

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

<b>RHC Petition #(s):</b>	22230006 (Petition A - Unlawful Rent)
<b>Address and Unit(s) of Rental Property:</b>	31 Church St. ■■■■■, Mountain View, CA 94041
<b>Petitioner Tenant Name(s):</b>	Karina Naranjo
<b>Respondent Landlord Name(s):</b>	Frank Cervantes for Cervantes, LLC
<b>Property Manager Name:</b>	N/A
<b>Date(s) of Hearing:</b>	January 12, 2023
<b>Place of Hearing:</b>	Online via Zoom
<b>Date Hearing Record Closed:</b>	January 12, 2023
<b>Date of Decision:</b>	February 13, 2023
<b>Date of Mailing:</b>	See attached Proof of Service
<b>Hearing Officer:</b>	E. Alexandra DeLateur

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

1. The petition in the above case (the “Petition”) under the City of Mountain View’s Community Stabilization and Fair Rent Act (“CSFRA”) was filed by Karina Naranjo, the Petitioner - Tenant (“Petitioner”) on November 29, 2022 and was accepted by the City on December 21, 2022.
2. Frank Cervantes, the Respondent-Landlord (“Respondent”) filed a response dated December 27, 2022 wherein he stated that his health prevented him from participating but that he would agree to “accept the adjusted rent as proposed by the tenant’s petition.”
3. A Notice of Prehearing Conference was served on December 21, 2022 with the notice accepting the petition, setting a tentative Hearing date on January 12, 2023 and a Prehearing Conference on December 29, 2022.
4. Petitioner appeared at the Prehearing Conference, but Respondent did not appear, which was consistent with his response that his health did not allow him to participate.

Decision 22230006 31 Church St. ■■■■■

A Prehearing Order was issued dated December 30, 2022, which ordered that the scheduled evidentiary hearing would go forward as noticed.

5. The matter was heard as scheduled on January 12, 2023 and the Hearing Officer closed the record at the conclusion of the hearing.

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

The following parties attended the Hearing:

Petitioner(s): Karina Naranjo (“Tenant” or “Petitioner”)

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

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

## **III. TESTIMONY**

Ms. Naranjo was sworn in under oath as a party to the petition and presented arguments, testimony, and evidence at the hearing.

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

On January 13, 2021, Petitioner entered into a Lease with Cervantes, LLC for the property known as 31 Church St. ■■■, Mountain View, California (“property”) to take possession of the property in February 2021 and remain effective through January 31, 2022. Her stated rent in the Lease was \$1,795 per month. However, an “Addendum” provided a \$200 per month “rent credit” or concession for the initial 12 months. The Lease also required that the Petitioner pay certain monthly utility costs to the Respondent which were billed through a ratio utility billing system (“RUBS”). Among other addenda attached to the Lease, there was a California Tenant Protection Act of 2019 Addendum, a Notice of AB 1482 Addendum, and an Exemption Form AB 1482 Addendum (Separately Alienable Exemption under AB 1482). These documents were initialed by the Petitioner but are inconsistent on the applicability of the statewide rent stabilization and just cause laws. The City of Mountain View’s rent stabilization law, the Community Stabilization and Fair Rent Act (CSFRA), was not mentioned in the Lease or Addenda and the City’s required form notice, available online to landlords, was not attached.

Petitioner moved into the property on February 1, 2021 and paid monthly rent of \$1,595 to her landlord for February 2021 through December 2021, along with the utility charges.

Petitioner paid rent for January 2022 in the amount of \$1,795 (full rent without the rent credit) plus utilities because the Lease was dated January 13, 2021 and so she was led to believe that the 12-month period ended with December 2021, even though she moved in

Decision 22230006 31 Church St. ■■■

and took possession of her unit on February 1, 2021. Petitioner argued that she should have only paid \$1,595 for January 2022 because she deserved twelve months of lower rent based on her move-in date.

On July 25, 2022, Respondent noticed a rent increase from \$1,795 per month to \$1,884 per month effective September 1, 2022. Petitioner has paid the increased rent amount plus utilities each month through January 2023 but filed her Petition to challenge it under the CSFRA on two grounds: 1) that the rent increase amount is more than the allowed AGA for 2022, and 2) that she received more than one rent increase in a 12-month period.

The City of Mountain View provided notice to the Respondent regarding the status of the property's compliance with the CSFRA. Respondent paid the required Rental Housing Fee, but had not registered this rental complex with the Rent Stabilization Program. The City of Mountain View also provided the most current inspection reports for the property, which showed that there are no significant current health or safety violations at the rental complex.

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

## **V. ISSUES PRESENTED**

- A.** What is Petitioner's Base Rent under the CSFRA from which one calculates a rent increase?
- B.** Is Respondent permitted to raise the rent?
- C.** If so, was there a legal rent increase for Petitioner?
- D.** Was the rent raised more than once in a 12-month period?

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

- 1. On January 13, 2021, Petitioner entered into a 12-month Lease with Cervantes, LLC for the property known as 31 Church St. [REDACTED], Mountain View, California ("property") here referred to as the "Lease" and occupied the property starting February 1, 2021.
- 2. The Lease stated that Petitioner's monthly rent was \$1,795.00 plus utilities but included an Addendum giving a "rent credit" of \$200.00 per month for the first 12 months of premises rent.
- 3. The Lease was not accompanied by the Required Information Sheet on the applicability of the City of Mountain View's CSFRA.

Decision 22230006 31 Church St. [REDACTED]

4. The Lease included inconsistent Addenda regarding the applicability of statewide rent increase limits and just cause laws.
5. Respondent has not registered this property with the Rent Stabilization Program for the City of Mountain View despite the City correspondence requesting Respondent to complete registration, although Respondent has paid the mandatory annual rental housing fees for the Program. Annual registration of CSFRA covered properties is mandatory and considered a substantial compliance factor.
6. Respondent uses Multifamily Utility Company as the agent to divide the utilities costs among the tenants and the landlord each month pursuant to a RUBS formula.
7. Respondent's agent told Petitioner that her rent would be \$1,795 for January 1, 2022 because the Lease was signed in January 2021 so 12 months would expire December 31, 2021.
8. Petitioner paid \$1,795 for January 2022 premises rent and continued to pay this amount through August 2022, plus utilities.
9. On July 25, 2022, Respondent noticed a rent increase from \$1,795 per month to \$1,884 per month for premises rent, effective September 1, 2022.
10. Petitioner paid \$1,884.00 per month for premises rent, plus utilities, from September 1, 2022 through January 2023.
11. Petitioner paid \$64.08 to the Respondent for January 2023 utilities.
12. The Annual General Adjustment (AGA) for 2022 (applicable from September 1, 2022 through August 31, 2023) is 5%.

## **VII. LEGAL AUTHORITY**

CSFRA Sec. 1710(d) and CSFRA Regs. Chapt. 4, Sect. (B) permit a tenant to file a petition for a downward adjustment of rent if a landlord demands or retains rent in excess of the lawful rents allowed by the CSFRA. The burden of proof in a Petition A: Unlawful Rent Petition is on the Petitioner-Tenant. *CSFRA Regs. Chapt. 5(G)(2)*.

### **Definition of Rent**

“Rent” is defined in CSFRA Regs, Chapt. 2, Sec. (p) as , “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.”

### **Definition of Base Rent related to Concessions**

“Base Rent” for tenancies post-October 19, 2015 is defined in CSFRA Regs. Chapt. 2, Sec. (b) as “the initial rent charged upon initial occupancy, provided that amount is not in violation of the Act or any provision of State law. The term “initial rental rate” means “only the amount of Rent actually demanded to be paid and paid by the Tenant for the initial term of the tenancy.” Where rent concessions or credits are provided during the initial term of the tenancy, the Regulations clarify that Base Rent is determined as follows:

“(i) Rent Concession. If a temporary rent concession is provided by the Landlord during the initial term of the tenancy, the ‘initial rental rate’ shall be the average amount of Rent actually demanded to be paid and paid by the Tenant during the initial term of the tenancy. A ‘rent concession’ includes, but is not limited to, any of the following:

- One (1) or more months’ free Rent, except as specified in subparagraph (ii) below; or
- A dollar or percentage amount reduction of the Rent provided over the course of the initial term of the tenancy.

(ii) Exclusions. The following shall not be considered in the calculation of “Base Rent” for any Tenancy:

- First month’s free or discounted Rent, where the ‘first month’ refers to the first full month following the start date of the Rental Agreement. For instance, if the Rental Agreement begins on September 15, then the ‘first month’ would refer to the period from October 1 to October 31; or
- The Tenant’s withholding of or failure to pay Rent in violation of the Rental Agreement, the Act, or State law; or

- Any reduction in Rent imposed pursuant to the final Decision of a Hearing Officer or the Rental Housing Committee....”

(iii) Initial Term of Tenancy. The ‘initial term of the tenancy’ refers to either the initial term as agreed upon by the Landlord and Tenant in the Rental Agreement, or ....” *CSFRA Chapt. 2(b)(2)*.

The Regulations address the remedies available to tenants filing unlawful rent petitions based on rent concessions. The relevant portion of Chapt. 4(G)(6) is subsection (a) which states “For rent concessions provided for a Tenancy that commenced before September 1, 2022, a Tenant shall be entitled 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.”

### **Allowed Rent Increases**

CSFRA Section 1707 describes the Rent Increase process, including how the AGA (Annual General Adjustment) is determined and applied. Subsection (b) states “[N]o more than one Rent increase per twelve-month period may be imposed on a Tenant.”

In certain circumstances described in CSFRA Section 1707(f), a Rent Increase is not allowed. “Conditions Under Which Rent Increase Not Permitted. No Rent increase shall be effective if the Landlord:...(1) Has failed to substantially comply with all provisions of this Article and all rules and regulations promulgated by the Committee;...”

### **Failure to Appear**

In this matter, the Respondent filed a Response indicating that he would not appear and did not authorize a representative to appear in his stead, thereby waiving his rights to present at the Hearing. The regulations state:

“Failure to appear by a responding party without good cause shall result in a determination that the party has waived their right to a Hearing, and the Hearing Officer shall rule on the Petition based on the evidence available in the record.” *CSFRA Regs. Chapt. 5(D)(4)(b)*.

## **VIII. DISCUSSION**

In this matter, the facts are not in controversy. On February 1, 2021, Petitioner was obligated to pay rent pursuant to a 12-month Lease which stated that the monthly rent was \$1,795.00 plus utilities but also included a monthly rent credit of \$200.00 for the first 12 months. The Petitioner paid \$1,595.00 per month from February 1, 2021 through December 2021. Although she paid only eleven months at the discounted rate, she was pressured to pay the full rent of \$1,795.00 starting in January 2022 and did so through August 2022.

In July 2022, Respondent served Petitioner with a notice of rent increase changing her monthly premises rent (without utilities charges) to \$1,884.00 starting September 1, 2022. Petitioner has paid \$1,884.00 for September 2022 through January 2023.

It is also undisputed that Respondent has failed to register this property with the City of Mountain View's Rent Stabilization Program although he has paid annual rental housing fees to the City. The City provided proof of correspondence informing the Respondent of its responsibilities under the CSFRA and his failure to register despite multiple requests from the CSFRA staff.

- A. What is the Petitioner's Base Rent? The base rent is calculated using the formula for concessions as follows: *Part 1 for premises rent*--The concession for the first full month of rent is exempt for calculating the Base Rent, so February 2021 rent is considered \$1,795.00, plus ten months of rent at \$1,595.00 for March 2021 through December 2021, plus \$1,575.00 for January 2022 because it should have been paid at the discounted rate per the Lease itself, not at the full rate. The average results in Base Premises Rent of \$1,611.67. *Part 2 for utilities*--the average utilities over the first 12 months paid to the RUBS biller is \$58.42. Therefore, the total monthly Base Rent including utilities in this case is \$1,670.09.
- B. Is Respondent entitled to increase Petitioner's rent? The facts show that Respondent has failed to register this property. Petitioner's testimony and Lease show that Respondent further failed to notify her at the commencement of her tenancy that the CSFRA applied to her unit and that there were tenant protections in place for her benefit. The City of Mountain View Rent Stabilization Program staff corresponded with the Respondent regarding the failure to register this property to no avail. Failure to register the property with the Rent Stabilization Program is substantial noncompliance under the law. Based on the CSFRA provision requiring substantial compliance with the program in order to apply a rent increase, the Respondent is not entitled to increase rents at this property, including unit [REDACTED], Petitioner's unit. *CSFRA Sect. 1707(f)(1)*.

There may be other reasons why the Respondent is not entitled to increase the rents as he attempted to do in January 2022 and September 2022. However, they need not be addressed here because Respondent is not in substantial compliance with the CSFRA simply by his failure to properly register the property.

Therefore, this decision need not analyze issues C and D for this decision, but will address those issues to clarify the application of the CSFRA.

- C. If so, was there a legal rent increase for Petitioner? If the Respondent had properly registered the rental property and complied with all requirements under the CSFRA, he would have been eligible to raise rent as proscribed by the CSFRA once per twelve-month period in an amount not to exceed the AGA set by the Rental Housing

Decision 22230006 31 Church St. [REDACTED]

Committee under the Regulations. Based on the Lease, the first twelve-month period started February 1, 2022 so the January 2022 rent increase was not proper and was unenforceable for several reasons. It was untimely, the increase was more than the allowable AGA, and the proper notices were not given to the Tenant.

1. Timing of the increases: Respondent allowed only eleven (11) months of rent at the initial rate before raising the rent in January 2022. Since this is a 12-month lease the rent cannot be changed until the end of the 12-month term of the lease. The first opportunity to raise rents would have been 12 months after the start of the initial lease (February 1, 2022). Likewise, Respondent attempted to raise the rent in September 2022 which is only eight (8) months after the January 2022 increase. This is not permitted by CSFRA Sect. 1707(b).
  2. Calculations: Using the calculated monthly Base Rent of \$1,670.09, the Respondent would have been allowed to raise the rent no earlier than February 1, 2022 in the amount of the applicable AGA, which was 2.0% for rent increases from September 1, 2021 through August 31, 2022. Therefore, the allowable increase would have been \$33.40 for a total allowable rent, including utility charges, of \$1,703.49 effective no earlier than February 1, 2022. Respondent's demand for rent in the amount of \$1,795.00 in January 2022 exceeded the permissible increase under CSFRA Section 1707(a). Although Respondent attempted to raise the rent 5% (the AGA for 2022) effective September 2022, they calculated that increase based on a mistaken base amount. Therefore, the increase to \$1,884.00 exceeds the permissible amount.
  3. Compliance with notices. Respondent failed to include a CSFRA Required Information Sheet along with the initial lease, and rent increase notices for January 2022 or September 2022 as required by Regulations. *CSFRA Regs. Chapt. 7 § B(1)*. Although this is not a matter of substantial compliance with the CSFRA, Respondent-Landlord is urged to provide the Required Information Sheet to tenants at the start of tenancy and upon each rent increase.
- D. Was the rent raised more than once in a 12-month period? Petitioner asserts that her rent was increased more than once within a 12-month period because Respondent charged the full premises rent without concessions, \$1,795.00, starting in January 2022 and then raised it to \$1884.00 September 1, 2022. These facts are undisputed. It is understood that many landlords have drafted leases with concessions, discounts, incentives, and the like and argued that the stated full rent will be charged at some point but is not a rent increase. This argument is not in accordance with CSFRA Reg. Chapt. 2(b)(2)(i) and therefore rejected. The Respondent's actions to charge the full



premises rent of \$1,795.00 in January 2022 constitutes a rent increase under the CSFRA but was invalid for failure to comply with all requirements of a rent increase under the law. Requirements include a proper notice with the Information Sheet (available online) and proper 30 days written service under state law. Since the January 2022 reversion to the full stated rent in the Lease constitutes a rent increase under the CSFRA (although invalid), it becomes clear that the rent increase in January 2022 and the increase in September 2022 amount to more than one rent increase within a twelve-month period. The CSFRA does not permit more than one rent increase within a twelve-month period.

For the sake of clarification, even if Respondent had complied with local and state law regarding the January 2022 rent increase, he would nevertheless not be permitted to increase the rent again in September 2022. It is also worth noting that the July 25, 2022 rent increase notice effective September 2022 did not strictly comply with the CSFRA requirement that that Landlords provide information regarding Tenant rights under the CSFRA. Respondent is urged to use the forms available to landlords or consult an attorney to comply with the CSFRA, especially notices to attach when a new tenancy is initiated and when a rent increase is noticed.

#### **IX. DECISION**

Based on the above discussion applying the law to the facts of this matter, IT IS HEREBY ORDERED that:

1. The lawful monthly Base Rent for Petitioner's unit is \$1,670.09, including utilities;
2. The current total legal monthly rent, including utilities paid to the Respondent, is \$1,670.09, as the rent has not been legally increased through the date of the hearing on this matter and no increase is allowed until Respondent properly registers the property;
3. Respondent shall credit or pay to Petitioner the rent overpayments in the amount of \$3,040.42 as well as additional overpayments made for payment of February 2023 premises rent and utilities. If Respondent elects to credit the tenant, he must notify the petitioner-tenant in writing within ten (10) days of the decision becoming final (see Attachment 2). If Respondent elects to make a lump sum payment to Petitioner-Tenant, it must be made within thirty (30) days of this Decision becoming final;
4. If the tenant has vacated her rental unit prior to the date this credit has been applied in full, the Landlord shall immediately pay the amount of the credit due to the tenant, to the Petitioner-Tenant directly, and

5. Once Respondent-Landlord has credited or paid Petitioner-Tenant for all overpayments and is in full compliance with the CSFRA, Respondent may properly notice an increase for the overall rent (including premises rent and utilities) effective any time after February 1, 2023.

Dated: February 13, 2023



E. Alexandra DeLateur,  
Hearing Office

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

**Hearing Officer Exhibits**

1. Notice of Acceptance and Follow-up Information for Petition, served December 21, 2022, setting the Prehearing Conference for December 29, 2022 and Hearing for January 12, 2023
2. CSFRA Hearing Information Sheet, served December 21, 2022
3. Hearing Officer Written Order and Summary of Prehearing Telephone Conference and Notice of Hearing, served December 30, 2022
4. Information regarding building code, fire, and safety violations at 31 Church St., Mountain View, California with a report showing no outstanding fire, health, or safety violations
5. Correspondence between the City of Mountain View Rent Stabilization Program staff (Patricia Black) and Respondent Frank Cervantes regarding registration of the property with the CSFRA program

**Petitioner Exhibits**

1. Petition A for Unlawful Rent, submitted November 29, 2022
2. Workbook A, submitted November 29, 2022
3. Notice of Submission and Proof of Service, served November 30, 2022
4. Workbook A, amended and filed December 20, 2022
5. Lease, fully executed January 15, 2021
6. Text message from Petitioner to Respondent, dated January 29, 2021
7. Text message from Petitioner to Respondent, dated July 26, 2022
8. Utilities statements from January 13, 2021 through December 18, 2022
9. Notice of Rent Increase, dated July 25, 2022
10. Petitioner's bank statements from February 9, 2021 through September 1, 2022 containing images of rent checks paid to Respondent
11. Screenshot of Google Search results with Zillow website details for 31 Church St Apt [REDACTED], undated

Decision 22230006 31 Church St. [REDACTED]

12. Correspondence between Petitioner and Respondent's agent, [REDACTED]  
regarding the Lease, initial move-in, and rent payments

**Respondent Exhibits**

1. Landlord's Response to the Petition, dated December 27, 2022

**Attachment 2**  
**Award Schedule**

**31 Church St** - RHC Petition# C22230006

**Hearing Officer Decision**

<b>Month/Year of Rent Payment</b>	<b>Actual Rent Paid including Utilities</b>	<b>Lawful Rent including Utilities</b>	<b>Payments in Excess by Petitioner</b>
January 2022	\$ 1,863.59	\$ 1,670.09	\$ (193.50)
February 2022	\$ 1,866.58	\$ 1,670.09	\$ (196.49)
March 2022	\$ 1,862.81	\$ 1,670.09	\$ (192.72)
April 2022	\$ 1,860.86	\$ 1,670.09	\$ (190.77)
May 2022	\$ 1,861.95	\$ 1,670.09	\$ (191.86)
June 2022	\$ 1,861.26	\$ 1,670.09	\$ (191.17)
July 2022	\$ 1,867.53	\$ 1,670.09	\$ (197.44)
August 2022	\$ 1,864.30	\$ 1,670.09	\$ (194.21)
September 2022	\$ 1,967.87	\$ 1,670.09	\$ (297.78)
October 2022	\$ 1,969.28	\$ 1,670.09	\$ (299.19)
November 2022	\$ 1,981.54	\$ 1,670.09	\$ (311.45)
December 2022	\$ 1,975.94	\$ 1,670.09	\$ (305.85)
January 2023	\$ 1,948.08	\$ 1,670.09	\$ (277.99)
February 2023	TBD		TBD
<b>TOTAL</b>			<b>\$ (3,040.42)</b>

**Credit Schedule**

<b>Month/Year of Rent Payment</b>	<b>Monthly Rent Owed (Base Rent)</b>	<b>Rent Credited to Petitioner*</b>	<b>Total Payment to be Paid by Petitioner</b>
March 2023	\$ 1,670.09	\$ 1,670.09	\$ -
April 2023	\$ 1,670.09	\$ 1,370.33	\$ 299.76
May 2023	\$ 1,670.09	TBD	TBD
<b>TOTAL</b>		<b>\$ 3,040.42</b>	

\*Landlord must credit any overpayment by Petitioner for February 2023 rent towards April and May 2023 rent.