

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

<b>Rental Housing Committee Case No.:</b>	22230015
<b>Address and Unit(s) of Rental Property:</b>	100 N. Whisman Rd. [REDACTED] Mountain View, CA 94043
<b>Petitioner Tenant Name(s):</b>	Lyubomir Grigorov, Bobbi Jo Cannizzaro
<b>Respondent Landlord Name(s):</b>	SI VI LLC
<b>Property Manager Name:</b>	Greystar California, Inc., DeAnna Verduzco, Community Manager
<b>Date(s) of Hearing:</b>	February 22, 2023
<b>Place of Hearing:</b>	Online via Zoom
<b>Date Hearing Record Closed:</b>	February 24, 2023
<b>Date of Decision:</b>	March 23, 2023
<b>Date of Mailing:</b>	See attached Proof of Service.
<b>Hearing Officer:</b>	Barbara M. Anscher

**I. PROCEDURAL HISTORY**

1. On December 15, 2022, Petitioners Lyubomir Grigorov and Bobbi Jo Cannizzaro (“Petitioners” or “Tenants”) filed with the City of Mountain View Rent Stabilization Program (the “City”) a Petition for a downward rent adjustment, specifically Petition A: Downward Rent Adjustment—Unlawful Rent as Defined by the CSFRA (the “Petition”) for 100 North Whisman Road, Unit # [REDACTED] (the “Affected Unit”).
2. A Notice of Acceptance of Petition was served electronically by the City on January 17, 2023.

3. A Notice of Prehearing Meeting and Hearing Date was also served electronically by the City on January 17, 2023, scheduling a prehearing video conference for February 8, 2023 and a hearing for February 22, 2023.
4. A prehearing video conference was held on February 8, 2023, as duly noticed. At the prehearing conference, the Hearing Officer explained hearing procedure, answered the parties' questions, and discussed whether additional evidence would be requested. At that time, Respondent's representative, Heather Austin, stipulated that Respondent would file a response to the Petition.
5. On February 8, 2023, the Hearing Officer issued an Order, setting a deadline of February 13, 2023 for filing additional documents. A Notice of Hearing Officer's Written Order and Summary of Prehearing Telephone Conference and Notice of Hearing were served electronically on the parties by the City on February 10, 2023.
6. Respondent filed a Response on February 13, 2023, as stipulated.
7. A Hearing was held on February 22, 2023 at 10:00 a.m., as duly noticed.
8. After the Hearing, the Hearing Officer issued an Order, dated February 22, 2023, requesting from Respondent the tenant ledger showing February charges to Petitioners. Respondent filed the ledger on that same date.
9. The Record was closed on February 24, 2023.

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

The following parties attended the Hearing: Petitioners Lyubomir Grigorov and Bobbi Jo Cannizzaro; Community Manager DeAnna Verduzco, Greystar California, Inc. ("Property Manager") and Assistant Community Manager Chelsea Araujo, on behalf of Respondent Landlord SI VI LLC.

For the City, Joann Pham, Analyst I, was present.

## **III. WITNESSES**

The following persons, duly sworn, testified at the Hearing and presented the following testimony:

### Lyubomir Grigorov

Mr. Grigorov testified that two issues need to be addressed: (1) miscalculation of the Base Rent, and (2) the application of the AGA (Annual General Adjustment) to an incorrect amount due to miscalculation of the Base Rent. He said that it was his understanding that under the CSFRA, the Base Rent should be calculated on the average of the first 12 months of what was actually paid by Petitioners to Respondent, even though the initial lease term as written in the lease was 18 months. He also said that during the initial term, Petitioners paid less than the full amount stated in the lease because they were given \$8,055.00 in rent concessions up front. He added that the rent increase imposed after the 18-month term of the lease ended, on June 16, 2022, was not calculated from the accurate Base Rent because it was based on the rent stated

in the lease, \$2,685.00, rather than the amounts actually paid during the first 12 months. Factoring in the 12-month initial rent period and the rent concessions, he believes that the Base Rent should be \$2,153.86. Using that Base Rent for calculating rent increases, he stated that the June 16, 2022 rent increase should have increased the rent to \$2,196.94.

Mr. Grigorov testified that his calculations are based on tenant rent ledgers obtained from Property Manager; he is only able to see what he owes on a monthly basis through Respondent's portal. He said that rent payments Petitioners made for the initial 12 months of the lease were based approximately on dividing the total rent concessions of \$8,055.00 into more or less equal numbers over 18 months and applying that amount each month as a credit against the amount owed for rent, utilities and other services; Petitioners would then pay out of pocket for the balance owed for the remainder of the rent, utilities and services.

Mr. Grigorov testified that along with payment for the rent of the physical space, Petitioners were billed each month for gas, sewer, trash, and water, which included a monthly \$4.40 fee, and they also paid for valet trash pickup and renter's insurance, both of which were mandatory. He said the utilities and other charges were pooled and averaged among all of the tenants occupying the Property.

Mr. Grigorov stated that in calculating the Base Rent, he took the average of what Petitioners actually paid out of pocket to Respondent over the first 12 months of the lease, omitting utilities and other housing services. He said he believed the averaging should not have exempted the first full month of rent concessions because his understanding of the CSFRA is that in order to omit the first full month's rent concession, the lease should have specifically indicated that the rent concessions were to be applied in the first full month of the lease. Since the rent concessions were paid out in a lump sum and could be applied at any time during the 18-month term of the lease, the first full month's concession should be included in the Base Rent calculation. However, he added that he had help from the City in calculating the Base Rent, so he is not completely certain of how it was done.

#### DeAnna Verduzco

Ms. Verduzco stipulated in her testimony that Petitioners are owed a refund due to miscalculation of the Base Rent; however, she calculates that amount differently than Petitioners do. She said that looking at CSFRA Regulation 2, example 2, she came to the conclusion that since Petitioners received three months' free rent through rent concessions, the first full month's rent would be considered a rent concession and would be excluded from the calculation of Base Rent, and the other two months' rent concessions would be included. She also believes that the Base Rent should be calculated based on the initial term of the lease as stated in the lease, which was 18 months. Her methodology for calculating the Base Rent is thus  $(15 \times \$2,685.00)/16$ , which equals \$2,517.18. This calculation excludes an entire month of the rent listed in the lease, i.e., \$2,685.00. She stated that she believes that the rent increase effective June 16, 2022 should have been calculated using Base Rent of \$2,517.18. The two

percent increase on June 16, 2022 would have resulted in rent of \$2,567.52. She said that according to her calculations, due to this error, Petitioners are owed a refund of \$1,454.95 for the period of June 16, 2022 through February 28, 2023. This amount is based on a rent differential of \$171.17 per month (the actual increased rent of \$2,738.70 less the amount that the increased rent should have been--\$2,567.52).

Ms. Verduzco also testified that the utilities—water, sewer, trash, and gas—are calculated by a third-party vendor using a RUBS (ratio utility billing) system. The \$4.40 charged each month is a fee that the third-party vendor bills for its services. She confirmed that the Petitioners also pay for renter’s insurance and valet trash service on a monthly basis.

#### **IV. EVIDENCE**

The following documents were submitted prior to the Hearing and marked and admitted into evidence without objection:

##### Hearing Officer’s Exhibits

Exhibit 1: Notice of Acceptance of Petition with accompanying CSFRA Hearing Information Sheet and Authorized Representative Form, dated 1/17/2023, with proof of service

Exhibit 2: Notice of Prehearing Meeting and Hearing Date and accompanying CSFRA Hearing Information Sheet, dated 1/17/2023, with proof of service

Exhibit 3: Follow-up Information for Petition, with accompanying CSFRA Hearing Information Sheet, Response Notice Form, Authorized Representative Form, Filed Copy of Tenant Petition A, Workbook, and Notice of Submission and Proof of Service, dated 1/17/2023

Exhibit 4: Notice of Hearing Officer Written Order and Summary of Pre-hearing Telephone Conference and Notice of Hearing, dated 2/10/2023

Exhibit 5: Hearing Officer Order, dated 2/8/2023

##### Petitioners’ Exhibits

Exhibit 1: Petition for Downward Adjustment of Rent, dated 12/15/2022

Exhibit 2: Notice of Submission and Proof of Service to Landlord of Petition Requesting Downward Adjustment of Rent, dated 12/15/2022

Exhibit 3: Tenant Petition A: Unlawful Rent Workbook, containing three worksheets, submitted with Tenant Petition

Exhibit 4: Lease Contract for 100 North Whisman Road [REDACTED], dated December 14, 2020, for a lease term of 12/16/2020 through 6/15/2022, signed by Petitioners and DeAnna Verduzco, with Addenda

Exhibit 5: Greystar Purged Resident Ledger, dated 10/27/2022, covering 12/1/2020 through 3/1/2022

Exhibit 6: Greystar Purged Resident Ledger, dated 1/19/2023, covering 12/1/2020 through 3/1/2022

Exhibit 7: Greystar Resident Ledger, dated 1/19/2023, covering 12/16/2020, and 4/1/2022 through 1/3/2023

Exhibit 8: Attachment to Notice of 2022 Annual General Adjustment of Rent, dated 4/27/2022

#### Respondent's Exhibits

Exhibit 1: Petition Response Notice, dated 2/13/2023

Exhibit 2: CSFRA Regulations Chapter 2

Exhibit 3: Lease Contract for 100 North Whisman Road [REDACTED], dated December 14, 2020, without Addenda

Exhibit 4: Attachment to Notice of 2022 Annual General Adjustment of Rent, dated 4/27/2022

The following documents were submitted post-Hearing and were marked and admitted into evidence without objection:

Hearing Officer's Exhibit 6: Notice of Hearing Officer Post-Hearing Order, dated 2/22/2023, with proof of service

Hearing Officer's Exhibit 7: Post-Hearing Order, dated 2/22/2023

Respondent's Exhibit 5: Resident Ledger, dated 2/22/2023, for the time period of 12/16/2020 and 4/1/2022 through 2/4/2023

#### **V. ISSUES PRESENTED**

1. Whether Respondent made unlawful rent increases under the CSFRA because they failed to take rent concessions into account in calculating the Base Rent.
2. Whether Respondent increased rent more than once within a twelve-month period in contravention of the CSFRA.

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

1. Petitioners entered into a Lease Contract with Respondent on December 14, 2020 for the Affected Unit (the "Lease"). The Affected Unit is a two-bedroom Rental Unit in a complex known as Central Park at Whisman Station, which has 354 Rental Units (the "Property").
2. The term of the Lease as stated in Paragraph 2 was eighteen months, from December 16, 2020 through June 15, 2022.

3. The Lease lists the “Base Rent” and “Total Monthly Payment” as \$2,685.00.
4. The Lease granted a one-time rent concession of \$8,055.00, which was credited to Petitioners’ balance on Respondent’s tenant ledger as of December 18, 2020. The description in the ledger states the amount is for “3 Months Free Concession.” A “Concession Addendum” appended to the Lease states that the rent concession of \$8,055.00 is a one-time amount for three months free rent to be applied in January 2021.
5. A “Utilities Addendum” appended to the Lease states that water, sewer, trash and gas are billed to the Respondent by the provider and then allocated to the Tenants by a third-party service using a ratio occupancy formula based on the number of occupants of each rental unit.
6. The \$8,055.00 rent concession provided by Respondent under the Lease was posted in one lump sum that could be used at any time during the 18-month term of the Lease to pay for the cost of the physical space in the Affected Unit (the “premises rent”) as well as for utilities and housing services. Utilities treated this way included gas, water, sewer, and trash. The third-party billing service which allocated the utilities payments charged a monthly service fee of \$4.40 which was billed to Tenants. Housing services charged to Tenants included renter’s insurance and valet trash collection, both of which were required under the Lease and automatically billed each month.
7. Between December 16, 2020 and February 1, 2022, each month Petitioners would pay Respondent an amount of their choosing. If that amount did not cover all of the premises rent, utilities, and services that Respondent demanded for that month, then Respondent would apply the rent concession balance to cover what was owed.
8. Utilities were generally billed two months in arrears.
9. As of March 3, 2022, once the rent concessions were used up, Petitioners began paying \$2,685.00 plus utilities and services each month.
10. On April 27, 2022, Respondent served a notice of a two percent rent increase from \$2,685.00 to \$2,738.70, effective June 16, 2022.
11. Petitioners paid \$2,711.85 for premises rent, plus utilities and services, for June 2022, \$2,738.70 for premises rent, plus utilities and services for July 2022, and \$2,763.70 for premises rent, plus utilities and services for August 2022. As of September 2022, they have been paying \$2,738.70 per month for premises rent, plus utilities and housing services.
12. Petitioners filed a Petition for downward adjustment of rent on December 15, 2022.

## **VII. DISCUSSION**

Pursuant to CSFRA Section 1710(d), a Tenant may file a Petition for a downward rent adjustment if the Tenant believes that a Landlord has demanded or retained rent in excess of the lawful amount set forth in the CSFRA. The Tenant bears the burden of proof by a preponderance of the evidence. See CSFRA Section 1711(h) and Regulations Ch. 5, Section (G)(2) and (3).

## Base Rent

CSFRA Section 1702(b)(2) defines Base Rent for tenancies commenced after October 19, 2015 as “the initial rental rate charged upon initial occupancy.” It further states that “[t]he term ‘initial rental rate’ means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy.” Regulations Ch. 2, Section (b)(2) elaborates upon this definition, stating that “‘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.” For cases involving temporary rent concessions during the initial term, “the ‘initial rental rate’ shall be the average amount of Rent actually demanded to be paid and paid by the Tenant for the initial term of the tenancy.” See CSFRA Regulations, Ch. 2, Section (b)(2)(i).

Thus, in any case where the amount of the Base Rent is at issue, it is necessary to determine exactly what the initial term of the tenancy was and the actual amounts demanded by the Landlord and paid by the Tenant for that term.

CSFRA Regulations Ch. 2, Section (b)(2)(iii) states that “if the Rental Agreement is...longer than twelve (12) months, the initial term shall mean twelve (12) months.” While the initial term set out in the Lease was 18 months, under the CSFRA only the first 12 months are counted for the purposes of calculating Base Rent. According to paragraph 2 of the Lease, its term commenced on December 16, 2020, so the initial term is December 16, 2020 through December 15, 2021. In testimony, Property Manager stated that her Base Rent calculations were done using an 18-month initial term, and therefore, Respondent’s proposed Base Rent calculations are incorrect.

In this particular case, calculating the amount of rent actually paid for the initial term presents some complexity due to the method with which Respondent configured the rent concessions. At the outset of the Lease term, Petitioners were given \$8,055.00 in rent concessions which could be applied towards rent of the physical premises, utilities, and housing services in any manner over the course of 18 months. The rent concessions were credited to the tenant rent ledger as of December 18, 2020, and, as Petitioners paid whatever out-of-pocket sums they chose to pay each month, the rent concessions credit would be applied to the balance owed.

Within this context, it is first necessary to understand what constitutes rent under the CSFRA. Each month, Respondent demanded \$2,685.00 in premises rent, reimbursement for utilities (gas, water, trash, sewer) which was calculated by an outside vendor using a ratio occupancy formula, and payment for mandatory valet trash services and renter’s insurance. The definition of rent under CSFRA Section 1702(p) includes “[a]ll periodic payments...under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for ...Utility Charges...”. The monthly premises rent charge of \$2,685.00 falls within the definition of periodic payments of rent.

Pursuant to CSFRA Section 1702(v), “Utility Charges” includes “[a]ny charges for gas, electricity, water, garbage, sewer..., or other service relating to the use and occupancy of a Rental Unit.”

Through a third-party vendor, Respondent charged Petitioners for water, garbage, sewer, and gas, all of which fall within the CSFRA's definition of "Utility Charges." Additionally, the \$4.40 monthly charge by the third-party vendor which calculated the allocation of utilities payments constituted a mandatory fee connected to the payment of utilities and therefore falls within the category of "other service relating to the use and occupancy of a Rental Unit." Because each of these charges was (1) demanded by Respondent to be paid by Petitioners (2) for the Petitioners' continued use and occupancy of the Affected Unit, these charges constitute Rent under the CSFRA.

Under CSFRA section 1702(h), "Housing Services include, but are not limited to...refuse removal..., and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit." The valet trash service – which picks up Petitioners' trash on a regular basis rather than having Petitioners dispose of their own trash in communal bins – qualifies as "refuse removal" because not only is payment for this service mandatory but also it is the only method of trash disposal available to Petitioners. The mandatory payments for renter's insurance constitute a benefit connected with the use or occupancy of the Affected Unit. Thus, these charges also fall within the definition of rent under the CSFRA.

Given these definitions, in order to calculate the rent actually paid by Petitioners for the first 12 months of the Lease term, one must determine what Petitioners paid out of pocket for the premises rent, utilities, and housing services. While Respondent billed Petitioners for utilities and housing services two months in arrears, it is necessary to look at the utilities and housing services amounts as accrued, not as billed, so as to accurately encompass what Petitioners had to pay for the first 12 months of the Lease. The CSFRA states that "[t]he term 'initial rental rate' means only the amount of Rent actually paid by the Tenant **for** the initial term of the tenancy." (CSFRA Section 1702(b)(2) (emphasis added)). In order to calculate what Petitioners actually paid **for** (rather than **during**) the first 12 months, one must consider what utilities and housing services they paid for that period regardless of when those utilities and housing services were billed. The chart below sets out Petitioners' rent payments for the initial term, separating out the payments for premises rent, utilities, and housing services. As can be seen, the amount paid out of pocket by Petitioners fluctuated from month to month.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Additional Services Paid	Total Rent Payments	Premises Rent Charged to Petitioners	Concession Used <sup>1</sup>
12/16/2020-12/31/2021	\$1,218.31	\$90.50	\$14.50	\$1,323.31 <sup>2</sup>	\$1,385.81	\$167.50

<sup>1</sup> Premises rent charged to Petitioners – premises rent paid.

<sup>2</sup> Calculated as follows: \$1,331.81 (amount paid by Petitioner per tenant rent ledger) - \$99.00 (security deposit) - \$14.50 (renter's insurance) = \$1,218.31, which is the amount of premises rent. \$1,218.31 + \$90.50 (utilities) + \$14.50 (renter's insurance) = \$1,323.31.



Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Additional Services Paid	Total Rent Payments	Premises Rent Charged to Petitioners	Concession Used <sup>1</sup>
1/1/2021	\$2,056.63	\$166.87	\$14.50	\$2,238.00	\$2,685.00	\$628.37
2/1/2021	\$2,153.11	\$160.39	\$39.50	\$2,353.00	\$2,685.00	\$531.89
3/1/2021	\$2,045.74	\$164.76	\$39.50	\$2,250.00	\$2,685.00	\$639.26
4/1/2021	\$2,053.66	\$156.84	\$39.50	\$2,250.00	\$2,685.00	\$631.34
5/1/2021	\$0.00	\$164.90	\$39.50	\$204.40	\$2,685.00	\$2,685.00
6/1/2021	\$2,342.55	\$167.95	\$39.50	\$2,550.00	\$2,685.00	\$342.45
7/1/2021	\$2,660.07	\$158.19	\$39.50	\$2,857.76	\$2,685.00	\$24.93
8/1/2021	\$2,482.00	\$170.95	\$39.50	\$2,692.45	\$2,685.00	\$203.00
9/1/2021	\$3,126.10	\$167.09	\$39.50	\$3,332.69	\$2,685.00	\$0.00
10/1/2021	\$1,987.47	\$173.03	\$39.50	\$2,200.00	\$2,685.00	\$697.53
11/1/2021	\$1,986.21	\$174.33	\$39.50	\$2,200.04	\$2,685.00	\$698.79
12/1/2021-12/15/2021	\$957.43	\$87.98	\$19.11	\$1064.52 <sup>3</sup>	\$1,299.19 <sup>4</sup>	\$341.76
Totals	\$25,069.28	\$2,003.78	\$443.11	\$27,516.17	\$32,220.00	\$7,591.82

In addition to calculating the actual rent payments, it is necessary to determine how to factor in rent concessions, particularly if there were rent concessions given in the first full month of the initial term. CSFRA Regulations Ch. 2, section (b)(2)(i) interprets the definition of “initial rental rate” in order to account for a rent concession granted by the Landlord: “If a temporary rent concession is provided by the Landlord during the initial term of the tenancy, the ‘initial rental rate’ shall be the average amount of Rent actually demanded to be paid and paid by the Tenant during the initial term of the tenancy.” Regulations Ch. 2, Section (b)(2)(ii) further states that in performing the calculation of the initial rental rate, the first full month of free or discounted rent shall not be considered. All other months in which there is free rent or discounted rent are factored into the calculation. Petitioners made use of concessions in the first full month of the initial term, i.e., January 2021; referring to the chart above, the amount of rent concessions applied to Rent in January 2021 was \$628.37.

<sup>3</sup> Calculated as follows: \$2,200.00 (total payment for the month) - \$181.82 (full monthly utilities payment) - \$39.50 (full monthly services payment) = \$1,978.68.  $(\$1,978.68/31) \times 15 = \$957.43$ .  $\$957.43 + \$87.98 + \$19.11 = \$1,064.52$ .

<sup>4</sup> Calculated as follows:  $(\$2,685/31) \times 15$

Because Petitioners' use of rent concessions does not demonstrate any consistent pattern,<sup>5</sup> it is difficult to calculate the average of the rent for the initial term using the various examples provided in CSFRA Regulations Ch 2, Section (b)(2)(iv), which are instructive in determining how to leave the first full month's rent out of the calculation.<sup>6</sup> Those examples anticipate a Landlord giving an entire month of free rent or a consistent percentage or dollar amount of each month's rent free across the entire initial term. In this particular case, assuming that the Petitioners paid \$2,685.00 as premises rent for January 2021 and then averaging the total premises rent by 12 months is the most appropriate and accurate manner in which to exclude the first full month's reduced rent from the calculation of Base Rent. The chart below reflects the change in the premises rent for January 2021 for the purposes of this calculation.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Additional Services Paid	Total Rent Payments	Premises Rent Charged to Petitioners	Concession Used
12/16/2020-12/31/2021	\$1,218.31	\$90.50	\$14.50	\$1,323.31	\$1,385.81	\$167.50
1/1/2021	<b>\$2,685.00</b>	\$166.87	\$14.50	\$2,866.37	\$2,685.00	\$628.37
2/1/2021	\$2,153.11	\$160.39	\$39.50	\$2,353.00	\$2,685.00	\$531.89
3/1/2021	\$2,045.74	\$164.76	\$39.50	\$2,250.00	\$2,685.00	\$639.26
4/1/2021	\$2,053.66	\$156.84	\$39.50	\$2,250.00	\$2,685.00	\$631.34
5/1/2021	\$0.00	\$164.90	\$39.50	\$204.40	\$2,685.00	\$2,685.00
6/1/2021	\$2,342.55	\$167.95	\$39.50	\$2,550.00	\$2,685.00	\$342.45
7/1/2021	\$2,660.07	\$158.19	\$39.50	\$2,857.76	\$2,685.00	\$24.93
8/1/2021	\$2,482.00	\$170.95	\$39.50	\$2,692.45	\$2,685.00	\$203.00
9/1/2021	\$3,126.10	\$167.09	\$39.50	\$3,332.69	\$2,685.00	\$0.00
10/1/2021	\$1,987.47	\$173.03	\$39.50	\$2,200.00	\$2,685.00	\$697.53
11/1/2021	\$1,986.21	\$174.33	\$39.50	\$2,200.04	\$2,685.00	\$698.79
12/1/2021-12/15/2021	\$957.43	\$87.98	\$19.11	\$1,064.52	\$1,299.19	\$341.76
Totals	\$25,697.65	\$2,003.78	\$443.11	\$28,144.54	\$32,220.00	\$7,591.82

<sup>5</sup> While Petitioners in their testimony said that they divided the rent concessions by 18 months and used the same amount each month to pay for premises rent, utilities, and services, the actual numbers do not support this concept.

<sup>6</sup> Petitioners argued during the Hearing that the first month of rent concessions should not be left out of the equation because the Lease did not clearly state that the rent concessions were to be applied to the first full month. However, there is nothing in the CSFRA or its regulations which requires that kind of language in the Lease. The regulations simply refer to rent concessions granted during the initial term of the tenancy without specificity as to how those rent concessions must be applied. See, CSFRA Regulations, Ch. 2, Section (b)(2)(i). If a rent concession is used in the first full month of the initial term, it is exempt from the Base Rent calculation.

12-Month Average	\$2,141.47	\$166.98	\$36.93	\$2,345.38	\$2,685.00	
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The Base Rent for the initial term would be the total of the averaged premises rent, utilities, and services:  $\$2,141.47 + \$166.98 + 36.93 = \$2,345.38$ . While Petitioner's Base Rent calculations for the premises rent are very close ( $\$2,153.86$  as opposed to  $\$2,141.47$ ), they do not take into account utilities and other services as required by the CSFRA.

Unlawful rent increase; two rent increases within 12-month period

CSFRA Section 1706(a) states that "no Landlord shall charge Rent in an amount that exceeds the sum of the Base Rent" plus lawful Annual General Adjustments. On December 16, 2021, after the initial 12-month term of the tenancy (as defined by the CSFRA Regulations) ended, when the Base Rent should have been  $\$2,345.38$ , including premises rent, utilities and services, Respondent was charging Petitioners premises rent of  $\$2,685.00$  plus utilities and services. At that point, rather than calculating the Base Rent as required by the CSFRA and reducing the rent they were charging, Respondent instead continued to charge premises rent that was greater than the rent permitted by the CSFRA and added utilities and services onto that already erroneous amount. At the Hearing, Property Manager stipulated that Respondent had acted in error and should have used a lower Base Rent. Unless the Lease specifically provided for a rent increase during the term of the Lease, the Base Rent of  $\$2,345.38$  should have been the rent charged by Respondent and paid by Petitioners for at least the remaining six (6) months of the term of the Lease (i.e., until the Lease expired on June 15, 2022) and could only be increased thereafter with a facially valid written notice under the CSFRA and state law.

Respondent's actions as of December 16, 2021 amount to an unlawful rent increase, because while Respondent may have thought it was simply continuing to bill a prior agreed upon rent, Respondent in fact had raised the rent to  $\$2,685.00$  plus utilities and services from the correct Base Rent of  $\$2,345.38$ . The increase from  $\$2,345.38$  to  $\$2,685$  was 14.5%, much higher than what was authorized by Sections 1706 and 1707 of the CSFRA, and Respondent added utilities and services charges onto that, thereby increasing the percentage difference even more. At that time, the allowed Annual General Adjustment ("AGA") was 2.9 percent. Additionally, Respondent did not issue a proper notice of rent increase with 30-days' written notice as required by California law, another ground for finding an unlawful rent increase. See CSFRA Section 1707(c).

When Respondent raised the premises rent effective June 16, 2022 to  $\$2,738.70$ , that rent increase was also unlawful for several reasons. First, CSFRA Section 1707(b) states that "[n]o more than one Rent Increase per twelve-month period may be imposed on a Tenant." The June 16, 2022 rent increase violated Section 1707(b) since Respondent had already raised the rent on December 16, 2021, and thus the June 16, 2022 rent increase was a second increase within a 12-month period. Secondly, the amount of the increase exceeded the allowed AGA under the

CSFRA, which at that time was 2.0 percent, because the Base Rent was \$2,345.38 and increasing it to \$2,738.70 plus utilities and services amounted to well over a 16 percent increase.

Thus, the rent increase effective December 16, 2021 and the rent increase effective June 16, 2022 were both unlawful rent increases under the CSFRA and must be disallowed.

#### Calculation of damages for unlawful rent

When it is found that there has been a collection of unlawful rents, an Individual Rent Adjustment is appropriate. (See CSFRA Sections 1702(i); 1714(a)). CSFRA Regulations Ch. 4, Section (G)(6) addresses limitations on Individual Rent Adjustments in the case of rent concessions. Specifically, Section (G)(6)(a) provides: “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 [to] the date of the filing of the Petition.” The Petition was filed on December 15, 2022, and thus the relevant period for calculating the Individual Rent Adjustment under Section (G)(6)(a) is December 16, 2021 through December 15, 2022. Unlawful rent was demanded for that entire time period.

Additionally, while CSFRA Regulations Ch. 2, Section (G)(6)(a) limits how far back the Hearing Officer may go in calculating damages for collection of unlawful rents in cases involving rent concessions, it does not limit damages going forward from the time of filing the Petition until the issuance of the Decision. Thus, a refund for overpayment of Rent between December 15, 2022, when Petitioners filed the Petition, through March 2023 will be included in the calculation of damages.

The chart below shows the rent overpayments for December 16, 2021 through February 2023. March 2023 damages are discussed later.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Additional Services Paid	Lawful Rent	Payments in Excess of Lawful Rent <sup>7</sup>
12/16/2021-12/31/2021	\$1,025.79 <sup>8</sup>	\$89.31 <sup>9</sup>	\$20.39 <sup>10</sup>	\$1,210.52	(\$75.04)

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<sup>7</sup> Calculation based on total of premises rent, utilities, and services paid minus lawful rent.

<sup>8</sup> Prorated premises rent payment based on \$2,200.00 (full payment listed in tenant rent ledger) - \$173.03 (full monthly utilities payment) - \$39.50 (full monthly services payment) = \$1,987.47. (\$1,987.47/31) x 16 = \$1,025.79.

<sup>9</sup> Prorated utilities payment based on total utilities as paid in December 2021 of \$173.03/31 x 16 = \$89.31.

<sup>10</sup> Prorated services based on total services as paid in December 2021 of \$39.50/31 x 16 = \$20.39.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Additional Services Paid	Lawful Rent	Payments in Excess of Lawful Rent <sup>7</sup>
1/2022	\$2,186.17	\$174.33	\$39.50	\$2,345.38	\$54.62
2/2022	\$2,418.36	\$181.82	\$39.50	\$2,345.38	\$294.30
3/2022	\$2,685.00	\$184.39	\$39.50	\$2,345.38	\$563.51
4/2022	\$2,685.00	\$178.28	\$25.00	\$2,345.38	\$542.90
5/2022	\$2,685.00	\$180.28	\$54.00	\$2,345.38	573.90
6/2022	\$2,711.85	\$139.09	\$25.00	\$2,345.38	\$530.56
7/2022	\$2,738.70	\$177.65	\$39.50	\$2,345.38	\$610.47
8/2022	\$2,763.70	\$175.74	\$39.50	\$2,345.38	\$633.56
9/2022	\$2,738.70	\$190.82	\$39.50	\$2,345.38	\$623.64
10/2022	\$2,738.70	\$192.83	\$39.50	\$2,345.38	\$625.65
11/2022	\$2,738.70	\$182.83	\$39.50	\$2,345.38	\$615.65
12/2022	\$2,738.70	\$187.29	\$39.50	\$2,345.38	\$620.11
1/2023	\$2,738.70	\$194.45	\$39.50	\$2,345.38	\$627.27
2/2023	\$2,738.70	\$198.45	\$39.50	\$2,345.38	\$631.27
3/2023	TBD	TBD	TBD	\$2,345.38	TBD
Totals	\$38,331.77	\$2,627.56	\$558.89	\$34,045.84	\$7,472.38
Total overpayment 12/16/2021-2/2023					\$7,472.38

For the period of December 16, 2021 through February 28, 2023, Respondent shall refund to Petitioners the total amount of \$7,472.38. For the month of March 2023, Respondent shall refund to Petitioners the difference between the total amount paid to Respondent for that month, including premises rent, utilities and housing services, and the lawful rent of \$2,345.38.

As discussed herein, Respondent may not collect the unlawful rent increases from December 16, 2021 and June 16, 2022. However, after Respondent has fully refunded Petitioners the amounts stated herein, provided Respondent is in substantial compliance with the CSFRA, as discussed in Section IX (6), below, Respondent may increase the Rent, as long as it is done in a manner consistent with the CSFRA and California law, also as discussed below.

## **VIII. CONCLUSIONS OF LAW**

1. Respondent incorrectly calculated the Base Rent by not basing it on the amount of rent actually paid by Petitioners for the initial term of the Lease, as required by CSFRA Section 1702(b)(2) and Regulations, Ch. 2, Section (b)(2)(i), but instead basing it on the amount stated in the Lease, which did not take into account rent concessions.

2. In its submissions for the Hearing, Respondent incorrectly calculated the Base Rent by using an 18-month initial term rather than a 12-month initial term in its calculations, as required by CSFRA Regulations, Ch. 2, Section (b)(2)(iii).
3. Respondent failed to calculate the correct Base Rent at the expiration of the initial 12-month term of the Lease and to roll back the rent to that amount. Failure to roll back the rent to the correct amount resulted in an unlawful rent increase pursuant to CSFRA Sections 1706(a) and (b). Additionally, this rent increase was not noticed as required by CSFRA Section 1707(c) and California law.
4. By notice of April 27, 2022, Respondent issued a second rent increase within a 12-month period, in contravention of CSFRA Section 1707(b). Thus, the second rent increase was invalid.
5. Respondent failed to calculate the correct Base Rent for the second rent increase, and thus exceeded the permissible amount under the CSFRA. See Section 1706(a). For this reason also, the rent increase noticed April 27, 2022 was invalid.
6. Under CSFRA Regulations, Ch. 4, Section (G)(6)(a), the Base Rent for the Affected Unit must be rolled back to the correct amount of \$2,345.38.
7. Under CSFRA Regulations, Ch. 4, Section (G)(6)(a), Petitioners are entitled to a refund for rent overpayment between December 16, 2021 and December 15, 2022. They are also entitled to a refund for the period from filing the Petition on December 15, 2022 through the rendering of this Decision.

## **IX. DECISION**

1. The Base Rent for the Affected Unit shall be rolled back to \$2,345.38, including utilities and housing services.
2. For the period of December 16, 2021 through February 28, 2023, Respondent shall pay to Petitioners a refund in the amount of \$7,472.38. This amount may be paid in eight monthly credits. This means that the monthly rent for April through October 2023 shall be reduced by \$934.05 per month to \$1,411.33, and the monthly rent for November 2023 shall be reduced by \$934.03, to \$1,411.35. These amounts include premises rent, utilities and housing services.
3. For March 1 through 31, 2023, Respondent shall refund to Petitioners the difference between the total amount paid by Petitioners to Respondent for that month, including premises rent, utilities and housing services, and the lawful rent of \$2,345.38. That refunded amount shall be credited to Petitioners' monthly rental payments on or before December 1, 2023.
4. The credits to Petitioners as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.
5. In the event that either Petitioners or Respondent terminates Petitioners' tenancy prior to application of the rent credits ordered by this Decision, the total amount then owed shall become due and payable to Petitioners immediately and if said amount is not paid, Petitioners shall be entitled to a money judgment in the amount

of the unapplied rent credits in an action in Small Claims court or any other administrative or judicial or quasi-judicial proceeding.

6. Pursuant to CSFRA Sections 1706(a), (b) and 1707(c), (f), Respondent may not issue a Rent increase for the Affected Unit until (1) the refund due to Petitioners is fully paid, and (2) Respondent has provided written notice to Petitioners of the rent increase at least 30 days in advance of such increase in the manner prescribed by the CSFRA and California law. Additionally, Respondent may not issue a rent increase for the Affected Unit if Respondent is in violation of any of the provisions set forth in CSFRA Section 1707(f)(1)-(3) and CSFRA Regs. Ch. 12 (B), which include, among other things, registering the Property annually with the Rent Stabilization Program (see CSFRA Regs. Ch. 11) and maintaining the Property in habitable condition according to state law and the CSFRA, including making all repairs required by the City Building Department or other department of the City of Mountain View as a result of Multi-Family Housing Program Inspections. Only when Respondent has complied with all of the provisions of this paragraph may Respondent issue a rent increase, provided that they do so in a manner consistent with the CSFRA and California law.
7. 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.



Barbara M. Anscher, Hearing Officer

Dated: March 23, 2023

**Attachment 1  
Award Schedule**

100 N Whisman Rd # [REDACTED] - RHC Petition# C22230015

**Hearing Officer Decision**

					Lawful Rent (Base							
Month/Year of Rent Payment		Premises Rent Paid	Utilities Paid	Additional Services Paid	Total Rent Paid	Rent, includng	Payments in Excess of Lawful Rent by Petitioner					
					(including Utilities and Additional Services)	Utilities and Additional Services)						
12/16/2020-12/31/2021	\$	1,025.79	\$	89.31	\$	20.39	\$	1,135.49	\$	1,210.52	\$	75.03
1/2022	\$	2,186.17	\$	174.33	\$	39.50	\$	2,400.00	\$	2,345.38	\$	(54.62)
2/2022	\$	2,418.36	\$	181.82	\$	39.50	\$	2,639.68	\$	2,345.38	\$	(294.30)
3/2022	\$	2,685.00	\$	184.39	\$	39.50	\$	2,908.89	\$	2,345.38	\$	(563.51)
4/2022	\$	2,685.00	\$	178.28	\$	25.00	\$	2,888.28	\$	2,345.38	\$	(542.90)
5/2022	\$	2,685.00	\$	180.28	\$	54.00	\$	2,919.28	\$	2,345.38	\$	(573.90)
6/2022	\$	2,711.85	\$	139.09	\$	25.00	\$	2,875.94	\$	2,345.38	\$	(530.56)
7/2022	\$	2,738.70	\$	177.65	\$	39.50	\$	2,955.85	\$	2,345.38	\$	(610.47)
8/2022	\$	2,763.70	\$	175.74	\$	39.50	\$	2,978.94	\$	2,345.38	\$	(633.56)
9/2022	\$	2,738.70	\$	190.82	\$	39.50	\$	2,969.02	\$	2,345.38	\$	(623.64)
10/2022	\$	2,738.70	\$	192.83	\$	39.50	\$	2,971.03	\$	2,345.38	\$	(625.65)
11/2022	\$	2,738.70	\$	182.83	\$	39.50	\$	2,961.03	\$	2,345.38	\$	(615.65)
12/2022	\$	2,738.70	\$	187.29	\$	39.50	\$	2,965.49	\$	2,345.38	\$	(620.11)
1/2023	\$	2,738.70	\$	194.45	\$	39.50	\$	2,972.65	\$	2,345.38	\$	(627.27)
2/2023	\$	2,738.70	\$	198.45	\$	39.50	\$	2,976.65	\$	2,345.38	\$	(631.27)
3/2023	TBD		TBD		TBD		\$	-	\$	2,345.38	TBD	
TOTAL											\$	(7,472.38)

**Credit Schedule**

<u>Total Monthly Rent</u>						
<u>Owed</u>						
Month/Year of Rent	(Base Rent, including Utilities and Additional Services)		Rent Credited to	Total Payment to		
Payment			Petitioner	be Paid by		
			Petitioner	Petitioner		
4/2023	\$	2,345.38	\$	934.05	\$	1,411.33
5/2023	\$	2,345.38	\$	934.05	\$	1,411.33
6/2023	\$	2,345.38	\$	934.05	\$	1,411.33
7/2023	\$	2,345.38	\$	934.05	\$	1,411.33
8/2023	\$	2,345.38	\$	934.05	\$	1,411.33
9/2023	\$	2,345.38	\$	934.05	\$	1,411.33
10/2023	\$	2,345.38	\$	934.05	\$	1,411.33
11/2023	\$	2,345.38	\$	934.03	\$	1,411.35
12/2023	\$	2,345.38	TBD		TBD	
TOTAL			\$	7,472.38		