Rental Housing Committee
Appeal Decision

Petitions C22230050 and C22230051

The Rental Housing Committee of the City of Mountain View (the "**RHC**") finds and concludes the following:

I. Summary of Proceedings

On May 26, 2023, Tenant Lina Sampayo along with her husband, Hector Balmaceda, (collectively **"Petitioner**") filed two petitions for downward adjustment of rent (the "**Petitions**") (Tenant's Exhibit #1 and #2) related to the property located 939 Rich Avenue, Unit [redacted], Mountain View ("**Property**"). The Property is owned by Mountain View Chinese Christian Church (MVCCC), which was represented at the pre-hearing conference by Jack Hsai, and at the hearing by Robert Chen, Charles Tsai, and Jian Luo (collectively "**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On August 21, 2023, a notice of hearing was issued with a hearing date scheduled for October 4, 2023 at 9:30 A.M.

The first Petition requested a downward adjustment of rent on the basis that Respondent's predecessor had failed to roll back Petitioner's rent upon the effective date of the Community Stabilization and Fair Rent Act ("**CSFRA**") and had thereafter improperly imposed the 2018 Annual General Adjustment. The second Petition request a downward adjustment of rent on the basis that Respondent had (1) failed to maintain the property in a habitable condition based on a water leak in one of the bedrooms, and the carport dripping "tar" onto vehicles and (2) had improperly reduced maintenance of the common areas (specifically landscaping) without a corresponding decrease in the rent.

On September 12, 2023, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Petitioner and Respondent (through its authorized representatives Mr. Hsai) were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing. A Notice of Hearing Officer's Written Order and Summary of Pre-Hearing Conference and Notice of the Hearing were served on the Parties on September 21, 2023. (HO Exhibits #4 and #5).

The hearing was held on October 4, 2023. The hearing record was held open until the close of business on October 10, 2023 for submission of additional evidence requested by the Hearing Officer. The Hearing Officer issued a decision on February 1, 2024 ("**HO Decision**"). The Hearing Officer's Decision was served on the parties on February 1, 2024.

A timely appeal of the Decision was received from the Respondent on February 15, 2024. (**Appeal**").

Procedural Posture

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the

Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

II. **Summary of Hearing Officer Decision.**

The Hearing Officer issued a detailed decision on the Petition summarizing the evidence and making findings of fact and conclusions of law.

The Hearing Officer found the following:

1. Petitioner met their burden of proof that Respondent (and its predecessor) had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because (a) Respondent's predecessor failed to roll back Petitioner's rent from $1,850.00 to the Base Rent of $1,700.00 upon the effective date of the CSFRA and (b) thereafter imposed the 2018 Annual General Adjustment of 3.6 percent on the incorrect Base Rent. Respondent must refund the Petitioner all overpaid amounts.

2. Petitioner also met their burden of proof that Respondent was responsible for its predecessor's unlawful retention of rent in excess of the amount permitted by the CSFRA on the basis that Respondent's predecessor had improperly collected $15.00 per month for the period from May 1, 2019 through January 2022 from Petitioner for renters insurance without first seeking or obtaining approval from the Rent Stabilization Program to provide this additional Housing Service and impose this additional charge.

3. Petitioner did not meet their burden of proof that Respondent (and its predecessor) had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA by implementing a service charge of $1.95 per month for the months of January 2017 through June 2022 connected with the tenant's online rental payments. Petitioner failed to demonstrate that she was required by Respondent, or its predecessor, to pay rent using the online service which charged this additional fee.

4. Petitioner met their burden of proof that beginning in November 2022, Respondent had failed to maintain the Property in a habitable condition due to water intrusion in one of the bedrooms in the unit. Petitioner demonstrated that they had provided Respondent with notice of and a reasonable opportunity to cure the water intrusion into and subsequent damage to the Property, but Respondent had failed to take adequate action to address the conditions. As a result, the bedroom – which constituted one-fourth of the living space of the unit – had become unusable by Petitioner, justifying a 25 percent per month reduction in rent for the 14-month period from December 2022 through the date of the decision plus an ongoing rent reduction of $425.00 per month until the issue is adequately addressed by Respondent.

5. Petitioner met their burden of proof that there was a reduction in housing services due to Respondent's elimination of the gardening and landscaping services. Petitioner's requested reduction of $50.00 per month was appropriate as it represented less than 3 percent of the maximum legal rent for the Property. The rent for the unit effective September 2022 should be reduced by $50 per month (to $1,650.00) due to the reduction/elimination of housing services.

6. Petitioner did not meet their burden of proof that Respondent had failed to maintain the Property in habitable condition and/or improperly decreased Housing Services due to the condition of the carport. While the City inspection report and photos submitted by Petitioner establish that the carport is deteriorating due to water damage and requires repair, the requirement for effective weatherproofing does not apply to the carport because it is not a habitable space. Further, the Petitioner admitted that they continue to be able to park their vehicle(s) in the carport, therefore there has not been a reduction in Housing Services as a result of the condition of the carport.

7. Petitioner did not meet their burden of proof that they experienced a further decrease in housing services because of the water intrusion based on their increased cost of heating. While Petitioner's PG&E costs did increase by a total of $190.06 between November 30, 2022, and May 26, 2023, due to the need to mitigate the humidity in the bedroom, there is no provision in the CSFRA which allows recovery of damages via the petition and hearing process.

8. Respondent is required to refund Petitioner the total sum of $24,347.67, plus any additional sums exceeding the current lawful rent of $1,225.00 for the Property that are paid by Petitioner after January 31, 2024. If Petitioner fails to receive a full refund from Respondent within thirty days after the decision becomes final, Petitioner may withhold rent payments until such time that they have withheld a total of $24,347.67.

9. The maximum lawful rent for the Property shall remain $1,225.00 per month until such time as (a) Respondent corrects all damages to the second bedroom in the unit; (b) Respondent restores landscaping services to the level that existed prior to September 1, 2022; (c) Respondent is otherwise in substantial compliance with the CSFRA, and (4) after substantial compliance with HO Decision and CSFRA, Respondent issues to Petitioner a notice of rent increase that complies with the state law requirements and CSFRA in terms of the amount and timing of the increase and the notice period expires.

III. Appealed Elements of Hearing Officer Decision

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section III of this Appeal Decision identifies the elements of the Decision that are subject to appeal by the Respondent. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Respondent raises the following five issues on appeal:

A. **The Hearing Officer abused her discretion by omitting Respondent's clarification letter**. Respondent argues that the Hearing Officer's decision to exclude their letter, which was submitted after the hearing, is an unjust outcome because the letter addressed certain "false allegations made by the tenant during the hearing" which Respondent was unable to address due to time constraints at the hearing.

B. **Respondent mistakenly failed to include one of the documents requested by the Hearing Officer.** Respondent alleges that its staff "overlooked" sending the requested Transfer Disclosure Statement file requested by the Hearing Officer in her Post-Hearing Order and seeks to have the document submitted into the record via its Appeal.

C. **The Hearing Officer abused her discretion by invalidating the imposition of the 2018 Annual General Adjustment of 3.6 percent.** Respondent argues that the Hearing Officer's decision to invalidate and roll back the 2018 AGA increase is "subjective, unfair, and unreasonable."

D. **The Hearing Officer erred in concluding that the Respondent and its predecessor in interest demanded and accepted unlawful Rent for the Property.** Respondent contends that as the current owner, it has never requested an additional increase in rent or additional charges for the property. Respondent further claims that while such actions may have occurred under the previous owner's management, Respondent was unaware of the issue and the previous owner's manager has asserted their lack of knowledge of the issue.

E. **The Hearing Officer erred or abused her discretion in determining that the Rent for the Property should be reduced by $450 per month for the Respondent's failure after notice to comply with the warranty of habitability.** Respondent alleges that Mr. Chen adequately addressed the issue by visiting the Property to view the problem and thereafter telling the upstairs neighbor to stop watering their plants.

IV. Decision Regarding Appealed Elements

A. Hearing Officer Did Not Abuse Her Discretion by Excluding the Untimely Submitted Clarification Letter.

The Hearing Officer did not abuse her discretion by excluding the untimely submitted clarification letter because admission of the document would unduly prejudice Petitioner.

Respondent argues that the Hearing Officer should have allowed submission of its clarification letter because the letter addressed issues that Respondent was unable to address at the hearing due to time constraints. As the Hearing Officer explained, the letter was evidentiary in nature and sought to address certain factual matters raised at the Hearing. (HO Decision at pp. 4:20-27.) Respondent submitted the letter after the Hearing, but before the Hearing Officer closed the Hearing Record. (*Id.*) Respondents allege that they submitted the letter "in response to the hearing official's request for additional statements." (*See* Resp.'s Appeal.) However, as the Hearing Officer explained, the letter "was not requested by the Hearing Officer, and was not otherwise authorized to be submitted in connection with the consolidated petition." (HO Decision at pp. 4:26-27.)

CSFRA Regulations provide that at a petition hearing, "Petitioner and other affected parties may offer any documents, testimony, written declarations, or other evidence that, *in the opinion of the Hearing Officer*, is credible and relevant to the requested rent adjustment." (CSFRA Regulations, ch. 6, sec. E.6.) The language of the regulations makes clear that a Hearing Officer has discretion to admit or omit evidence based on whether they believe that the evidence is credible or relevant. In the instance case, the Hearing Officer determined that the letter was not relevant (i.e., did not have any evidentiary value) because it was unsworn and addressed matters that Respondent had the opportunity to testify about or did testify about at the hearing and because it would be extremely unfair to Petitioner who no longer had the opportunity to rebut the statements in the letter. (HO Decision at pp. 5:1-6). The Hearing Officer acted fully within her authority in refusing to admit MVCCC's clarification letter, and Respondent has not put forth any new reasoning that justifies overturning the Hearing Officer's decision to exclude the letter.

B. Respondent Has Not Demonstrated an Excusable Error That Would Justify Admitting the Requested Document.

The Respondent has not demonstrated that there was excusable error or mistake on their part which would justify reopening the Hearing record to admit the Transfer Disclosure Statement requested by the Hearing Officer nor has Respondent established that the evidence is of the type that would change the outcome of the petition.

Typically, admitting new evidence requires a *de novo* hearing on the petition. A *de novo* hearing is only warranted where there is newly discovered evidence (i.e., evidence which existed at the time of the original hearing but was only discovered after the conclusion of the hearing), and the new evidence could not have been obtained prior to the closing of the hearing record by the exercise of due diligence, is not merely corroborative or cumulative, and would likely result in a different outcome.

In the instant case, Respondent was in possession of the Transfer Disclosure Statement and the Hearing Officer even offered additional time after the hearing for the Respondent to submit the document. (*See* HO Decision at pp. 5:10-23.) As Respondent admits in its Appeal, its agents merely "overlooked" sending the document prior to the close of the Hearing record. There is no excuse for the Respondent's failure to exercise due diligence. Further, Respondent has failed to demonstrate that admitting the Transfer Disclosure Statement and considering it would result in a different outcome.

Respondent has failed to establish that the document which it wishes to now submit into evidence and have considered is of the type that justifies as a *de novo* hearing.

C. Hearing Officer Did Not Abuse Her Discretion in Concluding the 2018 AGA Was Improperly Imposed.

The Hearing Officer did not abuse her discretion in concluding that the 2018 AGA was improperly imposed by Respondent's predecessor-in-interest because the decision comports with the requirements of the CSFRA.

Respondent argues that the Hearing Officer's decision to invalidate and roll back the 2018 AGA increase is "subjective, unfair, and unreasonable." Respondent's argument is entirely conclusory, providing no supporting evidence or legal argument to support its position.

In fact, the Hearing Officer's determination is supported by law. The CSFRA provides that upon its effective date, "no Landlord shall charge Rent in an amount that exceeds the sum of the Base Rent plus any lawful Rent increases actually implemented pursuant to" the Act. (CSFRA § 1706(a).) The "Base Rent" for a tenancy commencing on or before October 19, 2015, is the rent in effect on that date. (CSFRA § 1702(b)(1).) Further, the CSFRA prohibits a rent increase where "the Landlord has failed to substantially comply with all provisions of" the CSFRA "and all rules and regulations promulgated by the Committee." (CSFRA § 1707(f)(1).) The CSFRA Regulations provide that a Landlord's failure to roll back the rent and refund any overpayment of rent constitutes substantial noncompliance with the CSFRA. (CSFRA Regulations, ch. 12, section B.)

In the instant case, Respondent's predecessor-in-interest failed to rollback Petitioner's Rent from $1,850.00 to $1,700.00 upon the effective date of the CSFRA. (HO Decision at pp. 16:11-15.) Thereafter, Respondent's predecessor imposed the 2018 AGA of 3.6 percent on the incorrect Base Rent of $1,850.00,

bringing the Petitioner's monthly Rent for the Property to $1,917.00. (HO Decision at pp. 16:16-17.) However, this rent increase was invalid both because Respondent's predecessor in interest was not in substantial compliance with the CSFRA and the Regulations at the time of the increase and was therefore not entitled to take the increase, and because the 2018 AGA was imposed on the incorrect Base Rent in violation of the language in CSFRA § 1706(a). (HO Decision at pp. 16:24-27.)

Respondent's Appeal fails to put forth any legal authority or other reasoning for straying from the requirements of the CSFRA. While Respondent may feel that it is unfair for it to bear the consequences of its predecessor's acts or omissions, the language of the CSFRA makes no exceptions where the failure to comply with the CSFRA or the Regulations initiated with a prior owner. Nor would it be fair to the Petitioner to except Respondent from responsibility under the CSFRA or the Regulations when Petitioner did not cause or contribute to the error or omission by Respondent's predecessor. If Respondent believes this outcome is unfair or unreasonable, then it might explore recourse against its predecessor for its failures to comply with the CSFRA.

The Hearing Officer's decision is based on the correct interpretation and application of the requirements of the CSFRA. Therefore, the Hearing Officer did not abuse her discretion in concluding that the 2018 AGA was improperly imposed and therefore, void.

D. Hearing Officer Did Not Err in Concluding Respondent Had Demanded and Accepted Unlawful Rent.

The Hearing Officer did not err in concluding that Respondent had demanded and retained unlawful rent because the CSFRA does not absolve a Landlord from responsibility for the failures of prior owners of the same property.

The CSFRA states that "a Landlord who demands, accepts, receives or retains any payment of Rent in excess of the lawful Rent shall be liable to the Tenant in the amount by which the payment or payments have exceeded the lawful Rent" and "the Rent shall be adjusted to reflect the lawful Rent pursuant" to the CSFRA and the Regulations. (CSFRA § 1714(a).) The CSFRA defines "Landlord" as "[a]n owner, lessor, sublessor or any other person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, *predecessor, or successor of any of the foregoing*." (CSFRA § 1702(j) (emphasis added).) Taken together, these provisions provide that the Landlord of a Covered Rental Unit owes the Tenant of said Unit the duty to refund any overpayment of Rent in excess of the maximum lawful Rent for said Unit, even if those overcharges were collected by a predecessor Landlord.

Based on the foregoing, the Hearing Officer did not err in concluding that Respondent was liable to Tenant for any overpayment of Rent that either it or its predecessor demanded and retained.

E. Hearing Officer Did Not Err or Abuse Her Discretion in Holding that Respondent Failed to Adequately Address the Water Intrusion After Notice.

Finally, the Hearing Officer did not err or abuse her discretion in holding that the Respondent failed to adequately address the water intrusion and consequential damage thereof because there is sufficient evidence in the record to support the findings of fact and law underlying the decision.

Respondent contends that the Hearing Officer erred or abused her discretion in concluding that the lawful Rent for the Property should be reduced by 25 percent (or $425) per month based on the water

intrusion and resulting damage to the second bedroom in the unit. In doing so, Respondent does not allege that the condition did not exist (likely because Petitioner's testimony and documentary evidence and the City's inspection report confirmed the existence of the condition of the second bedroom.) Rather, Respondent argues that the Hearing Officer erred or abused her discretion because Respondent did adequately address the condition of the second bedroom. In doing so, Respondent points to the testimony of Mr. Chen, which is summarized in the HO Decision as follows:

> "As it relates to the condition of the Unit, according to Mr. Chen when Hector told him about the leaking, he was concerned that it might not be a one-time problem, but instead might be a structural problem. After seeing Mr. Balmacera's patch, he told the upstairs neighbor to stop watering plants. He did not hear from Ms. Sampayo or Mr. Balmacera again until the church sent them a buyout notice because MVCCC wanted to recover the Unit for the church's use. According to Mr. Chen, it was only after Ms. Sampayo and Mr. Balmacera received the buyout notice that they started mentioning again the water problem with the Unit. Mr. Chen testified that Petitioners had 'just mentioned' 'all this' in 'the past few months.'" (HO Decision at pp. 12:25-13:6.)

In reaching the conclusion that Respondent had failed to maintain the unit in a habitable condition due to the water intrusion, the Hearing Officer addressed each of Respondent's justifications for their failure to make repairs. (*See* HO Decision at pp. 21:19-24.) The Hearing Officer determined that none of the justifications were sufficient. (HO Decision at pp. 22:12-23.)

As the Hearing Officer correctly noted, neither the Petitioner's temporary "fix" of the issue nor the fact that Respondent desired to remove the property from the rental market absolved Respondent of the duty to maintain the Property in a habitable condition during Petitioner's continued tenure. (*Id.*) The evidence at the Hearing established that the Petitioner notified Respondent of the issue on more than one occasion but eventually ceased communications when they concluded that Respondent's goal was to get them to move out of the unit. (*See* HO Decision at pp. 7:19-27; 9:3-13.) Even if Petitioner did not raise the issue again, the evidence established that Respondent was informed of the issue again upon receipt of the City's inspection report from June 2023 and still failed to take any meaningful action to remedy the issue. (HO Decision at pp. 13:15-25; *see also* HO Exhibit #6.) Neither at the Hearing nor on Appeal does Respondent point to any legal authority that would support the contention that its desire to eventually remove the property from the rental market meant it could stop maintaining the Property. Further, as Hearing Officer noted, "reliance upon a tenant's undertaking a temporary 'fix' to address a serious habitability problem improperly shifts from the landlord its duty to maintain a rental unit in a habitable condition. Civil Code § 1941.1." (HO Decision at pp. 22:14-17.)

Moreover, the fact that the repairs may have been structural and may have required a licensed contractor did not excuse Respondent of its duty to address the issue. There is simply no legal authority for the contention that a Landlord is excused from exercising due diligence and seeking to resolve a serious habitability condition merely because the repairs would require the Landlord to hire a licensed contractor or temporarily relocate the Tenants. To add to the lack of authority for this contention is the fact that Respondent's failure was based on a mere conjecture; Respondent took no action whatsoever to determine the nature and scope of the condition and potential options for addressing the condition.

Even after failing to respond to Petitioner's requests, Respondent was provided with an additional opportunity to address the condition of the second bedroom. On June 2, 2023, the City provided Respondent with its inspection report, which clearly explained the actions that Respondent needed to

take to achieve compliance with applicable health and safety requirements. In relevant part, the City's report stated as follows:

- "Remove all water damaged drywall, remove all water damaged insulation, fully dry the wall cavity and restore the walls and ceiling to their original condition";
- "Due to obvious and visible signs of water damage to the existing wood flooring in the bedroom and living room, all the wood flooring must be removed, the slab dried out and new flooring installed"; and
- "Note: this water damage resulted from water entering from the deck above, have a licensed contractor inspect the deck, locate the cause of this water leak [sic] all repairs must be done with building permits issued before any work can begin." (HO Exhibit #6.)

The language in the City's report clearly indicated Respondent's actions up until June 2, 2023 had been insufficient and inadequate to address the untenantable condition of the second bedroom. Despite being provided with a clear roadmap for the actions it must take, Respondent testified at the hearing that it had not taken the actions in the report because "it would take time to accomplish the needed repairs, especially as contractors were difficult to hire at present." (HO Decision at pp: 13:23-24.)

Finally, at the Hearing, Respondent did not dispute testimony from Petitioner that the unusable bedroom constituted approximately one-fourth of the livable space of the Property. Therefore, it was reasonable for the Hearing Officer to rely on Petitioner's assessment in awarding a 25 percent reduction in the monthly rent based on the untenantable condition of the bedroom.

In conclusion, Respondent does not dispute that the water intrusion made the second bedroom uninhabitable or that it was not made aware of the condition of the Unit and given a reasonable opportunity to address the issue. Rather, Respondent unsuccessfully seeks to justify its failure to act to address the untenantable condition in the unit. On Appeal, Respondent fails to put forth any new authorities that would support its justifications and demonstrate that the Hearing Officer's conclusions were arbitrary or incorrect. As such, the Hearing Officer did not err or abuse her discretion in holding that the Petitioner was entitled to a 25 percent reduction in the monthly rent due to the unusable and unsafe condition of the second bedroom in the unit.

V. Conclusion

As detailed above, the RHC denies the appeal in its entirety and affirms the Decision in its entirety:

1. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of One Thousand Seven Hundred Dollars and Zero Cents ($1,700) on the basis that Respondent's predecessor failed to roll back the Rent for the Property upon the effective date of the CSFRA.

2. The Petitioner is entitled to an additional downward adjustment in rent to the correctly calculated monthly Rent of One Thousand Two Hundred Twenty-Five Dollars and Zero Cents ($1,225.00) per month. This amount includes a $425.00 per month reduction in Rent based on the water intrusion into and subsequent damage to the second bedroom in the unit and a $50.00 per month reduction in Rent based on Respondent's elimination of the landscaping services. The monthly lawful Rent for the Property shall remain $1,225.00 until such time that Respondent (a) Respondent corrects all damages to the second bedroom in the unit; (b) Respondent restores landscaping services to the level that existed prior to September 1, 2022; (c) Respondent is otherwise in substantial compliance with the

CSFRA, and (4) after substantial compliance with HO Decision and CSFRA, Respondent issues to Petitioner a notice of rent increase that complies with the state law requirements and CSFRA in terms of the amount and timing of the increase and the notice period expires.

3. The Petitioner is entitled to a total rent refund of Twenty-Four Thousand Three Hundred Forty-Seven Dollars and Sixty-Seven Cents ($24,347.67), plus any additional sums exceeding the current lawful rent of $1,225.00 for the Property that have been paid by Petitioner after January 31, 2024. The $24,347.67 refund constitutes the sum of the amounts set forth and further explained in paragraphs 12 through 16 of the "Order" section of the Hearing Officer's Decision. If Petitioner fails to receive a full refund from Respondent within thirty days after this decision becomes final, Petitioner may withhold rent payments until such time that they have withheld a total of $24,347.67 plus any additional sums exceeding the current lawful rent of $1,225.00 for the Property that have been paid by Petitioner after January 31, 2024. If Petitioner vacates the Property prior to recovering from Respondent the sum of $24,347.67 plus any additional sums exceeding the current lawful rent of $1,225.00 for the Property that have been paid by Petitioner after January 31, 2024., then the remaining balance shall become immediately due and owing no later than the date on which the Petitioner vacates the Property. In such case, if Respondent fails to provide Petitioner with the remaining balance on or before the date on which Petitioner vacates the Property, Petitioner may seek recovery of the outstanding amount via civil action.