

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

Rental Housing Committee Case	Petition A – Downward Rent Adjustment- Unlawful Rent Collected
Petition Number	C23240021
Property Address:	100 North Whisman, Mountain View CA 94043 [Central Park at Whisman Road]
Affected Unit{s}:	Number [REDACTED]
Petitioner Tenant Name(s):	Valentin Schwarz and Tiffany Tong
Respondent Landlord Name and Name of Property	SI VI LLC Central Park at Whisman Station Apartments [Managed by Greystar California]
Hearing Officer:	Martin Eichner
Date of Pre-Hearing Conference: Date of Hearing:	November 14, 2023 December 5, 2023
Date Hearing Record was Closed	December 19, 2023
Date of Mailing:	(See Attached Proof of Service)

HEARING OFFICER DECISION

I. STATEMENT OF THE CASE AND PROCEDURAL HISTORY TO DATE:

- a) A City of Mountain View Rent Stabilization Petition A with attached Workbooks, hereafter “Petition,” was filed on September 26, 2023 by Valentin Schwarz, and Tiffany Tong jointly described hereafter as “Tenants.” The Petition, seeking a Downward Rent Adjustment based on Unlawful Rent Collected, was filed pursuant to the Community Stabilization and Fair Rent Act, hereafter “CSFRA.”
- b) The downward rent adjustment being claimed in the Petition was based on the Tenants’ assertion that the Landlord had improperly calculated the base rent for the Tenants’ unit by incorrectly applying a rent concession offered to the Tenants.
- c) The Petition identified the Tenants’ rental unit as number [REDACTED], located at 100 North Whisman Road in the City of Mountain View, hereafter the “Rental Property.” As later identified, the Rental

Property is owned by SI VI LLC, and managed by Greystar Property Management Company, hereafter jointly described as the “Landlord.”

- d) The Petition and supporting documents were served on the Landlord by the Tenants with a September 26, 2023 Notice of Submission and Proof of Service to Landlord. The Landlord filed a Response to the Petition, dated October 10, 2023.
- e) A Prehearing Meeting was held on November 14, 2023 as per the November 2, 2023 Notice of Pre-Hearing Meeting and Hearing previously served on the parties. The Conference was held pursuant to Chapter 5, Section C.5 of the Regulations. The Tenants participated along with the Landlord participants, Heather Austin, Regional Property Manager for Greystar California and DeAnna Verduzco, Greystar Community Manager. The Prehearing was conducted by the assigned Hearing Officer, Martin Eichner. JoAnn Pham, Analyst in the City of Mountain View Rent Stabilization Division, participated to provide administrative support. The Meeting was held on the Zoom platform and recorded thereon.
- f) At the Prehearing Meeting, the Hearing Officer described the procedure that would be followed at the evidentiary Hearing, hereafter “Hearing.” He described general principles that applied such as the burden of proof and rules of evidence. The Hearing Officer emphasized that he might ask many of the questions during the Hearing to ensure a complete record, but that the parties were ultimately responsible for presenting and proving their cases at the Hearing. He asked the parties to confirm their participation in the December 5, 2023 Hearing and to identify the witnesses who would testify at the Hearing. He listed the Hearing exhibits tentatively identified as of that date. The Hearing Officer confirmed with the parties that the issues to be determined in this case, specifically determining whether unlawful rent was collected in connection with a rent concession agreed upon between the parties and determining the impact of that concession on the base rent for the Tenants’ unit and the resulting Annual General Increase for this rental unit.
- g) A Prehearing Summary and Order was issued on November 21, 2023. The Order set a schedule for the parties to disclose any additional witnesses or documentary evidence to be submitted at the Hearing.
- h) As per the above Notice, as well as the Prehearing Summary and Order, the Hearing in the above case was held on December 5, 2023. The parties listed above as participants in the Prehearing Meeting also participated in the Hearing. The Hearing was held on the Zoom platform and recorded thereon. The Hearing Officer emphasized certain portions of the Hearing process to supplement the explanation given during the Prehearing Meeting, such as the burden of proof and rules of evidence.
- i) The witness testimony, given under oath, was concluded during the December 5, 2023 Hearing. During the Hearing, various documents were identified and marked as Hearing Exhibits. However, certain additional documents not submitted for the Hearing record were identified by the parties as potentially relevant to the Decision. At the close of the Hearing, the Hearing Officer indicated he would issue a Post-Hearing Order to allow the parties to submit these documents. The Hearing Officer issued a Post-Hearing Order on December 6, 2023, setting a schedule for submitting those documents and other submissions such as witness statements. This Order stated that the Hearing Record for this Decision would be fully closed by end of business December 19, 2023 and that this Decision would be due 60 days thereafter.

- j) Subsequently, the parties did submit further documents, which are identified in the below Exhibit List. As per the December 6, 2023 Post-Hearing Order, the Hearing Record was deemed to be fully closed as of December 19, 2023.

II. EXHIBITS ¹

The following documents were marked as exhibits during the hearing and entered into the hearing record:

Hearing Officer Exhibits:

- Ex. 1 Instructions for Filing a Tenant Petition A
- Ex. 2 Hearing Information Sheet
- Ex. 3 November 2, 2023 Notice of Prehearing Meeting and Hearing Date for Petition
- Ex. 4 November 22, 2023 Notice of Hearing Officer's Prehearing Order and Notice of Hearing with attached Hearing Officer's Prehearing Meeting Summary and Order
- Ex. 5 December 6, 2023 Notice of Post-Hearing Order with attached Post-Hearing Order
- Ex. 6 March 23, 2023 Hearing Officer Decision in case number 22230015 [100 North Whisman Unit 3216]

- Ex. 7 February 20, 2024 Notice of Extension of Deadline for Hearing Officer Written Decision Deadline

Tenants Exhibits

- Ex. 1 September 26, 2023 Tenant Petition A – Unlawful Rent, and various attachments
 - Ex. 2 Workbook attached to the Petition
 - Ex. 3 September 26, 2023 Notice of Submission of Petition and Proof of Service
 - Ex. 4 January 13, 2021 – March 1, 2022 "Purged" Rent Ledger for the Tenants' unit
 - Ex. 5 January 20, 2021 – October 3, 2022 Rent Ledger for the Tenants' unit
 - Ex. 6 List of other tenants who were dissuaded from filing petitions
 - Ex. 7 August 7, 2023 Letter to Rental Housing Committee
 - Ex. 8 January 15, 2021 – October 18, 2022 Email correspondence with the Landlord
- Submitted after the Hearing in this case

¹ For purposes of better organization, the exhibit numbers assigned herein may differ from the tentative numbers assigned during the course of the Hearing.

Ex. 9 December 18, 2023 Tenants' post-hearing letter

Landlord Exhibits

Ex. 1 October 25, 2023 Petition Response Form (dated October 10, 2023)

Ex. 2 January 19, 2021 Lease for the Tenants' rental unit with addendum

Ex. 3 January 19, 2021 Move-in email

Submitted after the Hearing in this case:

Ex. 4 February 2021 – December 2023 Conservice monthly statements

Ex. 5 Landlord Statement

Ex. 6 January 19, 2021 Email Move-in regarding 1/20/21 Move-in

III. SUMMARY OF HEARING TESTIMONY

The following Summary is based on the hearing testimony given under oath that was determined to be relevant to this Decision:

Testimony from the Tenants

General

They moved into their unit at this Rental Property in mid-January 2021. They signed a lease a couple of days prior to move-in. They signed a different version of the lease a couple of days later. The parties agreed at the Hearing that the version that they regard as the operative lease is LL Ex. 2. The Tenants have not signed any subsequent lease.

The Tenants are still living in this unit, which has three bedrooms. The [REDACTED] of Tenant Valentin Schwarz lives with them. They initially had a roommate named [REDACTED], but he later moved out prior to the time the Petition was filed.

Rental and Concession History

The Tenants' search that ended in choosing this unit began when they were looking for a place to rent that was near work and in a good school district. They located this Rental Property online. They think they first realized a rent concession was being offered when they were taking a virtual tour. They also conducted a physical tour of the property a couple of times. They used the online portal to choose a specific unit. They were mainly dealing with a Landlord representative named [REDACTED] during in-person discussions at the Rental Property office. [REDACTED] mentioned the concession during their discussions.

They signed an 18-month lease with a three-month rent concession, but when they were ready to move in, there was some problem that prevented the move-in. As a result, they signed a new lease a couple of days later.

Their monthly rent for the first 18 months was \$2945. It was then increased to \$3003.90 on August 1, 2022. The rent was increased again in August 2023 to \$3154.10, which is their current rate.

They went through a discussion with [REDACTED] to understand how to make an initial payment through the Landlord's online system. They were asked to make an initial payment of approximately \$1054, but as they were going through the payment steps of the online payment system, the system required them to make a payment of \$8835, which was the amount of their concession. Their credit card was charged this amount. The system would not allow them to edit or reverse the charge. The Tenant emailed [REDACTED] to ask him to reverse this charge. He also asked his credit card company to cancel the charge, but that company told him it was irreversible. The charge remained on their tenant ledger until March but was removed from the ledger then. His credit card company did not reverse the \$8835 charge on his credit card account until the June timeframe.

They continued to pay the full monthly rent of \$2945 because they were worried about being treated as being in arrears. There were other mistakes made by the management company, for example they were charged a move-out fee when they first moved into the unit.

Eventually they were actually credited for the concession. The Landlord's ledger shows the concession.

They assert that the three-month concession should have been included in the computation of the CSFRA base rate for their unit. The resulting revised base rate is the amount which should have been used to calculate their rent increases in August 2022 and August 2023.

Testimony on behalf of the Landlord from Heather Austin and Deanna Verduzco

General

The legal name of the property owner is SI VI LLC. This entity has owned this property since at least 2017. The Rental Property was built in 1972. There are 152 units on the property. Greystar has been the third-party property management firm for the Rental Property since 2020. The previous property management firm was Alliance, which was purchased by Greystar. Heather Austin is the Regional Property Manager for Greystar. She has been responsible for this Rental Property for the last three years. Deanna Verduzco has been the onsite Community Manager for the last eight years.

Rental and Concession History

The Tenants were scheduled to move into their unit on January 20, 2021. As a result of a mistake made by the Landlord on January 15, 2021, the Tenants were charged \$8835, which was the amount of the concession. That charge was reversed on January 19, 2021; the \$8835 amount was then correctly entered as a credit on the Tenants' ledger.

They reversed the mistaken charge prior to the move-in, but in the interim, the Tenants had paid the \$8835 plus the \$1564 move-in fee. There was supposed to be a \$99 security deposit special, but

they were initially charged \$500 for the security deposit, which was reversed on January 20. The Tenants received a refund of the \$8835 in March. The credit card company charged a processing fee of \$220 for the \$8835 which the Landlord cannot refund.

As noted by this witness, the ledger “can be a bit confusing.”

Meanwhile, the Tenants continued to pay the full \$2945 monthly rent.

The way the concession is supposed to work is that a tenant pays the pro-rated first month rent. Then the second and following months are free as the concession credit is applied. There is a “welcome letter” which explains the initial charges. The utility statement the Tenants were receiving from their third-party provider Conservice showed a credit balance on his account until his initial lease ended. Since the Tenants “self-amortized” the concession, it wound up being credited in the last three months of the lease term. The steps taken by the Tenants could have been treated as a violation of the concession terms in the lease. The Landlord could have treated the concession as void, but instead the Landlord allowed the concession credit to be applied at the end of the lease. They felt they couldn’t enforce this part of the concession terms in the lease because of the “covid restrictions.”

The August 2022 increase was 2% of the base rent based on what they understood the City allowed as the maximum increase.

They calculated the increase using the base rent of \$2945, leading to the new rate of \$ 3003.90. The next year they used the maximum allowable increase of 5% applied to the then current rent of \$3003.90.

They calculated the base rent using the workbook provided by the City. They thought they were applying the correct concession formula based on that workbook. They based their calculation on the actual rent paid by the Tenants in the first twelve months, since the Tenants did not use the concession credit until the end of their 18 month lease. They felt that they were not required to apply the concession to their calculation of the base rent because the Tenants didn’t apply the concession credit in the first 12 months.

Heather doesn’t have the original workbook file she used to calculate these increases because the computer with those documents has been lost. She has submitted a statement outlining their calculations.

Response from Tenants to the Concession Testimony

The applicable 12-month time period should actually apply to April 2021 when the ledger was corrected or to June 2021, which is when they received the refund of the concession amount that they had been forced to pay in January. They didn’t know they were violating the lease by continuing to pay full rent until the last three months of the lease when they applied the concession credit.

The Landlord's portal is called "Rent Cafe." Valentin thinks it only showed a credit rather than showing the amount as their concession that they were required to take, but he does not have a clear memory.

They waited until the end of their lease to apply the concession because that time was when they finally felt comfortable. Before then the records were confusing, for example their rent ledger showed negative amounts at certain times, which were not correct. The Landlord also lost one of their checks.

They were never notified by the Landlord that they needed to take the rent concession in the early months of their tenancy or else risk losing it. They don't believe the language in the lease clearly informs them about the requirement to take the concession in the initial months.

Further from the Landlord Witnesses

The lease agreement concession addendum clearly explains, at page 31, that the concession must be used at the beginning of the lease term. They felt they couldn't send any legal letters upholding this part of the lease agreement or threaten to terminate the lease because of the covid restrictions prohibiting eviction.

The portal does show the current balance due or no payment due because of their credit. The Conservice statement is mailed to the Tenants every month. Their statement shows that they had this credit. They will submit the Conservice statements and an example of the rent portal interface.

The move-out charge used the wrong code to recognize the \$99 deposit special which made it look like the Tenants were charged a move-out fee. It was incorrect initially but was corrected on February 4.

There were no other notices to the Tenants telling them there might be a financial penalty for not using the concession immediately.

IV. ISSUES TO BE DETERMINED:

1. Whether unlawful rent was collected in connection with a rent concession that was part of the rental relationship between the parties and more specifically:

- a. Whether that concession was correctly applied when calculating the proper base rent for the Tenants' unit and the resulting permissible Annual General Increases for this rental unit.
- b. Whether the Landlord also incorrectly calculated the Tenants' base rent when it excluded the utility fees and other monthly fees paid separately by the Tenants.

V. ANALYSIS

A. This Case Requires Interpreting the Rent Concession Provisions in the CSFRA and the Regulations in the Context of the Landlord's Confusing Rental Obligation Information and Directions.

As noted in the below Findings of Fact, the Tenants were given confusing and inaccurate directions about how much they owed the Landlord at the start of their tenancy. The Landlord agreed to grant the Tenants an \$8835 concession. The Tenants were then forced to pay the \$8835 concession to the Landlord instead of receiving a credit in that amount. The Landlord states that it corrected its initial mistake of requiring this overpayment from the Tenants. However, the Landlord did not actually refund this overpayment for several months and never compensated the Tenants for the processing fee they paid to their credit card company. The Landlord never directly notified the Tenants about its mistakes or about its recalculations. The Landlord assumed that the Tenants would understand their rental status based on their rental ledger and other notices such as the Conservice statements. The Tenants asserted that these records were not clear. The Landlord witness admitted that the rent ledger could be confusing. Examination of these records shows that they are not clear to anyone attempting to understand the status of the Tenants' concession.

As noted below, the Landlord made other mistakes in handling the Tenants' rental obligation.

As a result of the confusion caused by the Landlord's mistakes, the Tenants paid their full monthly rent of \$2945 for the first twelve months of their lease term, rather than applying the concession credit they were supposed to have available. According to their testimony, they refrained from using the concession credit because they were unclear about the status of their rental payments. In light of their initial experience with the Landlord's payment system, Rent Cafe, and subsequent Landlord mistakes, they were understandably worried that the Landlord would punish them for not paying the full monthly rent set forth in their lease.

The Tenants eventually used the concession credit at the end of their 18-month lease term². The result of this delay was that the Landlord calculated the base rent for purposes of subsequent rent increases without any adjustment for the rent concession.

The CSFRA Regulations Chapter 2, Section b(2) definition of "Base Rent" states that,

[T]he "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.

Chapter 2, Section (b)(2)(iii) of the Regulations limits the use of "initial term" for applying a rent concession to 12 months.

This Decision requires addressing the Tenants' failure to use the concession within the first 12 months of their tenancy in light of the Tenants' justification for waiting to use it.

The below Conclusions of Law determine that the Tenants were justified in waiting to apply the concession credit. Their hesitancy was a result of the confusion created by the Landlord, which was

² As noted in the below Findings and Conclusions, the Landlord waived its assertion that the Tenants forfeited their concession because they "self-amortized" it instead of beginning to use it in February 2021.

never clarified for the Tenants. This Decision holds that the Chapter 2 definition of base rent should not be applied under these circumstances. A literal application of that definition to exclude the rent concession from the initial base rent would provide a substantial reward to the Landlord for its own mistakes.

Another key provision is found in the CSFRA Regulations Chapter 4, section G.6.a. This provision places a limit on the remedy for an unlawful rent increase based on improper application of a concession. Specifically,

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.

Under this provision, the September 26, 2023 Petition filing date excludes any refund of improper rent prior to September 27, 2022. Although the Tenants have presented a credible explanation for their decision to delay applying their rent concession, they have not advanced a convincing explanation for waiting until September 2023 to file their Petition.

This Decision applies the one-year limit by not awarding an actual refund of the rent rollback paid prior to September 27, 2022. The below Award limits the rollback refund to the time period on and after September 27, 2022.

B. The Recalculation of the Base Rent Must Also Apply the Utility Fees Charged to the Tenants.

As also noted below, the correctly calculated base rent should include the Tenants' separate payments for the various utility fees charged by the Landlord. CSFRA Section 1702(p) includes utility fees within the definition of rent. The requirement to include utility fees in this calculation was known to the Landlord because it was previously recognized for the same Rental Property in the prior Decision issued in response to CSFRA Petition Number 22230015.

VI. FINDINGS OF FACT

General and Jurisdiction

1. The Rental Property in this case was constructed in 1972. There are 152 rental units on the property. During the relevant time period, the legal owner of the Rental Property has been SI VI LLC. The property has been managed by the Greystar Company since at least 2017. Heather Austin is the Greystar Regional Manager responsible for this property. Deanna Verduzco is the Greystar onsite Community Manager for this property. These entities and persons are hereafter jointly referenced as the "Landlord."
2. This case was initiated on September 26, 2023, when Valentin Schwarz and Tiffany Tong, hereafter "Tenants," filed a City of Mountain View CSFRA Petition A seeking a Downward Rent Adjustment based on Unlawful Rent Collected. The downward rent adjustment claimed in the Petition was based on the Tenants' assertion that the Landlord had improperly calculated the base rent for the Tenants' unit when it failed to include the Landlord's significant rent concession in that calculation.

The Concession and Other Lease Terms

3. The Tenants signed a lease agreement on January 19, 2021, [LL Ex. 2], for a three-bedroom rental unit. They then occupied the unit along with the [REDACTED] of Tenant Valentin Schwarz. They initially had a roommate, but that roommate had vacated by the time the Petition was filed.
4. Page 1 of the lease signed by the Tenants lists the length of the lease as one year and six months. This first page lists a start date and move-in date of January 20, 2021. The end date is listed as July 15, 2022. This same page lists a “base” monthly rent of \$2945. This page also includes a statement indicating “Concession #1: One-Time, Applied February 2021 – 3 Months Free Concession - \$8835.”
5. The first page of the lease also stated that the “TOTAL DUE ON OR BEFORE MOVE-IN” was \$1089. The security deposit was listed on this first page as \$99.
6. Details of the concession were set forth in paragraph 4.3 at page 4 of the lease agreement. Among the relevant terms of this paragraph was language forfeiting the concession for any month in which the Tenants failed to pay the rent due for that month by the sixth day of the month.
7. The further terms of the concession were set forth in the Concession Addendum attached to the lease, beginning at page 30. This Addendum included language stating that the concession had been granted in exchange for the 18-month term of the lease. The Addendum included language indicating that the concession would be forfeit if the Tenants’ violated any term of the lease.
8. Despite the language in the lease describing the amount due at the time of move-in, the Tenants were forced to pay the Landlord \$8835, which was supposed to be the amount of the concession. They were also required to pay an additional \$1564 “move-in” fee on January 15, 2021. They made this payment through the Landlord’s online rent payment system, using their credit card account. According to the credible testimony of the Tenants, they paid this total amount because the Landlord’s online system required them to make these specific payments. This system would not allow them to edit or delete these amounts despite the different amounts in the lease.
9. Rather than correct its mistaken collection of \$8835, the Landlord sent a separate email to the Tenants documenting that it had collected the \$8835. The same email also referenced collection of the \$220 processing fee. [LL Ex. 4].
10. The Tenants took physical possession of their rental unit on or about January 21, 2021.
11. According to the Landlord testimony, its representatives realized that the Tenants had been incorrectly charged the amount of the concession instead of being given a credit for it. The Tenants were also charged a move-in fee that applied an incorrect code, not adjusted for the \$99 security deposit discount. According to the Landlord testimony, the \$8835 mistakenly charged to Tenants was discovered on January 19, 2021. The charge was reversed and entered as a credit to the Tenants’ rent ledger account. The incorrect move-in fee charge code was also corrected.
12. Despite recognizing its mistake, the Landlord did not send a follow-up message to the Tenants correcting its email, [LL Ex. 4], either at that same time or at any subsequent time.

13. The Tenants did not receive a refund of the January \$8835 payment on their rent ledger until March 2021. They received an adjustment from their credit card company in June 2021 for the \$8835 charge against their credit card account. The Tenants did not receive a refund from the credit card company or from the Landlord for the \$220 processing fee charged by the credit card company for the mistaken \$8835 charge in January 2021.
14. The correct status of the Tenants' account is supposed to be reflected in their tenant ledger maintained by the Landlord. The Tenants testified credibly that when they tried to review the rent ledgers, they were confusing and that they were not reliable.
15. Examination of the actual ledgers confirms that they would be confusing to anyone attempting to understand the status of the concession. There are two versions of the 2021 Rent Ledger marked as evidence. [T Ex. 4 and T Ex. 5]. The corrections described by the Landlord witness are noted in T Ex. 4, the "Purged" version, but not in T Ex. 5. Neither version of these rent ledgers clearly documents a credit against the Tenants' account for the \$8835 concession. The concession does not clearly appear in the "charges," "payments" or "balance" columns in either version of the rent ledger.
16. The Landlord representative admitted in her Hearing testimony that the rent ledgers "can be a bit confusing."
17. The Landlord contended that the Conservice utility billing statements provided notice to the Tenants of the accurate balance of their monthly rental account. However, the example provided by the Landlord, LL Ex. 4, does not clearly show that a rent payment credit would have been apparent to the Tenants.
18. Apart from whatever changes were made to one version of the Tenants' Rent Ledger, T Ex. 5], there is no evidence in the record documenting that the Landlord directly notified the Tenants about the reversal of the \$8835 charge they initially paid. There is also no evidence in the record indicating that the Landlord notified the Tenants that they were required to take their rent concession immediately, beginning as of February 1, 2021.
19. Tenant's Exhibit 8 is a contemporaneous email between Landlords and Tenants. The Landlord witness testified that the mistake was immediately corrected. However, this email does not correct the \$8835 charge the Tenants were directed to pay when using the Landlord's online system. It appears to treat the Landlord's collection of \$8835 from the Tenants as a routine, legitimate action.
20. Paragraph 4.3 of the Lease includes forfeiture language that applied if the Tenants failed to pay the full rent due by the sixth day of the month. In light of the Landlord mistakes earlier in their tenancy, it was prudent for the Tenants to pay the full monthly rent to avoid the penalties in paragraph 4.3 and elsewhere in the lease.
21. There is no evidence in the record documenting that the Tenants were notified that they might forfeit their concession if they did not apply it immediately to their monthly rent payments. The Landlord asserted that language in the concession addendum of the lease precluded the right of the Tenants to "self-amortize" the timing of utilizing the concession. However, the language cited by the Landlord witness only applies to months where a tenant fails to make a timely rent

payment. This language does not otherwise address the choice by a tenant of the specific month in which to apply the rent concession credit. The Landlord initially raised a claim that the Tenants forfeited the concession by not applying it during the early months of the lease. However, the Landlord indicated at the Hearing that it had allowed the concession credit to be applied at the end of the lease term.³

22. The Tenants paid the full \$2945 monthly rent set forth in the lease for the first 12 months of the lease term. They did not apply the concession credit until the last three months of the 18-month term. According to the Tenants' testimony, they waited to take the concession until the end of the lease because they did not feel "comfortable" about using it earlier. Their discomfort was justified, in light of the history of receiving confusing information about the balance of their account, as well as other mistakes the Landlord made in the Tenants' financial records.
23. In addition to the mistakes and confusion noted above, the Landlord made other mistakes while handling the Tenants' rental obligations. For example, the Tenants were charged a move-out fee when they made their initial payments. During the initial term of the lease, their tenant ledger showed negative balances that were not correct. The Landlord lost several of their rent payment checks.
24. The Landlord increased the monthly rent amount charged to the Tenants in August 2022. The rent was increased by 2% at that time, based on its understanding of the percentage of increase allowed by the CSFRA on that date. The increase was calculated using a base monthly rent of \$2945. The Landlord increased the Tenants' monthly rental amount in August 2023 by 5%, resulting in a new rate of \$3154.10. This 2023 increase was calculated using the same \$2945 initial base rent without any adjustment for the rent concession.
25. In addition to paying monthly rent, paragraph 11 of the Tenants' lease required them to pay utilities charged to their unit. The actual payments for utilities, including water, sewage, gas and trash, are documented in T Exs. 4 and 5 and LL Ex. 4.
26. The Landlord's calculation of these two rent increases did not include the utility fees paid by the Tenants as part of the base rent.
27. As of the date of the Hearing in this case, the Landlord had not adjusted the Tenants' rent increases to include the utility and other fees paid by the Tenants. The Landlord failed to make this adjustment despite the Decision in CSFRA Petition Number 22230015. This Decision applied to the same Rental Property subject to the Petition in this case. [HO Ex. 6]. That prior Decision included the separate utility fees charged to tenants at this Rental Property as part of the base rent calculation. This earlier Decision had become final and binding on the Landlord prior to the date the Tenants filed their Petition in this case.

³ The Landlord witness testified that the Landlord was reluctant to enforce the concession forfeiture language because of the Covid statutes and ordinances limiting Landlord action. There is no apparent provision in these Covid laws that would have prevented the Landlord from applying its forfeiture rights by means other than eviction. However, for purposes of this Decision, the operative result is that any applicable concession forfeiture language was waived by the Landlord, specifically in a verbal statement during the Hearing.

28. In their Petition, the Tenants included the various utility fees in their Workbook attachment. Since these fees were included, the Landlord had sufficient notice of this issue, based on the prior case and the workbook in this case.

VII. CONCLUSIONS OF LAW

General, Jurisdiction

- A. This Decision is issued in response to a “Petition A – Unlawful Rent Collected” filed by Tenants Valentin Schwarz and Tiffany Tong on September 26, 2023 pursuant to CSFRA Section 1710(d).
- B. The Tenant-Petitioners are “tenants” as defined in the CSFRA, Section 1702(u). They occupy a “rental unit” as defined in CSFRA Section 1702(s). That rental unit is not exempted from the CSFRA and accompanying Regulations under any of the exemption provisions set forth in CSFRA Section 1703.
- C. The Landlord in this case is a “landlord” as defined in CSFRA Section 1702(j).
- D. Based on the above Conclusions, there is jurisdiction under the CSFRA to determine the Petition filed in this case.

Applicable Principles of Law

- E. Pursuant to Chapter 5, Section G.1. of the CSFRA Regulations, the Tenants have the burden of proving the basis for granting their Petition based on Unlawful Rent Collected. Pursuant to Section 1711(h) of the CSFRA and Section G.3. of Chapter 5 of the Regulations, the standard of proof is the “preponderance of the evidence.” This standard is often described as deciding which parties’ evidence appears to be the more probable, or which party has tipped the scales in favor of its case.
- F. In Chapter 2, Section b(2) of the Regulations, the definition of “Base Rent” states that,
[T]he 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.
- G. Chapter 2, Section (b)(2)(iii) of the Regulations states that,
[I]f the Rental Agreement ...is longer than twelve (12) months, the initial term shall mean twelve (12) months.
- H. Chapter 2, Section (b)(2)(ii) of the Regulations describes the calculation of base rent when there has been a rent concession. This provision explains that there is an exclusion from that calculation as follows:

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....

- I. In calculating a rent rollback due to an improper application of a rent concession, Chapter 4, section G.6.a. of the Regulations applies. This provision places a limit on the remedy for an unlawful rent increase based on improper application of a concession. Specifically, it states that,

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.

- J. In calculating the rent rollback being awarded here, CSFRA Section 1702(p) also applies. This provision defines rent to include,

All periodic payments...rendered to...the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit...including all payment ...for ...**Utility Charges...** [emphasis added]

- K. In addition to the specific CSFRA principles that apply to this Decision, there is another general legal principle that applies. According to this general principle, a party to a legal proceeding should not financially benefit from its own mistakes.

The Handling of the Rent Concession by the Parties

- L. The Tenants met the burden of proving that the Landlord collected unlawful rent from them. The rent they have paid since August 2022 violates the applicable CSFRA provisions.
- M. In summary, the above Findings of Fact document that the Landlord provided confusing financial records to the Tenants and made a series of significant mistakes in handling their account.
- N. The Landlord failed to provide accurate financial information or directions for the Tenants to pay their initial move-in obligations. Specifically, in January 2021, the Landlord required the Tenants to pay an amount equal to the \$8835 rent concession, in order to occupy their rental unit. The \$8835 overpayment the Tenants was forced to pay is a significant amount. The Landlord also used the wrong code to determine the move-in fee, resulting in requesting a fee greater than the negotiated fee.
- O. The Lease itself had misleading information about the Tenants’ obligations. Specifically, page 1 of the lease lists the “base rent” as \$2945 per month. This provision has no modifying language or explanation indicating that the rent concession would modify the base rent amount.
- P. The Landlord failed to accurately demand the correct rental payment from the Tenants or inform them of the correct rate at the time of their move-in. Despite the assertions made by the Landlord representative at the Hearing, none of the contemporaneous records or communications in the Hearing record prove that the Tenants were clearly and accurately notified of their rental obligations at the beginning of their tenancy or anytime thereafter, until the Landlord testimony at the Hearing. On the contrary, the Landlord sent a contemporaneous

email, [T Ex. 8], acknowledging receipt of the \$8835 without acknowledging that its collection of that significant sum was a mistake, either then or at any later time.

- Q. Although the Landlord claimed it corrected the mistaken \$8835 charge within a few days, the payment was not entered as a refund on the Tenants' ledger until March 2021. As a result, the Landlord wrongfully possessed a significant sum of money that belonged to the Tenants for a number of weeks. The Tenants did not receive a refund from the credit card company they used to make this improper payment until June 2021. The Tenants were never reimbursed by the Landlord for the \$220 credit card processing fee they were charged.⁴
- R. None of the documents in the Hearing record clearly explain that the Tenants had been subsequently credited with the correct concession. The Landlord never directly explained the correct concession status to the Tenants at any point prior to the filing of the Petition herein. The only way for the Tenants to learn that their records had been corrected would have been to examine an accurate version of their rent ledger. The Tenants testified credibly that the rent ledgers were not clear or accurate. As also noted in the above Findings, an objective review of the ledgers confirms that they are confusing. Examination of the ledgers shows that one version, T Ex. 5 appears accurate. However, this version was contradicted by the other version of their rent ledger, T Ex. 6. The version represented by T Ex. 6 does not show that the Landlord's mistakes were corrected. There is no explanation for this discrepancy in the Hearing record. As noted in the above Findings, the Landlord witness admitted that the ledger could be "a bit confusing" but the Landlord never sent a direct explanation to the Tenants to clarify their status and never explained which version of the ledger was the applicable version.
- S. The Tenants were justified in failing to use the concession credit during the first 12 months of their lease term. The Tenants were justified in their fear that they would be subject to some type of negative Landlord action or penalties if they paid a lesser amount in that first year. Their fear was justified by the confusion and mistakes resulting from the Landlord directions at the beginning of the Lease term, as well as the on-going confusion in their ledger combined with the lack of subsequent accurate follow-up explanation from the Landlord. The Tenants fears were further justified by the other Landlord mistakes and inaccuracies described above.
- T. The Landlord's mistakes and inaccuracies should not be the reason it would financially benefit from the 12-month limit set by Chapter 2, Section (b)(2)(iii) of the Regulations.
- U. CSFRA Section 1702, Section b(2)(i) was not intended to reward a Landlord who failed to give the Tenants an accurate explanation of their rental obligation. The very significant rent concession offered to the Tenants was an important incentive for them to sign the Landlord's lease. The applicable provisions of the CSFRA should not be applied to deny the Tenants the benefit of this concession under the circumstances of this case. The above Findings of Fact and Conclusions of Law justify the Tenants' decision to delay using the concession credit. The "actually paid"

⁴ Since this fee was charged by the Tenants' credit card company, there is no jurisdiction under the CSFRA to order the Landlord to compensate the Tenants for it. However, this fee is another example of the impact of the Landlord's mistakes.

language in the Regulations, Chapter 2, Section b(2) should be interpreted to exclude money actually overpaid by the Tenants due to the Landlord's mistakes and confusing records.

- V. Based on the above conclusions, the correct base rent should be recalculated to deduct the \$8835 concession that the Tenants would have applied in the first twelve months absent the Landlord's mistakes and confusing records.
- W. It is held that the correct "initial rental rate" under the circumstances of this case includes a credit for the \$8835 rent concession.
- X. The subsequent rent increases given to the Tenants by the Landlord should be recalculated to apply a base rent that includes the \$8835 concession. Under the formula set forth in Chapter 2, Section (b)(2)(ii) of the regulations, the first month of free rent under the concession will not be included in the calculation.
- Y. Since the Tenants did not file their Petition until September 26, 2023, they are only entitled to an actual rollback credit for the amount of incorrect increase they paid in the year prior to September 26, 2023. The actual rollback will be awarded beginning as of September 26, 2022, continuing through the date of this Decision.

The Utility Fees

- Z. As part of the base rent and resulting recalculation awarded herein, CSFRA Section 1702(p) must be correctly applied to determine the revised base rent. This provision of the CSFRA specifically includes utility fees within the definition of "rent." The recalculation should include the separate monthly utility charges paid by the Tenants, including the monthly trash "valet" over which the Tenants had no control.
- AA. The inclusion of utility fees in the calculation of base rent is consistent with the prior Decision in CSFRA Petition Number 22230015. This Decision was issued for a different unit in the same Rental Property involved in this case. That prior Decision included the utility fees charged to tenants at this Rental Property when calculating the base rent. This Decision had become final and binding on the Landlord prior to the date the Tenants filed their Petition in this case. The Landlord had sufficient notice that these fees were an issue in this Decision based on this prior case and based on the inclusion of these fees in the Workbook attached to the Petition in this case.⁵

VIII. AWARD

- 1) The Tenant's base rent is recalculated to \$2,632.83, applying two months of the concession that should have been included for the first twelve months of the Tenants' base rent as explained in the above Conclusions of Law. The calculation of the rent rollback owed to the

⁵ The Landlord should have unilaterally made a corrected calculation to include the utility fees prior to the Hearing in this case. Once the prior Decision in CSFRA Petition Number 22230015 became final, the same calculation should have applied to the Tenants in this case.

Tenants as of the year prior to the date they filed their Petition is set forth in the attached Appendix A.

- 2) The calculation of the rollback also includes the monthly utility and related fees paid by the Tenants during the relevant time period. The resulting calculation is also set forth in Appendix A.
- 3) The Landlord shall apply the total rent rollback credit set forth in Appendix A to the Tenants' impending monthly rent payments within 30 days after the Decision becomes final, as follows:
 - a. 34% of the total actual rollback credit should be applied to the next monthly rent payment otherwise due from the Tenants [Month 1];
 - b. 33% should be applied as a credit to the following monthly rent payment otherwise due from the Tenants [Month 2];
 - c. 33% should be applied as a credit to the following monthly rent payment otherwise due [Month 3].
- 4) If the Tenants terminate their tenancy in their current Rental Unit at this Rental Property before the rent rollback credits have been fully applied to their monthly rental obligation, any remaining roll back credit not fully applied shall be refunded directly to the Tenants 30 days after they completely vacate their Rental Unit.
- 5) Since the Landlord is continuing to collect monthly rent in an amount that violates the CSFRA, the Tenants' current monthly rent should be reduced to the base rent set forth above from the date this decision becomes final and any amounts paid by tenant that exceed the base rent needs to be refunded to the tenant in addition to the amounts set forth in Exhibit A. This recalculation is a component of the Award in response to the Petition herein. It is not a replacement for, or a waiver of the CSFRA and State of California rules applicable to lawful rent increases.
- 6) If a dispute arises as to whether any party has failed to comply with any other aspect of this Decision, any party may also request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, Section J(1).

Dated: March 14, 2024

A handwritten signature in blue ink, appearing to read "Martin Eichner", written over a horizontal line.

Martin Eichner
Hearing Officer

**Appendix A
Award Schedule**

100 N Whisman Rd [REDACTED] - RHC Petition# C23240021

Hearing Officer Decision re Base Rent

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Actual Additional Services Paid
02/2021	excluded from calculation	\$ 189.66	\$ 25.00
03/2021	\$ 2,945.00	\$ 199.68	\$ 25.00
04/2021	\$ 2,945.00	\$ 204.40	\$ 25.00
05/2021	\$ 2,945.00	\$ 200.40	\$ 25.00
06/2021	\$ 2,945.00	\$ 199.79	\$ 25.00
07/2021	\$ 2,945.00	\$ 192.25	\$ 25.00
08/2021	\$ 2,945.00	\$ 191.72	\$ 25.00
09/2021	\$ 2,945.00	\$ 196.36	\$ 25.00
10/2021	\$ 2,945.00	\$ 202.36	\$ 25.00
11/2021	\$ 2,945.00	\$ 201.74	\$ 25.00
12/2021	\$ -	\$ 204.40	\$ 25.00
01/2022	\$ -	\$ 196.68	\$ 25.00
Totals	\$ 26,505.00	\$ 2,379.44	\$ 300.00
12-month average	\$ 2,409.55	\$ 198.29	\$ 25.00
BASE RENT		\$ 2,632.83	

Hearing Officer Decision

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Actual Additional Services Paid	Lawful Rent	Rent Payments in Excess by Petitioner
10/2022	\$ 3,003.90	\$ 199.10	\$ 25.00	\$ 2,632.83	\$ 595.17
11/2022	\$ 3,003.90	\$ 147.72	\$ 25.00	\$ 2,632.83	\$ 543.79
12/2022	\$ 3,003.90	\$ 192.52	\$ 25.00	\$ 2,632.83	\$ 588.59
01/2023	\$ 3,003.90	\$ 203.71	\$ 25.00	\$ 2,632.83	\$ 599.78
02/2023	\$ 3,003.90	\$ 204.40	\$ 25.00	\$ 2,632.83	\$ 600.47
03/2023	\$ 3,003.90	\$ 193.05	\$ 25.00	\$ 2,632.83	\$ 589.12
04/2023	\$ 3,003.90	\$ 180.54	\$ 25.00	\$ 2,632.83	\$ 576.61
05/2023	\$ 3,003.90	\$ 204.40	\$ 25.00	\$ 2,632.83	\$ 600.47
06/2023	\$ 3,003.90	\$ 190.36	\$ 25.00	\$ 2,632.83	\$ 586.43
07/2023	\$ 3,003.90	\$ 185.12	\$ 25.00	\$ 2,632.83	\$ 581.19
08/2023	\$ 3,154.10	\$ 184.44	\$ 25.00	\$ 2,632.83	\$ 730.71
09/2023	\$ 3,154.10	\$ 182.84	\$ 25.00	\$ 2,632.83	\$ 729.11
10/2023	if necessary	if necessary	if necessary	\$ 2,632.83	if necessary
11/2023	if necessary	if necessary	if necessary	\$ 2,632.83	if necessary
12/2023	if necessary	if necessary	if necessary	\$ 2,632.83	if necessary
1/2024	if necessary	if necessary	if necessary	\$ 2,632.83	if necessary
2/2024	if necessary	if necessary	if necessary	\$ 2,632.83	if necessary
3/2024	if necessary	if necessary	if necessary	\$ 2,632.83	if necessary
TOTAL**					\$ 7,321.44

Credit Schedule

Month/Year of Rent Payment	Monthly Rent Owed including Utilities (Base Rent)	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
4/2024*	\$ 2,632.83	\$ 2,489.29	\$ 143.54
5/2024	\$ 2,632.83	\$ 2,416.08	\$ 216.75
6/2024	\$ 2,632.83	\$ 2,416.07	\$ 216.76
7/2024	if necessary	if necessary	if necessary
8/2024	if necessary	if necessary	if necessary
9/2024	if necessary	if necessary	if necessary
TOTAL**		\$ 7,321.44	

* If the Decision does not become final by March 2024, rent credits shall begin to be applied the next month after the Decision becomes final.

** The total does not include the potential amounts overpaid after 9/2023.