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

IN RE 1826 HIGDON AVE, UNIT ■,
MOUNTAIN VIEW, CALIFORNIA

SANJUANA CASTILLO,

Petitioner,

vs.

MARIA GUADALUPE ROQUE,

Respondent.

CASE NUMBER 22230012

DECISION AFTER HEARING

DATE; December 1, 2022
TIME: 10:00 AM

I. HEARING

On December 1, 2022 commencing at 10:00 AM a hearing was held pursuant to the Community Stabilization and Fair Rent Act of the City of Mountain View (2016) (hereinafter

1 “CSFRA”)¹ relating to the rental property located at 1826 Higdon Ave Apartment ■, Mountain
2 View, CA (hereinafter, the “Apartment”). Appearing at the hearing on behalf of PETITIONER
3 Sanjuana Castillo (hereinafter “Ms. Castillo”) was her daughter, Ms. Linda Tirado (hereinafter
4 “Ms. Tirado”). RESPONDENT Maria Guadalupe Roque (hereinafter “Ms. Roque” and, together
5 with Ms. Castillo, “the Parties”) appeared at the hearing and represented herself. Also present at
6 the hearing, although taking no part in proceedings, were Ms. Joann Pham (hereinafter “Ms.
7 Pham”) and Ms. Patricia Black from the City of Mountain View. Assisting with translating
8 proceedings between English and Spanish were two translators from the City of Mountain View,
9 Ms. Ana Jimenez and Ms. Esperanza Sanz Escudero. Finally, Mr. ■ and Ms.
10 ■ appeared as witnesses and gave testimony in support of the petition. Mr.
11 ■ testified in opposition to the petition.

12 13 **II. DOCUMENTARY EVIDENCE PRESENTED**

14 In addition to the testimony taken at the December 1, 2022 hearing, documents from the
15 administrative record have been marked as exhibits and considered in reaching this decision.
16 Additionally, each party submitted documents which it wished to have considered as evidence in
17 support of their respective positions. All documents submitted by the parties have been admitted
18 and considered in reaching this decision.

19 20 **A. Hearing Officer’s Exhibits**

21 **Exhibit HO1.** Notice of Submission and Proof of Service to Landlord dated October 19,
22 2022.

23 **Exhibit HO2.** Representative Authorization Form dated October 19, 2022.

24 **Exhibit HO3.** Follow-Up Information for Petition Requesting Adjustment of Rent dated
25 November 3, 2022.

26 **Exhibit HO4.** Written Order and Summary of Pre-Hearing Conference Call dated
27 November 21, 2022.

28 ¹ The CSFRA was codified as Mountain View Municipal Code Article XVII, Section 1700 *et seq.*

1 **Exhibit HO5.** Notice of Hearing Officer Written Order dated November 23, 2022.

2 **Exhibit HO6.** Hearing Officer Order Reopening Record, dated February 10, 2023 and
3 associated Housing Inspection report dated February 2, 2023.²

4
5 **B. Petitioners' Exhibits**

6 Ms. Castillo submitted the following documents to be received into evidence in this
7 matter.

8 **Exhibit P1.** Petition B for Downward Rent Adjustment (Spanish), dated October 19,
9 2022.

10 **Exhibit P2.** Petition B for Downward Rent Adjustment (English), dated October 19,
11 2022.

12 **Exhibit P3.** City Of Mountain View Routine Inspection Form dated June 21, 2016

13 **Exhibit P4.** City of Mountain View Inspection Report, dated October 11, 2022.

14 **Exhibit P5.** City of Mountain View Inspection Report, dated November 15, 2022.

15 **Exhibit P6.** Residential Lease Agreement (photographs) between Petitioner and
16 Respondent, dated January 3, 2016.

17 **Exhibit P7.** Letter from Community Legal Services in East Palo Alto to Mr. Ken
18 Sperandio regarding the Property, dated March 15, 2021.

19 **Exhibit P8.** Three Day Notice to Pay Rent or Quit dated October 6, 2022

20 **Exhibit P9.** Excel Spreadsheet (in Spanish) titled "Workbook B".

21 **Exhibit P10.** Excel Spreadsheet (in English) titled "Workbook B".

22 **Exhibit P11.** Word Document containing translations into English of text messages
23 exchanged between Petitioner and Respondent, dated between June 22, 2022 and June
24 29, 2022.

25
26
27 ² **Exhibit HO6** was entered after the hearing pursuant to an order incorporated into the
28 exhibit, dated February 10, 2023. It was necessary to admit this exhibit in order to clarify
 testimony presented at the hearing by both parties. All parties had notice of this exhibit being
 accepted into the record and were given the opportunity to object to its consideration. No
 objections were received.

1 **Exhibit P12.** Multiple Undated Photographs showing areas within the Property or
2 common areas.

3 **Exhibit P13.** Multiple Undated Video Files showing holes in kitchen area of Property
4 and Petitioner washing dishes outside.

5
6 **Respondents' Exhibits**

7 Ms. Roque submitted the following documents into evidence:

8 **Exhibit R1.** Six Undated Photographs showing areas of the Property or the common
9 areas.

10 **Exhibit R2.** Multiple files titled "Rent Distribution" dated between January 2021 and
11 November 2021.

12 **Exhibit R3.** Multiple documents entitled "Expenses", dated between September 2021
13 and March 3, 2022

14 **Exhibit R4.** Document entitled Pet Control Invoices, dated between February 2022 and
15 April 2022.

16 **Exhibit R5.** Restore X LLC Invoice dated July 1, 2022.

17 **Exhibit R6.** Uni-Marble & Granite Inc Invoice dated June 30, 2022.

18
19 **III. PROCEDURAL HISTORY OF THE PETITION**

20 The Petition was submitted to the City of Mountain View on October 19, 2022. On
21 November 3, 2022 a notice of pre-hearing conference was issued with a scheduled date of
22 November 17, 2022 at 10:00 AM. On November 17, 2022, a pre-hearing conference call was
23 held with the Parties, the hearing examiner and Ms. Pham all present on the call and participating
24 therein. Following the pre-hearing conference, a notice of hearing and summary of conference
25 was issued to the Parties on November 23, 2022. The hearing on this matter was held on
26 December 1, 2022 at 10:00 AM.

27 //

28 //

1 **IV. TESTIMONY PRESENTED**

2 Both parties and their witnesses gave testimony at the hearing. A summary of the
3 relevant testimony presented at the hearing is as follows³:

4 Ms. Tirado, daughter of Petitioner, testified in support of the petition as follows:

5 Although Ms. Tirado's name is not on the contract, she lives at the Property with her
6 Mother. She has been living there for between six and seven years. She lives there with her
7 Mother, her Stepfather, their two children and her own children. When they first moved in, there
8 were issues with several features not being present that should have been. These issues were
9 reported to Respondent sometime during 2017 and were not rectified until 2021. Initially, when
10 Petitioner and her family moved in, they were reluctant to make too much of an issue of the
11 defects with the Property, because they were trying to "help Respondent out." During the
12 COVID pandemic, Respondent asked Ms. Castillo to act as an onsite manager for the property.
13 Ms. Castillo agreed to act in that capacity. Shortly after the COVID pandemic Respondent hired
14 a new property manager to replace Ms. Castillo and the relationship between the parties started
15 to deteriorate. In March of 2021, Ms. Castillo sought advice from Community Legal Services in
16 East Palo Alto (hereinafter "CLSEPA"), who wrote to Respondent regarding the habitability
17 issues that were present in the Property at that time.

18 Prior to the letter from CLSEPA, when Ms. Castillo would report an issue with the
19 property, Ms. Roque would get mad and only sometimes would respond and make any repairs.
20 Minor repairs were made to the front door in 2021 in an effort to repair the large gap below the
21 door. In response to a report that the kitchen sink was falling, Respondent arranged to have two
22 posts installed to hold it in place. There were also issues with the living room door, which the
23 letter states were reported to Respondent in 2016 but remained unresolved until Ms. Tirado used
24 a draught excluder to stop cold air seeping in under the door.

25
26
27 ³ At the hearing, Ms. Castillo, Ms. Roque, and Ms. ██████ testified in Spanish, a language in
28 which the Hearing Examiner is not proficient. The summary of the testimony presented by those
individuals is therefore based on a translation into English by expert and experienced translators who
had taken a translator's oath on the record.

1 There were also electrical issues with the outlets in the Property. Although this issue was
2 reported to Ms. Roque, no repairs were conducted. Eventually, Ms. Tirado put electrical tape
3 over the outlets to make sure that the resident's minor children were not harmed.

4 There were also issues with vermin infestations in the Property. Cockroaches infested the
5 property so badly they could be heard crawling within the walls all the time. Eventually, the
6 cockroach issue was addressed by pest control who required everything to be removed from the
7 kitchen. Unfortunately, the other apartments in the complex were not similarly treated and the
8 cockroaches returned. The pest control treatments were carried out once per month.

9 On some occasions Respondent would attempt to address an issue and Petitioner would
10 arrange to be home, but no one would arrive to do the job. On one occasion, Respondent
11 arranged for someone to repair the kitchen sink, and that repair was scheduled to take all day.
12 Ms. Castillo arranged to take the children outside and made them pancakes to snack on while
13 they were out. The contractor arrived and then proceeded to blame Ms. Castillo for the defects
14 and alleged that there was rotten food throughout the kitchen, including the pancakes that Ms.
15 Castillo had just prepared.

16 There are some items outside in the yard area which are stacked neatly under a pop-up
17 tent. Although the tent has since been damaged by high winds, it still operates to protect the
18 equipment outside that should not be exposed to the rain. Respondent told Petitioner that she
19 could not have a canopy/pop-up tent in the yard because it was against Mountain View City law
20 and told her to remove it.

21 In approximately April 2022, there was an issue with the kitchen sink leaking into the
22 basement, which was reported to Respondent. It really smelled bad for a long time. When Ms.
23 Castillo reported this issue to Respondent, Respondent became mad and tried to blame
24 Petitioners for the smell by saying it was their dogs that were responsible for the smell or that
25 they were mopping with a dirty mop. Eventually, Respondent and her son-in-law came by and
26 inspected the issue. Respondent's son-in-law sometimes does repairs and provides handyman
27 services to Respondent. During that inspection, photographs were taken showing standing water
28 flooding the basement. Respondent's son-in-law told Petitioners not to use the kitchen sink for

1 at least a week so that the water would dry up. During this week, Ms. Castillo was forced to
2 wash dishes outside in the driveway under a tap located there. Petitioner and her family were
3 unable to eat inside the Property due to the smell.

4 Two weeks later, another company arrived and pumped the water out of the basement to
5 dry it up. This process took another four days. The pump was very loud and ran all day and
6 night.

7 One of the windows in the apartment was broken. Ms. Tirado's uncle purchased a
8 replacement window when Respondent failed to make timely repairs, however the replacement
9 window was too small. The window was eventually replaced on or about November 28, 2022.

10 When Petitioner and her family moved into the Property, they had access to a larger
11 curbside trash bin. On or around July 2017, that trash bin was replaced with a smaller one.
12 There was also an issue with the sewer line in the Property. At one point the sewer lines backed
13 up into the apartment and there was wastewater and other sewerage pooling in the bathtub. Ms.
14 Castillo attempted to clear the sewer line but was unable to do so. She then called Ms. Roque,
15 who sent someone out to clear the line but did not clean up the mess afterwards. Ms. Castillo
16 was left with no alternative but to clean up the mess and spilled sewerage herself.

17 Finally, there was an issue with the water heater in the Property. From approximately
18 2016 until after the letter from CLSEPA in 2021, Petitioner and her family had no access to hot
19 water, being forced to shower in cold water. Eventually, in 2021, the water heater was replaced
20 with a larger one and they had hot water for two to three days before the water went cold again.
21 On inspection, Ms. Tirado discovered that someone had turned the temperature on the water
22 heater down so that the water was coming out cold. After the City inspection, Ms. Tirado was
23 shown how to turn the temperature of the water heater back up. Since that time the temperature
24 has been turned down again, but Ms. Tirado is now able to fix that issue herself.

25
26 Ms. Castillo presented testimony in support of the Petition as follows:

27 In approximately September of 2020, Ms. Castillo began paying a reduced amount of rent
28 to Respondent as a result of the COVID pandemic. At this time, Ms. Castillo was paying

1 approximately 25% of the rental amount. In 2021, Ms. Castillo paid the full amount of rent for a
2 time, but soon had to resume paying the same reduced rental amount as before. Ms. Castillo
3 does not remember the dates on which she paid the full amount of rent, nor the date on which she
4 began paying the reduced rent again. Ms. Castillo has not paid rent from May 2022 to present.

5 Ms. Castillo first informed Respondent about the water leak from the upstairs apartment
6 verbally approximately four years ago, sometime during 2018. It was finally repaired the week
7 before the hearing was held.

8 There were also plumbing issues with the sewer system within the Property. This issue
9 also commenced in 2021. When this issue was reported to Respondent, she did not come to
10 inspect the issue, but rather stated that this was an issue for the City to address. The sewage was
11 backing up into the bathtub and there was human effluent everywhere. At that point, Petitioners
12 reached out to the City and requested an inspection. After the inspection by the City, the issue
13 was resolved within hours.

14
15 Mr. [REDACTED] testified on behalf of Petitioner as follows:

16 Mr. [REDACTED] and his wife are friends of Ms. Castillo through their church. One evening,
17 Mr. [REDACTED] and his wife visited Ms. Castillo at the Property. Immediately upon entering the
18 Property, they smelled a very strong smell and, due to his experience as a handyman, he knew
19 that it was a smell that came from wastewater or sewage. Mr. [REDACTED] discussed the smell with
20 Ms. Castillo and she told him that it had been reported to her landlord but that the landlord had
21 not yet taken any steps to fix it because they were waiting for it to dry out by itself. Mr. [REDACTED]
22 informed Ms. Castillo that it would not dry out by itself because there was likely still water
23 running into that area and that it would need to be pumped out. Once dried out, the area would
24 need to be disinfected, preferably using lime to generate heat.

25 While Mr. [REDACTED] was there, Ms. Castillo called her landlord and told her what Mr.
26 [REDACTED] had said. Respondent became mad and hung up on Ms. Castillo. At first, Mr. [REDACTED]
27 thought that it was because Ms. Castillo was not cleaning her house properly. Mr. [REDACTED] had
28 been there several times prior to that occasion and had tried to stay outside to avoid the smell.

1 Over time Mr. [REDACTED] could tell that the smell was getting worse and worse. When Ms. Castillo
2 showed Mr. [REDACTED] the area under the kitchen sink, he could see that was where the water was
3 coming from and the smell was even worse in that area.

4 He also noticed that Ms. Castillo was having to wash her dishes outside in the driveway.
5 He went to visit Ms. Castillo during the pumping process and the machines were really loud.

6
7 Ms. [REDACTED] also testified on behalf of Petitioner as follows:

8 Ms. [REDACTED] is the wife of Mr. [REDACTED] and was with him at the Property when they
9 discovered the strong smell. When she first smelled it Ms. [REDACTED] was concerned that the
10 smell was the result of Ms. Castillo not cleaning her home properly. It was a very bad smell.
11 After a few visits Ms. [REDACTED] tried to stay outside when she visited Ms. Castillo's home. Ms.
12 [REDACTED] has visited Ms. Castillo's home many times. Eventually Ms. Castillo showed Ms.
13 [REDACTED] the area under the kitchen sink and Ms. [REDACTED] became convinced that was where the
14 smell was coming from. One time Ms. Castillo invited Ms. [REDACTED] inside to have lunch with
15 her but Ms. [REDACTED] was unable to eat due to the smell despite how hungry Ms. [REDACTED] was.

16 Ms. [REDACTED] also visited Ms. Castillo while the basement pumping process was
17 underway. During that visit it was so loud inside the Property that it was impossible for Ms.
18 Castillo and Ms. [REDACTED] to have a conversation.

19
20 Ms. Roque offered the following testimony in opposition to the Petition:

21 On June 13, 2022, Ms. Roque was first informed about the smell. Ms. Roque went out the
22 same day and confirmed that there was indeed a smell. During that visit, Ms. Roque also inspected
23 the other two apartments in the complex. During that visit several of the other residents informed
24 her that they would not open their windows because there was a strong smell of "weed" coming
25 from Ms. Castillo's apartment.

26 On June 14, 2022, Ms. Roque's brother-in-law, a licensed contractor, came out to
27 determine the cause of the smell in Ms. Castillo's apartment. After the inspection she called her
28 insurance carrier to file a claim to have the water removed. The insurance company responded to

1 Ms. Roque on or about June 20, 2022. The process of pumping the water out and making repairs
2 took approximately four days to complete. During that four-day period she received multiple calls
3 from Ms. Tirado complaining about the noise and asking how long the pumps would be running.
4 Ms. Tirado's calls during that time were antagonistic and Ms. Tirado threatened to call the City.

5 After the pumping was complete, the plumbing was repaired so that the issue did not re-
6 occur. Since they were replacing the plumbing, Ms. Roque suggested to Ms. Castillo that they
7 also replace the cabinets at the same time. Ms. Castillo agreed and that too was done.

8 Ms. Roque only found out about the broken and ill-fitting window recently, which has
9 since been repaired. The property has recently been re-inspected by the City and everything is
10 now fixed. Every time that Ms. Roque goes out to the Property, the smoke alarms have been
11 disconnected, possibly because they are smoking within the apartment.

12 Ms. Roque has no knowledge of anyone turning down the water heater and finds it less than
13 credible that neither Ms. Castillo nor Ms. Tirado have complained to her, as Ms. Roque believes
14 they would have if that were the case.

15 Ms. Roque testified that there was no decision on her part to give Petitioner a smaller trash
16 bin, rather the trash company discovered that Ms. Castillo's apartment had a larger medium-size
17 bin, when it should have been a small one, and simply corrected that mistake. Ms. Castillo checked
18 her records to verify that they had, indeed, been paying for a small size bin and found that to be
19 true. Petitioner mistakenly had use of the medium size bin for approximately four months before
20 the error was discovered and rectified.

21 Any issues that were reported to Ms. Roque have been fixed, either by Ms. Roque or a
22 contractor as required.

23 Mr. [REDACTED] offered testimony in opposition to the Petition. Mr. [REDACTED] was a
24 property manager, hired by Respondent for approximately a year, starting in late 2020 and
25 departing in early 2022. From the beginning, Mr. [REDACTED]'s interactions with Ms. Tirado were
26 combative. In early 2021, Mr. [REDACTED] was able to inspect the Property and proceeded to fix
27 the most urgent issues that they discovered. One of those issues was that the water heater was
28 leaking and that was immediately replaced.

1 There was other work which was required but it was hampered by members of
2 Petitioner's family being home, despite their request that the apartment be vacant. During that
3 visit, Mr. [REDACTED] made what repairs he could at that time and took photographs showing the
4 condition of the Property. Mr. [REDACTED] discovered that there was a significant water leak in the
5 kitchen which had partially rotted the countertop. Mr. [REDACTED] and his contractor did an
6 emergency repair to the water supply so that it no longer leaked but they could not do the job
7 completely because that would have required removing the sink completely.

8 Shortly after that visit, Mr. [REDACTED] received a letter from a "housing organization"
9 informing him that there were additional issues that needed to be addressed. All issues listed
10 within the letter were repaired within a week of the date of the letter. Shortly after that, Mr.
11 [REDACTED] contacted the organization that sent the letter and informed them that the defects had
12 been repaired. The organization informed Mr. [REDACTED] that they were happy with the quality of
13 repairs and that they were closing the file.

14 There was an issue with pests in the Property. Upon investigation, Mr. [REDACTED]
15 discovered that someone residing at the Property had installed an outdoor sink which was
16 draining directly to the ground and attracting vermin. This outdoor sink was depositing
17 foodstuffs in the yard area belonging to Petitioner's apartment, which was attracting cockroaches
18 and rats to the area.

19 Ms. Roque hired a pest control company to come out and treat the apartment complex
20 once per month. There were several occasions when the pest control company would come out
21 and they were unable to treat Petitioner's apartment.

22 One other issue that often came up was that Petitioner, or her family, consistently had to
23 be warned about smoking within the Property and removing the carbon monoxide/smoke
24 detectors within the Property. There were at least two occasions when Mr. [REDACTED] visited the
25 property and found that the smoke detectors had been removed.

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1 **V. ISSUES PRESENTED**

- 2 1. Was there a failure to maintain habitable premises sufficient to support a rent rebate
3 and/or rent reduction?
4 2. Was there a decrease in housing services sufficient to warrant a rent rebate or rent
5 refund?

6
7 **VI. DISCUSSION**

8 **A. HABITABILITY**

9 In any petition, the burden of proof falls on a petitioner to show that the relief they are
10 seeking in their petition is supported by the evidence and the petitioner's burden of proof is the
11 preponderance of the evidence. *CSFRA §1711(h)*; *see also Community Stabilization and Fair*
12 *Rent Act Regulations (hereinafter "the Regulations") § 5(G)(2).*

13 In this case, Petitioner must show that there has been either a violation of the warranty of
14 habitability or a reduction in housing services in order to be granted a rent reduction and/or rent
15 rebate.

16 The CSFRA permits a tenant to file a petition for a downward adjustment of rent based
17 on allegations that a landlord has failed to ensure that the leased premises comply with the
18 warranty of habitability. *CSFRA § 1710(b).*

19 Additionally, California law implies a warranty of habitability for all residential leases in
20 this State. This implied warranty was first recognized by the California Supreme Court in 1974
21 in the case of Green v. Superior Court. Language used by the Court in that case is particularly
22 instructive here. The court stated, in relevant part, that:

23 We have concluded that a warranty of habitability is implied by law in residential
24 leases in this state and that the breach of such a warranty may be raised as a defense
25 in an unlawful detainer action. Under the implied warranty which we recognize, a
26 residential landlord covenants that premises he leases for living quarters will be
27 maintained in a habitable state for the duration of the lease. This implied warranty
28 of habitability does not require that a landlord ensure that leased premises are in
 perfect, aesthetically pleasing condition, but it does mean that 'bare living
 requirements' must be maintained. In most cases substantial compliance with those
 applicable building and housing code standards which materially affect health and
 safety will suffice to meet the landlord's obligations under the common law implied
 warranty of habitability we now recognize. As the Hinson court observed: '(m)inor
 housing code violations standing alone which do not affect habitability must be

1 considered de minimis and will not entitle the tenant to reduction in rent. . . .’ Green
2 v. Superior Court (1974) 10 Cal.3d 616, 637-638 *citing* Hinson v. Delis (1972), 26
3 Cal.App.3d 62,70.

4 Petitioner alleges that there were several defects within the Property that made
5 Petitioner’s apartment uninhabitable. First, Ms. Castillo alleges that there was a water leak that
6 pooled in the basement of the Property causing a strong smell, there were broken windows that
7 remained unrepaired, there were cracks in the walls and gaps under the doors, there was a
8 pest/rodent infestation, there was a sewage leak and there were other plumbing issues, including
9 a broken water heater.

10 The CSFRA permits a tenant to file a petition for a rent reduction and/or rent rebate based
11 on a violation of the warranty of habitability.

12 *Petition for Downward Adjustment — Failure to Maintain Habitable Premises:*

- 13 (1) Failure to maintain a Rental Unit in compliance with governing health and
14 safety and building codes, including but not limited to Civil Code Sections
15 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10,
16 constitutes an increase in Rent. A Tenant may file a Petition with the
17 Committee to adjust the Rent downward based on a loss in rental value
18 attributable to the Landlord's failure to maintain the Rental Unit in habitable
19 condition.
- 20 (2) A Tenant Petition filed pursuant to this Subsection must specify the conditions
21 alleged to constitute the failure to maintain the Rental Unit in habitable
22 condition and demonstrate that the Landlord was provided with reasonable
23 notice and opportunity to correct the conditions that form the basis for the
24 Petition.

25 *CSFRA § 1710(b)*

26 The CSFRA also permits a tenant to file a petition for a rent reduction based on a
27 reduction of housing services:

28 “*Petition for Downward Adjustment — Decrease in Housing Services or*
Maintenance. A decrease in Housing Services or maintenance, or deterioration of
the Rental Unit beyond ordinary wear and tear, without a corresponding reduction
in Rent, is considered an increase in Rent. A Tenant may file a Petition to adjust
the Rent downward based on a loss in rental value attributable to a decrease in
Housing Services or maintenance or deterioration of the Rental Unit. The Petition
must specify the circumstances allege [sic] to constitute a decrease in Housing
Services or maintenance, and demonstrate that the Landlord was provided with
reasonable notice and an opportunity to correct in like manner to Petitions filed
pursuant to Subsection 1710(b)(2) herein.”

CSFRA § 1710(c)

1 It is clear from the provisions of the CSFRA that there must be clear notice of the defect
2 and a reasonable opportunity to make repairs in order to grant a rent reduction for a violation of
3 the warranty of habitability, failure to maintain habitable premises, or decrease in housing
4 services or maintenance.

5 As such, for each alleged defect, Ms. Castillo must show that she reported the defect to
6 Ms. Roque in a timely manner and that Ms. Roque failed to make the required repairs within a
7 reasonable time after the issue was reported to her.

8
9 **i. Basement Flood and Smell**

10 It is undisputed that there was a water leak and that it pooled in the basement, causing a
11 smell in Petitioner's apartment. *Recording of Proceedings (hereinafter "RP") 41:29, 2:25:09.*
12 Ms. Tirado testified that she thought that the smell began in approximately April 2022 and was
13 not resolved until June or July. *RP 1:12:02.* Further, Ms. Tirado testified that her mother, Ms.
14 Castillo, reported the issue to Respondent and that respondent came out to look at the issue two
15 weeks later. *RP 41:18.* Essentially, Ms. Roque and Mr. [REDACTED] testified that they were
16 unaware of the defect with the kitchen sink that was causing the flooding in the basement and the
17 bad smell until June 13, 2022. *RP 2:25:03.* Ms. Roque further stated that the contractor came
18 out to pump the basement dry on June 20, 2022, a process which took four days to complete. *RP*
19 *2:28:25.* According to Respondent, therefore, the issue was resolved within approximately two
20 weeks of it first being reported to her. Taking Respondent's testimony at face value, this would
21 appear to have been a reasonable time to make the repair for such a significant issue.

22 The testimony presented by Petitioner and Respondent are evenly balanced and, without
23 further evidence, Petitioner would not have carried her burden of proof.

24 However, the record casts doubt on Ms. Roque's memory of events. Given that a letter to
25 Respondent from CLSEPA specifically mentions a bad smell coming from the kitchen sink leak
26 back in 2021 it appears that this issue has indeed been persisting for much longer than
27 Respondent's memory suggests. **Exhibit P7.** Since it appears that there has been an ongoing
28 issue with the leaking kitchen sink, it makes it more likely that Petitioner's memory of events is

1 more accurate and that the issue was, indeed, first reported to Ms. Roque by Ms. Castillo in
2 April, not July. A period of approximately three months to make repairs to an issue as serious as
3 this is excessive, under the circumstances. Petitioner has therefore carried her burden of proof as
4 it relates to the leaking sink and the associated smell.

5 Essentially, Petitioner was without the use of her kitchen for this entire period of time.
6 Petitioner and Ms. Tirado testified that they were unable to cook in the kitchen and were forced
7 to rely on take-out food or fast food for most of the time. Additionally, Petitioner was forced to
8 wash dishes outside the apartment, under an external tap which presumably only provided cold
9 water to wash her dishes in. The record also indicates that Ms. Castillo's visitors were reluctant
10 to visit Ms. Castillo and her family and often chose to remain outside in order to alleviate the
11 impact of the smell from the flooded basement.

12 The Petition indicates that the current monthly rental amount for the Property is Three
13 Thousand One Hundred and Five Dollars (\$3,105.00) per month. **Exhibit P2**. As the impact of
14 the unrepaired defect on the lives of Petitioner and her family was significant a rent reduction of
15 forty percent (40%) for the months of May and June 2022 is appropriate. Petitioner is therefore
16 entitled to a total refund for this issue of Two Thousand Four Hundred and Eighty-Four Dollars
17 (\$2,484.00).

18 19 **ii. Broken Windows**

20 Ms. Tirado testified that there was a broken window in one of the rooms and that she had
21 attempted to replace it but the replacement window was too small. *RP 54:34*. This issue was not
22 repaired until the week before the hearing. *RP 54:50*. Ms. Tirado's uncle purchased the
23 replacement window for Petitioner approximately two weeks after the issue was first reported to
24 Respondent. *RP 1:25:26*. Neither Petitioner, Ms. Tirado nor any of their witnesses gave
25 evidence about when the window was first reported to Ms. Roque, however.

26 The City of Mountain View Inspection Reports dated October 11, 2022 and November
27 15, 2022 indicates that there is a mis-fitted window in place that needed to be replaced. **Exhibit**
28 **P5**.

Respondent therefore knew of this defect at least on October 11, 2022, if not before. Weather proofing of a property, including having functional windows is vital to the habitability of a rental unit. As such, the defective window is a violation of habitability, or at the least a failure to maintain the property, sufficient to support the award of a rent refund to Petitioner. As such a rent refund of ten percent (10%) for the month of October 2022 is appropriate. Petitioner is therefore entitled to a rent refund of Three Hundred and Ten Dollars and Fifty Cents (\$310.50) for this defect.

iii. Cracks and Gaps in the Property

Petitioners reported a large gap below the living room door to Respondent during 2016. *RP 24:18*. Ms. Tirado had to block the gap with a draught excluder to stop the cold air coming in. *RP 24:45*. Further, the City inspections show a large number of issues with the structure, weatherproofing and pest-proofing of the property. **Exhibit P5**. Unfortunately, other than the gap under the living room door, the record contains no evidence about when any other gaps or cracks in the property were first brought to the attention of Respondent. As such, the only evidence about time that the record contains is that the gaps and cracks existed when the City inspected during October 2022 and had been improved, but not completely repaired, by the follow up inspection in November 2022. *Id.* The recording of proceedings does indicate, however, that all issues identified by the City had been resolved prior the hearing. *RP 2:38:30*. However, that statement does not seem to be accurate based on the inspection reports from the City. **Exhibit P5** *see also* **Exhibit HO6**. According to the inspection reports the cracking and subsiding has still not been rectified as of February 2, 2023. *Id.* These cracks and gaps also are connected to the failure to make the property pest proof which is also cited as a currently existing fault. *Id.*

Under the circumstances, a period of more than three months to make repairs to the property is eminently an unreasonable length of time. Petitioner has therefore met her burden of proof on this matter. Failure to provide a structure that is weatherproof and able to be pest-proofed is a significant violation of habitability. As such a rent refund of ten percent (10%) for

1 the months of October 2022 through February 2023 is appropriate. In addition, an ongoing rent
2 rebate of the same amount (10%) will apply until the property is repaired to the satisfaction of
3 the City. A total rent refund for this issue of One Thousand Five Hundred and Fifty-Two Dollars
4 and Fifty Cents (\$1,552.50) is ordered for this defect.

5
6 **iv. Pest Infestation**

7 Ms. Tirado testified that there are issues with both cockroaches and rats in the Property.
8 *RP 26:20.* On behalf of Respondent, Mr. [REDACTED] testified that he first found out about the pest
9 and rodent issue at the Property shortly after he took on the role of property manager in late
10 2020. *RP 2:55:26.* Shortly after that, Respondent began a monthly treatment of the apartment
11 complex by a pest control company. *RP 3:05:09 see also **Exhibit R4**.* The pest and rodent
12 infestation continued until the property was inspected by the City in October 2022. **Exhibit P5**.

13 Although it is clear that Respondent has made a sincere effort to improve the situation
14 regarding the pest infestation at the property, it is also clear that those efforts have not been
15 successful. Unfortunately, merely paying for a routine monthly pest control program that does
16 not resolve the issue is not sufficient.

17 As such Petitioner has met her burden as it relates to pest and rodent infestation. Taking
18 the testimony presented in the best light for Respondent, Respondent knew about the pest issues
19 in December 2020. The condition therefore persisted for a total of twenty-three and a half (23.5)
20 months before it appears to have been remedied prior to the reinspection by the City in
21 November 2022. **Exhibit P5**.

22 Rodent and pest infestations are a serious violation of habitability, especially when they
23 last as long as this issue has. A refund of twenty percent (20%) per month is appropriate for this
24 issue. Petitioner therefore is entitled to a refund of Fourteen Thousand Five Hundred and
25 Ninety-Three Dollars and Fifty Cents (\$14,593.50).

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1 **v. Sewage Leak**

2 There was an occasion when the toilet overflowed and Respondent sent someone out to
3 repair it but Petitioner had to clean up afterwards. *RP 59:54*. The letter from CLSEPA to
4 Respondent also indicates that the sewage backflow was a one-time issue. **Exhibit P7**. On
5 behalf of Petitioner, CLSEPA was complaining that Respondent had made no effort to reimburse
6 Petitioner for the cleanup following the problem and not complaining about an ongoing issue.
7 *Id.*

8 Because it appears that this issue was repaired by Respondent in a timely manner no rent
9 refund or rebate is appropriate for this issue.

10
11 **vi. The Water Heater and Other Plumbing issues**

12 Ms. Tirado testified that Respondent was informed about the faulty water heater in 2016.
13 *RP 57:28*. Mr. [REDACTED] testified that he noticed the water heater was defective shortly after he
14 took over as property manager and that the unit was immediately replaced. *RP 2:53:34*.
15 Petitioner has therefore carried her burden of proof on this matter.

16 At best for Respondent, therefore, we have a lack of hot water from December 2016 until
17 October 2020, when Mr. [REDACTED] was hired. The defect in the property therefore existed for at
18 least forty-six (46) months.

19 Again, the lack of hot and cold running water is a major violation of habitability and
20 warrants a refund of twenty percent (20%). Petitioner is therefore entitled to a total rent refund
21 of Twenty-Seven Thousand Eight Hundred and Ninety-Four Dollars (\$27,894.00) for this issue.

22 Overall, Petitioner is entitled to a rent refund of Forty-Six Thousand Eight Hundred and
23 Thirty-Four Dollars and Fifty Cents (\$46,834.50) for Respondent's failure to maintain habitable
24 premises.

25
26 **B. REDUCTION OF HOUSING SERVICES.**

27 The CSFRA permits a tenant to file a petition to reduce the rent due based on a reduction
28 of housing services. *CSFRA § 1710(c)*. Housing Services under the CSFRA are defined as

1 including repairs, maintenance, painting, and specifically includes the provision of hot and cold
2 water. *CSFRA § 1702 (h)*.

3 Other than a potential failure to generally maintain the property, as discussed above, the
4 sole issue that presents a possibility of a reduction of housing services, as opposed to a violation
5 of habitability is the issue of the reduction in size of the trash bins.

6 There is essentially no dispute that Petitioner had a larger trash bin (apparently medium
7 sized) when they first moved in that was later reduced to a smaller bin. *RP 34:26, 2:42:23*.
8 However Respondent's testimony explains that it was not her who initiated the reduction in size
9 of the trash bin, but rather it was the trash company itself who discovered a larger bin than what
10 Respondent paid for, and which Petitioner should have had, had been supplied to the Property by
11 mistake. *RP 2:44:09*.

12 On balance, therefore, this issue does not qualify for a reduction of services, but rather
13 represents the correction of an error by a third party which was beyond the control of
14 Respondent. Respondent could have chosen to pay an increased fee for the larger trash bin but
15 was under no obligation to do so.

16 Petitioner has therefore not carried her burden of proof on this matter.

17 It is important to note that Petitioner testified she has not paid rent since May 2022. The
18 Notice to Pay Rent or Quit, dated October 6, 2022, shows Petitioners had not paid April 2022 rent,
19 July 2022 rent, August 2022 rent, September 2022 rent, or October 2022 rent. **Exhibit P8.**
20 Assuming, without deciding, that the amount shown on the Notice to Pay rent or Quit is accurate,
21 the rent refund specified here may be used to satisfy any past due and unpaid rent outstanding from
22 Petitioner to Respondent. The adjusted refund must therefore take into account Petitioners' unpaid
23 rent totaling \$24,840.00 from April 2022 to December 2022 and any other subsequent amounts
24 that are not reflected in the record of proceedings.

25 26 **VII. SUMMARY OF FINANCIAL AWARDS**

27 For the ease of refence of the Parties a summary of the rent refunds and/or rent rebates is
28 attached as **Attachment 1** to this decision, along with the dates relevant to each.

1 **VIII. DECISION**

2 1. Petitioners' request for a downward adjustment of rent is GRANTED in part and
3 DENIED in part. See Attachment 1 to this Written Decision for the Award Schedule.

4 2. Petitioner's request for a rent rebate and/or rent reduction based on a failure to
5 maintain the Property or a violation of Habitability is GRANTED.

6 3. Petitioner's request for a rent rebate and/or a rent reduction based on a reduction of
7 housing services is DENIED.

8 4. Petitioner is entitled to a total rent refund of Forty-Six Thousand Eight Hundred
9 and Thirty-Four Dollars and Fifty Cents (\$46,834.50).

10 5. An ongoing rent reduction/rent rebate of Three Hundred and Ten Dollars and Fifty
11 Cents (\$310.50) will apply until the subsiding and cracks allowing the entry of vermin into the
12 Property are repaired. The ongoing monthly rent for the property will therefore be Two Thousand
13 Seven Hundred and Ninety-Four Dollars and Fifty Cents (\$2,794.50) until this repair is completed
14 to the satisfaction of the City.

15 6. This rent refund may be paid to Petitioner by Respondent either by check or as a
16 rent credit, as Respondent's sole and complete discretion. This refund must also be applied to any
17 past due and unpaid rent owed by Petitioner and the balance shall be applied to Petitioner's rent
18 ledger going forward, or as a refund check, at Respondent's discretion.

19 7. If Respondent chooses to issue a rent credit to Petitioner any remaining balance of
20 the rent refund that is outstanding as of the date on which Petitioner and her family vacate the
21 property shall be issued as a rent refund check payable to Petitioner.

22 8. If there is any dispute as to whether any Party in this matter is in compliance with
23 this decision and the parties are unable to resolve the dispute between themselves, a Compliance
24 hearing may be requested by any Party. Such a request should be submitted, in writing and in the
25 format specified by the City, to City staff with a copy to all other Parties.

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DATED: February 23, 2023



DEREK W. CHANTLER
Hearing Officer

Attachment 1

1826 Higdon Ave ■ - RHC Petition# 22230012

Award Schedule

Hearing Officer Decision

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue Persisted	Rent Amount	Percent of Rent Rebate	Rent Rebate Awarded
Basement Flood and Smell	6/1/2022	7/31/2022	2.0	\$ 3,105.00	40%	\$ 2,484.00
Broken window in bedroom	10/1/2022	10/31/2022	1.0	\$ 3,105.00	10%	\$ 310.50
Cracks/gaps in property	10/1/2022	2/28/2023	5.0	\$ 3,105.00	10%	\$ 1,552.50
Pest infestation	12/1/2020	11/15/2022	23.5	\$ 3,105.00	20%	\$ 14,593.50
Sewage leak	NA	NA	NA	NA	NA	\$ -
Water heater and other plumbing issu	12/1/2016	7/31/2019	32.0	\$ 3,000.00	20%	\$ 19,200.00
	8/1/2019	10/1/2020	14.0	\$ 3,105.00	20%	\$ 8,694.00
TOTAL Rent Rebate/Credit Awarded						\$ 46,834.50

*Rent increase effective 8/1/2019

Past Due Rent Credit Schedule

Month/Year of Rent Payment	Unpaid Rent Owed to Landlord	Rent Credited to Petition	Total Rent Owed to Landlord
4/2022	\$ (3,105.00)	\$ 3,105.00	\$ -
7/2022	\$ (3,105.00)	\$ 3,105.00	\$ -
8/2022	\$ (3,105.00)	\$ 3,105.00	\$ -
9/2022	\$ (3,105.00)	\$ 3,105.00	\$ -
10/2022	\$ (3,105.00)	\$ 3,105.00	\$ -
11/2022	\$ (3,105.00)	\$ 3,105.00	\$ -
12/2022	\$ (3,105.00)	\$ 3,105.00	\$ -
TOTAL	\$ (21,735.00)	\$ 21,735.00	\$ -

Remaining Rent Rebate after Past Due Credit \$ 25,099.50

Future Rent Credit Schedule

Month/Year of Rent Payment	Rent Owed to Landlord	Rent Credited to Petitioner	Total Rent Due to Landlord	Rent Credit Remaining
1/2023	\$ (2,794.50)	\$ 2,794.50	\$ -	\$ 22,305.00
2/2023	\$ (2,794.50)	\$ 2,794.50	\$ -	\$ 19,510.50
3/2023*	\$ (2,794.50)	\$ 2,794.50	\$ -	\$ 16,716.00
4/2023	\$ (3,105.00)	\$ 3,105.00	\$ -	\$ 13,611.00
5/2023	\$ (3,105.00)	\$ 3,105.00	\$ -	\$ 10,506.00
6/2023	\$ (3,105.00)	\$ 3,105.00	\$ -	\$ 7,401.00
7/2023	\$ (3,105.00)	\$ 3,105.00	\$ -	\$ 4,296.00
8/2023	\$ (3,105.00)	\$ 3,105.00	\$ -	\$ 1,191.00
9/2023	\$ (3,105.00)	\$ 1,191.00	\$ 1,914.00	\$ -

*Schedule shows reduced rent due to code violations through March 2023. Landlord required to reduce rent to \$2,794.50 until code violations are cleared to the satisfaction of the City. This may extend the rent schedule above.