

**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.:	C23240002
Type of Petition:	Failure to Maintain Habitable Premises
Address of Rental Property:	31 Church Street
Subject Unit(s):	# [REDACTED]
Petitioner Name	Karina Naranjo
Respondent Names	Cervantes LLC, Owner; Francisco Cervantes, Owner
Date of Pre-Hearing Conference:	Monday, November 27, 2023
Date of Hearing:	December 18, 2023
Hearing Forum:	Zoom
Date Premises Reviewed by PG&E	February 14, 2024
Date Hearing Record Closed:	February 14, 2024
Date of Decision:	March 25, 2024
Date of Mailing:	See attached Proof of Service
Hearing Officer:	Duf Sundheim

I. STATEMENT OF THE CASE

1. On October 10, 2023, Karina Naranjo ("Tenant") filed a petition (the "Petition") (HO Exhibit 1) with the City of Mountain View Rental Housing Committee ("RHC") with respect to the property located at 31 Church Street, # [REDACTED] Mountain View, CA (the "Premises"). The Petition claimed Cervantes LLC ("Landlord") failed to maintain a habitable premises due to a malfunctioning gas heater (the "Gas Heater"). (Tenant and Landlord collectively may be referred to as the "Parties").

2. The Petition was accepted by RHC on November 13, 2023, and notices (the "Pre-Hearing Notice") were sent to the Parties on that date indicating there would be a Pre-Hearing Zoom Conference (the "Pre-Hearing Conference") on November 27, 2023 (HO Exhibit 2).

3. Tenant, Landlord, JoAnn Pham of the RHC ("Ms. Pham"), and Duf Sundheim, the hearing officer ("Hearing Officer") participated in the Pre-Hearing Conference. In addition to discussing hearing procedures, the parties were given a deadline by which to submit all documents ("Initial Deadline"). After the Pre-Hearing Conference but before the pre-hearing order was issued (the "Pre-Hearing Order") Landlord requested the Initial Deadline be extended to December 11, 2023. Pursuant to such request, the Pre-Hearing Order set the deadline as December 11, 2023.

4. Landlord submitted a response to the Petition on December 11, 2023 (LL Exhibit 1).

II. PARTIES WHO ATTENDED THE HEARING

The Hearing was held December 18, 2023 (the "Hearing Date").

Present were:

Tenant:	Karina Naranjo
Landlord:	Francisco Cervantes
City of Mountain View:	Patricia Black
Hearing Officer:	Duf Sundheim

III. PARTIES WHO ATTENDED POST-HEARING EVALUATION SITE VISIT

One of the issues in the case was whether harmful or potentially harmful levels of gas were being emitted from the Gas Heater or from some other source inside or near the Premises (the "Gas Leak Issue"). Due to the importance of the Gas Leak Issue, the Hearing Officer requested a specialist come to the Premises to give their professional opinion on the Gas Leak Issue (the "Evaluation"). The date for the Evaluation was set for and occurred on February 14, 2024 ("HO Exhibit 3"). [REDACTED] ("P.G.&E Representative"), the person who came out from P.G.&E. to turn off the gas on September 8, 2022 (the "Initial Visit"), was the same person who came out to do the Evaluation.

Hence, the parties present for the Evaluation were:

Tenant:	Karina Naranjo
Landlord:	Francisco Cervantes
PG&E Representative:	[REDACTED]
Hearing Officer:	Duf Sundheim

IV. SUMMARY OF FINDINGS

Tenant is entitled to a rent credit of \$1,174.73 as detailed below.

V. ISSUES PRESENTED

1. Gas Leak Issue. Has there been a reduction in the habitability of the Premises because of the Gas Leak Issue?

2. Failure to Fix the Gas Heater. Has there been a reduction in the habitability of the Premises because of Landlord's failure to fix the Gas Heater on a timely basis?

VI. TESTIMONY

1. February 21, 2021: Tenant took possession of the Premises on February 21, 2021.

2. Rent. The rent for the Premises during the relevant periods are below:

February 2021 – December 31, 2021	\$1,595.00/month
January 1, 2022 – August 31, 2022	\$1,795.00/month
September 1, 2022 – February 27, 2023	\$1,884.00/month
February 28, 2023 - March 31, 2023 ¹	\$1,670.09/month
April 1, 2023 – present	\$1,786.99/month

3. April 29, 2021: Tenant testified the week prior to April 29, 2021, hot air was coming out of the Gas Heater even when it was turned off. She also testified she could smell gas. On April 29, 2021, she sent a text to Landlord explaining the problem and asked Landlord "to shut the [H]eater down completely". Tenant supplied documentation to support her testimony (T Exhibit 1, p.1).

Landlord testified and presented evidence (LL Exhibit 1, p.2) indicating the heat Tenant was experiencing was due to a combination of the outdoor temperature and the heat generated by the pilot.

Tenant sent a text in response indicating, "Ok thank you I do not know much of this so thank you for" your "patience and for explaining" Ibid. At the Hearing, Tenant testified she later

¹ On February 13, 2023, a Petition Decision was issued and was finalized effective February 27, 2023 for Downward Adjustment of Rent related to unlawful payment of rent. The decision reset the rent to \$1,670.09 as provided in the modified Petition's Workbook B (Attachment 3).

checked the Gas Heater, and not withstanding Landlord's comments and her reply, the Gas Heater was still on and generating heat.

4. April 30, 2021. Landlord testified and provided evidence the Gas Heater "was completely shut down by handyman" on April 30, 2021 (LL Exhibit 1, p.2).

5. May 1, 2021 – September 7, 2022. To provide heat to the Premises when needed from May 1, 2021 through September 7, 2022, Tenant utilized an electric heater (the "Electric Heater") she purchased with her own funds. She testified the Electric Heater cost approximately \$77.00. The documentation Tenant provided to support this claim was a Wal-Mart receipt dated October 3, 2022 for \$115.54, which included the purchase of additional items unrelated to this case.

When asked at the Hearing why she did not ask for the Gas Heater to be turned back on, she testified she was "scared of the same situation happening".

6. September 8, 2022. On September 8, 2022, Tenant again smelled gas and called PG&E. Representative came out immediately and noted a "leak @ wall heater control valve" and pursuant to Tenant's request, shut down all gas to the Gas Heater (the "Initial Visit"). (T Exhibit 1, p.5).

7. September 9, 2022. On September 9, 2022, Landlord indicated the Gas Heater would be repaired (Tenant Exhibit 2, p.5).

8. September 2022 – October, 2022. A week or two later, Tenant did receive a text from [REDACTED] an HVAC vendor for Landlord ([REDACTED]). Tenant was under the assumption a date had been agreed to when [REDACTED] would come to the Premises to fix the Gas Heater, stayed home that entire day waiting for [REDACTED] but [REDACTED] never came.

After [REDACTED] was a no-show, Tenant felt that she had done all she could to get Landlord to address the problem. And given (1) the demands of her job, (2) the fact the weather had cooled down to the point she could not smell the gas, (3) PG&E had turned off the gas, and (4) the Electric Heater was providing sufficient heat, she took no further action until April 22, 2023.

9. April 22, 2023. On April 22, 2023, the temperature again was on the rise and she could again smell gas. Tenant sent Landlord a text date stamped "Sat, Apr 22 at 6:15 PM" and marked "Delivered" (the "April 22 Text") (T Exhibit 1, p.3). The April 22 Text informed Landlord the Gas Heater had never been fixed and asked Landlord to do so.

Landlord testified he was in Yosemite at the time and did not receive the text.

10. July 2023 – October 10, 2023. Tenant indicated she contacted the City about filing a petition in July, 2023. The Petition was not processed by the City until October 10, 2023 (HO Exhibit 1).

11. November 13, 2023 -November 23, 2023. Landlord received a copy of the Petition on November 13, 2023. At the Pre-Hearing Conference on November 27, 2023, Landlord indicated he was not able to open the Petition and asked the City to resend it. The City did resend it in a different form to the Landlord on the same day, November 23, 2023.

12. December 1, 2023. On December 1, 2023 a new heater was installed in the Premises by Landlord (LL Exhibit 1, p.7).

13. December 18, 2023. The Hearing was conducted via videoconference on December 18, 2023.

14. January 22, 2024. As noted above, the issue here was not simply did the Landlord meet its obligation to provide sufficient heat. There also was the issue whether the amount of natural gas in the Premises was harmful to the Tenant. Given the importance and technical nature of this issue, a Post Hearing Order was issued January 22, 2024 calling for the Evaluation (HO Exhibit 3).

15. February 14, 2024. The Evaluation was conducted February 14, 2024.

As noted elsewhere, PG&E Representative made both the Initial Visit when the Gas Heater was disconnected, and the Evaluation.

Upon seeing the apartment, PG&E Representative stated, "Oh, I remember this one." The Hearing Officer then asked PG&E Representative if he had come upon a dangerous situation during the Initial Visit on September 8, 2022. PG&E Representative replied, "No. If it had been a dangerous situation, I would have been required to shut it down" further upstream.

The Hearing Officer then asked PG&E Representative if Tenant smelled gas, why that did not indicate there was a serious problem or the threat of a serious problem. PG&E Representative indicated at low levels, gas was not harmful. At high levels it could be extremely dangerous and even deadly. But there was no evidence that ever was the case at the Premises.

PG&E Representative then pulled out an instrument (the "Instrument") and went to various parts of the Premises. PG&E Representative indicated at no point during the Evaluation was there evidence of a leak anywhere in the Premises.

PG&E Representative said the only sure way you could tell if there was a serious problem is if one used the Instrument. PG&E Representative emphasized to the Tenant, if she ever had any concern at all as to whether the smell of the gas posed a threat, she should immediately call PG&E and someone would come out and check.

Tenant acknowledged PG&E Representative's statement. However, to ensure Tenant understood what PG&E Representative was saying and what it meant to her claim, the Hearing

Officer asked if she understood PG&E Representative was saying he had no evidence that the gas had ever reached a harmful level. Tenant acknowledged she understood. The Hearing Officer went on to ask if she understood that if at any time she was concerned that there might be a serious issue she should contact PG&E immediately. Tenant again acknowledged that she understood.

In summary, PG&E Representative's testimony was that at the time of the Initial Visit the gas did not constitute a threat to the health or safety of the Tenant, at the time of the Evaluation the gas did not constitute such a threat, and there was no evidence the gas had been a threat between those two dates.

VII. THE LAW

1. Burden of Proof: Preponderance of the Evidence. For a Tenant to prevail in conjunction with the filing of a Petition for Adjustment of Rent pursuant to The Community Stabilization and Fair Rent Act ("CSFRA"), Tenants must show by a preponderance of the evidence they are entitled to the relief sought. CSFRA § 1711(h) and Regulations Ch. 5, Section (G)(2) and (3).

2. Failure to Maintain Premises is Increase in Rent. Under CSFRA Section 1710(b)(1), the failure of the Landlord to maintain a premises in compliance with applicable law, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3, constitutes an increase in rent. A Tenant may file a Petition with the RHC to adjust the rent downward based on a loss in rental value attributable to the Landlord's failure to comply.

3. Landlord's Obligation to Provide Adequate Heat. Cal. Code Regs. Tit. 25, § 34 Heating provides:

(a) Every dwelling unit and guest room used or offered for rent or lease shall be provided with heating facilities capable of maintaining a minimum room temperature of 70 degrees F at a point three feet above the floor in all habitable rooms . . . These facilities shall be installed and maintained in a safe condition and in accordance with Chapter 37 of the Uniform Building Code, the Uniform Mechanical Code, and other applicable laws. ("Landlord's Obligation to Provide Heat")

4. Tenant must provide specifics, notice, opportunity. CSFRA Section 1710(b)(2) (the "CSFRA") states that a "Tenant Petition filed pursuant to this Subsection must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition."

5. Tenant cannot substantially contribute to the problem. Further, California Civil Code Sect. 1941.2 provides that a landlord has no duty to repair a dilapidation if the tenant

substantially contributes to the existence of the dilapidation or interferes substantially with the landlord's obligation under Sect. 1941 to affect the necessary repairs.

VIII. DECISION

1. Gas. According to PG&E Representative, there is no evidence the gas concentration ever reached a level where it was harmful to Tenant or created a potentially harmful condition. Consequently, Tenant has not shown by a preponderance of the evidence that there was a reduction in the habitability of the Premises due to the smell of the gas.

2. Heater. Landlord failed to meet Landlord's obligation to provide heat from May 1, 2021 through November 30, 2023. Such failure is a partial abdication of Landlord's duty to provide a habitable premises. Landlord's liability is subject to the following aggravating and mitigating factors.

a. The \$77.00 Cost of Electric Heater to be born by Landlord. Landlord's obligation to provide heat is mitigated by the fact the Gas Heater was turned off at Tenant's request. The request was made because Tenant was scared of the smell, but as discussed in detail throughout this Decision, there is no evidence the smell ever was a threat to Tenant's health and safety.

Since Tenant did not want to use the Gas Heater, to provide heat to the Premises, Tenant purchased the Electric Heater to meet her needs. As providing heat to a premises is an essential element of a landlord's obligation to its tenants, the Electric Heater should have been purchased by Landlord and hence we hold Landlord responsible for the \$77.00 cost of the Electric Heater.

b. Landlord's Failure to Fix the Gas Heater as Promised. On September 8, 2022, Tenant again smelled gas. PG&E Representative conducted the Initial Visit and shut off the gas to the Gas Heater.

At that time Landlord agreed to fix the Gas Heater. Yet Landlord never did so until December 1, 2023, when he replaced the Gas Heater with a new gas heater. Landlord's testimony was that he thought [REDACTED] his vendor, had done the work in the Fall of 2022.

First, it is up to Landlord to ensure the work Landlord authorized is done, and done properly. Landlord did not do this. Further, Landlord knew or should have known that he never received an invoice from [REDACTED] for the work, giving him actual knowledge, or at a minimum constructive knowledge, that the work had not been done. For this failure to have the Gas Heater repaired as he agreed to do, we hold the Landlord liable for a 4% reduction in the habitability of the structure commencing October 1, 2022 through April 30, 2023.

c. Landlord's Failure to Respond to the April 22 Text. In the April 22 Text, Tenant again asked for the Gas Heater to be repaired. Landlord's defense as to why he did not then fix

the Gas Heater is that he did not receive the April 22 Text because he was in Yosemite. However, the April 22 Text is marked "Delivered". Hence, a preponderance of the evidence shows the April 22 Text was delivered. Giving Landlord until April 30, 2023 to respond to the April 22 Text requesting Landlord fix the Gas Heater, as of May 1, 2023 Landlord's failure to fix the Gas Heater is an aggravating factor increasing the reduction in habitability of the Premises from 4% to 5% through November 30, 2023, the day prior to the installation of a new gas heater on December 1, 2023.

d. Award for the Failure to Fix the Gas Heater: \$1,097.73. Tenant is entitled to a rent credit of \$1,097.73 for the failure to fix the Gas Heater as promised, determined as follows:

October 1, 2022 to March 31, 2023:	\$400.80
Rent:	\$1,670.09/mo.
Reduction in Rent:	4%
Credit:	6 months @ \$66.80/mo.
April 1, 2023 to April 30, 2023	\$ 71.48
Rent:	\$1,786.99
Reduction in Rent:	4%
Credit:	1 mo. @ \$71.48/mo.
May 1, 2023 to November 30, 2023	\$625.45
Rent:	\$1,786.99
Reduction in Rent:	5%
Credit:	7 months @ \$89.35/mo.
<hr/> Total	\$1,097.73

e. Total Award: \$1,174.73. The total rent credit therefore is \$1,174.73; \$77.00 for the Electric Heater plus \$1,097.73 for the failure to fix the Gas Heater on a timely basis (the "Award").

e. Rent Credit. As long as Tenant retains possession of the Premises, Tenant shall receive the Award as a rent credit. If Tenant vacates the Premises, that portion of the Award that has not been credited shall be paid by Landlord to Tenants within thirty (30) days of the date Tenant vacates the Premises (the "Decision"). See Attachment 2 to this Decision for the Award Schedule.

f. Successors. The Award shall be enforceable as to any successor in interest or assignees of Landlord.

g. Delay in Payment. If any portion of the Award is not paid within thirty (30) days of the date due (the "Unpaid Award"), Tenants shall be entitled to a money judgment in the amount of the Unpaid Award in an action in Small Claims court or any other administrative or judicial or quasi-judicial proceeding.

h. Dispute. 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).

It is so ordered.

A large, stylized handwritten signature in black ink, appearing to read 'Duf Sundheim', is written over a horizontal line.

Duf Sundheim
Hearing Officer

3.25.24

Attachment 1
Exhibits

Hearing Officer

HO Exhibit 1: Tenant's Petition and Petition Workbook, dated October 10, 2023

HO Exhibit 2: Pre-Hearing Notice, dated November 13, 2023

HO Exhibit 3: Post Hearing Order re Site Visit, dated January 22, 2024

HO EXHIBIT 4: Revised Workbook B, dated March 18, 2024 (provided as Attachment 3 to the Petition Decision)

Landlord

LL Exhibit 1: Landlord's Response to Tenant's Petition, dated December 11, 2023

Tenant

T Exhibit 1: Various Communications involving Tenant from April 29, 2021 through September 9, 2022

T Exhibit 2: Documentation showing Heater purchased by Tenant on October 3, 2022.

**Attachment 2
Award Schedule**

31 Church St # [REDACTED] - RHC Petition# C23240002

Hearing Officer Decision

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue Persisted	Lawful Monthly Rent	Percentage Rent Reduction	Rent Reduction Awarded
Failure to fix gas heater	10/1/2022	3/31/2023	6	\$ 1,670.09	4%	\$ 400.80
Failure to fix gas heater	4/1/2023	4/30/2023	1	\$ 1,786.99	4%	\$ 71.48
Failure to fix gas heater	5/1/2023	11/30/2023	7	\$ 1,786.99	5%	\$ 625.45
Refund for purchase of gas heater	N/A	N/A	N/A	N/A	N/A	\$ 77.00
TOTAL						\$ 1,174.73

Credit Schedule

Month/Year of Rent Payment	Monthly Rent Owed by Petitioner	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
5/2024*	\$ 1,786.99	\$ 1,174.73	\$ 612.26
TOTAL		\$ 1,174.73	\$ 612.26

Attachment 3
Hearing Officer's Revised Workbook "B"



Resident Petition B:
Failure to Maintain Habitable Premises, or Reduction or Elimination of Communal Facilities, Housing Services or Maintenance
Worksheet 1 - Rent Increases

Fill in white cells only.

Date of Rent Increase	Amount of Prior Rent	Amount of New Rent	Percent of Rent Increase or Decrease
4/16/2021	\$ 2,000.00	\$ 2,250.00	13%
2/1/2021	\$ 1,795.00	\$ 1,595.00	-11%
1/1/2022	\$ 1,595.00	\$ 1,795.00	13%
9/1/2022	\$ 1,795.00	\$ 1,884.00	5%
2/27/2023	\$ 1,884.00	\$ 1,670.09	-11%
4/1/2023	\$ 1,670.09	\$ 1,786.99	7%
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Resident Petition B:
Failure to Maintain Habitable Premises, or Reduction or Elimination of Communal Facilities, Housing Services or Maintenance
Worksheet 2 - Failure to Maintain Habitable Premises

Total Amount of Estimated Decrease \$ 12,800.00

Fill in white cells only.

Describe Each Condition	Is condition resolved? (Yes or Not)	Date Condition Started	Date Condition Resolved (or Petition Date if unresolved)	Date Owner Notified of Condition (at least 30 days before petition filed)	Estimated Decrease in Rental Value Due to Condition per Month	Number of Months Condition Present	Total Estimated Decrease per Condition
<i>Bathroom window broken</i>	<i>No</i>	<i>6/27/2021</i>	<i>11/1/2021 (Petition filing date)</i>	<i>8/15/2021</i>	<i>\$ 300.00</i>	<i>4</i>	<i>\$ 1,200.00</i>
Heater Gas Leak	No	4/29/2021	10/10/2023	4/29/2021, 9/9/2022, 4/22/2023	\$ 400.00	32	\$ 12,800.00
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Resident Petition B:
Failure to Maintain Habitable Premises, or Reduction or Elimination of Communal Facilities, Housing Services or Maintenance
Worksheet 3 - Decrease in Housing Services or Maintenance

Total Amount of Estimated Decrease \$ -

Fill in white cells only.

Describe Each Condition	Is condition resolved? (Yes or Not)	Date Condition Started	Date Condition Resolved (or Petition Date if unresolved)	Date Owner Notified of Condition (at least 30 days before petition filed)	Estimated Decrease in Rental Value Due to Condition per Month	Number of Months Condition Present	Total Estimated Decrease per Condition
Laundry room closed	No	6/27/2021	11/1/2021 (Petition filing date)	8/15/2021	\$ 150.00	4	\$ 600.00
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