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CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

**PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT
("CSFRA") AS CODIFIED IN CITY OF MOUNTAIN VIEW CITY CHARTER
ARTICLE XVII**

**IN RE 1643 VILLA STREET, APT. ■,
MOUNTAIN VIEW, CALIFORNIA ■,**

NO: C22230029

ROBERTO RIVERA,

DECISION AFTER HEARING

Petitioner,
vs.

Hearing Date: May 17, 2023
Hearing Time: 9:30 A.M.

SHUFANG CHEN & WILLIAM PAN,
Respondents.

Pursuant to written notice, an administrative hearing ("Hearing") on the March 8, 2023 petition for rent adjustment ("Petition") filed by Roberto Rivera ("Mr. Rivera"), tenant at 1643 Villa Street Unit ■, Mountain View ("Unit") was held via Zoom on May 17, 2023 at 9:30 A.M.

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- 1 T-2 Tenant Petition “A” for Unlawful Rent (3/8/2023)
- 2 T-3 Residential Lease/Month to Month Rental Agreement (1/1/2009)
- 3 T-4 Compilation: Confirmation of Electronic Payments (8/18/2021 to 2/1/2023)
- 4 T-5A Handwritten note re: payment of \$1,600 cash to Shufang Chen (5/3/2023)
- 5 T-5 Compilation: Bank Statements (6/1/22 through 1/31/2023)
- 6 T-6 Compilation: Confirmation of Electronic Payments (6/1/2023 through 4/13/2023)
- 7 T-7 Compilation: Confirmation of Electronic Payments and Utility Statements related
- 8 to tenant’s utility payments (6/23/2022-1/19/2023)
- 9 T-8 Notice of Change of Terms of Tenancy (3/15/19)
- 10 T-9 Tenant Estoppel Certificate (2/21/2022)
- 11 T-10 Renewed Residential Lease/Month to Month Rental Agreement (9/1/2022)

12 Respondent’s Exhibits:

- 13 LL-1 Petition Response Notice and Response (4/12/2023)
- 14 LL-2 (Further) Landlord Response to Petition (5/9/23)
- 15 LL-3 Tenant Statement/Rent Ledger with highlights (4/15/2022-3/1/2023)
- 16 LL-4 Tenant Statement/Rent Ledger (1/1/2009 through 5/9/2023)
- 17 LL-5 Compilation: PG&E Energy Statements (10/24/2022 through 4/24/2023)
- 18 LL-6 Compilation: City of Mountain View Utility Statements (7/8/2022 through
- 19 5/8/2023)
- 20 LL-7 Compilation: Real Estate Disclosure Statements (3/8/2022)
- 21 LL-7A. Seller’s Disclosure Statement (2/24/2022)
- 22 LL-7B Seller Property Questionnaire (2/24/2022)
- 23 LL-7C Disclosures of Natural Hazards (2/23/2022)
- 24 LL-7D Chicago Title – Preliminary Report (2/16/2022)

25 Hearing Officer Exhibits:

- 26 HO-1 Program E-Mail re Registration Status (3/10/23)
- 27 HO-2 Notice of Acceptance (4/7/2023)

1 HO-3 Follow-Up Information for Petition Requesting Adjustment (3/7/23)
2 HO-4 Notice of Prehearing Meeting and Hearing Date (4/12/2023)
3 HO-5 Summary of Prehearing Conference and Order (5/2/2023)
4 HO-6 City of Mountain View Inspection Report (5/20/21; as updated 6/2/21)
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7 **SUMMARY OF TESTIMONY**

8 Mr. Rivera, Mr. Pan and Ms. Chen each provided sworn testimony at the hearing.

9 **Summary of Petitioner's Testimony:**

10 Mr. Rivera testified that he filed his petition because he did not have to pay for utilities
11 under his original rental agreement. The building owners have changed ownership at least three
12 times in recent years, and he believes records were lost in the process. According to Mr. Rivera,
13 "the administrator" (Mr. Pan) repeatedly told him that Mr. Rivera is "paying too little" and that he
14 "has to start paying more." The explanation given to Mr. Rivera by Mr. Pan was that the utilities
15 costs for the Unit were very expensive. Mr. Rivera testified that whenever he goes to the office,
16 the new property manager (Mrs. Pan) also tells him that he must "pay more."

17 According to Mr. Rivera, the owner before Respondents charged "only a little" for
18 utilities, but now the bills are a lot more. Under the current ownership, Mr. Rivera does not
19 receive any explanation about his utilities bills. There is an app that is used but it only shows the
20 charges, not how they were calculated. Mr. Rivera testified that the current utilities charges have
21 now become too much, so he is very confused and wants to know why. When he called Mr. Pan
22 and asked for an explanation about why the utilities charges were so high, according to Mr.
23 Rivera the response he received was "No, I'm not going to give you an explanation because I'm
24 on vacation." The only thing he was ever told is that Mr. Pan has "talked to everyone and
25 everyone agrees to those documents."

26 In response to questioning by the hearing officer about the "Tenant Estoppel Certificate"
27 (T-9), Mr. Rivera testified that he did sign it. He did so because the previous landlord made him
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1 sign it. According to Mr. Rivera, the previous landlord told him that the certificate was “part of
2 the process” and that Mr. Rivera “had to do it.” Mr. Rivera testified that his rent was raised within
3 three months after he signed the estoppel.

4 During their discussion about the certificate, the prior owner did not tell Mr. Rivera that
5 signing the document might cause him to waive the legal rights that he might have. He did not tell
6 him that the document was going to be given to Respondents. According to Mr. Rivera, every
7 time a new owner purchased the building, they brought new documents to him and said that he
8 had to sign them. These documents were always in English. Mr. Rivera does not read the English
9 language.

10 In response to questioning by the hearing officer about the Notice of Change of Terms of
11 Tenancy (T-8), Mr. Rivera first saw the document on the date shown on it. He thinks that he may
12 have signed a copy of it, but he does not have it.

13 In response to a question from Mr. Pan, Mr. Rivera said that there have been four people
14 living in the Unit for the entirety of his tenancy. He testified that they were all family members.¹

15 In response to a question from Mr. Pan about a text message discussion that occurred
16 between him and Mr. Pan on or about December 7, 2022 about the particulars of the rent in which
17 Mr. Rivera said he would not be paying utilities until Mr. Pan’s return, Mr. Rivera testified that it
18 was not true that he was told by Mr. Pan that he did not have to pay the utilities charges until Mr.
19 Pan returned from vacation. According to Mr. Rivera, when he went to the office and told them
20 that he did not have the money and might have to take out a loan, the only response he received
21 was that he had to pay.

22 ¹ In cross-examination, Respondents attempted to obtain testimony from Mr. Rivera about
23 the identity of the Unit’s occupants on the grounds that (1) the CSFRA requires a tenant prove, in
24 connection with any new occupant, that the necessary relationships required to avoid a rent
25 increase (family member or replacement roommate) exists, and (2) the CSFRA requires a tenant
26 “register” any new person who moves into a rental property, yet Mr. Rivera had not done so.
27 However, as Mr. Rivera’s Petition did not raise the question of how many residents lived in the
28 Unit or allege that he was being charged excess rent on that ground, this hearing officer did not
permit Mr. Pan to question Mr. Rivera about the specific identities or familial relationship of
everyone living in the Unit as this otherwise-private information is not relevant or necessary to
any material fact relating to Mr. Rivera’s petition. See Evidence Code §§210, 350.

1 In response to further questioning by Mr. Pan, Mr. Rivera confirmed that on November
2 10, 2022, Mr. Rivera requested a copy of the lease he had signed with Respondents and a copy of
3 the utility bill. Mr. Pan orally explained to him how the electricity, gas and water charges were
4 calculated. Mr. Rivera confirmed that he told Mr. Pan that he had to go back and talk to his
5 roommate and would "let Mr. Pan know." In Mr. Rivera's opinion, he still did not have a
6 complete explanation of the divisions and how they were done. Even though he got documents,
7 he did not understand them, because they were in English.

8 In response to questioning from Mr. Pan about whether he received monthly statements
9 from Respondents about the utilities, Mr. Rivera denied receiving them. He testified that the only
10 documents that are ever available are all in English and he does not read English. He wants to
11 know each month exactly how the charges were prorated. He also did not understand how his
12 utilities were being charged in comparison to the other units or what prorated proportions are for
13 the other units in the rental complex. He felt that since other units had a washer and dryer, and his
14 unit did not, the bills he was getting might not be divided fairly. Mr. Rivera testified that the
15 water charges being demanded by the landlord are now so high that he must do his laundry
16 outside the apartment complex. Mr. Rivera testified that he feels Mr. Pan is just making excuses
17 to him and believes that Respondents are making up their calculations for the utilities. He also
18 testified that, if now under Respondents, the rental amount is going to be based upon how many
19 people live in the Unit, it is a different way of calculating the rent than has been done before.

20 Mr. Rivera testified that he wants to make sure that everything is being done fairly and
21 according to the law, not just following Respondents' belief about what should be done.

22 **Summary of Respondents' Testimony**

23 Testimony of William Pan

24 Mr. Pan testified that the reason for Respondents increased utility bills for the Unit was
25 not because they wanted to raise the rent, but because the utilities company increase their charges
26 each year, sometimes as much as 10%. Mr. Rivera has been in his rental since 2009 and those
27 numbers had not been increased to account for that. Respondents adjusted the utility bills "a little
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1 bit” to make it easier to maintain the property. According to Mr. Pan, Respondents have their own
2 costs and want to make the property better, but also need to resolve their negative cash flow. Mr.
3 Pan felt that asking the tenants to pay a portion of the utility bills was fair to everyone.

4 Mr. Pan testified, while examining Mr. Rivera, that the proration of water bills reflected
5 the fact that Mr. Rivera lives in a 2 bedroom, 1 bathroom apartment and had four people living in
6 the Unit; 30% of the water bill was therefore allocated to his Unit. Mr. Pan confirmed that the
7 utility bills previously sent to Mr. Rivera were a flat \$100 per month but are intended to be
8 around 30% of the cost. Mr. Pan testified that Mr. Rivera’s electricity bill was shared equally with
9 Unit C, same as previously. For other utilities, the prorations were calculated differently as Unit B
10 and Unit C were 1 bedroom apartments. According to Mr. Pan, those two apartments are paying
11 25% of those costs each, but since Mr. Rivera’s unit is a 2 bedroom unit, he is paying 50%.²

12 According to Mr. Pan, Mr. Rivera can access all the details of the rent including the
13 utilities on the app and can come to the office anytime for copies of the bills. The utility bills are
14 for two-month periods, so the amount Mr. Rivera is paying looks higher but in fact is not.

15 In response to questioning from the hearing officer, Mr. Pan testified that he received a
16 copy of the Tenant Estoppel Certificate as part of their purchase documents. Ms. Chen was the
17 listing agent for the property. He also testified that he prepared the tenant statement/rent ledger
18 (LL-4). Despite the ledger entry’s description, Mr. Rivera’s utility charges in May 2022 were not
19 \$1,500; that amount was the monthly rent. According to Mr. Pan, in September 2022,
20 Respondents corrected how utilities charges were referenced on the ledger.

21 In response to questioning from the hearing officer, Mr. Pan confirmed that he saw the
22 tenant’s original rental agreement when they purchased the property. Mr. Pan agreed that the
23 original rental agreement did not require the payment of utilities charges. Mr. Pan testified that
24 he made no inquiry of the seller about why utilities were now being charged to tenants despite the
25 absence of utilities charges being shown on the rental agreements. According to Mr. Pan, he did

26 ² Although there was no direct testimony confirming this, this testimony gives rise to an
27 inference that there are only three rental units at the 1643 Villa Street complex. However, public
28 records indicate that this complex in fact contains four, not three, units.

1 not think he needed to make any inquiry because two owners had owned the property before
2 Respondents, and the new charges for utilities shown on the estoppel certificate seemed
3 intuitively correct to him given that Mr. Rivera's original lease was 14 years old, and there were
4 no records about how utilities charges had been handled by previous owners.

5 Mr. Pan confirmed that Respondents undertook due diligence on what laws might impact
6 the rental units before their purchase. Mr. Pan was not sure whether the real estate disclosures
7 Respondents received as part of their purchase of the property disclosed the existence of a rent
8 control ordinance. He researched on the internet and checked the City of Mountain View website.
9 According to Mr. Pan, he had questions and had tried to e-mail the City before he increased the
10 rent and had also called the City and left two voicemails. He testified that this was "during
11 COVID" so there was no response, presumably nobody was working at the City office. Mr. Pan
12 testified that he attempted to contact the City "2 or 3 times" between July 2022 and the date he
13 was notified that his rental units were not registered, and that Ms. Chen had also attempted to
14 reach the City. Mr. Pan did not make inquiries about the law in Mountain View until he had
15 already purchased the property, so he did not know before he purchased that there was a specific
16 law about rents in Mountain View that was different from California laws about the subject.

17 Mr. Pan testified that he learned about the CSFRA in approximately July 2022, when he
18 went to the website to find out how Respondents could raise the rent.³ Mr. Pan testified that
19 Respondents did not realize they needed to register their rental units with the Rent Stabilization
20 Program until they received the bill from the previous owner. They received the notice in
21 December, but he was on vacation. When he returned in January 2023, he paid fees to the City
22 immediately and submitted some information to the Rent Stabilization Program via the City's
23 website. Mr. Pan testified that the next time he visited the Rent Stabilization Program, he finished
24 the registration process after a program staff person advised him it had not been completed. Mr.

25 _____
26 ³ There was a conflict in Mr. Pan's testimony: initially, he testified that previous owner
27 mentioned about the required fee payment but did not tell him to go to the City to register; he
28 subsequently testified that the prior owner had not told him about the fees, and he did not learn
about them until the prior owner sent the bill.

1 Pan believed that the Unit was fully registered with the City of Mountain View Rent Stabilization
2 Program and all fees paid as of February or March 2023.

3 According to Mr. Pan, when he browsed the City website, it mentioned that if the tenant
4 adds a person to the rental unit the landlord is not allowed to raise the rent for certain relatives.
5 He testified that he assumed, after Mr. Rivera told him that he had to talk to his roommate about
6 the utilities charges, that the roommate is not a family member, so Respondents could raise the
7 rent because there was a new occupant.

8 Mr. Pan argued that Mr. Rivera has been living in the Unit since 2009 and since 2019 he
9 has had no problem paying the utility bills. Mr. Rivera had taken 3 or 4 weeks to review their new
10 rental agreement in 2022 and if he had questions or concerns about the rent amounts, he could
11 have come and discussed them with Respondents. He did not say anything at that that time; his
12 complaints did not begin until Respondents changed the way the utilities bills were calculated.
13 Respondents make no money from the utilities charges. If he had an objection to the rent
14 payments, Mr. Rivera could have filed a petition in 2019 or 2020. He did not complain until the
15 utilities bills were \$80 or \$100 higher. Mr. Pan contended that because of Mr. Rivera's delay in
16 complaining, his petition is not fair to Respondents.

17 Testimony of Shufang Chen:

18 Ms. Chen originally provided no direct testimony during the hearing. However, upon
19 questioning from the hearing examiner, Ms. Chen testified that she had been a listing agent for "a
20 few" multifamily rental properties being sold in California but did not remember the exact
21 number. None of those listings were in Mountain View. As it related to the estoppel certificate,
22 Ms. Chen testified that the seller in the transaction asked the tenants to sign estoppel certificates
23 and she was not involved in that process. Ms. Chen did not ask the seller whether she could speak
24 to the tenants to confirm the accuracy of the estoppel certificates before the close of escrow.
25 Ms. Chen did not ask the prior owners for the rental history of the rental units. The only
26 information she received was on the estoppel certificates.

27 According to Ms. Chen, she never attempted to contact the City of Mountain View after
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1 receiving the bill for registration fees, and nobody told her during the sale process that they
2 needed to pay “the bill” to Mountain View. Ms. Chen did not herself attempt to contact the City
3 of Mountain View as it relates to the unit until approximately March 2023, when she went to the
4 office. Ms. Chen testified that the utilities charges first were imposed under a prior owner, not
5 under Respondents, so they were not Respondents’ doing.

6 **ANALYSIS**

7 The ultimate question in this proceeding is: What amount of rent can Respondents legally
8 charge Mr. Rivera for the Unit? The answer to that question requires a two-step process of
9 analysis. First, the lawful amount of rent under the CSFRA must be determined without regard to
10 the utilities charges that are being charged for the Unit. The propriety and amount of utilities
11 charges which can be added to the lawful rent for the Unit must then be determined.

12 **I. Rent Chargeable for the Unit Exclusive of Utilities Charges**

13 Every rental unit in Mountain View is required to be registered with the Rent Stabilization
14 Program unless exempt from the registration requirement. *See* CSFRA Regulations, Chpt. 11, § B
15 subd. (1). The registration process is not complete until all the information which is requested on
16 the Rent Stabilization Program’s registration forms (online or otherwise) is provided by a
17 landlord, and the annual program fee paid. *Id.*, § B subd. (2); CSFRA §1709 subd. (j). If this
18 process is not complete by March 1 of each year, the landlord is not in substantial compliance
19 with the CSFRA. CSFRA Regulations, Chpt. 12 § D. The consequence the CSFRA imposes for
20 substantial noncompliance with the CSFRA is that a landlord is prohibited from increasing rent,
21 whether through the CSFRA’s annual general adjustment or otherwise. *See* CSFRA Regulations,
22 Chpt. 12, § B & Table 1. That prohibition against a rent increase continues to exist even after
23 registration until any excess rent collected from the tenant is refunded. *Id.*

24 As of the effective date of the CSFRA in 2016, the rent being charged for the Unit was
25 \$1,500 per month, having increased in June 2014 from the original contract rent of \$1,300 per
26 month. On May 1, 2021, the rent for the Unit was increased by Respondent’s predecessor in
27 interest from \$1,500 per month to \$1,600 per month, an increase of 6.7%. This increase was

1 substantially higher than the annual general adjustment authorized under the CSFRA for 2021.
2 Neither of Respondents' predecessors in interest registered the Unit (which does not qualify for
3 exemption from registration for any reasons set forth in the CSFRA (*see generally* CSFRA §
4 1703) before raising the rent.

5 Respondents purchased the Unit from their predecessor landlord in April 2022. Although
6 the Unit was still not registered with the Rent Stabilization Program as required by the CSFRA,
7 on July 19, 2022 Respondents entered into a new rental agreement with Mr. Rivera which (1)
8 increased the rent for the Unit from \$1,600 per month to \$1,650 per month effective September 1,
9 2022; (2) increased his security deposit by \$350.00, which was paid by Mr. Rivera on September
10 1, 2022. The increase in rent to \$1,650 per month represented a 3.125 percent increase in rent,
11 again more than the annual general adjustment authorized for 2022. Despite this, Respondents did
12 not complete registration of the Unit until March 31, 2023, almost a year after their purchase.

13 None of these rent increases for the Unit beginning in 2021 were permissible under the
14 CSFRA. Respondents' predecessors in interest failed to comply with the CSFRA's registration
15 requirement which took effect in 2020. *See* CSFRA §1707(f) [no rent increase permitted unless
16 landlord is in substantial compliance with the ordinance and governing regulations]. That failure
17 continued each year, until March 31, 2023, despite changes in ownership. It was only on that
18 March 2023 date that any owners of the Unit were in substantial compliance with the CSFRA's
19 registration requirement and thus potentially eligible to impose a rent increase. CSFRA
20 Regulations Chpt. 11, ¶ F [failure to register is substantial noncompliance].

21 Although substantial compliance may be a defense to enforcement of an ordinance in
22 certain circumstances, testimony at the hearing established that Respondents' failure to register
23 the Unit for almost a year was not excusable. Knowledge of the laws governing real property and
24 its use are imputed to a property owner; ignorance of the CSFRA's registration requirement is
25 therefore not an excuse for their violation or a defense against the consequences of the violation.
26 *See, e.g., Tarrant v. Butler* (1960) 180 Cal.App.2d 235, 240; Winnaman v. Cambria Community

1 Services Dist., (1989) 208 Cal.App.3d 49, 56.⁴

2 Mr. Pan testified that after his purchase, he consulted the City of Mountain View's Rent
3 Stabilization Program website to "see what he could do with the property" and what rents he
4 could charge but did not learn from that due diligence about CSFRA's registration requirement.
5 Yet information about the registration requirement and a copy of both the CSFRA and its
6 regulations are present on that website. Mr. Pan also testified that he attempted to contact the
7 Rent Stabilization Program "2 or 3" times after he purchased the Unit beginning in July 2022,
8 including by voicemail, but never received a response from the City. If this testimony was
9 credible, this would mean that he could not obtain information from the Program staff for six
10 months (until January 2023.) However, there is no evidence that the entire Rent Stabilization
11 Program was completely shut down for six months. Rent Stabilization Program employees were
12 working physically in the office beginning in April 2022. Mr. Pan's testimony that there was no
13 response to *any* of his attempts to obtain information from the Rent Stabilization Program for that
14 length of time is simply not credible. Given this, his failure to complete the registration process
15 by March 1, 2023 was not excusable, and requires a conclusion that the Unit was not in
16 substantial compliance until March 31, 2023.

17 For these reasons, until at least April 1, 2023 neither Respondents nor their predecessors
18 in interest were permitted to demand or collect more than \$1,500 periodic rent for the Unit, plus
19 any additional charges that were authorized under that ordinance as of the effective date of the
20 CSFRA or subsequent.

21 Finally, Respondents' \$350.00 increase in Mr. Rivera's security deposit also violated the
22 provisions of the CSFRA. On its face, the CSFRA outright prohibits such an increase. CSFRA §
23 1706 subd. (c).

24
25 ⁴ This principle has particular force here. Ms. Chen is a real estate agent and handled
26 Respondents' acquisition of the property containing the Unit. She testified that she had handled
27 multiple real estate transactions of this type (involving multifamily residential properties), even as
28 she did not recall how many. It is therefore not unreasonable to attribute to her a greater duty of
inquiry about the laws governing use of the property, including the CSFRA, before purchasing it.

1 **II. Imposition of Utilities Charges for the Unit**

2 In addition to the periodic rent, the duty for Mr. Rivera to pay a portion of the utilities
3 charges for the Unit was first added to Mr. Rivera's rental agreement effective June 2019. (T-8).
4 Those charges were carried over to the new rental agreement signed by the Parties in 2022. (T-
5 10). The question is whether those charges could be lawfully imposed under the CSFRA.

6 They could not, for two reasons. First, as discussed above, due to the failure of registration
7 *no rent increase at all* could have been lawfully noticed at any time until April 1, 2023. CSFRA
8 §1707(f). The second, and equally important reason, however, is that Respondents' imposition of
9 utilities charges on top of the lawful base rent for the Unit was itself independently improper.
10 The definition of "rent" under the CSFRA includes amounts paid for utilities. CSFRA § 1702
11 subd. (p). Therefore, any increase in those charges, of any amount, is an increase in rent.

12 As of the effective date of the ordinance, all rents for units covered by the CSFRA were
13 required to be rolled back to the amount charged on October 19, 2015. CSFRA §§1702 subd.
14 (b)(1). After that date, no landlord was permitted to charge a higher rent for a unit covered by the
15 CSFRA until September 1, 2017, and any increase in rent had to be done in accordance with the
16 CSFRA. Id., § 1706(a); CSFRA § 1707(a).

17 Mr. Rivera's rental agreement prior to the effective date of the CSFRA made no provision
18 for the payment of utilities. (T-4). Since the rent in effect for the Unit in October 2015 was \$1,500
19 with no utilities costs payable by the tenant, neither Respondents nor their predecessors were
20 entitled to charge any amount for utilities costs for the Unit to Mr. Rivera. Neither had received
21 any approval to do so from the Rent Stabilization Program (following consideration of a landlord
22 petition for an upward adjustment of rent above the maximum legal rent for the Unit, which
23 remained \$1,500 per month because of the failure to register the Unit). The change of the
24 financial terms of Mr. Rivera's rental agreement to add utilities charges to the rent beginning in
25 June 2019 (T-8) was therefore unlawful. Mr. Rivera is entitled to a full refund of all sums which
26 the evidence admitted into the record (T-5 through T-8) confirms that he paid Respondents and
27

1 their predecessors in interest for utilities between June 1, 2019 and the date of this decision.⁵

2 A. Impact of the 2019 Change of Terms and 2022 Rental Agreement

3 In opposition to the Petition, Respondents contended that Mr. Rivera did not complain
4 about either the 2019 change of terms for his tenancy (T-9)⁶ or the new rental agreement with
5 them in 2022 (T-10), both of which include a requirement to pay for utilities and one of which
6 increased his security deposit. This argument is not sufficient to overcome the requirements of the
7 CSFRA. A landlord cannot circumvent their obligations under a rent stabilization ordinance
8 merely by obtaining their tenant's acquiescence or agreement to an otherwise unlawful rental
9 agreement. *See, e.g., Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1372; *Carter v. Cohen*
10 (2010) 188 Cal.App.4th 1038, 1046-8 ["Generally, landlords cannot circumvent their obligations
11 under the RSO through the tenant's acquiescence or agreement.] Instead, "[T]he courts . . . will
12 not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an
13 illegal act." *Id.*, at 1047 *citing Lewis Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141. Unless the
14 imposition of utilities charges by Respondents or their predecessors was lawful under the
15 CSFRA, Mr. Rivera could pursue a refund of utility payments he made to Respondents and their
16 predecessors, even if he initially acquiesced to that charge by signing a new rental agreement
17 reflecting that illegal charge. *See, e.g., Carter, supra* at 1047-1049 [tenant could pursue remedies
18 to recover excess rents paid for a unit covered by the Los Angeles rent stabilization ordinance
19 even though her underlying rental contract was illegal; her knowledge of the fact that her rental
20 did not have a certificate of occupancy when she signed her lease was not enough to overcome
21 the public policies underlying the ordinance).] Yet, as discussed above, neither the imposition of

22 ⁵ Recognizing that Respondents did not personally receive all the money that must be
23 refunded because they have only owned the Unit since 2022, they are nonetheless responsible for
24 its repayment to Mr. Rivera. The CSFRA defines "landlord" as "An owner, lessor, sublessor or
25 any other person entitled to receive Rent for the use and occupancy of any Rental Unit, or an
26 agent, representative, predecessor, or successor of any of the foregoing." CSFRA §1702(i)
[Emph. Add.] As such, a current landlord's legal duty to a tenant under the CSFRA to refund
overcharges in excess of the lawful rent is clear, even if those overcharges were collected by a
predecessor landlord. *See* CSFRA §1714(a).

27 ⁶ Mr. Rivera testified that he had seen a copy of the Change of Terms and believed that he
28 had signed it. -14-

1 utilities charges nor the increase in the security deposit was, in fact, lawful under the CSFRA.

2 B. Impact of the Tenant Estoppel Certificate

3 Respondents also contend that their imposition and collections of utilities charges is
4 proper in part because Mr. Rivera signed an estoppel certificate (T-9) at the request of the prior
5 landlord including the payment of utilities as part of his rent for the Unit. In other words,
6 Respondents contend that, by virtue of the estoppel certificate, Petitioner must continue to pay a
7 share of utility costs in addition to his base rent because by signing the estoppel, he agreed that it
8 showed the correct rent for the Unit, including payment for utilities.

9 This contention cannot be sustained under the facts governing the Petition, even though in
10 most other contexts an estoppel certificate is fully enforceable against the person signing it if that
11 instrument has been relied upon. *See* Evidence Code § 622; *see also* Plaza Freeway Limited
12 Partnership v. First Mountain Bank (2000), 81 Cal. App. 4th 616, 626 [estoppel certificates are
13 enforceable as binding instruments under Evidence Code §622 and with few exceptions, the
14 recitation of facts asserted within them is conclusive.] To enforce the estoppel in this case would,
15 however, contravene the dictates of the CSFRA and the public policy underlying it.

16 The provisions in the estoppel certificate are provisions regarding the rent level (including
17 the amount of utilities charges to be paid); to wit, they relate to the amount of consideration paid
18 by the tenant for underlying rental agreement. These recitations, therefore, fall squarely within
19 Evidence Code §622's exception to conclusive enforceability – the recital of consideration. *See*
20 Evidence Code §622. Therefore, the representations in the estoppel certificate in this case about
21 the amount of rent due and payable by the tenant, including for utilities, are not binding on Mr.
22 Rivera in this or any other proceeding.

23 The determination of whether the representation in the estoppel certificate that Mr. Rivera
24 had “no defenses, off-sets, or counterclaims against the payment of rent” against his landlord as
25 of the date he signed the estoppel (which, if enforceable would require denial of this Petition)
26 presents a closer legal question. Clearly, on the date Mr. Rivera signed the estoppel he did, in
27 fact, have a defense, off-set and counterclaim against the payment of rent (because of the

1 unlawful increases in rent discussed above). The representation, therefore, was false at that time.
2 Factual representations in an estoppel certificate are routinely enforced against tenants within the
3 context of commercial leases, even when those facts as stated are erroneous. *See, e.g., Plaza*
4 *Freeway, supra*, at 626. Because the representation of “no defenses, off-sets, or counterclaims
5 against the payment of rent” in the estoppel certificate is about the legal relationship between the
6 parties, and not a representation about the amount of consideration, it does not fall into Evidence
7 Code § 622’s exception. Its enforceability must be separately considered.

8 This hearing officer finds that despite Evidence Code § 622, the representation that Mr.
9 Rivera had no defenses, off-sets or counterclaims against his landlord relating to rent cannot be
10 conclusively applied against Mr. Rivera, for two reasons.

11 First, it is settled law that any waiver of statutory rights⁷ must be voluntary, knowing and
12 intelligent, or it is unenforceable. *See, e.g., Bauman v. Islay Investments* (1973) 30 Cal.App.3d
13 752, 758 [(“I)t is settled law in California that a purported ‘waiver’ of a statutory right is not
14 legally effective unless it appears that the party executing it had been fully informed of the
15 existence of that right, its meaning, the effect of the ‘waiver’ presented to him, and his full
16 understanding of the explanation.”]

17 In this case, Mr. Rivera testified that he signed the estoppel certificate because he was told
18 by the predecessor landlord that he must do so as “part of the process.” Mr. Rivera was not given
19 the option to *not* sign the estoppel. He was not told that the estoppel certificate was being given to
20 a new buyer and that the new buyer might rely upon it. He was not told anything about what an
21 estoppel certificate means or does. As Mr. Rivera testified, he does not read English and therefore
22 could not read or understand the estoppel certificate, which is written entirely in English, let alone
23 understand the possible legal consequences of his signing. While the law does not generally
24 excuse the failure to read a document before signing it, even when there is a language barrier
25 (unless the document was a contract negotiated in a language other than English; see Civil Code
26

27 ⁷ “A municipal ordinance has the same force within the corporate limits of the city adopting
28 it as does a statute throughout the state.” *Farmer v. City of Inglewood*, (1982) 134 Cal.App.3d
130, 139 n.8

1 §1632), Mr. Rivera was given no information by Respondents' predecessor in interest about the
2 nature of the estoppel certificate, the reasons he was being asked to sign one, and the possible
3 legal impact if another, unknown person, relied upon it in the future. Under these circumstances,
4 the estoppel certificate cannot be enforced in a way that would effectuate a waiver of his right
5 under the CSFRA to seek recovery of unlawful rents he paid.

6 Additionally, the estoppel certificate at issue in the Petition is for a residential unit which
7 is subject to local regulatory protections adopted in part for the primary purpose of protecting
8 tenants from excessive rent increases. See, e.g., CSFRA § 1700. The estoppel certificate therefore
9 implicates not just principles of contract and waiver; it implicates public policy, including those
10 reflected in the CSFRA and its regulations. Section 1713 of the CSFRA provides that "Any
11 provision of a Rental Housing Agreement, whether oral or written, which purports to waive any
12 provision of this Article established for the benefit of the Tenant, shall be deemed against public
13 policy and shall be void." It would be a violation of public policy to permit Respondents to retain
14 the right to violate the CSFRA's rent limitations merely because Mr. Rivera signed a document
15 purporting to absolve his landlord from liability for rent claims in the future. *See, e.g., Panzer-*
16 *Hamilton Company v. Bray*, (1929) 96 Cal.App. 460, 464-65. [estoppel cannot be enforced to
17 effectuate a violation of law or public policy.]

18 C. Impact of an Alleged Increase in Occupancy

19 According to Respondents, Mr. Rivera has roommates who (1) moved into the Unit after
20 the date of Mr. Rivera's original rental agreement in 2009, such that they were "additional
21 occupants" within the meaning of the CSFRA; and (2) are not qualifying relatives who otherwise
22 qualify for protection from rent increases under the CSFRA despite moving in after the tenancy
23 began. Respondents contended that the increased utilities charges which Respondents have levied
24 for the Unit are proper because Mr. Rivera now has an additional occupant living in the Unit.

25 The CSFRA Regulations (at Chapter 9) address the question of additional occupants and
26 their impact, if any, upon the maximum legal rent chargeable for a covered rental unit. Chapter 9,
27 Section C(4) provides that an additional occupant does not, in and of itself, authorize an increase

1 in the maximum legal rent; an increase is not lawful unless the *only* occupants of a rental unit are
2 “additional occupants” as defined in the Regulations.⁸

3 Mr. Rivera testified that he still occupies the Unit and has occupied the Unit continuously
4 since the beginning of his tenancy (before the effective date of the CSFRA.) He also testified that,
5 despite there being only three (3) tenants listed on his original 2009 lease, there was not an actual
6 increase in the number of persons occupying the Unit. He also testified there have been four
7 people living in the Unit since the inception of his tenancy in 2009.

8 Mr. Rivera’s continuous occupancy in the Unit prohibits any increase in the rent charged
9 for a covered unit because of additional occupants unless it is otherwise authorized by the
10 CSFRA; to wit, the additional occupant neither qualifies for protection as an eligible relative or as
11 a replacement roommate. CSFRA Regulations, Chpt. 9, §C(4)(b). A landlord has no unilateral
12 right, under the CSFRA, to simply raise the rent or add utilities charges to the maximum legal
13 rent to reflect a rental unit’s higher occupancy unless the additional occupant enjoys no
14 protections under the CSFRA because they are not an eligible family member or replacement
15 roommate. Any such increase in rent is unlawful. While Mr. Pan testified about his belief that
16 there was an additional occupant in the Unit that was not sufficiently related to Mr. Rivera, he
17 also testified that this was an assumption based only upon Mr. Rivera telling him that he had to
18 “talk to his roommate” about the increase in utilities charge for the Unit. Assumptions are not, by
19 definition, competent evidence sufficient to rebut Mr. Rivera’s direct testimony about the number
20 of people living in the Unit. The alleged increase in the occupancy in the Unit does not, therefore,
21 provide a defense against the relief sought in the petition.

22 D. Applicability of Laches Defense

23 Finally, Respondents contend that the Petition should be denied because Mr. Rivera
24

25 ⁸ “Additional Occupant” is defined at Chapter 9, Section (B)(1) of the Regulations as “An
26 Additional Occupant is any person whose primary residence is a Covered Rental Unit, but who
27 was not one of the original occupant(s) who took possession of the Covered Rental Unit when the
28 tenancy began for the Covered Rental Unit, unless the person occupied the Covered Rental Unit
on or before December 23, 2016.”

1 waited “too long” to complain about the addition of utilities charges to his rent, which began in
2 June 2019 under Respondent’s predecessor in interest. Mr. Pan repeatedly testified that Mr.
3 Rivera “had no problem” with paying utilities until the amount increased and made no complaints
4 prior to that time. With this argument, Respondents effectively assert the equitable defense of
5 laches against the Petition. A laches defense, fundamentally grounded in equity, cannot be
6 sustained in this case. Just as the estoppel certificate cannot be enforced against Mr. Rivera as
7 violative of public policy, so too would denial of relief to Mr. Rivera solely because he delayed in
8 filing his Petition.

9 **ORDER**

10 Given the evidence and arguments received prior to, at, and after the Hearing, and good
11 cause appearing, it is hereby **ORDERED** as follows:

12 It is **FOUND** that the maximum legal rent chargeable for the Unit was \$1,500 per month
13 from the inception of the CSFRA in 2016 through at least April 1, 2023 due to Respondents’ (and
14 their predecessors’) failure to register the Unit as required by the CSFRA.

15 It is further **FOUND** that Respondents’ assessment and collection of any sums over and
16 above the maximum lawful rent for the Unit (including those sums collected by their predecessors
17 in interest) violated the CSFRA and must be refunded to Mr. Rivera.

18 It is further **FOUND** that Mr. Rivera is entitled to a be refunded all sums paid to
19 Respondents or their predecessors in interest that were more than the \$1,500 maximum lawful
20 rent for the Unit for the period of March 15, 2019 through the date of this decision.

21 It is therefore **ORDERED** that Respondents shall refund to Mr. Rivera the sum of
22 \$2,250.00, representing the amount of rent collected by Respondents and their predecessors in
23 interest between June 1, 2021 and the date of this decision which exceeded the \$1,500 maximum
24 lawful rent for the Unit. This overcharge was \$100 per month for the months of June 2021
25 through August 2022 (15 months), and \$150.00 per month from September 1, 2022 through the
26 date of this decision (9 months), assuming tenant continued to pay \$1,650.00 for rent after
27 January 1, 2023.

1 Although Mr. Rivera did not submit evidence of the rent he paid to Respondents in May
2 2021, It is further **ORDERED** that, in addition to the payments listed above, Respondents shall
3 refund to Mr. Rivera 100 percent of any rent amount he paid to Respondents for rent for the
4 month of May 2021 which exceeded the lawful rent amount of \$1,500. If there is a factual dispute
5 between Petitioner and Respondents and the amount to be refunded under this provision,
6 Petitioner shall not be required to file a new petition but may instead ask the Rent Stabilization
7 Program to reopen this proceeding and schedule a compliance hearing relating to this matter at
8 which evidence and argument to be evaluated by this hearing officer.

9 It is further **ORDERED** that, in addition, Mr. Rivera shall be refunded the sum of
10 \$3,350.85 (representing the total amount of utilities payments he made up for the period of May
11 1, 2019 to April 13, 2023).

12 It is further **ORDERED** that, in addition to the payments listed above, Respondents shall
13 refund to Mr. Rivera 100 percent of the amount he paid to Respondents for rent and utilities
14 payments above the lawful rent amount of \$1,500 after April 13, 2023. If there is a factual dispute
15 between Petitioner and Respondents and the amount to be refunded under this provision,
16 Petitioner shall not be required to file a new petition but may instead ask the Rent Stabilization
17 Program to reopen this proceeding and schedule a compliance hearing relating to this matter at
18 which evidence and argument to be evaluated by this hearing officer.

19 It is further **ORDERED** that, in addition to the payments listed above, Respondents shall
20 refund an additional \$350.00 to Mr. Rivera, the amount that they received as an increase to his
21 security deposit in violation of CSFRA § 1706 subd. (c). Respondents may not increase Mr.
22 Rivera's security deposit in the future, except in compliance with the CSFRA's provisions.

23 It is therefore **ORDERED** that Respondents shall pay to Mr. Rivera a total of \$5,600.85,
24 plus any additional sums paid by Mr. Rivera over the lawful rent amount of \$1,500 after April 13,
25 2023 to Respondents for rent and utilities, on or before August 1, 2023.

26 It is further **ORDERED** that if Mr. Rivera does not receive full payment from
27 Respondents by August 1, 2023, Mr. Rivera shall be entitled to withhold his rent payments until
28

1 such time as he has withheld a total \$5,600.85 (or any lesser sum that is appropriate if
2 Respondents have made any earlier payment required by this decision directly to Mr. Rivera.).
3 Mr. Rivera may refer to Attachment 1 to this Decision the recommended Credit Schedule in the
4 event that he must withhold rent to recover the sums awarded to him by this decision.

5 It is further **ORDERED** that the maximum lawful rent for the Unit shall be \$1,500 per
6 month until Respondent is in full compliance with this order, is otherwise in substantial
7 compliance with the CSFRA, and until a notice of rent increase complying with the requirements
8 of state law and the CSFRA in terms of the amount of increase and the timing of the increase is
9 given to Mr. Rivera and the notice period has expired. This maximum lawful rent amount is
10 inclusive of all utilities. Any future rent increases for the unit may be applied as a percentage only
11 of this maximum lawful rent.

12 It is further **ORDERED** that if any dispute arises as to whether any party has failed to
13 comply with this Decision, any party may request a Compliance Hearing pursuant to CSFRA
14 Regulations, Chpt. 5, section J(1).

15 It is further **ORDERED** that Respondents may not impose or collect any sums for the
16 purposes of paying the Unit's utility costs going forward, for whatever reason, unless and until (1)
17 Respondents have filed a petition for a rent increase pursuant to the CSFRA and have obtained a
18 final order authorizing a rent increase for that purpose; (2) Respondents are otherwise in
19 substantial compliance with the CSFRA; and (3) Respondents subsequently provide Mr. Rivera
20 with a written notice of rent increase in the manner required by law.⁹

21 Respondents are reminded that, pursuant to CSFRA section 1707 subd (b), they are
22 prohibited from including, in any future rent increase, any annual general adjustments that
23 accrued prior to their ownership, but which were not lawfully implemented by their predecessor

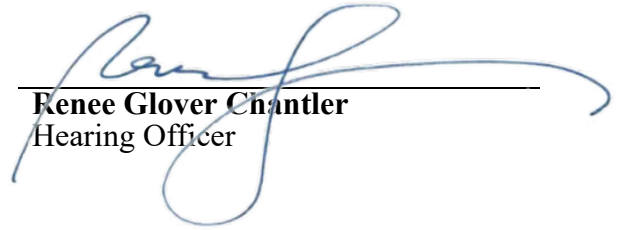
24 ⁹ Respondents are not without additional remedies to mitigate the financial impact of this
25 decision. Question 17(B) of the Seller's Disclosure Statement (Exh. LL-7A) required the seller to
26 disclose whether any rent control law governed the operation of the property being sold. *See* LL-
27 7A at pg. 3. Landlord's predecessor in interest falsely answered "No" in response to this question,
28 as the CSFRA was in effect during the entirety of the seller's ownership, having gone into effect
in 2016. Given this, Respondents may have a remedy *against their seller* for failure to disclose
the existence of the CSFRA as was required by the disclosure forms used in the purchase
transaction.

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landlord(s).

IT IS SO ORDERED.

DATE: June 30, 2023



Renee Glover Chantler
Hearing Officer

**Attachment 1
Award Schedule**

1643 Villa St Apt [REDACTED] - RHC Petition# C22230029

Hearing Officer Decision

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Lawful Rent	Payments in Excess by Petitioner
5/2021	TBD	\$ -	\$ 1,500.00	TBD
6/2021	\$ 1,600.00	\$ 32.00	\$ 1,500.00	\$ 132.00
7/2021	\$ 1,600.00	\$ 58.00	\$ 1,500.00	\$ 158.00
8/2021	\$ 1,600.00	\$ 70.00	\$ 1,500.00	\$ 170.00
9/2021	\$ 1,600.00	\$ 72.00	\$ 1,500.00	\$ 172.00
10/2021	\$ 1,600.00	\$ 68.00	\$ 1,500.00	\$ 168.00
11/2021	\$ 1,600.00	\$ 58.00	\$ 1,500.00	\$ 158.00
12/2021	\$ 1,600.00	\$ 30.00	\$ 1,500.00	\$ 130.00
1/2022	\$ 1,600.00	\$ 42.00	\$ 1,500.00	\$ 142.00
2/2022	\$ 1,600.00	\$ 51.00	\$ 1,500.00	\$ 151.00
3/2022	\$ 1,600.00	\$ 71.00	\$ 1,500.00	\$ 171.00
4/2022	\$ 1,600.00	\$ 62.30	\$ 1,500.00	\$ 162.30
5/2022	\$ 1,600.00	\$ -	\$ 1,500.00	\$ 100.00
6/2022	\$ 1,600.00	\$ -	\$ 1,500.00	\$ 100.00
7/2022	\$ 1,600.00	\$ 65.25	\$ 1,500.00	\$ 165.25
8/2022	\$ 1,600.00	\$ 185.52	\$ 1,500.00	\$ 285.52
9/2022	\$ 1,650.00	\$ -	\$ 1,500.00	\$ 150.00
10/2022	\$ 1,650.00	\$ 130.59	\$ 1,500.00	\$ 280.59
11/2022	\$ 1,650.00	\$ 230.88	\$ 1,500.00	\$ 380.88
12/2022	\$ 1,650.00	\$ 81.13	\$ 1,500.00	\$ 231.13
1/2023	\$ 1,650.00	\$ 743.97	\$ 1,500.00	\$ 893.97
2/2023	TBD	\$ 517.74	\$ 1,500.00	\$ 517.74
3/2023	TBD	\$ 263.88	\$ 1,500.00	\$ 263.88
4/2023	TBD	\$ 517.59	\$ 1,500.00	\$ 517.59
5/2023	TBD	TBD	\$ 1,500.00	TBD
6/2023	TBD	TBD	\$ 1,500.00	TBD
7/2023	TBD	TBD	\$ 1,500.00	TBD
SUBTOTALS*	\$ 32,250.00	\$ 3,350.85	\$ 31,500.00	
TOTAL				\$ 5,600.85

Credit Schedule

Month/Year of Rent Payment	Monthly Rent Owed including Utilities (Base Rent)	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
7/2023	\$ 1,500.00	\$ 1,500.00	\$ -
8/2023	\$ 1,500.00	\$ 1,500.00	\$ -
9/2023	\$ 1,500.00	\$ 1,500.00	\$ -
10/2023	\$ 1,500.00	\$ 1,100.85	\$ 399.15
TOTAL		\$ 5,600.85	

Refund Schedule

Month/Year of Rent Payment	Total Refund
8/2023**	\$5,950.85

* Subtotals for the Lawful Rent column calculates through April 2023 only to account for records submitted.

** This amount includes \$2,250.00 for excess rent, \$3,350.85 for utilities, and \$350.00 for the additional security deposit. If credit schedule elected for refund to tenant, then only the refund of \$350.00 for the additional security deposit is due by this deadline.