

CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

HEARING OFFICER DECISION

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

Type of Petition	Tenant Petition C – Undue Tenant Hardship
Case No:	22230007
Property Address:	141 Del Medio, Mountain View CA 94040
Affected Unit{s}:	Number [REDACTED]
Petitioner Tenant Name(s):	Marion Pauck
Respondent Landlord Names(s)	Gina Frye, Lydia Sanabria [Calson Property Management]
Hearing Officer:	Martin Eichner
Dates of Hearings:	October 7, 2022
Date Record Closed	October 12, 2022
Date of Mailing:	(See Attached Proof of Service)

I. Statement of the Case and Procedural History to Date

- a. A Tenant Petition C – Undue Tenant Hardship was filed on September 15, 2022 by the above named Tenant, hereafter "Tenant." The Petition was filed pursuant to the Community Stabilization and Fair Rent Act, hereafter "CSFRA." The Petition named Calson Property Management as the Landlord, hereafter "Landlord," for the rental property occupied by the Tenant.
- b. The Tenant served a Notice of Submission of Petition on the Landlord on September 15, 2022. She also signed a Representative Authorization form naming Bruce Christenson as her representative in this case. As used herein, the term "Tenant" includes both Marion Pauck and Bruce Christenson.
- c. The Landlord did not file a written Response.
- d. A Pre-Hearing Conference was held for the parties in this case, and the related undue hardship cases at the same rental property, on September 30, 2022, utilizing the Zoom platform. The Conference was conducted by Martin Eichner, the Hearing Officer assigned to decide these Petitions. The Hearing Officer issued a Pre-Hearing Order summarizing the verbal explanation and directives given at this Conference.
- e. As per the Pre-Hearing Order, the Hearing in this case was noticed for October 7, 2022. It was held and completed on that date, utilizing the Zoom platform. The Hearing record was left open at the end of the October 7 Hearing for the Landlord to file a Response to the Petition and to submit further evidence verifying that the Landlord has properly registered all the units on this property no later than close of business October 12, 2022.

- f. The Landlord did not file any submission in response to this opportunity as of the October 12, deadline. As noted below, the Landlord did register the property as of October 10, 2022.
- g. This Decision became due 30 days thereafter.

II. Attendees at the Hearing

The following parties attended the Hearing and provided testimony and other input for the record¹:

For the Tenant-Petitioner:

Marion Pauck and her designated representative, Bruce Christenson²

For the Landlord Del Medio Manor LLC

Gina Frye and Lydia Sanabria, employees of Calson Property Management

On Behalf of the City of Mountain View Rent Stabilization Program

Patricia Black, Senior Management Analyst

III. Evidence

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

Hearing Officer Exhibits

HO Ex. 1 – September 22, 2022 Notice of Acceptance of Petition

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

HO Ex. 3 – Notice for October 7, 2022 Hearing

HO Ex. 4 – Notice of Settlement Conference

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

HO Ex. 6 – Email from City of Mountain Staff Rent Stabilization Staff concerning CSFRA property registration status as of September 30, 2022

HO Ex. 7 – City of Mountain View property inspection records for this rental property for inspections and compliance activities in 2015

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

¹ Joann Pham, City of Mountain View Rent Stabilization Program Staff, also participated to provide administrative support.

² Mr. Christenson also is named in a Power of Attorney signed by the Tenant Marion Pauck.

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

Tenant Exhibits

T Ex. 1 – September 15, 2022 Petition filed by the Tenant

T Ex. 2 – Worksheet Number 1 accompanying the Petition

T Ex. 3 – Worksheet Number 2 accompanying the Petition

T Ex. 4 – September 4, 2002 Tenant's lease for this unit

T Ex. 5 – September 15, 2022 Representative Authorization Form for Petition signed by the Tenant designating Bruce Christenson as her representative

T Ex. 6 – September 15, 2022 Notice of Submission served on the Landlord and email from Bruce Christenson to Lydia Sanabria

T Ex. 7 – Photo of Citizenship photo I.D. for the Tenant showing her date of birth in the year 1928

T Ex. 8 -- Income verification documents for the time period September 2021 through August 2022

T Ex. 9 – October 24, 2019 Tenant's lease agreement

T Ex. 10 – October 3, 2022 summary of the Tenant's recent [REDACTED]

T Ex. 11 – Summary of PG&E utility bills for September 2021 through August 2022

Landlord Exhibits

LL Ex. 1 – August 1, 2022 email to the Tenant explaining the Landlord's computation of most recent rent increase

LL Ex. 2 – July 29, 2022 Notice of Rent Increase

LL Ex. 3 – Database summary of rent history prepared by the Landlord

LL Ex. 4 – Tenant ledger maintained by the Landlord applicable to this Tenant

IV. Summary of Relevant Evidence

The following Summary is based on the hearing testimony, and the exhibits entered into the record at the hearing.

Testimony from Gina Frye on behalf of the Landlord

The Tenant first moved into a rental unit on this property on September 4, 2002 at an initial rate of \$1150. On April 1, 2003, the Tenant's rent was reduced by \$50, perhaps because she moved into a different unit. On May 1, 2003, the Tenant's rent was reduced by another \$50. On April 14, 2008 the Tenant's rent was increased to \$1025. As of January 1, 2014, the Tenant was paying a monthly rent of \$1300. On November 1, 2017 the Tenant's monthly rent

increased to \$1344 and on December 1, 2018, it increased to \$1352. As of December 1, 2019, the Tenant's monthly rental rate was \$1460. As a result of the September 1, 2022 increase, the Tenant has been paying \$1605 monthly rent.³

Testimony On Behalf of the Tenant-Petitioner Marion Pauck from Bruce Christensen and the Tenant

Gina Frye's summary of the Tenant's rental history was accurate.

The Tenant has occupied a one-bedroom, one-bathroom unit, since 2002.

They received the notice of the September 1, 2022 rent increase at the end of July 2022. [LL Ex.2]. They filed the Tenant's Petition on September 15, 2022. The Petition filing was delayed because two people came to her apartment and tricked the Tenant into installing software on her computer with a password program that made it impossible for the Tenant to use her computer. As a result of this "hack," the Tenant also had to change all of her bank accounts, a process which lasted until Labor Day. Taking these steps prevented her from finding time to prepare her Petition or being able to access her financial records on her computer. They did not have a paper trail for the Tenant's finances, so they had to go to the bank to ask the bank to pull her financial records. It was during this time period that Bruce Christenson was given the Tenant's power of attorney.

The hardship being claimed here is based on the Tenant's total income being below the applicable AMI standard. She is also spending more than 50% of her income on her rental obligation. She now pays 56% of her total income for her monthly rent based on the new increased rent. The Tenant also has a significant dental bill as evidenced in T. Ex. 10. She recently paid her medical bill owed to the Palo Alto Medical Foundation.

The Tenant previously earned compensation for freelance translation and publications, but she has had no significant earnings from this activity in 2022. The Tenant's current income comes from Social Security and a pension, along with a few royalty payments from books previously published by the Tenant and her husband. She has no investment income or other passive income.

The Tenant is current on her monthly rent payments. She hasn't received any rent relief payments from the government or from non-profits.

Further Testimony from Gina Frye on behalf of the Landlord

The Landlord does not dispute any of the Tenant's testimony regarding her income or financial status.

There are 104 units on this rental property. Of those units, 41 received the September 1, 2022 rent increase. For this tenant, her September 1, 2022 increase included a 5% AGA increase as well as banked increases of 2.0% and 2.9% based on rent increases not imposed on 2020 and 2021.

³ All amounts listed in this Decision have been rounded off to the nearest dollar.

She and Lydia recently became managers for this property. They were not familiar with the applicable registration process. They thought the property was already registered as required by the CSFRA, but they received an email yesterday indicating that certain units were not registered.

Testimony from Patricia Black

She is a Senior Management Analyst employed by the City of Mountain View Rent Stabilization Program. As such, she is familiar with the CSFRA registration requirements and the resulting landlord registration records. The applicable records show that this rental property at 141 Del Medio has not been registered as required by the CSFRA, as of the time of this morning's Hearing. The property was not registered during the relevant prior time going back to July 2022.

All of the 104 units on this property should have been registered.

The Landlord had been notified of its duty to register several times in prior years. Joann Pham sent a follow-up reminder on September 30, 2022, HO Ex . 6.⁴

V. Issues Presented

1. Does the Tenant have a right to pursue her Petition for undue tenant hardship pursuant CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations if she failed to file a timely Petition within the timeframe established by Reg. Chap. 7(C)(1)(b), and if the Petition was not filed during the required timeframe , can she still pursue her Petition if the Landlord failed to give the mandatory banked increase notices to the Tenant and the City as required by Reg. Chap. 7(B)?
2. Does this Tenant qualify under the undue hardship criteria set forth in CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations promulgated thereunder, more specifically under the applicable provisions for a household with inadequate income as alleged in the Tenant's Petition, pursuant to Reg. Chap. 7(C)(2)(a) and/or a senior household pursuant to 7(C)(2)(c)?
3. Are there "banked increases" applied by the Landlord to this Tenant during the relevant time period pursuant to CSFRA Section 1707(d) that would be subject to reduction under the above undue hardship criteria and if, so, how should they be computed?
4. Did the Landlord raise any issues in this case, such as the right to a fair return or the market rental value of the Tenant's rental unit, that should be considered in this Decision?
5. Is any rent increase within the scope of this Tenant Petition subject to further modification based on the Landlord's CSFRA compliance status before and after October 9, 2022?

⁴ The current status of the property registration is documented in HO Exs. 8 and 9. These exhibits indicate that the property registration process was acknowledged by the City to be completed as of October 10, 2022.

VI. Findings of Fact Supporting this Decision

1. Since 2002, Marion Pauck has been a Tenant living by herself in Unit [REDACTED] in the property located at 141 Del Medio in the City of Mountain View. This rental unit has been the Tenant's primary residence since 2002. During the relevant time period for this Decision, the Tenant has been a senior over the age of 62, [T Ex. 7.]. Since the summer of 2022, Bruce Christenson, who is the Tenant's friend from church, has acted on behalf of the Tenant pursuant to the Tenant's power of attorney. Mr. Christenson is also the Tenant's Authorized Representative in this case. [T Ex. 5].
2. The 141 Del Medio Ave. rental property is owned by Del Medio Manor, LLP. The property manager during the relevant time period has been Calson Property Management.
3. At all times relevant herein, the monthly rent paid by the Tenant was subject to the CSFRA limits on rent increases. As of December 1, 2019, the Tenant's monthly rental rate was \$1460. The Landlord did not increase the Tenant's monthly rent for the years 2020 or 2021.
4. As of September 1, 2022, the Tenant's monthly rent was increased from \$1460 to \$1605. The Tenant has been paying the \$1605 monthly rent amount since September 1, 2022. According to the Landlord testimony, the Tenant is current on her rental obligation.
5. The Landlord's witness testified that the Tenant's September 1, 2022 monthly rent increase to \$1605 was based in part on the Landlord's application of "banked" increases, applying those permissible AGA increases that were not imposed on the Tenant in the prior years 2020 and 2021. Specifically, the computation of the September 1, 2022 increase for this unit included banked increases of 2.9% and 2.0%, which when combined with the 5% AGA allowed for 2022, resulted in a total increase of 9.9%.
6. Of the 104 total rental units located on this property, 41 received rent increases that became effective as of September 1, 2022, increasing rents by 9.9%. All of those increases included banked amounts. Of those 41, the tenants in 4 of those units filed hardship petitions, which amounts to approximately 10% of the affected units.⁵
7. The Tenant filed her Petition, [T Ex. 1], asserting Undue Tenant Hardship on September 15, 2022, more than 10 days after the September 1 rent increase became effective. The delay in filing this Petition resulted from the Tenant's computer and financial records being compromised by computer hackers.
8. The Tenant's annualized income as of September 2022 was significantly lower than \$117,950, the applicable one hundred percent (100%) of the median household income for Santa Clara County as adjusted for household size, according to the California Department of Housing and Community Development. As of July 2022, the Tenant's

⁵ In other undue tenant hardship cases heard for this property in this same time period, the Landlord indicated that 39 units were subject to the September 1, 2022 banked increases. The numerical discrepancy is not relevant to the Decision in this case.

- annual income from her Social Security benefits, evidenced by her bank statements, [T Ex. 8], was approximately [REDACTED]. Her annual pension benefits, as shown in T Ex. 8, were less than [REDACTED]. Her total annualized income from these two benefits was less than [REDACTED].
9. The Tenant testified credibly that she had no other significant income during the relevant time period despite occasional payments for royalties in prior years. She also testified credibly that she had no income from investments or other passive income.
 10. The Tenant was aged 94 at the time she filed her Undue Hardship Petition, as evidenced in T Ex. 7.
 11. At the time of the September 1, 2022 rent increase, the Tenant's average monthly income for all sources was less than [REDACTED] while her monthly rental obligation prior to the September 1, 2022 rent increase was \$1460. With the September 1 rent increase to \$1605, she has been required to allocate more than 50% of her household income to her monthly rent payments, even if only the AGA⁶ was included in the amount of that rent increase.
 12. Furthermore, the Tenant's credible testimony and her financial records establish that her income has been at levels below the above hardship guidelines for a representative period of time prior to September 2022.⁷
 13. The relevant evidence, based on the testimony of Patricia Black and HO Exs. 7, 8 and 9, demonstrates that the Landlord was notified that it had not complied with the registration requirements of the CSFRA at the time the Petition in this case was filed. The Landlord was non-compliant for a significant period of time prior to October 10, 2022, including July, August and September 2022 when the Landlord implemented the rent increase at issue in this case. The Landlord remained non-compliant with its registration obligation until registration was completed and accepted by the City on October 10, 2022.
 14. In the companion undue tenant hardship cases for units [REDACTED] and [REDACTED], the Landlord filed a Landlord Response raising issues on its behalf related to its right to a fair return, but the Landlord did not file a Response prior to the October 7, 2022 Hearing in this case. The Landlord also did not file a Response after the Hearing, despite the Hearing Record being left open to allow a response to be filed.

VII. CONCLUSIONS OF LAW

- A. At all times relevant herein the rental property and the unit occupied by the Tenant in this case have been subject to the jurisdiction of the CSFRA.

⁶ With just the AGA, her new monthly rent would be \$1533, greater than 50% of [REDACTED].

⁷ The Tenant also submitted [REDACTED], [T Ex 10], and her utility bills, [T Ex. 11]. These documents were not deemed necessary to determine her undue hardship status.

- B. The September 1, 2022 monthly rental increase given to the Tenant by the Landlord was based in part on the allowable AGA and in part on the Landlord's application of banked increases from 2020 and 2021. Section 1707(d) of the CSFRA permits the use of banked increases when a Landlord has not implemented the full amount of prior allowable AGA increases. However, this same section of the CSFRA, along with Chapter 7, Section C of the Regulations, renders any such banked increases subject to the "undue hardship" sections of these same provisions.
- C. In order to seek a reduction of the banked rental increases, a tenant must file a timely Petition within the timeframe established by Reg. Chap. 7(C)(1)(b). That provision requires the Petition to be filed no later than 10 days after the effective date of the applicable rent increase. The Petition in this case was not filed within the 10-day time frame encompassed by the Landlord's implementation of the rent increase. As noted in the Findings of Fact, that increase was implemented as of September 1, 2022; the Petition was not filed until September 15, 2022.
- D. Pursuant to Reg. Chap. 7(C)(1)(b), "Hardship Petitions received more than ten (10) calendar days after the effective date of the requested rent increase will be rejected."⁸
- E. The damage to the Tenant from being hacked just prior to the effective date of the rent increase was significant. Reg. Chap. 7(C)(1)(b) does not contain any exception permitting a late filing, even where a petitioner might be able to demonstrate good cause for a late filing.
- F. However, the Landlord's failure to comply with its registration requirements under CSFRA Reg. Chap. 11(B)(1) and 11(F) constituted "substantial noncompliance" with the CSFRA. Under Section 1707(f)(1) "no rent increase shall be effective" where the Landlord is in substantial noncompliance with any provision of the CSFRA or its Regulations. The failure of the Landlord in this case to comply with the registration requirements in the CSFRA Regulations prior to October 10, 2022 precluded the Landlord from instituting any rent increase, including any AGA or any banked increases, that could have been "effective" prior to October 10, 2022.
- G. Since there was no "effective" rent increase until October 10 at the earliest, the Petition filed on September 15, 2022 meets the requirements in Reg. Chap. 7(B) for a timely filing.
- H. Based on the Landlord's failure to comply with its registration requirements, the Tenant is entitled to a rebate of the entire amount of the rent increase she paid from September 1 through October 9, 2022, including both the AGA and banked components.

⁸ Presumably, the Rent Stabilization Staff did not immediately reject the Petition due to the same Landlord compliance issues addressed in this Decision.

- I. As of October 10, 2022, when the rental property had become registered, the Landlord's rent increase for the Tenant's unit became valid and effective.
- J. Pursuant to Reg. Chap. 7(C)(1)(c), the petitioning Tenant has the burden of proving the undue hardship claim in her Petition, as applied to the banked rent increases that did become effective after October 9, 2022.
- K. The Tenant has established the facts necessary to demonstrate that she has met the undue hardship criteria set forth in CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations. Specifically, the Tenant has proven that she meets the applicable requirements for a household with inadequate income pursuant to Reg. Chap. 7(C)(2)(a) since her income during the relevant time period was significantly below the applicable AMI level.
- L. The Tenant has also established the facts necessary to demonstrate that she has met the requirements of Reg. Chap. 7(C)(2)(c), since she is a senior over the age of 62 who spends more than 50% of her total income to pay the rent for her unit, which is her principal residence.
- M. Since she has met her burden of proving her eligibility under both Reg. Chap. 7(C)(2)(a) and Reg. Chap. 7(C)(2)(c), the Tenant is presumed to meet the applicable undue hardship criteria set forth in CSFRA Sec. 1707(d) and Chapter 7, Section C of the Regulations.
- N. There is no basis in the Hearing record for this case that rebuts or refutes this presumption.
- O. The circumstances of the Tenant's income indicate that her undue hardship will continue for the foreseeable future.
- P. There is no need to address any issue of the Landlord's right to a fair return in this Decision since the Landlord failed to raise any such issue in this case, either prior to the October 7, 2022 Hearing or after.
- Q. Based on these conclusions, the Tenant is entitled to relief after October 10, 2022 from the undue hardship she has proven pursuant to Reg. Chap. 7(C)(6). The Tenant is entitled to a reduction in her monthly rent obligation equivalent to the banked increases after October 10, 2022 and continuing thereafter until August 31, 2023.

VIII. AWARD

- i. The monthly rental obligation of the Tenant in this case for the time period between September 1, 2022 and October 9, 2022 is reduced for the entire amount of the rent

increase imposed by the Landlord. That reduction includes both the amount of the AGA increase for 2022 as well as all banked increases for this time period.

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

Dated: November 16, 2022

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

Martin Eichner
Hearing Officer