

CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

HEARING OFFICER DECISION PURSUANT TO

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

Rental Housing Committee Petition No.:	C22230037
Type of Petition:	Petition B: Failure to Maintain Habitable Premises
Address of Rental Property:	1725 Wright Ave.
Subject Unit(s):	█
Petitioner Name(s) and Authorized Representative(s):	Eric Allen Walker
Respondent Name(s) and Authorized Representative(s):	Timpson Enterprises, Inc., Owner; Shirley Ankenbauer, Property Manager
Date of Telephone Conference:	May 2, 2023
Date of Hearing:	May 9, 2023
Place of Hearing:	Zoom
Date Hearing Record Closed:	May 9, 2023
Date of Decision:	June 9, 2023
Date of Mailing:	See attached Proof of Service
Hearing Officer:	Duf Sundheim

I. STATEMENT OF THE CASE

1. On March 3, 2023, Eric Allen Walker ("Tenant") filed a petition (the "Petition") with the City of Mountain View Rent Housing Committee ("RHC") with respect to the property located at 1725 Wright Ave. (the "Property"), Unit #█ (the "Premises"), claiming a failure to maintain a habitable premises due to the lack of hot water (the "Claim").

2. The Petition was accepted by RHC on April 4, 2023.

3. Landlord, through the Premises' property manager Shirley Ankenbauer ("Landlord's Representative") submitted a response to the Petition April 22, 2023.

4. The Notice of Prehearing Conference was served on April 11, 2023. A Revised Notice of Prehearing Conference and Hearing Date was served on April 12, 2023, which changed only the Hearing date from May 15, 2023 to May 9, 2023 at 1:00 p.m.

5. The Pre-Hearing Telephone Conference was held May 2, 2023. Tenant, Landlord's Representative, JoAnn Pham ("Ms. Pham") of the City of Mountain View's Rent Stabilization Program ("RSP"), and Duf Sundheim, the hearing officer ("Hearing Officer") participated in the

call. In addition to discussing hearing procedures, the parties were told to submit any additional documentation by close of business Friday, May 5, 2023, including an up-to-date reading of the maximum water temperature at the Premises.

II. PARTIES WHO ATTENDED THE HEARING

1. The Hearing was held May 9, 2023 (the "Hearing Date"). Tenant, Landlord's Representative, Ms. Pham, Patricia Black of the RSP, and the Hearing Officer were the only parties present at the Hearing. There were no witnesses, interpreters, or legal representatives present.

III. SUMMARY OF FINDINGS

1. Due to a lack of hot water, Landlord has failed to maintain a fully habitable Premises.

2. Commencing December 1, 2022, the measure of damages is \$7.33 per day or \$220 per month. This means as of April 30, 2023, the damages were \$1,100 and continue to accrue at \$7.33 per day until the 120-degree minimum as set forth in California Health and Safety Code Section 114192 (Exhibit P-9) (the "Minimum Requirement") has been achieved.

IV. TESTIMONY

1. Tenant's testimony

a. Tenant moved into the Premises on July 1, 2022.

b. On November 17, 2022 (Petitioner Exhibit 5 (hereinafter "Exhibit P-6")), Tenant informed Landlord that more than two weeks prior, the maximum water temperature had dropped and was well below the Minimum Requirement.

c. Exhibit P-7 indicates that as of November 21, 2022, the maximum water temperature had returned to "normal", only to fall off again by November 23, 2022. It has not met the Minimum Requirement since.

d. Tenant had to go out and buy a portable heater just to make the bathroom warm enough for Tenant to take a shower. Landlord reimbursed Tenant \$100 to compensate Tenant for the cost of the heater (Exhibit P-7).

e. Tenant presented several readings showing the water did not meet the Minimum Requirement, the most recent being Exhibit P-11, which showed as of May 9, 2023, the maximum water temperature was 105, 15 degrees below the Minimum Requirement.

2. Landlord's question to Tenant.

a. Landlord asked Tenant if the recording of the temperature as set forth in Exhibit P-11 might have been affected by the temperature of the plastic container holding the water. Tenant indicated when he ran the hot water, he ran it over the plastic container to ensure the plastic was at the same temperature as the water.

2. Landlord's testimony

a. In Landlord's Response Form (Respondent Exhibit 1 (hereinafter "Exhibit R-1")), Landlord indicated Landlord discussed the hot water issue with Landlord's vendors. Landlord asked their vendors whether there was any reason for the Premises to have a lower temperature than other units. The vendors told the Landlord there was no reason. Landlord also testified they checked with some other tenants and no one Landlord talked to was having a similar problem. Landlord's Response Form made no mention of Landlord ever actually testing the water temperature at the Premises.

At the Hearing, however, Landlord did indicate recent readings had been taken at the Premises and that they had run from between 106 and 107 degrees, admittedly well below the Minimum Requirement.

SUMMARY OF RELEVANT EVIDENCE

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

V. ISSUE PRESENTED

1. Was there a reduction in the habitability of the Premises due to the fact the water temperature was below the Minimum Requirement?

VI. FINDINGS OF FACT SUPPORTING THIS DECISION

1. Since November 23, 2022, the water temperature in the Premises has failed to meet the Minimum Requirement and even both parties agree that as of the Hearing Date the water temperature at the Premises was at least thirteen degrees below the Minimum Requirement.

VII. DISCUSSION

A. Burden of Proof

Petitions for Adjustment of Rent filed pursuant to the CSFRA must be supported by the preponderance of the evidence submitted prior to and at the hearing. *CSFRA § 1711(h)*. Here,

there is no dispute as to the facts. Both parties agree the water temperature regularly is at least 13 degrees below the Minimum Requirement. The only issue is the measure of damages.

VIII. DECISION

Based on the above findings of fact, discussion, and conclusions of law, it is hereby decided that:

1. The maximum water temperature has failed to reach the 120-degree Minimum Requirement on a consistent basis since November 23, 2022 (the "Impact Date") and was still an issue as of the Hearing Date. This is a clear failure of the Landlord to maintain a habitable Premises.

2. The Minimum Requirement is necessary (a) to provide sufficient heat to shower, wash hands, and clean dishes, (b) to prevent bacteria from forming in the areas where the water is being stored, and (c) other health and practical reasons.

3. The evidence in this case showed the failure to meet the Minimum Requirement had a significant impact on Tenant's use of the shower and the ability to properly use the sinks. There was no evidence of any bacteria in the water or related health issues.

4. Consequently, we hold there has been a reduction in the habitability of the Premises since the Impact Date. We have given Landlord seven days to fix the issue and thus hold starting December 1, 2022 (the "Start Date"), Landlord has failed to meet its obligation to the Tenant to provide a habitable premises and have accessed a 10% penalty effective December 1, 2022.

5. Rent is \$2,200 per month. Given the Start Date and the 10% penalty, Tenant is entitled to a rent credit of \$7.33 per day or \$220 per month from December 1, 2022, for each day the Minimum Requirement is not met. As of April 30, 2023, the aggregate figure is \$1,100.

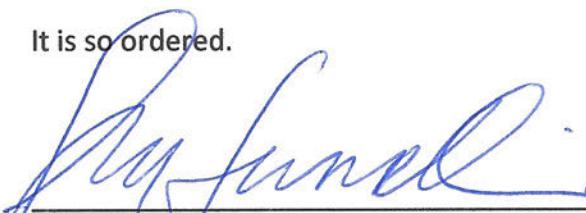
6. Tenant shall keep track of the maximum water temperature, inform Landlord of his findings on a weekly basis, and with proper notice, Landlord shall have access to the Premises to check the water temperature.

6. Tenant shall be compensated for the damages through a rent credit, according to the attached table.

7. Without limiting Tenant's rights to bring any future actions, this matter shall be deemed terminated once the Minimum Requirement has been met for 15 consecutive days.

8. If Tenant terminates the tenancy for any reason or no reason, without affecting the other rights of either party, Landlord shall pay Tenant any balance due under this decision within 30 days of the termination of the lease.

It is so ordered.



Duf Sundheim
Hearing Officer

ATTACHMENT 1
SUMMARY OF RELEVANT EVIDENCE

Hearing Officer Exhibits

1. Notice of Acceptance, dated April 4, 2023
2. Follow-up Information for Petition, dated April 4, 2023
3. CSFRA Hearing Information Sheet, served April 4, 2023
4. Hearing Officer Written Order and Summary of Prehearing Telephone Conference and Notice of Hearing, dated May 3, 2023

Petitioner Exhibits

1. Petition, dated March 3, 2023.
2. Petition workbook, submitted March 3, 2023
3. Petitioner's Notice of Submission and Proof of Service, dated March 3, 2023
4. Lease agreement, dated June 1, 2022
5. Proof of rental payments from May 31, 2022 through March 1, 2023
6. Tenant's text message to Landlord Representative, dated November 17, 2023, notifying of hot water issues
7. Text messages between Tenant and Landlord on November 22, 2023 through sometime March 2023 regarding ongoing hot water issues
8. Photos of water temperature measured at 99.7 degrees Fahrenheit, Landlord Representative's contact information, required lease attachments providing information about the CSFRA, and the Fall 2022 Newsletter for tenants from the Rent Stabilization Program
9. Legislative Counsel Bureau copy of California Health and Safety Code Section 114192
10. Photo of water temperature reading measured at 102.4 and 101.3 degrees Fahrenheit taken immediately after the Prehearing Meeting on May 2, 2023
11. Photo of water temperature reading measured at 105.3 degrees Fahrenheit taken the morning of the Hearing on May 9, 2023

Respondent Exhibits

1. Landlord Representative Response, filed April 22, 2023
2. Landlord's Representative Authorization form, filed April 22, 2023
3. Bay City Boiler Invoice, dated December 31, 2022; Al's Roofing Supply Invoice, dated January 5, 2023; Lund Pearson McLaughlin Inspection, Testing, and Maintenance Cover Sheet completed February 16, 2023; and various citations to online resources regarding hot water requirements and recommendations
4. Text messages between Landlord Representative, Tenant, and Maintenance Staff to coordinate and measure hot water temperature in unit █ hot water readings for all units at 1725 Wright Ave measured on May 4, 2023

Attachment 2
Award Schedule

1725 Wright Ave # ■ - RHC Petition# C22230037

Hearing Officer Decision

Habitability Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue Persisted	Rent Amount	Percent of Rent Rebate	Rent Rebate Awarded
Hot water	12/1/2022	4/30/2023	5.0	\$ 2,200.00	10%	\$ 1,100.00
Continuing hot water issues*	5/1/2023	TBD	TBD	TBD	10%	\$7.33/ day
TOTAL						\$ 1,100.00

Credit Schedule

Month/Year of Rent Payment	Total Payment to be Paid by		
	Monthly Rent Owed by Petitioner	Rent Credited to Petitioner	Petitioner
7/2023**	\$ 2,245.00	\$ 1,100.00	\$ 1,145.00
TOTAL		\$ 1,100.00	\$ 1,145.00

* Hot water issues beginning 5/1/2023 will continue to accrue a rent rebate of \$7.33/ day

** Continuing hot water issues beginning 5/1/2023 should be added to the rent credited to Petitioner for July 2023 and continue to be credited on a monthly basis if the issue is not resolved