

**CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE**  
**HEARING OFFICER DECISION PURSUANT TO**  
**UNDER THE COMMUNITY STABILIZATION AND FAIR RENT ACT (“CSFRA”)**

Rental Housing Committee Case No.:	C23240032 and C23240033 (Petitions A and B)
Property Address:	2200 California St.
Affected Units:	Unit █
Petitioner Tenant Name(s):	Abdul Campos
Respondent Owner Name(s)	Ferdi DeLuna, property manager for The Arbors at Mountain View
Hearing Officer:	E. Alexandra DeLateur
Date of Pre-Hearing Conference:	January 25, 2024
Date of Hearing:	February 16, 2024 at 9:30 a.m. (Zoom) Record closed February 23, 2024
Date of Mailing:	(See Attached Proof of Service)

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

1. The petition in the above case (the “Petition”) was filed by Abdul Campos (“Petitioner”) on or about November 22, 2023 and was accepted by the City on or about December 22, 2023.
2. A Notice of Hearing on Petition was served on January 9, 2024, setting a Hearing on February 16, 2024 with a Prehearing Conference on January 25, 2024.
3. Respondent /Landlord filed a response on or about December 20, 2023, along with documents to support their positions.
4. The parties appeared at the Prehearing Conference on January 25, 2024 with the assistance of a Spanish language interpreter. A Prehearing Order was issued dated January 26, 2024.
5. The matter was heard as scheduled on February 16, 2024. Two certified Spanish language interpreters assisted the Petitioner during the hearing. At the conclusion of

the hearing, the Hearing Officer held the record open until the close of business on February 23, 2024 for submission of additional evidence.

6. A Post-hearing Order issued on February 19, 2024 holding the evidentiary record open through February 23, 2024 to allow additional evidence to be submitted. The record closed on February 23, 2024.

## **II. PARTIES WHO ATTENDED THE HEARING**

The following parties attended the Hearing:

Petitioner(s): Abdul Campos (“Tenant” of “Petitioner”)

Respondent(s): Ferdi DeLuna (“Landlord” or “Respondent”) on behalf of the Landlord,  
The Arbors of Mountain View  
Mariana Garcia, property manager and witness for the Respondent

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

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

Esperanza Sanz Escudero, Spanish language interpreter, Multicultural Engagement Program, City of Mountain View

Alitcel Camacho, Spanish language interpreter, Rent Stabilization Division, City of Mountain View

## **III. WITNESSES**

The parties, Mr. Campos, and Mr. DeLuna, were sworn in and presented testimony and evidence at the hearing. Additional witnesses were called, sworn in, and appeared: Mariana Garcia (for Respondent).

## **IV. SUMMARY OF THE EVIDENCE**

### **Petition A: Unlawful rent**

Petitioner entered into a Rental Agreement commencing November 1, 2020 for the property known as 2200 California St., Unit [REDACTED] (“Unit”) for a term of twelve months (“Lease”). The residents were the Petitioner, his wife Polonia Marquez, and three minor children. The initial rent stated in the Lease was \$2,350.00 per month plus utilities as set forth in the Water, Sewer, Trash Utility Addendum. The Lease included a Rent

Concession Addendum to Lease (“Addendum”) dealing with concessions which granted the tenants two months of concessions where they would pay \$0 in rent for January 2021 and July 2021 under certain conditions. Respondent testified that the rent concessions were advertised to fill vacant units during the pandemic and to encourage timely rent payments. The Addendum specified that the concessions are conditioned on all rent payments being made on time by the first of each month in which rent was due. Furthermore, the Addendum stated that upon default, the Respondent may collect the full amount of the concessions upon demand.

The rent ledger indicates that early in the term of the Lease, Petitioner paid rent in several partial payments over a period of days, often after the first of the month. Petitioner testified that he and his wife suffered a loss of employment at times while the pandemic emergency was in effect.<sup>1</sup> Later in the tenant/landlord relationship, Petitioner often paid the rent in one payment and paid some late fees despite paying the rent amount in full.

On March 8, 2021, Petitioner submitted to the Respondent a “Declaration of Covid-19-related financial distress” alleging that he was unable to pay his rent due to one or more unexpected pandemic related reduction in income or increase in expenses. There was no evidence presented on whether or not Petitioner or Respondent filed an application for rent relief pursuant to the statewide or local emergency rent relief programs.

Effective November 1, 2022, Respondent raised Petitioner’s rent from \$2,350.00 per month plus utilities “not to exceed \$320.00” to \$2,467.50 per month plus for utilities “not to exceed \$336.00”. Respondent provided a copy of this Notice of Change of Monthly Rent dated September 23, 2022. The rent increase was \$117.50 or 5%. A Notice of Change of Monthly Rent dated September 25, 2023 attempted to raise Petitioner’s rent to \$2,640.22 plus utilities “not to exceed \$359.52” effective November 1, 2023. The Notice included a 7% increase based on the 5% AGA for 2023 and a banked 2% AGA for 2021. The Respondent calculated the Base Rent to be \$2,350.00 (full monthly rent of \$2,350.00 for 12 months of the initial lease, ignoring the two months of concessions). It does not appear that Respondent included any utilities in their calculations of Base Rent.

Petitioner alleges that the Respondent has charged and collected unlawful rents based on Respondent’s calculation of Base Rent which failed to apply the concession in the Lease. Petitioner seeks a recalculation of the Base Rent, applying the two months of concessions, which would result in Base Rent of \$2,033.39, (\$1,958.33 average monthly

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<sup>1</sup> Governor Newsom declared the Covid-19 emergency on March 4, 2020 and there was a statewide eviction moratorium, the Covid-19 Tenant Relief Act of 2020; however, the effect of the special Covid-19 tenant protections varied for tenants who applied for, or received rental assistance, but the rent remained due at some point. The state of emergency was lifted by the Governor on February 28, 2023.

rent paid plus an average monthly utility cost of \$75.05 during the first twelve (12) months of the Lease).

Petitioner also testified that he did not pay rent for a couple of months in the recent past in order to get the attention of the Respondent because the Petitioner felt that his maintenance requests were not being taken seriously.

### **Petition B: Failure to Maintain a Habitable Premises/Failure to Repair Causing a Reduction in Housing Services**

The Petitioner argues that the following areas of maintenance and repairs were not adequately and timely addressed: 1) Master bathroom (a) walls have peeling paint and (b) mold has grown around the toilet and toilet pipe/wall joint, 2) Second bathroom (a) bathtub silicon sealer is worn off, (b) bathtub sliding door rubber missing causing mold around the tub, and (c) mold is growing on the ceiling, causing danger and an unpleasant smell, 3) Livingroom and Kitchen (a) flooring cracking, (b) stove doesn't work properly, (c) paint is peeling on the walls, and (d) the dishwasher does not work despite Respondent's repeated attempts to fix it. Petitioner presented evidence in the form of testimony, video tour of the Unit, photos, and a maintenance request (written in Spanish) dated August 23, 2023 ("Maintenance Request"). As a form of getting the Respondent's attention regarding these maintenance issues he wanted addressed, Petitioner deliberately withheld rent for a couple of months. Based on the rent ledger, Petitioner paid partial rent for September, October, and November 2023.

Respondent presented evidence to show that they did not receive sufficient information in the request for maintenance to provide them with an opportunity to understand the request or address the issues raised by Petitioner. They stated that the only written request was general and written in Spanish. The Respondent testified that the assistant manager, Mariana Garcia who spoke Spanish, tried to follow up with calls with Petitioner and did not receive responses.

After serving the Petitioner with a Notice to Enter Dwelling Unit, they also entered the unit on October 13, 2023 for a smoke detector check in the entry, living room, and kitchen and did not see most of the maintenance issues included in this Petition. They issued a Notice to Enter Dwelling Unit dated January 25, 2024, after this Petition was filed, in order to inspect the unit for mold, etc. and to mitigate any further damage.

Respondent presented evidence in the form of testimony and documents, including the rent ledger, notices, the Lease, and maintenance request from Petitioner plus a summary of evidence and a timeline.

### **Burden of Proof for Tenant Petitions:**

The Petitioner bears the burden of proof regarding the Petition's request for relief by a preponderance of the evidence. *CSFRA Regulations, Chapter 5, Sections G, subsections (2) and (3)*.

A list of exhibits is attached as Attachment 1 and incorporated herein. There being no objections to the evidence presented by parties, all evidence that was offered was admitted into the record.

### **V. ISSUES PRESENTED**

- A.** Did Petitioner receive a proper and effective notice of rent of increase on about September 25, 2023, pursuant to the CSFRA Sections 1706 and 1707 and CSFRA Regulations?
- B.** If the answer to A is negative (the notice was improper), what is the current lawful rent and what amounts must be refunded, if any?
- C.** Did Petitioner suffer from a reduction in housing services due to either the Respondent's failure to maintain a habitable premises or a refusal to maintain or make necessary repairs pursuant to Petitioner's reasonable request?
- D.** If the answer to C is affirmative, what are the appropriate damages, if any?

### **VI. FINDINGS OF FACT SUPPORTING THIS DECISION**

#### **Petition A: Unlawful Rent**

- 1. Petitioner along with his family has resided in the Unit as their primary residence for at least twelve (12) months.
- 2. The parties entered into a Lease which called for a tenancy starting November 1, 2020 for a term of twelve (12) months and monthly rent of \$2,350.00 but included an Addendum providing two (2) months where concessions reduced rent to \$0 (January 2021 and July 2021) on condition that tenants paid the rent timely by the first of each

month. Furthermore, upon default which voided the concessions, the Respondent was entitled to collect the full rent from Petitioner.

3. The Lease included a Water, Sewer, Trash Utility Addendum providing that the tenant shall be responsible for utilities, not to exceed \$320.00 per month, billed through a ratio utility billing system (RUBS).
4. The Lease included a CSFRA Addendum and notices to the tenants as required by law.
5. Respondent charged Petitioner monthly rent as follows from the inception of the Lease: \$2,350.00 for ten (10) months and \$0 for two (2) months for a total of \$23,500.00 for the entire initial twelve (12) months, which Petitioner paid.
6. Additionally, Petitioner was invoiced for and paid utility charges of \$900.63 to the Respondent over the initial twelve (12) months of the Lease.
7. Respondent and Petitioner agree that Petitioner occasionally paid rent late, or in several partial payments over time, during the first twelve (12) months. The rent ledger and Petitioner's records of payments indicate several months where Petitioner tendered full rent in multiple partial payments or paid a late fee.
8. On March 8, 2021, Petitioner submitted to Respondent a "Declaration of Covid-19 related financial distress" indicating that he suffered a hardship to pay rent related to the effects of the pandemic and emergency protocols.
9. Petitioner testified that he and his spouse lost work during the pandemic.
10. No one presented evidence of any application for rent relief for this Petitioner/Unit.
11. On September 23, 2022, Respondent issued a Notice of Change of Monthly Rent which raised Petitioner's premises rent from \$2,350.00 to \$2,467.50 effective November 1, 2022, plus a "not to exceed" amount for utilities from \$320.00 to \$336.00. The increases were calculated using an AGA of 5% (source unknown, possibly AGA for 2022), and using a Base Rent of \$2,350.00.
12. On September 25, 2023, Respondent issued a Notice of Change of Monthly Rent which raised Petitioner's premises rent from \$2,467.50 to \$2,640.00 effective November 1, 2023 plus a "not to exceed" amount for utilities from \$336.00 to \$359.52. According to

the Notice, Respondent based their calculations on the AGA for 2023 of 5% plus a banked AGA for 2021 of 2% using the rent amount of \$2,467.50.

13. The Respondent did not utilize the proper calculations regarding rent concessions under the CSFRA.
14. The lawful Base Rent for this unit is \$2,033.39 (\$1,958.33 in average premises rent plus \$75.05 in average utilities paid over the initial twelve-month term of the Lease).
15. The Annual General Adjustment (AGA) for 2021 is 2%.
16. The Annual General Adjustment (AGA) for 2022 is 5%.
17. The Annual General Adjustment (AGA) for 2023 is 5%.
18. Calculating the proposed rent increase based on the correct Base Rent of \$2033.39, the first rent increase could have increased rent to \$2,135.06 (5% 2022 AGA or \$101.67). However, the November 2022 rent increase is not allowed because it was improperly calculated, and the illegal rents collected are recoverable by Petitioner.
19. Calculating the proposed rent increase for November 2023 based on the correct Base Rent of \$2033.39, the lawful rent could be \$2,175.73 (5% 2023 AGA plus 2% banked 2021 AGA or \$142.34). However, the November 2023 rent increase is not allowed because it was improperly calculated, and the illegal rents collected are recoverable by Petitioner.
20. Respondent has not attempted to collect the rent for the two (2) months of concessions where the Addendum to the Lease called for rent of \$0; however, Respondent is attempting to calculate Base Rent as if the concessions were invalidated.
21. The Respondent has paid the CSFRA fees and registered the property with the Rent Stabilization Division as required.

**Petition B: Failure to Maintain a Habitable Premises/Failure to Repair Causing a Reduction in Housing Services**

1. On June 2, 2023, the City of Mountain View cited the owner of the property for one outstanding health, safety, or fire protection violation regarding patching the ceiling over two parking spaces, but the violations are not related to this Unit.
2. The paint in the master bathroom has extensive peeling paint on the walls.
3. Around the toilet, particularly where the toilet links with the wall pipe, shows deterioration and mold.
4. The hall bathroom combined bath/shower has mold growing.
5. The hall bathroom tub sliding door is deteriorating, allowing water to leave the tub.
6. The hall bathroom has mold growing and is smelly.
7. The hall bathroom has peeling paint on the walls.
8. The flooring in the living room and kitchen is cracking and warping so it is uneven.
9. The kitchen stove does not function properly and not all of the 4 burners work.
10. The living room and kitchen walls have peeling paint on the walls.
11. The dishwasher does not function properly despite several attempts to fix it by maintenance staff.
12. On August 23, 2023, Petitioner submitted a Maintenance Request card to management in Spanish, complaining of multiple issues.
13. Respondent's manager, Mariana Garcia who speaks Spanish, helped translate the Maintenance Request card and also attempted to call Petitioner and his spouse on August 29, 2023 and August 30, 2023 to follow up, but did not receive an answer.
14. On October 13, 2023, Respondent's managers entered the Unit to check the smoke detectors while the Petitioner was not home. They saw the state of the flooring in the living room and kitchen plus the broken dishwasher handle but did not go into the bathrooms.
15. On January 26, 2024 (after the Petition was filed), Respondent's managers entered the Unit to check on the mold complaints and found nothing to be concerned about.
16. Respondent testified that they were not aware of any mold or mildew issues with the Unit prior to the filing of the Petition, or they would have addressed them in a timely manner.



17. Petitioner testified that he stopped paying full rent for a couple of months in order to get Respondent's attention since management was not responding to his requests for maintenance.

## VII. LEGAL AUTHORITY

1. CSFRA Sections 1706 and 1707 regulate rent increases for existing tenancies. A rent increase must be noticed properly in writing. *CSFRA Sec. 1707(c)*. A landlord must include specific language with notice that is often in the form of an Attachment form available on the City's website. The maximum allowable increase for a twelve-month period is set by the Rental Housing Committee (RHC) each year and is referred to as the Annual General Adjustment or "AGA" for that year, available on September first each year. According to the Notice, Respondent based their calculations on the AGA for 2023 of 5% plus a banked AGA for 2021 of 2% on the prior rent of \$2,467.50 as charged by Respondent. It does not appear that the utilities payments were included in this calculation.

CSFRA section 1710 provides that both tenants and landlords may file a petition on several bases. Tenants may petition for an individual rent adjustment under subsection (b) for failure to maintain a habitable premises, under subsection (c) for a decrease in housing services or maintenance, or under subsection (d) for unlawful rent. In this matter, Petitioner brought their Petitions under subsections (c) regarding unresolved maintenance/reduction in housing services and (d) for unlawful rent.

CSFRA Section 1713 states, "Non-waivability. Any provision of a Rental Housing Agreement, whether oral or written, which purports to waive any provision of this Article established for the benefit of the Tenant, shall be deemed to be against public policy and shall be void."

Base Rent: "The Base Rent is the reference point from which the lawful Rent shall be determined and adjusted in accordance with the Act." *CSFRA Regulations, Chapter 2(b)*. In subsection (b)(2), the definition more specifically deals with rent concessions for a tenancy commencing after October 19, 2015 and the calculation of Base Rent. The definition of Base Rent was clarified and went into effect August 1, 2022.

Rent: "All periodic payments and all nonmonetary consideration, including, but not limited to, the fair-market value of goods, labor performed, or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all

payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting.” *CSFRA Regulations, Chapter 2(p)*.

Utility Charges: “Any charges for gas, electricity, water, garbage, sewer, telephone, cable, internet, or other service relating to the use and occupancy of the Rental Unit.” *CSFRA Regulations, Chapter 2(v)*.

Housing Services: “Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.” *CSFRA Regulations, Chapter 2(h)*.

## **VIII. DISCUSSION**

### **A. Unlawful Rent**

Based on the evidence presented, the Petitioner has met their burden to show that (1) Respondent has received unlawful rents, and (2) there were unresolved maintenance and repair issues that Respondent should have addressed. In the case of a tenancy commencing prior to September 1, 2022, the CSFRA Regulations, Chapter 4, section G (6) limits the tenant’s recovery of overpaid rent due to concessions to “a rollback to the Base Rent and a refund of only the Rent that was overpaid within one (1) year prior the date of the filing of the Petition [sic].”

The Petitioner’s tenancy commenced November 1, 2020 for a twelve (12) month lease. The tenancy has continued to the present. It is unclear if there were any renewals of the Lease or if the tenancy continued as a month-to-month tenancy. The original Lease provided for monthly rent of \$2,350.00 plus utilities but included an Addendum providing two (2) months where concessions reduced rent to \$0 (January 2021 and July 2021) provided that tenants paid the rent timely by the first of each month. The Lease included a Water, Sewer, Trash Utility Addendum providing that the tenant shall be responsible for utilities, not to exceed \$320.00 per month, which includes payments through the Respondent for water, sewer, and trash services billed through a third-party biller.

The original Lease’s Rent Concessions Addendum states in part,

“This concession is contingent on Resident’s full payment of rent being received on or before the first day of the month for all months in which rent is due...The concession does not constitute a waiver or change of the per-month rental rate set forth in the Rental Agreement. *The rental rate set forth in the Rental Agreement shall be used as the floor for any future Rental Agreement rent increases.* (emphasis supplied)

Such concessions are being given to Resident(s) by Owner in contemplation of Resident(s) remaining a tenant in good standing for the entire term of the Rental Agreement. Failure of Resident(s) to remain a tenant at the Premises in good standing is a failure of consideration by Resident(s) under this Addendum....

In the event that Resident(s) commits any default under the Rental Agreement during the term of the Rental Agreement following the commencement date, *the Resident(s) hereby agree to reimburse the Owner/Agent the full amount of the above mentioned rental concession, and such amount due shall be deemed rent under the Rental Agreement, and shall be paid immediately upon demand by Owner/Agent.*”(emphasis supplied)

This Addendum attempts to (1) set the Base Rent for this unit without the two months of concessions, and (2) allow the Respondent to demand back the concession amounts if the Petitioner paid rent late, specifically after the first day of each month. The Addendum’s first goal of setting the Base Rent for the CSFRA rent increase calculations is against public policy, is illegal, and will not be enforced. The Petitioner cannot waive the protections of the rent stabilization laws in Mountain View. CSFRA Section 1713.

As to the second purpose of the Addendum, Respondent argues that the Petitioner’s concessions were voided by late payments. The language of the Addendum is quite clear that the concessions are intended to promote timely rent payments. If a tenant fails to pay timely, then the Respondent has a right to claw back the rent that was subject to the concessions. However, the timing of the Addendum is critical to the analysis and the Respondent presented conflicting evidence which affects their credibility. It is important to note that the original Lease was negotiated during the Covid-19 shutdown and during a statewide eviction moratorium. Per the Tenant Protection Act of 2020, tenants received temporary relief from paying rents on time under certain conditions, such as submission of a "Declaration of COVID-19-related financial distress." In fact, Petitioner provided a "Declaration of COVID-19-related financial distress" to Respondent on March 8, 2021 during the term of the original Lease. At the hearing, Petitioner testified that he and his spouse had suffered job losses and were struggling to make their rent payments. They paid all rents, along with utilities and late fees, to the

Respondent until late 2023 just prior to filing the Petition.<sup>2</sup> The strict link of timely payments to rent concessions in 2020 was in violation of the emergency tenant protection measures that were in place to prevent undue tenant hardship and displacement. For that reason, that provision violates public policy and will not be enforced in this context. Additionally, there was no evidence that Respondent made any demand on Petitioner for the two (2) months of rent concessions, so it does not appear that they were relying on the Addendum for relief based on late payments. In light of the evidence presented, it is more likely that the Addendum was being used as a means to calculate Base Rent at a higher amount for future rent increases.

Pursuant to the definition of Base Rent in the CSFRA, the Petitioner's Base Rent is determined by adding all of the rents actually paid in the first twelve (12) months of the Lease, which includes premises rent and utilities paid to the landlord. Respondent charged Petitioner monthly rent as follows from the inception of the Lease: \$2,350.00 for ten (10) months and \$0 for two (2) months for a total of \$23,500.00 for the entire initial twelve (12) months, which Petitioner paid. Additionally, Petitioner was invoiced for and paid utility charges of \$900.63 to the Respondent over the initial twelve (12) months of the Lease. Therefore, the properly calculated Base Rent, which includes utilities, is \$2,033.39. This is the starting point for any rent increase.

Respondent issued two (2) rent increases based on an incorrect Base Rent of \$2,350.00. On September 23, 2022, Respondent raised Petitioner's rent from \$2,350.00 to \$2,467.50 effective November 1, 2022, calculated using an AGA of 5% (source unstated, possibly AGA for 2022). Respondent also increased the "not to exceed" amount for utilities from \$320.00 to \$336.00.<sup>3</sup> On September 25, 2023, Respondent issued a Notice of Rent Increase which raised Petitioner's rent from \$2,467.50 to \$2,640.00 effective November 1, 2023 plus the "not to exceed" amount for utilities to \$359.52. According to the Notice, Respondent based their calculations on the AGA for 2023 of 5% plus a banked AGA for 2021 of 2% on the prior rent of \$2,467.50.

Based on the incorrect Base Rent and the impermissible increases, Petitioner was not required to pay rent in excess of \$2,033.39. The evidence in the form of the rent ledger and proof of payments shows that Petitioner paid rent in the amount of \$2,467.50 plus utilities<sup>4</sup> for November 2022, through June 2023, \$6,053.79 in August 2023 (for July, August, and part of September 2023 rent), and \$2,450.00 for September and October

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<sup>2</sup> Whether the full rents were paid with or without rent relief funds is unclear.

<sup>3</sup> Respondent interpreted the law to allow a 5% increase in both the premises rent and cap for utilities. The utilities are determined based on the definition of Base Rent which takes into account the average of actually paid utilities in the first twelve (12) months. Therefore, both rent increases were not calculated properly.

<sup>4</sup> The utilities paid through Conservice (a RUBS utility biller) totaled \$903.19 for the twelve-month period from November 2022 through October 2023. After March 2023, Respondent ceased billing through Conservice for utilities and no charges appear on the rent ledger.

2023. The record shows that Petitioner paid \$2,675.00 for November 2023 and December 2023.

Pursuant to CSFRA, Chapter 4, section G (e), Petitioner may have their rent rolled back to the appropriate Base Rent and may recover overpayments in rent due to concessions for the twelve (12) months prior to filing of the Petition in November 2023. Therefore, this decision will look back to the period November 2022 through October 2023. It is undisputed that Petitioner paid \$31,996.98 for the months of November 2022 through October 2023 in premises rent, utilities, plus late and insufficient funds fees. This amount was more than the Respondent charged during that period. Respondent charged \$30,913.19, including premises rent of \$29,610.00 plus utilities of \$903.19 and fees of \$400.00. Petitioner's lawful rent was \$24,800.68 (\$2,033.39 per month for twelve (12) months is \$24,400.68 plus allowable late and insufficient funds (NSF) fees of \$400.00); **therefore, Petitioner is entitled to recover overpayments of \$7,596.30 from Respondent.**

**Furthermore, if Petitioner has overpaid rent for the months since filing the Petition in November 2023 to time this decision is served, Petitioner shall receive the refund of the difference in the amount of rent paid and the lawful rent of \$2,033.39 for those months as well.**

## **B. Maintenance and Repairs**

As to all the issues listed in the Petition, the following applies. The Petitioner's testimony is that he made verbal complaints to the managers but received no service for the maintenance issues. The Respondent testified that the only maintenance request received was in the form of a written Maintenance Request Card on August 23, 2023 in Spanish. Per Google Translate, Petitioner wrote,

*Paint the bathroom walls, living room floor, and kitchen, the dishwasher, the stove, the toilet, the closet drawers, the bathroom door, the living room curtain.*

As Respondent described that request, it combined several general complaints, and it was in Spanish. Allegedly, a manager told Petitioner to make requests in English, which he said he cannot do. Respondent stated that they did not address the issues because Petitioner failed to respond to two (2) voice messages left on his phone by Ms. Garcia, requesting further information. Petitioner claimed that he hoped to get the manager's

attention by suspending full rent payments and then discussing the needed maintenance and repairs.<sup>5</sup>

After this Petition was filed, Respondent issued a Notice to Enter for January 26, 2024 and inspected the Unit for mold and peeling paint which the managers usually want to treat without delay. Since they hadn't seen the bathrooms in the earlier smoke alarm inspection, they wanted to address any potential problems. Their conclusions were that the stove worked fine, that there were no mold problems, but that there were raised/lifted areas in the flooring and the dishwasher handle was indeed broken.

Pursuant to California Civil Code section 1954(a)(2), a landlord has a right to enter upon reasonable notice to make "necessary or agreed repairs." In this case, the Respondent sought additional information about the requests for maintenance in the Maintenance Request card that Petitioner submitted August 23, 2023. Respondent testified that they could not do repair work until they understood the nature of the repairs. Petitioner testified that the managers would not listen to him or his wife and that he lost trust in them. Initially, it is clear that there was a language barrier to communicating the requests and taking action. Over time, the evidence suggests that trust broke down between the parties. Even if Petitioner failed to clarify the request after two phone messages, it would seem that Respondent should not give up on Petitioner. Perhaps, a written notice in Spanish would be an option. Or, perhaps, an attempt to speak directly with the Petitioner face to face. Based on the evidence presented, the hearing officer concludes that Petitioner's failure to respond to two voice messages does not alter the fundamental analysis regarding the ongoing maintenance issues.

The Petition B asks the Petitioner to place a value on the unmet repairs and maintenance issues, in the form of a rent reduction, for the hearing officer to consider. Petitioner has listed his values in the Petition, but the hearing officer has discretion to award a different value as appropriate.

*Master Bathroom:*

Petitioner complained of paint on the bathroom walls peeling, causing paint chips to come loose, possibly hurting his children's eyes. He also mentioned black mold spots forming around the toilet area, especially where the toilet attaches to the wall pipe. The video and pictures show peeling paint on a wall and a corner that are extensive. From the look of the wall, Respondent concluded that someone has intentionally been

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<sup>5</sup> Although failing to pay rent will gain the attention of the managers, there are other avenues to bring neglected maintenance and repair issues to the landlord's attention and tenants are encouraged to seek legal advice before holding back any rent payments.

peeling off the paint. Respondent also blamed the black spots of mold on excess moisture caused by failing to use the fan while someone uses the shower. Petitioner denied that anyone in his household has intentionally peeled off the paint. The Petitioner notified the Respondent of these issues August 23, 2023 which is three (3) months prior to the filing of the Petition in November 2023. Although the shower/bathtub were useable, the presence of mold and the peeling paint made the use of the bathroom less enjoyable and more potentially hazardous. The conditions have remained through March 2024 (five (5) month post-petition) at the rate of \$50.00 per month. Therefore, the Petitioner is entitled to eight (8) months multiplied by \$50.00 or \$400.00 to date.

*Second Bathroom:*

Petitioner complained of mold growing in the bathtub due to the absence of the silicon sealer, mold on the ceiling, peeling paint on the walls, and sliding door rubber seals deteriorating allowing mold to grow. Respondent did not specifically address the issues but stated that they did not act on the written maintenance request because it was “vague,” and Petitioner failed to answer Ms. Garcia’s calls for clarification. Petitioner notified the Respondent of these issues August 23, 2023<sup>6</sup> which is three (3) months prior to the filing of the Petition in November 2023. Again, the Petitioner and his family were able to use the bathroom but the mold, leaking door, and peeling paint affected their enjoyment and potentially their health. The conditions have remained through March 2024 (five (5) month post-petition) at the rate of \$50.00 per month. Therefore, the Petitioner is entitled to eight (8) months multiplied by \$50.00 or \$400.00 to date.

*Living Room/Kitchen:*

Petitioner complained that the flooring in the living room and kitchen was damaged, cracking, and lifting up in way that is dangerous and may cause people to trip and fall. Peeling wall paint in both rooms also worries Petitioner due to hazards to his children. He also said not all burners work on the stove and the stove causes electrical interruptions and now stopped working. He also said that the stove light at the top of the stove is always “on.” Furthermore, the dishwasher is also not working since July 2023 and a part of the handle broke.

Respondent testified that the managers noticed and performed a check for the smoke detectors in the Unit on October 13, 2023 in the entry, living room and kitchen. At that

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<sup>6</sup> The Petitioner’s workbook states the Petitioner notified the Respondent of some mold spots in the second bathroom January 2022, but the majority of complaints were included in the Maintenance Request card which can be verified so the date for damages will be August 2023.

time, Respondent noticed the broken dishwasher handle and some lifted flooring, but that the managers did not go into the bathrooms or beyond the common areas. Respondent noted that a refurbished stove was installed in October 2022 and had worked fine when installed. New flooring had been installed in the Unit in November 2021. At the inspection on January 26, 2024, Respondent claims that all burners on the stove were working which is puzzling based on Petitioner's testimony that the broken burners caused his family to spend money and time eating out when they would rather have eaten at home. Again, Respondent stated that the walls looked as if someone peeled the paint intentionally.

Petitioner notified the Respondent of these issues August 23, 2023 which is three (3) months prior to the filing of the Petition in November 2023. The conditions have remained through March 2024 (five (5) month post-petition) at the rate of \$100.00 per month. Therefore, the Petitioner is entitled to eight (8) months multiplied by \$100.00 or \$800.00 to date.

#### Conclusion:

Based on the evidence presented in support of the Petition B, the Petitioner is credible in complaining of these issues needing attention. He stated that he made the maintenance requests in person because he could not fill out the Maintenance Request card in English, although he ultimately tried to fill one out in Spanish. The Respondent knew Petitioner has limited English language skills and relied on their Spanish speaking manager, Ms. Garcia, to help communicate with the Petitioner—both at the time he entered the Lease and later to clarify what he was requesting. Overall, it appears that Respondent did not address the verbal requests for maintenance and repairs, which caused great frustration for Petitioner. On the occasions that the Respondent entered the Unit, they testified that they did not notice some of these outstanding issues, including the mold despite the photos and video that show these issues. Even if a refurbished stove was provided recently, it can malfunction. It is not credible that the stove had no problems upon inspection in light of Petitioner's testimony. Furthermore, the flooring was surprisingly new to have the cracking and lifting shown by the evidence. However, Respondent brought no evidence to show that Petitioner was responsible for the problems through misuse or neglect. Respondent's arguments that Petitioner caused the damages fail for lack of evidence. Therefore, damages for reductions in housing services/failure to maintain or repair are awarded to Petitioner as set forth below.



## IX. DECISION

### *Unlawful Rent:*

1. The Petitioner's correct Base Rent is \$2,033.39. Because the Base Rent calculation herein addresses the use of RUBS, Respondent need not submit a One-Time Utility Adjustment Petition for the Affected Unit;
2. Petitioner's overpayments are recoverable from Respondent as unlawful rent in the total amount of \$7,596.30 for unlawfully collected rent for November 1, 2022 through October 31, 2023;
3. Petitioner is entitled to any overpayments in excess of the lawful rent of \$2,033.39 per month since filing this Petition in November 2023 until this decision has become final. If there is a factual dispute between Petitioner and Respondent about the amount to be refunded, either party may request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, Section J(1);
4. If Petitioner has received any rental assistance from any entity for the period of November 1, 2022 through October 31, 2023, Petitioner must repay the difference between the unlawfully collected rent paid by the entity on behalf of Petitioner and the lawful rent of \$2,033.39 each month upon receipt of the rent refund from Respondent.

(see Attachment 2: Decision Award Spreadsheet).

### *Maintenance and Repair:*

1. Petitioner is entitled to a reduction in monthly rent for several reductions in housing services/failure to repair from August 2023 (the date of the Maintenance Request card through March 2024 (three (3) months prior to the Petition plus five (5) months during the petition process) as set forth here:
  - a. Peeling paint and mold in the master bathroom: \$400.00 through March 2024 and the mold must be treated and the walls must be repainted plus there shall be a rent reduction of \$50.00 per month continuing each month going forward until resolved;
  - b. Peeling paint and mold in the second bathroom plus shower door: \$400.00 through March 2024 and the mold must be treated and the peeling paint repaired plus there shall be a rent reduction of \$50.00 per month continuing each month going forward until repaired;
  - c. Flooring in the living room and kitchen: \$800.00 through March 2024 and the flooring must be replaced plus there shall be a rent reduction of \$100.00 per month continuing each month going forward until replaced;

- d. Peeling paint in the living room and kitchen: \$400.00 through March 2024 and the walls must be re-painted plus there shall be a rent reduction of \$50.00 per month continuing each month going forward until the work is complete;
  - e. Kitchen stove: \$400.00 through March 2024 and the stove must be replaced or repaired to function fully and properly, plus there shall be a rent reduction of \$50.00 per month continuing each month going forward until the stove works properly;
  - f. Dishwasher: \$80.00 through March 2024 and the dishwasher must be replaced or repaired to function fully and properly, plus there shall be a rent reduction of \$10.00 per month continuing each month going forward until the dishwasher works properly.
2. In total, Respondent shall refund to Petitioner the amount of \$2,800.00 for failure to maintain habitable premises and decrease in housing services or maintenance from the period August 2023 through March 2024.

#### *Decision Guidelines*

1. Respondent shall refund to Petitioner the total amount of (a) \$10,396.30, (b) plus any additional amounts exceeding the current lawful rent of \$2,033.39 for the Affected Unit that may have been paid or be paid by Petitioner after October 31, 2023, and (d) apply any continuing reductions of rent per month for housing services/failure to repair issues that remain ongoing as outlined in Attachment 2, Award Schedule, appended hereto.
2. In the event that Petitioner does not receive full payment of \$10,396.30 from Respondent as ordered in this Decision on or before June 1, 2024 or ten (10) days after this decision becomes final, whichever is later, Petitioner shall be entitled to withhold rent payments until such time as Petitioner has withheld a total of \$10,396.30, less any sums Respondent has paid directly to Petitioner pursuant to this Decision. Petitioner may refer to Attachment 2, Award Schedule, for a Credit Schedule setting forth the amounts Petitioner may withhold. As set forth below, Respondent may not issue a rent increase to Petitioner until Petitioner has received from Respondent all amounts ordered by this Decision to be paid.
3. In the event that this Decision is appealed, the final appeal decision shall include an updated refund schedule as applicable. Additionally, if this Decision is appealed, pending the outcome of the appeal, this Decision will not be considered final, and Petitioner shall continue to pay the monthly rent of \$2,640.22 until the appeal decision is final.
4. In the event that either Petitioner or Respondent terminates Petitioner's tenancy for any reason prior to delivery of the payments ordered by this Decision, the total amount then owed shall become due and payable to Petitioner immediately and if said amount

is not paid, Petitioner shall be entitled to a money judgment in the amount of the unpaid payments in an action in court or any other administrative or judicial or quasi-judicial proceeding.

5. The payments and credits to Petitioner as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.
6. Subject to Paragraph 7, below, and pursuant to CSFRA Sections 1706(a), (b) and 1707(c), (f), Respondent may not issue a Rent increase for the Affected Unit until (1) all refunds due to Petitioner are fully paid, and (2) Respondent has provided written notice to Petitioner of the rent increase at least 30 days in advance of such increase in the manner prescribed by the CSFRA and California law. It should be noted that CSFRA Regulations Ch. 7, Section (B)(1) requires that a notice in substantially the same form as that promulgated by the Rental Housing Committee must be served on Tenants for all rent increases.
7. In addition to abiding by the requirements of Paragraph 11, above, Respondent may not issue a rent increase for the Affected Unit if Respondent is in violation of any of the provisions set forth in CSFRA Section 1707(f)(1)-(3) and CSFRA Regs. Ch. 12, Section (B), which require substantial compliance with the CSFRA and include, among other things, charging only lawful amounts of rent, registering the Property annually with the Rent Stabilization Division (see CSFRA Regs. Ch. 11), refunding all unlawfully charged rents for all Tenants, and maintaining the Property in habitable condition according to state law and the CSFRA, including making all repairs ordered hereunder or required by the City Building Department or other department of the City of Mountain View as a result of Multi-Family Housing Program Inspections. Only when Respondent has complied with all of the provisions of this paragraph and paragraph 6, above, may Respondent issue a rent increase, provided that they do so in a manner consistent with the CSFRA and California law.
8. 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).

(see Attachment 2: Decision Award Spreadsheet).

IT IS SO ORDERED.

/s/ E. Alexandra DeLateur

E. Alexandra DeLateur, Hearing Officer

Dated: April 22, 2024

## **ATTACHMENT 1 LIST OF DOCUMENTARY EVIDENCE**

**2200 CALIFORNIA ST. APT [REDACTED]**

### **Hearing Officer Exhibits**

1. Notice of Acceptance of Petitions served on December 22, 2023
2. Follow-up Information Notice of Petition served on December 22, 2023
3. Notice of Hearing on Petition served on January 9, 2024, setting a Hearing on February 16, 2024 with a Prehearing Conference on January 25, 2024
4. Pre-hearing Order and Notice of Prehearing Order dated January 26, 2024
5. Information from the City of Mountain View regarding building code, fire, and safety violations at 2120 W. Middlefield Rd., Mountain View, California with a report showing no outstanding fire, health, or safety violations
6. Information from the City of Mountain View Rent Stabilization Program staff regarding the status of the registration of the property with the CSFRA program and the annual fees indicating that the Respondent has complied with registration of the property and paid the required fees
7. Post-hearing Order dated February 19, 2024 and Notice of Post-hearing Order dated February 20, 2024

### **Petitioner Exhibits**

1. The combined Petitions A and B filed by Abdul Campos ("Petitioner") on or about November 22, 2023 and accepted by the City on December 22, 2023
2. Workbook A for a Downward Adjustment of Rent for Collection of Illegal Rent
3. Workbook B for a Downward Adjustment of Rent Failure to Maintain Habitable Premises and/or Decrease in Housing Services or Maintenance
4. Notice of Submission and Proof of Service, November 22, 2023 for each Petition
5. Rental Agreement for a tenancy commencing November 1, 2020 for twelve (12) months, starting with the Rent Concession Addendum
6. Petitioner's receipts for money orders to show rent payments made to Respondent
7. Rent ledger
8. Maintenance Request card dated August 23, 2023
9. Photos and video tour regarding a variety of maintenance issues

## **Respondent Exhibits**

1. Respondent's Response dated December 20, 2023
2. Respondent's Timeline from August 26, 2023 to January 26, 2024
3. Rent Ledger dated December 20, 2023
4. Rental Agreement for a tenancy commencing November 1, 2020 for twelve (12) months
5. Conservice bills for utilities for Petitioner's Unit for November 2020-November 2023
6. Rent Ledger dated January 30, 2024
7. Petitioner's "Declaration of Covid-19 related financial distress" dated March 8, 2021
8. Maintenance Request card dated August 23, 2023 with Respondent's notes on a post-it note
9. Copies of Petitioner's rent payments from November 2020 through December 2023
10. Rent Roll for Unit [REDACTED]
11. Notice of Change of Monthly Rent dated September 23, 2022
12. Notice of Change of Monthly Rent dated September 25, 2023
13. Notice to Enter Dwelling dated October 13, 2023
14. Notice to Enter Dwelling dated January 26, 2024
15. Smoke Detector Testing certificate for Unit [REDACTED]

## Hearing Officer Decision re Base Rent

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Lawful Rent
11/2020	\$ 2,350.00	\$ 126.25	\$ 2,033.39
12/2020	\$ 2,350.00	\$ 126.25	\$ 2,033.39
1/2021	\$ -	\$ 126.25	\$ 2,033.39
2/2021	\$ 2,350.00	\$ 185.49	\$ 2,033.39
3/2021	\$ 2,350.00	\$ 161.49	\$ 2,033.39
4/2021	\$ 2,350.00	\$ 174.90	\$ 2,033.39
5/2021	\$ 2,350.00	\$ -	\$ 2,033.39
6/2021	\$ 2,350.00	\$ -	\$ 2,033.39
7/2021	\$ -	\$ -	\$ 2,033.39
8/2021	\$ 2,350.00	\$ -	\$ 2,033.39
9/2021	\$ 2,350.00	\$ -	\$ 2,033.39
10/2021	\$ 2,350.00	\$ -	\$ 2,033.39
Totals	\$ 23,500.00	\$ 900.63	
12-month average	\$ 1,958.33	\$ 75.05	
<b>BASE RENT</b>		\$ 2,033.39	

## Hearing Officer Decision re Unlawful Rent

Month/Year of Rent Payment	Actual Premises Rent Paid	Premises Rent Charged	Actual Utilities Paid	Actual Additional Services Paid	Lawful Rent	Payments in Excess by Petitioner
11/2022	\$ 2,467.50	\$ 2,467.50	\$ 159.52	\$ 35.00	\$ 2,033.39	\$ 628.63
12/2022	\$ 2,467.50	\$ 2,467.50	\$ 212.09	\$ -	\$ 2,033.39	\$ 646.20
1/2023	\$ 2,467.50	\$ 2,467.50	\$ 207.35	\$ 35.00	\$ 2,033.39	\$ 676.46
2/2023	\$ 2,467.50	\$ 2,467.50	\$ 164.42	\$ 35.00	\$ 2,033.39	\$ 633.53
3/2023	\$ 2,467.50	\$ 2,467.50	\$ 159.81	\$ 60.00	\$ 2,033.39	\$ 653.92
4/2023	\$ 2,467.50	\$ 2,467.50	\$ -	\$ 60.00	\$ 2,033.39	\$ 494.11
5/2023	\$ 2,467.50	\$ 2,467.50	\$ -	\$ 35.00	\$ 2,033.39	\$ 469.11
6/2023	\$ 2,467.50	\$ 2,467.50	\$ -	\$ 35.00	\$ 2,033.39	\$ 469.11
7/2023	\$ -	\$ 2,467.50	\$ -	\$ 35.00	\$ 2,033.39	\$ (1,998.39)
8/2023	\$ 6,053.79	\$ 2,467.50	\$ -	\$ 35.00	\$ 2,033.39	\$ 4,055.40
9/2023	\$ 2,450.00	\$ 2,467.50	\$ -	\$ -	\$ 2,033.39	\$ 416.61
10/2023	\$ 2,450.00	\$ 2,467.50	\$ -	\$ 35.00	\$ 2,033.39	\$ 451.61
11/2023	\$2,675.00*	\$2,640.22*	TBD	TBD	\$2,033.39*	TBD
12/2023	\$2,675.00*	\$2,640.22*	TBD	TBD	\$2,033.39*	TBD
1/2024	TBD	TBD	TBD	TBD	\$2,033.39*	TBD
2/2024	TBD	TBD	TBD	TBD	\$2,033.39*	TBD
3/2024	TBD	TBD	TBD	TBD	\$2,033.39*	TBD
4/2024	TBD	TBD	TBD	TBD	\$2,033.39*	TBD
Totals	\$ 30,693.79	\$ 29,610.00	\$ 903.19	\$ 400.00	\$ 24,400.68	
<b>TOTAL OVERPAYMENTS**</b>						<b>\$ 7,596.30</b>

\* Not included in Totals calculations

\*\* The total does not include the potential amounts overpaid after October 2023

## Hearing Officer Decision re Failure to Maintain Habitable Premises and Reduction in Housing Services or Maintenance

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue Persisted	Monthly Rent	Percentage of Rent Reduction	Total Rent Reduction Awarded
Peeling paint and mold in master bathroom	8/1/2023	3/31/2024	8.00	\$ 2,033.39	n/a	\$ 400.00
Shower door	8/1/2023	3/31/2024	8.00	\$ 2,033.39	n/a	\$ 400.00
Flooring in living room and kitchen	8/1/2023	3/31/2024	8.00	\$ 2,033.39	n/a	\$ 800.00
Peeling paint in living room and kitchen	8/1/2023	3/31/2024	8.00	\$ 2,033.39	n/a	\$ 400.00
Kitchen stove	8/1/2023	3/31/2024	8.00	\$ 2,033.39	n/a	\$ 400.00
Dishwasher	8/1/2023	3/31/2024	8.00	\$ 2,033.39	n/a	\$ 400.00
Peeling paint and mold in master bathroom (ongoing)	4/1/2024	TBD	TBD	\$ 2,033.39	n/a	\$50/month
Shower door (ongoing)	4/1/2024	TBD	TBD	\$ 2,033.39	n/a	\$50/month
Flooring in living room and kitchen (ongoing)	4/1/2024	TBD	TBD	\$ 2,033.39	n/a	\$100/month
Peeling paint in living room and kitchen (ongoing)	4/1/2024	TBD	TBD	\$ 2,033.39	n/a	\$50/month
Kitchen stove (ongoing)	4/1/2024	TBD	TBD	\$ 2,033.39	n/a	\$50/month
Dishwasher (ongoing)	4/1/2024	TBD	TBD	\$ 2,033.39	n/a	\$10/month
<b>TOTAL**</b>						<b>\$ 2,800.00</b>

\*\* The total does not include the potential amounts due after April 2024

**TOTAL REFUND AWARDED TO PETITIONER \$ 10,396.30**

## Credit Schedule

Month/Year of Rent Payment	Rent Owed to Landlord	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
6/2024	\$ 2,033.39	\$ 2,033.39	\$ -
7/2024	\$ 2,033.39	\$ 2,033.39	\$ -
8/2024	\$ 2,033.39	\$ 2,033.39	\$ -
9/2024	\$ 2,033.39	\$ 2,033.39	\$ -
10/2024	\$ 2,033.39	\$ 2,033.39	\$ -
11/2024	\$ 2,033.39	\$ 229.35	\$ 1,804.04
<b>TOTAL**</b>		<b>\$ 10,396.30</b>	

\*\* The total does not include (1) the potential amounts overpaid above the Base Rent of \$2,033.39 3 after October 2023 or (2) ongoing rent reductions for housing services/failures to repair after April 2024