount. However, the Tenant doesn't acknowledge discussion of any agreement to pay this extra fee. The lease does not reference an additional charge for the upgraded windows. If the unlawful rent issue had been fully addressed, these and other factual issues would have been developed further.

Nothing in this Decision should be interpreted as a finding as to whether the \$50 fee was "illegal" rent. However, nothing in this Decision should be interpreted to preclude the Tenant's option to file a new illegal rent petition at some point in the future.

The Landlord gave the Tenant a \$139 rent credit for the upgrade fee he was charged before the new windows were installed. For the reasons already discussed, this Decision does not address the validity of that credit.

on every occasion when the Landlord's maintenance staff came to the rental unit to address his complaints.

According to the Landlord testimony, the maintenance staff would adjust the vents to the proper position, but the vents would be back in the wrong position every time they returned to the unit during the time period between November 2022 and March 23, 2023. Based on this testimony, the Landlord wants this Decision to draw the circumstantial inference that the Tenant must have changed the vent settings after the maintenance staff set them in the correct position.

The Tenant testified emphatically that he never touched the vents to make any changes in their positioning. He also denied that his wife and son ever touched the vents.

Resolving this stark discrepancy about the vent settings is a significant challenge. However, certain points are useful in resolving the conflicting evidence about what happened to the register vents.

First, the design of the system, as described by the Landlord witness, seems confusing. According to [REDACTED], the registers in the kitchen and living room must be closed in order for heat to reach other rooms. If the system is designed to work this way, the question becomes why were vented registers installed in these rooms?

More importantly, if the maintenance staff found the vents improperly set on several different occasions, including at least two occasions when [REDACTED] was personally present, why wasn't the Tenant given a specific written directive telling him not to adjust them? It is also puzzling that the Landlord failed to take any other steps such as posting written instructions directly on the vented registers in the kitchen and living room. If the problem was due to the Tenant, it makes no sense that maintenance staff would make repeated visits to the rental unit but not take some type of strong action to change his behavior. Instead, the maintenance staff made repeated visits to the rental unit and repeatedly made the same adjustments to the vents. The lack of written directives is underlined by the testimony of Mr. [REDACTED]. He stated that he verbally told someone at the rental unit not to adjust the vents, but he is not even sure whom he spoke to.

In his March 1, 2023 email to the Landlord, City Inspector Jim Olson specifically suggested that the Landlord email the Tenant with instructions about the vents [LL Ex. 1]. However, there is no evidence in the Hearing record documenting that written instructions were subsequently sent to the Tenant.<sup>6</sup>

Most importantly, if the maintenance staff repeatedly came to the unit to re-set the vents in the registers, there should have been adequate heat immediately after each such visit. If so, why would the Tenant repeatedly change the settings on the vents after the maintenance visits? He should have realized he was receiving adequate heat and should have had no reason to change the vent settings thereafter.

The Landlord's explanation for the cause of the problem is questionable in light of other factors.

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<sup>6</sup> The Landlord correspondence with Mr. Olson does not otherwise support its case. Mr. Olson merely indicated in an email that the vent settings "could" be the cause of the problem.

The Tenant testified that maintenance staff placed cardboard in the heating systems. Then they installed larger cardboard, and then they removed it. If [REDACTED]'s testimony is to be believed, the only problem with the system was the incorrect register vent adjustment. If true, why did the maintenance staff tinker with inserting and removing cardboard in the system? It is noteworthy that [REDACTED] did not deny or explain the Tenant's testimony about the cardboard.

Even more so than with the windows evidence, the Landlord's case is significantly weakened by its failure to present testimony from [REDACTED]. The Tenant testified that Mr. [REDACTED] made an important admission, which is that the heater needed to be changed. The Landlord was aware that the Tenant would make this claim at the Hearing. Prior to the Tenant's Hearing testimony, and prior to filing his Petition, this statement from Mr. [REDACTED] is recounted in the Tenant's January 19, 2023 email to the Landlord. Given the consistency of the Tenant's assertion of this admission and the failure of the Landlord to produce [REDACTED] to deny or explain the asserted statement, the below Findings hold that this admission did occur.

#### **F. Computation of the Award**

Based on the above Analysis, the Tenant is entitled to a downward rent adjustment due to the Landlord's failure to provide adequate heating.

At the Hearing, the Tenant emphatically asserted that he and his family lived in the rental unit without adequate heat for 130 days. However, the Landlord's liability for the rent reduction does not begin until it was notified by the Tenant and had an opportunity to respond. The first documented notice to the Landlord occurred in the Tenant's December 19, 2022 email. Since the Landlord responded immediately, December 22 is the appropriate start date for the reduction. Since the Tenant agreed that the heating system was functioning as of March 23, the computation of the rent reduction ends as of March 22, 2023 for purposes of this Decision.<sup>7</sup> The resulting total number of days for the rent reduction is 90.

Freezing cold temperatures in the bedrooms and bathrooms of the Tenant's rental unit must be viewed as a major discomfort and a serious loss of the benefits of the tenancy here.

The amount of reduction appropriate here is further complicated by the poor protection of the single pane windows, at least until the new windows were installed in early February. The Decision concludes that the percentage of reduction independently due to the heating system failure, without consideration of the impact of the windows, is 30%.

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<sup>7</sup> It is difficult to distinguish improved bedroom temperatures due to the heating system adjustments versus the improved weather by late March. However, since the Tenant admitted the rooms had acceptable temperatures as of March 23 and he did not complain about heat thereafter, March 22 is the end date for purposes of this Decision.

## **VI. FINDINGS OF FACT**

### **General Facts and Jurisdiction**

1. Milton Saravia, the Tenant-Petitioner in this case, signed an application to occupy the two-bedroom, two-bathroom unit [REDACTED] at the Solano Apartments rental property on October 13, 2022 [LL Ex. 3]. The Tenant and his family previously occupied another unit at the same property. The Tenant signed a written lease for unit [REDACTED] dated November 9, 2022 [T Ex. 6]. The Tenant and his family and his family initially occupied unit [REDACTED] on November 13, 2022. During the time period relevant to this Decision, the Tenant paid monthly rent in the amount of \$3195.
2. There are a total of 124 units at the Solano Apartments property, which is owned by Solano Apartments LP. The building and rental units were constructed in approximately 1968.
3. Ronit Bodner is a principal in the management firm for Solano Apartments. Ms. Bodner presented legal argument and testimony under oath at the Hearing in this case. [REDACTED], who testified at the Hearing in this case, is employed by the separate property management company, Vintage Property Management. This company contracts for maintenance services at the Solano Apartments. While carrying out his duties at the Solano Apartments, Mr. [REDACTED] acts as the agent for the property owner.
4. The Tenant initiated this case when he filed a "Petition B – Failure to Maintain Habitable Premise," on April 21, 2023 pursuant to the CSFRA [T Ex. 1].

### **The Windows**

5. The Tenant testified without contradiction that the temperature inside his rental unit bedrooms and bathrooms was freezing cold. According to the Tenant, this condition lasted from soon after he first took occupancy of the unit until March 23, 2023.
6. As noted by the Landlord, the Tenant's prior unit had more exposure to natural heat from the sun than unit [REDACTED] which faces north.
7. The Tenant testified that part of the reason for the cold temperature in unit [REDACTED] was the failure of the single pane windows in the bedrooms of the unit to fully prevent the influx of cold outside air. The Landlord did not present evidence at the Hearing contradicting the Tenant's testimony about the cold air entering his unit from the single pane windows.
8. At the time he applied to occupy unit [REDACTED] in October 2022, the Tenant discussed the condition of the unit with the Landlord's local property manager, [REDACTED]. According to the Tenant's uncontradicted testimony, Mr. [REDACTED] told the Tenant the single pane windows would be "changed" within "ten days" because they were "not in good condition." This promise is not documented in writing; it was made in a verbal conversation between the Tenant and [REDACTED]. Mr. [REDACTED] was not called as a witness by the Landlord.
9. The double pane windows were not installed until February 10, 2023.
10. The Landlord presented the following response to the windows issue at the Hearing. The upgrade from single pane to double pane windows was an "amenity" for which the Tenant should have understood he was being charged an additional monthly rent of \$50. [REDACTED]



was not authorized to tell the Tenant that the new windows would be installed within ten days. As documented in LL Ex 4, the actual process was complex and time consuming. The Landlord presented credible evidence that the entire process of ordering and installing the new windows required an extensive time period, normally six to eight weeks. The double pane windows were individually measured and then custom ordered and manufactured prior to installation. This waiting period was even longer in the winter of 2022-23 due to the intervening holidays, bad weather and supply chain issues.

11. The Tenant denied that he was ever told about the amenity charge for the new windows. He denied being told the applicable time frame would be six to eight weeks. The lease signed by the Tenant during the same time period, [T Ex. 6], does not reference the characterization of the new windows as an amenity nor does it reference the additional \$50 monthly charge for installing them.
12. The Tenant became concerned about the delay in providing the new windows, particularly after he received a very high PG&E utility bill.<sup>8</sup> By mid-December, [REDACTED] had explained to the Tenant how to utilize the Landlord's process for complaining about maintenance issues. As of the same mid-December time period, the Tenant had lodged complaints about the lack of adequate heating through the Landlord's maintenance complaint process [T Ex. 5].
13. Although the Tenant continued to ask Mr. [REDACTED] about when the new windows would be installed, the Tenant never verbally complained to Mr. [REDACTED] that the windows were contributing to the freezing cold in the bedrooms. He never verbally complained to [REDACTED] or any other Landlord representative about inadequate weather protection, apart from questioning Mr. [REDACTED] about the timing as described above.
14. The Tenant never used the Landlord maintenance complaint process to notify the Landlord that the current windows were not providing adequate protection against the cold winter weather. He never transmitted this concern to the Landlord through any other written avenue.
15. There is no evidence that the Landlord became aware of the inadequacy of the windows independently. The Landlord witness with maintenance expertise testified that he never inspected the condition of the single pane windows, and that he would have done so if he had been aware of a complaint about the functioning of the single pane windows.
16. Even if [REDACTED]'s statement that the "windows were not good" shows some Landlord knowledge of the inadequacy of the single pane windows, the Landlord provided a credible explanation for the installation delay that occurred between November 2022 and February 2023. The Landlord stated that the windows needed to be ordered and manufactured on a custom basis.
17. The new windows were promptly measured and ordered by the Landlord at the same time the Tenant signed his lease. The Landlord stated that the new windows were further delayed due to

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<sup>8</sup> At the Hearing, the Landlord noted that everyone had high utility bills during this harsh winter.

additional factors beyond its control, including the intervening holidays, supply chain issues and the frequent rainy weather. There is no evidence that the Landlord was responsible for any portion of these subsequent reasons why the installation was delayed.

### **The Heating System**

18. As noted above, the Tenant testified that the temperature in the bedrooms and bathrooms of unit [REDACTED] was freezing within a few days after he first occupied the unit. The cold temperature in the unit continued, even after the double pane windows were installed on February 10, 2023.
19. The heating system for unit [REDACTED] was designed around a heater, located on the balcony just outside the Tenant's unit. Warm air was transmitted from this outside heater to each room in the unit through ductwork terminating in vented registers in each room [LL Ex. 5]. A thermostat in the unit controlled the amount of warm air generated by the heating system.
20. The Tenant initially complained verbally to Resident Manager [REDACTED] about the lack of adequate heat. The Tenant testified without contradiction that [REDACTED] told him on January 26, 2023 that a new heater would be installed. The heater replacement never occurred.
21. On December 19, 2022, based on advice from Mr. [REDACTED], the Tenant sent an email to the Landlord complaining about the inadequate heat. The Tenant sent several additional written complaints, including emails on December 27, 2022, as well emails on January 15, January 16, January 19, February 3, February 23, and March 19, 2023 [T Ex. 5].
22. The Landlord's maintenance staff came to the Tenant's unit almost immediately after his initial December 19 email complaint about the heating system. When he continued to complain about the lack of adequate heat, the maintenance staff returned to the Tenant's unit on multiple occasions. Eventually, the maintenance supervisor, [REDACTED], personally came to the unit to address these continuing complaints.
23. According to the testimony on both sides, the maintenance staff adjusted the register vents on each visit to the Tenant's unit. According to the Landlord witness [REDACTED], if the vents in the living room and kitchen were properly closed, a sufficient amount of hot air would be "pushed" into the other rooms. According to Mr. [REDACTED], the maintenance staff found the vents in the wrong positions every time they came to the Tenant's unit, even though they had left the vents in the correct position after each prior visit. According to this same witness, the heating system functioned properly if the vents were in the right position. According to him, no other repairs were made because no other repairs were necessary. Temperature readings that he measured with a laser device while in the unit confirmed that the system was working properly when the vents were in the correct position.
24. According to the Tenant, it is true that the maintenance staff changed the vent positions when they came to his unit, but he denied that he or any other member of his household touched the vents or changed their positions at any time during this period. The Tenant testified that the amount of heat in the bedrooms and bathrooms did not improve after any of these maintenance staff visits. Also, according to the Tenant, the maintenance staff made other alterations to the

system, specifically by inserting cardboard into the system, which they later removed and replaced with a larger piece of cardboard. The Tenant stated that the maintenance staff did not otherwise repair or replace the system.

25. Witness [REDACTED] testified that he believed the Tenant was verbally told not to change the vent positions on multiple occasions. Mr. [REDACTED] testified that he personally told some member of the Tenant's family not to change the vent positions, although he was not sure whom he spoke with.
26. The Landlord never gave a written directive to the Tenant to leave the register vent positions untouched. The Landlord failed to issue a written directive to the Tenant telling him not to adjust the register vents, even after Mountain View Code Enforcement Inspector Jim Olson suggested written directions in an email to the Landlord. [LL Ex. 1]. The Landlord failed to take any other steps to instruct the Tenant not to change the vent settings. For example, the Landlord could have taped written instructions directly on the living room and kitchen registers, but it took no such steps.
27. The Tenant admitted that the temperature in his rental unit was acceptable as of March 23, 2023.

## **VII. CONCLUSIONS OF LAW**

### **Jurisdiction**

- A. This Decision is issued in response to a "Petition B – Failure to Maintain Habitable Premises," filed by Tenant-Petitioner Milton Saravia on April 21, 2023 pursuant to CSFRA Section 1710(b)(1).
- B. The Tenant-Petitioner is a "tenant" as defined in the CSFRA, Section 1702(u). He and his family occupy a "rental unit" as defined in CSFRA Section 1702(s). That rental unit is not exempted from the CSFRA rent stabilization program under any of the exemption provisions set forth in CSFRA Section 1703.
- C. The Landlord in this case is a "landlord" as defined in CSFRA Section 1702(j).
- A. Based on the above Conclusions, there is jurisdiction under the CSFRA to determine the Petition filed in this case. CSFRA Section 1710(b)(1) specifically references the habitability standards set forth in California Civil Code Section 1941.1 as a basis for a petition seeking a downward rent adjustment based on habitability violations.

### **Applicable General Principles of Law**

- B. Pursuant to Chapter 5, Section G of the CSFRA Regulations, the Tenant has the burden of proving the basis for granting his Petition based on failure to maintain habitable premises.
- C. In order to grant the Tenant's Petition, he must prove:

- I. The existence of a condition in his rental unit that violated an applicable habitability statute or other similar standard such as California Civil Code Section 1941.1;
  - II. Awareness by the Landlord that this condition existed;
  - III. Failure of the Landlord to take timely and effective action to correct the condition after becoming aware of it.
- D. To the extent that the Landlord asserts that a factor outside its control caused or continued the habitability violation, the burden of proving that assertion rests on the Landlord. In this case, a factor outside the control of the Landlord would include inclement weather or manufacturing delays, as well as tampering or negligence by the Tenant.

### **The Windows**

- E. California Civil Code Section 1941.1(1) requires a landlord to provide “Effective waterproofing and weather protection...including unbroken windows and doors.”
- F. The Landlord’s duty to comply with this habitability standard was unconditional; that duty is not diminished or altered by other factors such as the amount of sunlight entering the unit.
- G. Based on the Tenant’s uncontradicted testimony, cold air invaded his unit through the single pane windows. It is concluded that the single pane windows in unit [REDACTED] did not meet the weather protection requirements of California Civil Code Section 1941.1(1). This violation of the habitability standard continued until new double pane windows were installed on February 10, 2023.
- H. However, it is also concluded that the above Findings of Fact show that the Tenant never notified the Landlord that the single pane windows violated the weather protection standard. The Tenant knew how to raise such a complaint as is demonstrated in the Findings describing his email complaints about the heating system. The Tenant communicated his concern to the Landlord about the delay in the new window installation, but he never connected that concern to language that could reasonably be construed to invoke a habitability standard. The admission by [REDACTED] that the “windows were no good” is insufficient to prove the Landlord was aware of the habitability violations in light of the Tenant’s subsequent failure to complain that the old windows were causing the freezing conditions in the rental unit.
- I. Even if [REDACTED]’s admission that the windows were not in good condition was accepted as sufficient proof of Landlord awareness, as a separate and independent conclusion, the above Findings of Fact show the Landlord proved the delays in the installation of the old windows were due to factors beyond its control. Since the delays were not due to the Landlord’s actions or inactions, the Tenant did not prove the Landlord failed to make a timely effort to repair the condition of the windows.
- J. Based on the foregoing Conclusions, it is held that the Tenant failed to meet his burden of proof to sustain his Petition requesting a downward rent adjustment based on the condition of the windows in his rental unit.

### **The Heating System**

- K. California Civil Code Section 1941.1(4) requires a Landlord to provide “heating facilities that conformed with applicable law at the time of installation, maintained in good working order.”
- L. The Tenant’s uncontradicted testimony proves that the freezing temperature in the unit’s bedrooms and bathrooms failed to meet the requirements of California Civil Code Section 1941.1(4). This violation started soon after his occupancy of the unit and lasted until March 23, 2023.
- M. The above findings demonstrate that the Tenant first gave written notice to the Landlord of this condition as of December 19, 2022. The Findings also list the additional written notices sent to the Landlord. The Landlord’s efforts to adjust the heat flow in the unit also demonstrate it was aware that the heating system was inadequate, at least when the register vents were not properly set.
- N. Although the Findings show that the Landlord’s maintenance staff responded to the Tenant’s complaints about the lack of adequate heat, the freezing temperature in the bedrooms and bathrooms was not alleviated by the actions taken by the maintenance staff. This conclusion is based on the Tenant’s testimony. It is also proven by the maintenance staff’s repeated attempts to properly adjust the register vents to increase the heat flow in the bedrooms and bathrooms as well as other modifications they attempted such as inserting cardboard.
- O. The Landlord witnesses asserted that the heating system functioned properly as long as the vents were in the proper positions, specifically as long as the vents in the living room and kitchen were closed. The Landlord also asserts that since its staff properly adjusted the vents on every visit, this Decision should draw the circumstantial conclusion that the Tenant or his family must have changed the vents back to the wrong position after each maintenance staff visit.
- P. However, it is concluded that the Landlord’s testimony on this issue is less persuasive than the Tenant’s denial that he and his family ever touched the register vents. Therefore, the Landlord has failed to prove its principal contention that the Tenant was responsible for the heating deficiency. This conclusion is based on the following:
  - a. It is inherently contradictory to provide a heating system which installs vented registers in every room but which is designed to require the vents in two of those rooms to always be closed in order for the system to properly function;
  - b. If the heat functioned properly after the maintenance staff properly set the vent positions, it is illogical to conclude that the Tenant and his family then changed the vent settings after they were properly set and did so on multiple occasions after the maintenance staff supposedly set the vents to provide adequate heat in the unit. If the maintenance staff vent settings resulted in adequate heat throughout the unit, there would have been no reason for the Tenant or his family to change them.

- c. If the vent settings were crucial, it would be expected that the Landlord would have given explicit written directions to the Tenant not to change the vent positions. Instead, the Landlord inexplicably sent its maintenance staff back to the unit on multiple occasions to repeatedly restore the vent positions without issuing written directions to the Tenant not to change the vent positions. This conclusion is further supported by the suggestion to the Landlord from Code Enforcement Inspector Olson to give written instructions to the Tenant, a suggestion ignored by the Landlord. [LL Ex. 1]. As noted in the above Findings, the Landlord failed to take any other steps to discourage the Tenant from changing the vent settings, such as placing written instructions directly on the living room and kitchen registers.
  - d. The assertion that the only necessary repair was to set the vent positions correctly is inconsistent with the Resident Manager's promise to the Tenant that the heating system would be changed, according to the Tenant's uncontradicted testimony.
  - e. The assertion that the only necessary repair was to set the vent positions correctly is also controverted by the Tenant's uncontradicted testimony describing the maintenance staff efforts to use cardboard inserts to alter the heating system.
- Q. It is therefore concluded that the Tenant met his burden of proof necessary to sustain his petition for a downward adjustment of rent due to the inadequate heat in his rental unit. He established that the heating system violated the applicable habitability standard. He also proved that the Landlord was aware of the condition and subsequently failed to adequately correct it.
- R. It is also concluded that the Landlord failed to show the Tenant was responsible for the heater deficiency. The greater weight of the evidence supports the conclusion that the Tenant was not responsible for causing the deficient performance of the heating system, including the asserted incorrect vent positions.
- S. The cold temperature in the bedrooms and bathrooms of a rental unit during a harsh winter represents a major continuing discomfort. This condition was a significant loss of the benefits of the tenancy here. The overall time period for assessing this reduction begins on December 22, 2022. The Tenant sent his first written complaint on December 19, 2022. Since the Landlord responded immediately, December 22 is an appropriate start date for the reduction. The time period for the reduction ends on March 22, 2023, based on the Tenant's admission that the heat in his unit was adequate on March 23.
- T. The downward rental adjustment should be calculated without the contributing impact of the single pane windows during a portion of the above time period. The poor heat is held to be independently responsible for a 30% reduction.
- U. Since the functioning of the heating system became acceptable to the Tenant at the same time the winter weather subsided, nothing in this Decision should be construed to be a

determination of whether the heating system will function properly in future severe winter weather.

### **VIII. AWARD**

- a. The Tenant is entitled to a downward rental adjustment of 30% solely as a result of the inadequate heating system in his bedrooms and bathrooms. The period for assessing this downward adjustment begins as of December 22, 2022 and ends on March 22, 2023, a total of 90 days.
- b. The applicable daily rate for this period is \$106.50, based on dividing the Tenant's \$3195 monthly rent by 30. The resulting 30% daily reduction is \$31.95.
- c. The calculation of the resulting total downward adjustment of \$2875.50 is set forth in the attached Appendix A.
- d. The above rent adjustment shall be applied as a credit against the Tenant's future monthly rent obligation, effective as of the date this Decision becomes final. Half of the reduction credit shall be applied to the first future monthly rent payment due after this Decision becomes final. The remaining half of the reduction credit shall be applied to the second future monthly rent payment due after this Decision becomes final.
- e. If the Tenant vacates his rental unit at this property before both reduction credits become final and applicable, the entire amount of the remaining reduction credit still due shall be paid directly to the Tenant within thirty (30) days after he vacates.
- f. 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).

Dated: August 31, 2023

A handwritten signature in blue ink, appearing to read 'Martin Eichner', is written over a horizontal line.

Martin Eichner  
Hearing Officer

**Appendix A  
Award Schedule**

1050 Crestview Dr [REDACTED] - RHC Petition# C22230046

**Hearing Officer Decision**

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Days Issue Persisted	Monthly Rent	Percentage Reduction in Rent	Rent Reduction Awarded
Failure of windows to provide adequate weather protection	10/13/2022	2/10/2023	120.0	\$ 3,195.00	0%	\$ -
Failure to provide adequate heat in bedrooms and bathrooms	12/22/2022	3/22/2023	90.0	\$ 3,195.00	30%	\$ 2,875.50
<b>TOTAL</b>						<b>\$ 2,875.50</b>

**Credit Schedule**

Month/Year of Rent Payment	Monthly Rent Owed by Petitioner	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
10/2023	\$ 3,195.00	\$ 1,437.75	\$ 1,757.25
11/2023	\$ 3,195.00	\$ 1,437.75	\$ 1,757.25
<b>TOTAL</b>		<b>\$ 2,875.50</b>	<b>\$ 3,514.50</b>