

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

Rental Housing Committee Petition No.:	C22230052
Type of Petition:	Failure to Maintain Habitable Premises
Address of Rental Property:	222 Escuela Ave
Subject Unit(s):	██████
Petitioner Name(s) and Authorized Representative(s):	Judith Hernandez, Israel Gonzalez
Respondent Name(s) and Authorized Representative(s):	Highland Garden Apartments, Owner; Eva Sharp, Regional Manager
Date of Telephone Conference:	August 17, 2023
Date of Hearing:	August 30, 2023
Place of Hearing:	Zoom
Date Hearing Record Closed:	August 25, 2023
Date of Decision:	October 10, 2023
Date of Mailing:	October 16, 2023
Hearing Officer:	Duf Sundheim

I. STATEMENT OF THE CASE

1. On May 16, 2023, Judith Hernandez ("Ms. Hernandez") and Israel Gonzales (collectively "Tenants") filed a petition (the "Petition") with the City of Mountain View Rent Housing Committee ("RHC") with respect to the property located at 222 Escuela, ██████ (the "Premises"). The Petition claimed Highland Garden Apartments ("Landlord") failed to maintain a habitable premises due to extensive mold which was allowed to grow over an extended period of time (the "Claim").

2. The Petition was accepted by RHC June 15, 2023.

3. The Notice of Prehearing Conference was served on August 9, 2023.

4. The Pre-Hearing Telephone Conference was held August 17, 2023 (the "Pre-Hearing Conference"). Tenants, the Premises' Regional Manager Eva Sharp ("Ms. Sharp"), Landlord's Community Manager Arnetta Griffin ("Ms. Griffin"), appeared on behalf of the Landlord, JoAnn Pham of the RHC ("Ms. Pham"), and Duf Sundheim, the hearing officer ("Hearing Officer") participated in the call. In addition to discussing hearing procedures, the parties were told to submit all documentation by close of business August 25, 2023.

5. Landlord, through Ms. Sharp, submitted a response to the Petition on August 24, 2023.

II. PARTIES WHO ATTENDED THE HEARING

1. The Hearing was held August 30, 2023 (the “Hearing Date”).

Present were:

Tenants: Ms. Hernandez
Israel Gonzales

Tenant’s Witness:

[REDACTED]

Landlord: Ms. Sharp
Ms. Griffin
Terry Bettes, Director of Maintenance (“Mr. Bettes”)
Francisco Ramirez, Lead Maintenance Technician (“Mr. Ramirez”)

City of Mountain View: Joann Pham

Translators: Esperanza Sanz Escudero
Jason Walker

Hearing Officer: Duf Sundheim

III. SUMMARY OF FINDINGS Landlord owes Tenants \$7,050.60 for a reduction in the habitability of the Premises.

IV. ISSUES PRESENTED

Are Tenants entitled to compensation from the Landlord because of the presence of mold in the Premises? If so, at what rate and over what period of time?

V. TESTIMONY

1. June 18, 2021: The original tenants moved into the Premises on July 1, 2021. The initial rent was \$2,799.

2. October 21, 2021: Tenants testified on or about October 21, 2021, pursuant to a rain shower, water came into the Premises in the area surrounding the living room window which made the inside of the wall wet with moisture (the “Wall” or the “Wall Issue”). Tenants notified Landlord’s Mr. Ramirez of the problem. Mr. Ramirez told Tenants he was going to take no action at that time as the Wall needed to first dry out.

At the Hearing (a) Landlord did not challenge this testimony, (b) Landlord presented no contrary evidence other than the blanket statement by Mr. Ramirez that except as set forth in Landlord’s records submitted by Landlord and attached as L Exhibit 3 (“Landlord’s Records”) there were no discussions about the Wall Issue (the “Ramirez Statement”), and (c) there is no record of this interaction in Landlord’s Records.

3. December 1, 2021. Tenants testified on December 1, 2021, Mr. Ramirez came to the Premises to address an issue with the sink. Mr. Ramirez was informed by the Tenants the Wall was still wet. Tenants testified that although the Wall was wet, the moisture had not adversely affected the paint and there were no visible signs of mold. Mr. Ramirez did not take any remedial action at this time either.

At the Hearing (a) Landlord did not challenge this testimony, (b) Landlord presented no contrary evidence other than the Ramirez Statement, and (c) Landlord’s Records reference a sink issue (Work Order 368128) but makes no reference to the Wall Issue.

4. February 19, 2022. Tenants testified on February 19, 2022, Mr. Ramirez came to the Premises to repair the washer. Tenants informed Mr. Ramirez that the Wall was even wetter than it was in December 2021 and that discoloration had started to occur in certain segments of the wall. Mr. Ramirez acknowledged the discoloration but said no repairs could be done at that time because the Wall was wet.

At the Hearing (a) Landlord did not challenge this testimony, (b) Landlord presented no contrary evidence other than the Ramirez Statement, and (c) Landlord’s Records reference a washer issue (Work Order 378795) but make no reference to the Wall Issue.

5. April and May 2022. Tenants testified no repairs were done between February 2022 and April 2022. In April and May of 2022 Mr. Ramirez returned to the Premises. He treated the wall with a chemical designed to eliminate the moisture and painted the wall. This resolved the problem to Tenants’ satisfaction until November 2022.

At the Hearing (a) Landlord did not challenge this testimony, (b) presented no contrary evidence other than the Ramirez Statement, and (c) Landlord’s Records reference a drain issue in April 2022 (Work Order 385792) but makes no reference to the Wall or any work done by Mr. Ramirez.

6. July 1, 2022. On July 1, 2022, rent for the Premises was increased from \$2,799 to \$2,938 per month.

7. November 16, 2022. Tenants testified in November 2022 the moisture returned. On November 16, 2022, Tenants submitted a Work Order indicating there was humidity in the Premises. This is the first Work Order where Tenants mention the Wall Issue.

On November 19, 2022, Mr. Ramirez came to the Premises and recommended Tenants move the furniture and other personal property to enable Mr. Ramirez to conduct the repairs. Tenants complied. Mr. Ramirez again applied the chemical designed to eliminate the moisture. Tenants testified Mr. Ramirez did not repaint the wall but told Tenants he would repaint the wall and finish the work once the chemical had eliminated the moisture.

At the Hearing (a) Landlord did not challenge this testimony, and (b) in Work Order 421704 under "Completed Date" Landlord's Records indicate "have seal with silicone around the window so that the water does not continue to leak when it rains".

8. November 28, 2022. Tenants testified pursuant to Work Order 422947 on November 28, 2022, Mr. Ramirez came to the Premises to address a sink and bathtub issue. During that visit Mr. Ramirez again looked at the wall and told the Tenants the wall was still too wet to paint.

At the Hearing (a) Landlord did not challenge this testimony, (b) Landlord presented no contrary evidence other than the Mr. Ramirez Statement, and (c) Work Order 422947 makes no mention of the Wall Issue.

██████ testified that her ██████ was a good friend of the daughter of Tenant Ms. Hernandez. ██████ indicated that in the November 2022 time frame her ██████ developed crisis situations where she would sneeze uncontrollably, her eyes would be a strange color, and her nose would turn red. When ██████ told Ms. Hernandez of her ██████ problem, Ms. Hernandez indicated it may be due to the Wall. ██████ went to the Premises, saw and smelled the Wall and determined the Wall probably was the source of her ██████ problem. Consequently, thereafter ██████ would not allow her daughter to go to the Premises but only meet up with Ms. Hernandez' ██████ at the mall.

At the Hearing Landlord indicated they had no questions for ██████.

9. December 2022. Tenants testified as of December 17, 2022, the wall was not only wet but black mold had appeared. Tenants filed Work Order 426706.

Landlord's Records indicate on December 19, 2022, Mr. Ramirez treated the wall with a solution and told Tenants to run a dehumidifier for three days. The Work Order indicates

“suspected discoloration from the air mattress against the wall and curtains being closed.” Mr. Ramirez indicated he would return on December 21, 2022, to check the area and remove the dehumidifier.

Both parties agree the work was not completed and the Wall was not painted during the Holiday season. Tenants indicated it was due in part because Mr. Gonzales had come down with [REDACTED]. T Exhibit 2 shows the text sent to the Landlord on December 26, 2022 to that effect. Work Order 426706 in Landlord’s Records indicates Landlord attempted to enter the Premises on four separate occasions to complete the work but was turned away by Tenants for various reasons.

10. January 2023. The main point of contention is Landlord testified that all Wall repair work was completed on January 4, 2023. Tenants vehemently disagree and testified the work was not done until the June/July 2023 time frame.

To support its position, Landlord refers to Work Order 426706 which states: “On 1/4 returned and painted wall.” Under questioning from the Hearing Officer, Mr. Bettes admitted that Landlord’s policy was to take readings and pictures at the time the work was completed. Landlord did not present any evidence showing that such actions were taken in January. Landlord did provide readings and pictures taken on August 12, 2023, a date by which both parties agree the work was done.

Landlord’s records also are inconsistent as to when the work was done. Under “Completed Date” in Work Order 426706 Landlord indicates all work was completed on December 26, 2022. However, under “Completion Notes” Landlord states the work was completed on January 4, 2023.

At the Hearing Landlord also claimed the condition of the Wall was adversely impacted prior to January 3, 2023, by Tenants turning off the dehumidifier. Tenants testified they kept the dehumidifier on at all times, except when they slept at night. This position is not inconsistent with Landlord’s own wording in Work Order 426706 where Landlord only indicates Tenants needed to use the dehumidifier for three additional days “to ensure the area was dry”.

11. April 1, 2023.

a. Picture Shows Wall not fixed as of April 1, 2023. Tenants testified between December 2022 and April 2023, the mold continued to grow, and no work was done by Landlord to remove it. An indication of the urgency Tenants felt is reflected in Work Order 444395 submitted April 1, 2023. Tenants indicated the Wall Issue was an “Emergency”. “There’s a issue on the wall, I need you guys your assistance as soon as possible thank you.” Tenants submitted a picture of the Wall attached as T Exhibit 3 showing the horrible condition as of that date (the “Picture”).

At the Hearing Landlord indicated Mr. Ramirez told Landlord the Picture was taken in December 2022 and did not accurately reflect the condition of the Wall as of April 1, 2023. When Landlord was asked by the Hearing Officer if Landlord had a picture of the Wall at any time prior to August 2023 to show the Wall had been repaired at any time before Tenants claim the work was done, Landlord admitted they did not have such picture.

In Landlord's Records the only notation by Landlord is "Resident said they noticed a smell in the unit. FA returned with dehumidifier for 3 days. Smell in unit dissolved. No evidence on the wall."

b. Health Impact. At the Hearing Tenants testified as to the significant, negative impact the mold had on their health, including T Exhibit 3 which showed the impact of the mold on their skin.

12. April 29, 2023. Given Landlord's failure to repair the Wall, on April 29, 2023, Tenants submitted Work Order 449156, another Work Order marked "Emergency" stating in part, "[W]e're waiting also for repair the wall that still has humidity".

At the hearing (a) Landlord did not challenge this testimony and (b) in Landlord's records there is a notation, "inspected the dryer and fixed . . . no evidence of humidity on the wall."

13. May 1, 2023. Tenants testified they became even more concerned after an AT&T worker (the "Worker") came to the Premises on May 1, 2023, for an internet installation. Upon seeing the Wall, the Worker left the Premises to obtain a specialized mask. When the Tenants asked the Worker why he went to get a specialized mask, the Worker informed Tenants of the high health risks of being exposed to that particular type of mold.

14. May 16, 2023. Given the lack of response by Landlord, Tenants filed the Petition with the City on May 16, 2023, indicating the Wall still had not been fixed.

15. June – July 2023. Tenants testified during the June/July 2023 time frame Mr. Ramirez fixed the Wall Issue.

16. August 12, 2023. On August 12, 2023, Landlord's Records indicate they came to the Premises and took various readings and took pictures to show the Wall work had been done. Those pictures are attached as L Exhibit 3.

VI. The Law

A. Burden of Proof: Preponderance of the Evidence. For a Tenant to prevail in conjunction with the filing of a Petition for Adjustment of Rent pursuant to The Community

Stabilization and Fair Rent Act (“CSFRA”), Tenants must show by a preponderance of the evidence they are entitled to the relief sought. CSFRA § 1711(h) and Regulations Ch. 5, Section (G)(2) and (3).

B. Failure to Maintain Premises is Increase in Rent. Under CSFRA Section 1710(b)(1), the failure of the Landlord to maintain a premises in compliance with applicable law, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3, constitutes an increase in rent. A Tenant may file a Petition with the RHC to adjust the rent downward based on a loss in rental value attributable to the Landlord's failure to do so.

C. Presence of Mold Constitutes Failure to Maintain Premises. California Health and Safety Code (“CA H&SC”) Sect. 17920.3(a)11 and (a)13 provides any premises which has a condition that endangers the health of the occupants, such as mold or dampness is considered to be a substandard premises which is not in compliance with applicable law. (With respect to mold, CA H&SC requires such determination to be made by a health officer or a code enforcement officer. However, here there is no dispute as to whether there was mold. Landlord not only admitted there was mold but also admitted mold is a serious issue.)

D. Tenants’ Obligations.

1. Tenant must provide specifics, notice, opportunity. CSFRA Section 1710(b)(2) states that a “Tenant Petition filed pursuant to this Subsection must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition.”

2. Tenant cannot substantially contribute to the problem. Further, California Civil Code Sect. 1941.2 provides that a landlord has no duty to repair a dilapidation if the tenant substantially contributes to the existence of the dilapidation or interferes substantially with the landlord’s obligation under Sect. 1941 to affect the necessary repairs.

VII. Conclusions of Law and Fact

A. Landlord’s Liability.

1. Landlord has no liability through January 4, 2023.

a. October 21, 2021. It is undisputed (a) the Wall had substantial moisture on October 21, 2021, but (b) that no discoloration was present in October 2021 nor at any time thereafter until February 2022. Hence until February 2022, the Wall was an issue, but not perceived by either party as a major problem.

b. February 19, 2022. Tenants testified Mr. Ramirez acknowledged the discoloration upon a visit to address a washer issue on February 19, 2022, but said no work could be done while the Wall was wet. Tenants testified the repairs were made in the April/May 2022 time period. Although Tenants met the notice and opportunity provisions of CSFRA Section 1710(b)(2) as Mr. Ramirez was made aware of the issue and had the opportunity to correct as required; Tenants did not appear to view the issue as a serious one at that time as there is no evidence Tenants reached out to Landlord by filing a Work Order or other communication to the Landlord between February 2022 and May 2022. Hence, Landlord is not responsible for the condition of the Wall up to and through May 2022.

c. April/May 2022. During the April/May time period, Mr. Ramirez treated the Wall to Tenants' satisfaction. There was no evidence presented by Tenants that there was any further issue until November 2022. Hence, Landlord has no liability for the condition of the Wall up to November 2022.

d. November 2022. Tenants testified in November 2022 the moisture returned. On November 19, 2022, Mr. Ramirez came to the Premises, asked the Tenants to move furniture away from the Wall, which they did, and the Parties waited for the Wall to dry out.

e. December 17, 2022. It is undisputed by December 17, 2022, no corrective work had been done and mold began to form. There is conflicting testimony as to why and the extent to which Tenants would not allow Landlord to enter the Premises to fix the Wall during the Holiday Season. Tenants claim it was at least in part due to Mr. Hernandez coming down with COVID. Landlord's Records show at least four different occasions when they were turned away from the Premises. Because of (a) these factors, (b) the Tenants' having the burden of proof, and (c) the statutory requirement of providing the Landlord a reasonable opportunity to correct the condition, Landlord is not responsible for the failure to fix the Wall up to and through January 4, 2023.

2. Landlord liable for a reduction in the habitability of the Premises from January 4, 2023, through July 1, 2023. Exactly when the Wall was fixed is the pivotal issue in this case. The preponderance of the evidence presented shows the Wall Issue was not resolved until July 1, 2023 at the earliest.

a. First, the Picture showing the Wall in deplorable shape submitted April 1, 2023 reflected the condition of the Wall on such date, not December 2022 as Landlord asserted.

b. Second, if the Wall had been fixed on January 3, 2023, why would Tenants have taken the following actions?

(i) April 1, 2023: File an Emergency Work Order stating the Wall had not been fixed.

(ii) April 29, 2023: File an Emergency Work Order stating the Wall had not been fixed.

(iii) May 16, 2023: File the Complaint stating the Wall had not been fixed.

All Landlord had to do to completely undermine Tenants' claim as of those dates would have been to submit one picture showing the work was completed as of any one of those dates. Something Landlord never did.

c. Third, Tenants would have had to totally make up the alleged encounter with the AT&T Worker on May 1, 2023. The Tenant's testimony regarding the AT&T worker is credible.

d. Finally, as noted above, there are numerous gaps and inconsistencies in Landlord's Records. During the Hearing Tenants gave detailed testimony (a) of discussions they had with Mr. Ramirez about the Wall, (b) when Mr. Ramirez took action, and (c) when he did not. Many of those discussions are missing from Landlord's Records as submitted for this case. And with respect to a key entry, the date Landlord claims they completed the work, Landlord's Records Work Order 426706 indicates the "Completed Date" was December 26, 2022, yet the "Completion Notes" indicate the Wall was not fixed until January 4, 2023.

B. Aggravating factors.

1. Mr. Bettes testified any time a report indicates there is a microbial growth issue, Landlord "treats it as the most, highest urgency because we know what it can do health wise." Landlord's PowerPoint also emphasized Landlord is fully aware of the importance of maintaining a mold-free environment. Consequently, the fact (i) Landlord lied about whether they had fixed the wall and (ii) knowingly allowed the serious condition to exist for an extended period time are serious aggravating factors.

C. Possible mitigating factors.

1. Access delayed. As noted above, California Civil Code Sect. 1941.2 requires an opportunity to correct the issue. Because Landlord's access to the Premises appears to have been limited during the 2022-2023 Holidays, we have delayed the liability start date until January 3, 2023.

2. Landlord's other mitigation claims denied. In the PowerPoint attached as L Exhibit 3 and at the Hearing Landlord claims:

[When Landlord] became aware of the issue and on each occurrence took the correct action to resolve the issue, but the resident's interference with moisture removal by turning off the dehumidifier, not properly ventilating, and creating continued condensation on the windows prolonged the mildew removal process and created an environment for mildew to return.

First, Landlord's stating in September 2023 that they solved the problem in January 2023 when they did not actually solve the problem until July 2023 at the earliest is not taking "the correct action." Second, the primary cause of the moisture appears to have been caused by a rainstorm in the October 2021 time period which was not sealed by Landlord until November 2022 when Landlord stated in Work Order 421704 "have seal with silicone around the window so that the water does not continue to leak when it rains". Third, Tenants had the humidifier on as directed and only turned it off when they were sleeping. Fourth, Tenants testified they moved all furniture away from the Wall as Landlord requested. Fifth, Tenants testified they ventilated the room whenever weather conditions allowed, and Landlord presented no evidence to the contrary. Consequently, we find Tenants did not substantially contribute to the mold under Civil Code Sect. 1941.2.

D. Conclusion. Taking into account all possible mitigating factors, the preponderance of the evidence shows by January 4, 2023 at the latest Landlord had been notified and had been given the opportunity to resolve the Wall Issue. The Wall Issue was not resolved until at least July 1, 2023 and hence Landlord is liable for the condition of the Wall from January 4, 2023 through July 1, 2023. The fact Landlord knew both the seriousness and magnitude of the issue, yet knowingly failed to solve the problem over a period that stretched several months, and then compounded the problem by lying about when the Wall Issue was resolved are material, significant aggravating factors.

VII. DECISION

Due to the Wall Issue, under CSFRA Section 1710(b)(1) there has been a reduction in the habitability of the Premises.

Damages for unsafe or unhealthy conditions are very difficult to measure in dollars with specificity. They generally are determined in one of two ways. The first involves calculating the difference between (i) the fair rental value of the affected unit if it had been as warranted, and (ii) the fair rental value of the affected unit as it is currently with the existing condition. The second method involves determining the percentage reduction in use, which involves reducing Tenants rental obligation by a percentage corresponding to the relative reduction of use of the affected unit caused by the unsafe or unhealthy conditions. (See, *Green v. Superior Court*, 10 Cal.3d 616, 638, 639 fn. 24 (1974).

The facts of this case appear to favor the first method: determining the reduction in the fair market value of the Premises. The second (the reduction in use approach) appears to be more appropriate when something like a heater or faucet is not working.

Here, there has been a significant percentage reduction in the value of the Premises during the period in question. An AT&T Worker walks out and will not walk back in without a specialized mask. A neighbor will not allow her child to even enter the Premises. The health of the Tenants is affected physically. Someone would have to get a steep discount to agree to live in such conditions. Hence, Tenant has suffered a 40% reduction in the value of the Premises from January 4, 2023, through July 1, 2023.

Rent during this period was \$2,938 per month, or \$97.93 per day. 40% of \$97.93 is \$39.17 per day. There are 180 days between January 3, 2023, and July 1, 2023. Therefore, Tenants are entitled to \$7,050.60 for the damages they suffered (the "Award").

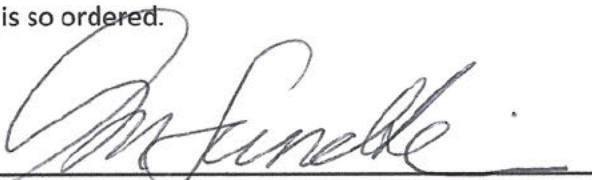
As long as Tenants retain possession of the Premises, Tenants shall receive the Award as a rent credit. If Tenants vacate the Premises, that portion of the Award that has not been credited shall be paid by Landlord to Tenants within thirty (30) days of the date Tenants vacate the Premises (the "Decision"). See Attachment 2 to this Decision for the Award Schedule.

The Award shall be enforceable as to any successor in interest or assignees of Landlord.

If any portion of the Award is not paid within thirty (30) days of the date due (the "Unpaid Award"), Tenants shall be entitled to a money judgment in the amount of the Unpaid Award in an action in Small Claims court or any other administrative or judicial or quasi-judicial proceeding.

If a dispute arises as to whether any party has failed to comply with this Decision, any party may request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, section J(1).

It is so ordered.



Duf Sundheim
Hearing Officer

ATTACHMENT 1
EXHIBITS

Hearing Officer Exhibits

HO Exhibit 1: Fire Safety Reports, dated July 17, 2012 through October 19, 2022

HO Exhibit 2: Notice of Acceptance of Petition, dated June 15, 2023

HO Exhibit 3: Follow Up Information for Petition

HO Exhibit 4: CSFRA Hearing Information Sheet, served June 15, 2023

HO Exhibit 5: Hearing Officer Written Prehearing Notice of Prehearing Meeting dated July 20, 2023

HO Exhibit 6: Hearing Officer Written Prehearing Notice Granting Postponement dated July 27, 2023

HO Exhibit 7: Hearing Officer Written Prehearing Notice of Prehearing Meeting dated August 9, 2023

HO Exhibit 8: Hearing Officer Written Order and Summary of Prehearing Telephone Conference and Notice of Hearing, dated August 24, 2023

HO Exhibit 9: Notice of Extension of Hearing Officer's Written Decision dated September 29, 2023

Tenants Exhibits

T Exhibit 1: Lease dated June 18, 2021

T Exhibit 2: Covid Notification

T Exhibit 3: Maintenance Requests; Photos

T Exhibit 4: Tenant Petition for Downward Adjustment of Rent for Failure to Maintain Habitable Premises

T Exhibit 5: Tenants Worksheets

Landlord Exhibits

L Exhibit 1: Representative Authorization

L Exhibit 2: Witness List

L Exhibit 3: PowerPoint Presentation

**Attachment 2
Award Schedule**

222 Escuela Ave [REDACTED] - RHC Petition# C22230052

Hearing Officer Decision

Habitability Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Days Issue Persisted	Lawful Monthly Rent	Percentage Rent Reduction	Rent Reduction Awarded
Mold in bedroom	1/3/2023	7/1/2023	180.0	\$ 2,938.00	40%	\$ 7,050.60
TOTAL						\$ 7,050.60

Credit Schedule

Month/Year of Rent Payment	Monthly Rent		Total Rent
	Owed by Petitioner	Rent Credited to Petitioner	Owed to Landlord
10/2023	\$ 2,938.00	\$ 2,938.00	\$ -
11/2023	\$ 2,938.00	\$ 2,938.00	\$ -
12/2023	\$ 2,938.00	\$ 1,174.60	\$ 1,763.40
TOTAL		\$ 7,050.60	\$ 1,763.40