

CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

HEARING OFFICER DECISION

PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT (“CSFRA”)

Type of Petition	Tenant Pétition C – Undue Tenant Hardship
Case No:	22230002
Property Address:	141 Del Medio, Mountain View CA 94040
Affected Unit{s}:	Numbers [REDACTED]
Petitioner Tenant Name(s):	Leah Symekher
Respondent Landlord Names(s)	Del Medio Manor, LLP and Calson Property Management
Hearing Officer:	Martin Eichner
Dates of Hearings:	October 6, 2022
Date Record Closed	October 6, 2022
Date of Mailing:	(See Attached Proof of Service)

I. Statement Of The Case And Procedural History To Date

- a. A Tenant Petition C – Undue Tenant Hardship was filed on August 5, 2022, by the above-named Tenant Petitioner, hereafter “Tenant.” The Petition was filed pursuant to the Community Stabilization and Fair Rent Act, hereafter “CSFRA.” The Petition named Calson Property Management as the Landlord, hereafter “Landlord,” for the rental property occupied by the Tenant.¹
- b. A Notice of Submission was completed on August 16, 2022.
- c. The Landlord filed a Response on September 13, 2022.
- d. A Pre-Hearing Conference was held for the parties in this case and related cases at the same rental property on September 30, 2022, utilizing the Zoom platform. The Conference was conducted by Martin Eichner, the Hearing Officer assigned to decide these Petitions. The Hearing Officer issued a Pre-Hearing Order summarizing the verbal explanation and directives given at this Conference.
- e. As part of the Pre-Hearing Conference, the Tenants in units [REDACTED] and [REDACTED] requested that their cases be consolidated for Hearing, a request that was granted by the Hearing

¹. As noted above, the owner of the rental property is Del Medio Manor LLP, which is also included in the term Landlord used herein.

Officer. As part of that request, both Tenants waived any privacy issues between themselves. The consolidated Hearing for these two Petitions was held on October 6, 2022, utilizing the Zoom platform.² The witnesses who presented testimony relevant to this case are listed below.

- f. The Hearing was completed on October 6, 2022. The Hearing record was closed at the conclusion of the October 6 Hearing, resulting in this Decision being due 30 days thereafter.

II. Attendees at the Hearing

The following parties attended the consolidated Hearing and provided testimony under oath and other input for the record of this case³:

Tenant-Petitioner [Unit [REDACTED]]:

Leah Symekher

For the Landlord Del Medio Manor LLC

Gina Frye and Lydia Sanabria, employees of Calson Property Management

On Behalf of the City of Mountain View Rent Stabilization Program

Patricia Black, Senior Management Analyst

III. Documentary Evidence

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

Hearing Officer Exhibits

HO Ex. 1 – October 3, 2022 Pre-Hearing Order

HO Ex. 2 – September 23, 2022 Notice of Pre-Hearing Conference

HO Ex. 3 – Notice for October 6, 2022 Hearing

HO Ex. 4 – Notice of Settlement Conference

HO Ex. 5 – CSFRA Registration Documents for this rental property

² Although the two cases were consolidated for hearing purposes, separate decisions are being issued for each case. This Decision applies only to Tenant Leah Symekher in Unit [REDACTED], Case Number 22230002.

³ Joann Pham, City of Mountain View Rent Stabilization Program Staff, also participated to provide administrative support.

HO Ex. 6 – City of Mountain View property inspection records for this rental property for inspections and compliance activities in 2015

HO Ex. 7 – Email from City of Mountain Staff Rent Stabilization Staff concerning CSFRA property registration status as of September 30, 2022

HO Ex. 8 – October 6 email from Patricia Black to Del Medio Manor regarding registration status

HO Ex. 9 – October 10, 2022 Email from Andrea Kennedy, City of Mountain View Rent Stabilization Program indicating that the Landlord had registered all units at the property as of that date.

T Ex. 1 – August 5, 2022 Tenant C Hardship Petition with financial and other worksheet attachments and Addendum

T Ex. 2 – August 16, 2022 Notice of Submission of Petition served on the Landlord

T Ex. 3 – 2020 Wages and Salary Statement

T Ex. 4 – December 3, 2005 Lease

T Ex. 5 – August 19, 2022 Compensation Statement from [REDACTED]

T Ex. 6 – June 19, 2022 Leave of Absence form from [REDACTED]

T Ex. 7 – [REDACTED] LOA documents

T Ex. 8 – Response to Landlord rent increase

T Ex. 9 – Wages and bank statements referencing 2021 income

T Ex. 10 – April 4, 2021 Tenant's [REDACTED]

T Ex. 11 – Rent increase notices for 2016 and 2017

T Ex. 12 – Lease renewal letter for 2019

LL Ex. 1 – September 13, 2022 Landlord response to the Tenant Petition

LL Ex. 2 – August 1, 2022 email to residents explaining computation of most recent rent increase

LL Ex. 3 – July 29, 2022 Notice of Rent Increase

LL Ex. 4 – Database summary of rent history prepared by the Landlord

LL Ex. 5 – Tenant ledger maintained by the Landlord applicable to this Tenant

IV. Summary of Relevant Evidence

Testimony from Tenant-Petitioner Leah Symekher

She has been a tenant in rental unit number [REDACTED] at this property since 2005, as documented in T Ex. 4. Her niece lived with her for an approximate two-year time period in 2016-2017. No one else has lived with her since then.

Her initial rent for this unit, as documented in LL Ex. 5, was \$865 per month. Based on the Landlord Ledger, [LL Ex. 5], Her monthly rent as of 12/1/2018 was \$1391, and then as of 12/1/2019, it was increased to \$1459. As per LL Ex. 3, her monthly rent was increased as of September 1, 2022 to \$1603, an amount she has been paying since then.

She asserts that the undue hardship rent adjustment that should be applied to her is the CSFRA category for inadequate household income. This category recognizes a hardship for a single income earner whose income is below the applicable AMI in this area, which is set as \$117,950. Her actual income has been significantly below this standard. As of July 2022, her total annualized income was [REDACTED], composed of [REDACTED] at that time. Her annualized income for the year 2021, prior to her [REDACTED], was [REDACTED]. This income was based on her holding two jobs, one at [REDACTED] and one at [REDACTED]. She was a [REDACTED] in the [REDACTED] and was a [REDACTED] at [REDACTED]. Her income for 2020 was [REDACTED].

She returned to her job at [REDACTED] on September 19, 2022, but [REDACTED] has been unable to accommodate a return to work for her.

She has not had any other income, including passive or investment income and she did not receive any Covid-19 rent relief payments. She has the unusual expense of her pending [REDACTED]. [T Ex. 10].

She enjoys living in this diverse community and values the level of rent obligation, which is consistent with her level of income. She has made her rent payments despite her [REDACTED], and she keeps her unit well maintained. She was surprised at the recent September 1 increase of almost 10%; she wasn't aware of the rules for banked increases. She pays her utility bill in addition to the monthly rent.

Testimony from Gina Frye on behalf of the Landlord

She doesn't dispute any of the testimony from the Tenant in this case concerning her income and rental history.

There are a total of 104 rental units on this property at 141 Del Medio. She applies a "different set of rules" for the units subject to the CSFRA. These rules include the right to use banked increases from 2020 and 2021. They did not increase rent for these units in 2020 or 2021. The rent increase in July 2022 included the 5% AGA for that year, combined with

banked increases from those prior years 2020 and 2021, which were 2.9% and 2.0%. The total increase with the banked increases was 9.9%. They did not increase the rent for all the units at the same time because certain tenants had different rent cycles. The renters with longer tenure did receive the same September 1, 2022 increase of 9.9%, a total of 39 at that time. Of those, four filed hardship petitions.

To her knowledge, she has complied with all CSFRA requirements applicable to this property. She is not aware of any pending notices from Mountain View Code Enforcement about code violations. There was a notice about two weeks ago from the fire department concerning chemicals left in a storage room, which was promptly resolved.

If these units were at market level, the monthly rent would be \$2350. Also, their policy is that a new prospective tenant would have to demonstrate income of three times the monthly rent, which Leah could not meet. However, Leah is a good tenant and her tenancy is in good standing.

Further Testimony from Tenant-Petitioner Leah Symekher

Prior rent increases have provided a fair rent of return for the Landlord. She has paid all those prior increases. She and other tenants filed a case in 2016 over the application of the CSFRA to long-time tenants, which she viewed as retaliation.

She believes she is entitled to respect as a long-time tenant in good standing.

Testimony from Patricia Black

She is a Senior Management Analyst employed by the City of Mountain View Rent Stabilization Program. As such she is familiar with the CSFRA registration requirements and the resulting landlord registration records. The applicable records show that this rental property has not been registered as required by the CSFRA, as of the time of this morning's Hearing. Relevant correspondence, such as HO Exs.7 and 8, document notice to the Landlord that it has not complied with the registration requirements.

V. Issues Presented

1. Does this Tenant qualify under the undue hardship criteria set forth in CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations promulgated thereunder, more specifically under the applicable provisions for a household with inadequate income as alleged in the Tenant's Petition, Pursuant to Reg. Chap. 7(C)(2)(a)?
2. Are there "banked increases" applied by the Landlord to this Tenant during the relevant time period that would be subject to reduction under the above undue hardship criteria and, if so, how should the reduction be computed?

3. Should any such rent increase modification be subject to adjustment due to Landlord issues such as the right to a fair return or the market rental value of the Tenant's rental unit?
4. Is any rent increase subject to this Tenant Petition subject to further modification based on the Landlord's CSFRA compliance status?

VI. Findings of Fact Supporting this Decision

1. The Tenant in this case has occupied rental unit number [REDACTED] located on the rental property at 141 Del Medio in the City of Mountain View since 2005. She has lived alone in this unit since 2018.
2. The property is owned by Del Medio Manor, LLP. The property manager is Calson Property Management.
1. The Tenant's initial 2005 monthly rent was set at \$865. Thereafter the Landlord periodically raised the Tenant's monthly rent. As of 2016, the monthly rent paid by the Tenant was subject to the CSFRA limits on rent increases.
2. The Landlord did not increase the Tenant's monthly rent during the years 2020 and 2021.
3. As of the beginning of 2022, the Tenant was paying monthly rent in the amount of \$1459. In a notice from the Landlord dated July 29, 2022, [LL Ex. 3], the Tenant's rent was increased to \$1603 per month as of September 1, 2022.
4. The Tenant's September 1, 2022 monthly rent increase to \$1603 was based in part on the Landlord's application of "banked" increases for those permissible AGA increases that were not imposed on the Tenant in the prior years 2020 and 2021.
5. According to the testimony of the Landlord's representative, the Landlord's computation of the September 1, 2022 increase included banked increases of 2.9% and 2.0%, which when combined with the 5% AGA, resulted in a total increase of 9.9%.
6. The Tenant Hardship Petition filed by the Tenant, [T Ex. 1], was filed on a timely basis. It was filed on August 5, 2022 prior to the September 1, 2022 effective date for the rent increase at issue in this case.
7. The Tenant has been paying the increased monthly rent amount since September 1, 2022.
8. Of the 104 total rental units located on this property, 39 received rent increases that became effective as of September 1, 2022. Those increases included banked amounts. Of those 39, 4 filed hardship petitions, which amounts to approximately 10% of the affected units.

9. The Tenant's annualized income as of September 2022 was significantly lower than \$117,950, the applicable one hundred percent (100%) of the median household income for Santa Clara County as adjusted for household size, according to the California Department of Housing and Community Development. As of July 2022, her total annualized income was [REDACTED], at that time composed entirely of [REDACTED], as evidenced by T Exs. 5, 6 and 7.
10. Furthermore, the Tenant's income has been significantly lower for a representative period of time prior to September 2022. Her annualized income for the year prior to her [REDACTED] was [REDACTED]. This income in the year prior was based on her holding two jobs, one at [REDACTED] and one at [REDACTED]. She was a [REDACTED] in the [REDACTED] and was a [REDACTED] at [REDACTED]. Her income for 2020 was [REDACTED]. The Tenant's places of employment and resulting income levels are documented in T Exs. 3 and 9, as well as the Tenant's credible testimony.
11. The Tenant testified credibly that she has no other sources of income, including passive income such as income from investments.
12. The Landlord did not dispute any of the Tenant's testimony or documentary evidence describing her income.
13. The Tenant subsequently returned to her employment at [REDACTED] after she filed her Petition; but based on her income evidence, her income remains significantly below the undue hardship level.
14. In assessing the Tenant's undue hardship, it is also relevant that she has a substantial [REDACTED] owed to [REDACTED], as evidenced in T Ex.10.
15. The Landlord's representative testified credibly that a recent fire department inspection was promptly resolved.
16. The relevant evidence, [HO Exs. 7, 8 and 9], demonstrates that the Landlord was notified that it had not complied with the registration requirements of the CSFRA at the time the Petition in this case was filed. The Landlord remained non-compliant until registration was completed and accepted by the City on October 10, 2022.

VII. CONCLUSIONS OF LAW

- A. The rental property and the unit occupied by the Tenant in this case are subject to the jurisdiction of the CSFRA.
- B. The September 1, 2022 monthly rental increase given to the Tenant by the Landlord was based in part on the Landlord's application of "banked" increases permitted by Section 1707(d) of the CSFRA. This provision of the CSFRA permits the use of banked increases. However, this same section of the CSFRA along with Chapter 7, Section C of

the Regulations established to implement the banking provisions, renders any such banked increases subject to the “undue hardship” sections of these same provisions.

- C. The Tenant filed a timely Undue Tenant Hardship Petition within the timeframe established by Reg. Chap. 7(C)(1)(b) seeking a reduction in the portion of her September 1, 2022 increase attributable to banked increases.
- D. Pursuant to Reg. Chap. 7(C)(1)(c), the petitioning Tenant has the burden of proving the undue hardship claim.
- E. Since the Tenant’s applicable household income during the applicable period has been proven to be significantly below 100% of the median household income for Santa Clara County as adjusted for her household size, it is presumed that the Tenant meets the applicable undue hardship criteria set forth in CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations. Specifically, the Tenant has proven that she meets the applicable provisions for a household with inadequate income pursuant to Reg. Chap. 7(C)(2)(a). There is no basis in the Hearing record for this case that rebuts or refutes this presumption.
- F. Based on these conclusions, the Tenant is entitled to relief from the undue hardship she has proven, pursuant to Reg. Chap. 7(C)(6). Specifically, she is entitled to a reduction in her monthly rent obligation equivalent to the banked increases imposed on her as of September 1, 2022. The Tenant is entitled to a rebate of any such banked increases she has paid since September 1, 2022.
- G. The circumstances of the Tenant’s income indicate that her undue hardship will continue for the foreseeable future, even if she returns to both her prior employment positions
- H. The reduction in rent awarded to the Tenant in response to her Petition does not interfere with the Landlord’s overall right to a fair return for its investment in this property. The great majority of other units on this property are paying the banked increases implemented by the Landlord at the same time, approximately 90% of the affected units. The Landlord’s right to a fair return is further protected by the fact that this Tenant and all other affected tenants are paying the full AGA for 2022. It is relevant that the Landlord did not file its own Petition asserting that a rent increase was necessary to provide a fair return.
- I. The Landlord’s related assertion that the rent being paid by the Tenant is “grossly under market” is not a factor that the CSFRA permits a hearing officer to consider when determining an undue tenant hardship petition.
- J. Based on its failure to comply with its registration requirements under CSFRA Reg. Chap. 11(B)(1) and 11(F), a landlord’s failure to register constitutes “substantial noncompliance” with the CSFRA. Under Section 1707(f)(1) “no rent increase shall be effective” where the Landlord is in substantial noncompliance with any provision of the

CSFRA or its Regulations. The failure of the Landlord in this case to comply with the registration requirements in the CSFRA Regulations prior to October 10, 2022 precluded the Landlord from instituting any rent increase, including any AGA or any banked increases, prior to October 10, 2022. The Tenant is entitled to a rebate of the entire amount of the rent increase she paid in addition to her prior monthly rental obligation from September 1 through October 9, 2022.

VIII. AWARD

- i. The monthly rental obligation of the Tenant in this case for the time period between September 1, 2022 and October 9, 2022 is reduced for the entire amount of the rent increase imposed by the Landlord. That reduction includes both the AGA increase for 2022 as well as all banked increases for this time period.
- ii. The rental obligation of the Tenant in this case from October 10, 2022 through August 31, 2023 is reduced by any banked increase amount she has paid that exceeds the 5% AGA increase implemented as of September 1, 2022.
- iii. The Tenant will remain obligated to pay the 2022 AGA increase during the October 10, 2022 through August 31, 2023 time period.
- iv. Whether the Landlord can apply any banked increase to the Tenant's rental obligation at any time after August 31, 2023 is not within the scope of this Decision.
- v. Any rental amounts that the Tenant has paid since September 1, 2022 for rent increases that exceed the reduced rental obligation under this Award shall be applied as a rent credit to the Tenant's monthly rent obligation for the first monthly rent period that occurs after this Decision become final. If the Tenant has vacated her rental unit prior to the date this credit would be applicable, the Landlord shall pay the amount of the credit to the Tenant directly after this Decision become final.

Dated: November 4, 2022

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

Martin Eichner
Hearing Officer