

RENT STABILIZATION BOARD

CITY OF EAST PALO ALTO

Kenneth Franklin,

Petitioner

Vs.

Woodland Park Communities,

Respondent

CASE NO. 2023-0001 and 2023-0002

DECISION AFTER HEARING

PARTIES AND HEARING DATE

Petitioner Kenneth Franklin ("Franklin") filed on November 3, 2023 a petition with the Rent Stabilization Program against Respondent Woodland Park Communities ("Woodland Park"). Franklin's petition states that he is a tenant at 1851 Clarke Avenue, Unit 10, East Palo Alto, California.

A hearing on the petition was held on May 17, 2024 at 10:00 a.m. Present at the hearing was Franklin and, on behalf of Woodland Park, Pabel Zumarraga, General Manager, Aura Andrade, Community Manager, and Andrea Bumagat, Compliance Manager. Prior to the hearing, the undersigned Hearing Officer, at the request of Franklin, inspected Franklin's rental unit. Natasha Raiburn, Rent Stabilization Program Administrator, accompanied the Hearing Officer at the inspection. Mr. Zumarraga and Ms. Andrade, arrived at the rental unit as the Hearing Officer and Ms. Raiburn were leaving but raised no objection to the inspection.

ISSUES PRESENTED

Franklin's petition seeks a rent reduction based on (a) a violation of rent limits and (b) habitability problems, reduction in maintenance and services and/or failure to provide maintenance and services required by law, and code violations. As to the reduction in maintenance and services in particular, the petition identifies an outside backyard patio that is cracked and uneven.

On February 15, 2024, Woodland Park filed a response in opposition to the petition, stating that the rental unit has been maintained in a good and habitable condition and when Franklin has notified Woodland Park of a problem in the rental unit, Woodland Park has addressed the problem in a timely manner and that any rent increases that have been imposed have been in compliance with the City's Rent Stabilization Ordinance and Regulations.

RELIEF REQUESTED

The petition requests that Franklin's rent be reduced.

EVIDENCE

Franklin has been a tenant in his rental unit since May 2010. In July and August 2023, Franklin brought to the attention of Woodland Park that the outdoor patio had cracks and was uneven, making it difficult for him to store plastic containers holding his work materials in that area. More recently, Franklin brought to the attention of Woodland Park that the bathtub was in need of repair as part of it was coming apart and clogging the drain.

Mr. Zumarraga testified that Woodland Park had been responsive to the cracks in the outdoor patio and that in August 2023 a contractor (Innovative General Engineering) had submitted an invoice to Woodland Park that it had installed new concrete on the cracked slab and brushed to make a clean repair. He also testified that the bathtub would be re-glazed to prevent the chipping.

Franklin disputed that any work had been done on the patio at any time and it did not appear to the Hearing Officer during the inspection that any repairs had been done to the outdoor patio.

From December 2022 to December 2023, Franklin's rent was \$689.25 monthly. As of December 2023, his rent was (and is) \$748.36 monthly.

LEGAL FRAMEWORK

Section 13 of the City's Rent Stabilization and Just Cause for Eviction Ordinance ("Rent Ordinance") addresses rent adjustments for maintenance and service reductions. The failure to maintain a rental unit in a habitable condition consistent with building or housing codes is considered an increase in rent and a rent reduction may be ordered based on loss in rental value attributable to a failure to maintain the rental unit in a habitable condition. In addition, a decrease in housing services or maintenance without a corresponding reduction in rent is considered an increase in rent and a rent reduction may also be ordered based on loss in rental value attributable to a reduction in maintenance or services.

"Housing services" are broadly defined to include maintenance, repairs and any other benefit connected with the use or occupancy of rental unit. Rent Ordinance, Section 4, subsection G.

Subsection E of Section 1500 of the Rent Stabilization Board Regulations for Residential Tenancies in the City of East Palo Alto ("Regulations") sets forth the grounds for reductions in rent. These include a failure of a landlord to comply with the "Warranty of Habitability" set forth in California Civil Code, section 1941.1, failure to comply with building or housing codes or other legal requirements for the maintenance and operation of rental housing which affects the livability and/or rental value of the rental unit, and decreases in housing services or failure to provide adequate maintenance without a corresponding reduction in rent. Minor maintenance deficiencies or deterioration, however, that have no or insignificant impacts on the livability of rental value of a rental unit and that do not cause any health and safety risk shall not provide a basis for reduction in the rent.

Under California Civil Code, section 1941.1, a dwelling shall be deemed untenable if it substantially lacks any of the following: effective waterproofing and weather protection of roof and exterior walls; plumbing or gas facilities maintained in good working order; a water supply, capable

of providing hot and cold running water; heating facilities maintained in good working order; electrical lighting maintained in good working order; building, grounds, and appurtenances kept in clean, sanitary and free from all accumulation of debris, rubbish, rodents, and vermin; an adequate number of receptacles for garbage and rubbish; and floors, stairways, and railings maintained in good repair.

A petitioner shall bear the burden of proof and must prove by a preponderance of evidence the grounds for a reduction in rent. Regulations, at paragraph c, subsection E, Section 1500. Reductions in rent shall be effective from the date that the landlord first had notice or should have known of the condition providing the basis of the reduction. For failures justifying a reduction in rent that are ongoing at the time of hearing, the reduction shall be in effect until the failure is corrected. Regulations, at Paragraph d, subsection E, Section 1500.

DISCUSSION

Although Franklin's petition seeks a rent reduction based on a violation of rent limits and a reduction in maintenance and services, habitability problems, and/or failure to provide maintenance and services required by law, Franklin submitted no evidence concerning a violation of rent limits. Franklin's evidence concerned a reduction in maintenance and services and habitability problems.

The evidence was clear both from the Hearing Officer's personal examination of the outdoor patio area and from the pictures Franklin submitted at the hearing that the outdoor patio area is cracked and uneven and that it has been that way for some time, possibly from the roots of trees that are on the other side of the patio fence. As stated above, contrary to the invoice submitted to Woodland Park that the patio area had been repaired in August 2023, there was no visual evidence of any work having been done in that location.

It does not appear that the condition of the patio area constitutes a failure of the landlord to comply with the "warranty of habitability" set forth in California Civil Code, section 1941.1. Nor does the condition of the patio constitute a failure to comply with building and housing codes or other legal requirements for the maintenance and operation of rental housing that affects the habitability and/or rental value of the rental unit.

Rent, however, includes housing services and, as stated above, housing services are broadly defined and include repairs, maintenance, and any other benefit connected with the use or occupancy of a rental unit. Certainly the use of backyard patio is a benefit connected with the use or occupancy of the rental unit and Franklin testified that the condition of the backyard patio has prevented him from using it. Moreover, the backyard patio has cracks and is uneven and it is evident that these conditions have existed for some time—perhaps years—indicating that the conditions are more than minor maintenance deficiencies or deterioration that have no or an insignificant impact on the livability or rental value of the rental unit. On the other hand, the condition of the bathtub does appear to be a minor maintenance deficiency or deterioration that have no or an insignificant impact on the livability or rental value of the rental unit.

Woodland Park has been on notice of the condition of the backyard patio since July 2023 and although an invoice submitted to Woodland Park indicates repair work was undertaken to the patio in August 2023, Franklin testified that no such work occurred and the Hearing Officer also did not

observe any repairs to the patio. Accordingly, Franklin has carried his burden of proof that he is entitled to a rent reduction based on the condition of the backyard patio and a 5% reduction in rent is reasonable. The reduction will be applied to the rent paid from July 2023 to the present and will continue until the condition of the backyard patio is fixed. Woodland Park's proposed solution to the condition of the patio is to "shave" the concrete in order to make the patio level. It is uncertain that will adequately address the condition.

DECISION

1. The petition for a rent reduction based on a reduction in housing services and/or failure to maintain the rental unit as reflected in the condition of the backyard patio is granted; the rent is reduced by 5% from July 2023 to the present and continuing until the backyard patio condition has been repaired or, if it cannot be adequately repaired, replaced.
2. Franklin is entitled to a reimbursement of rent in the amount of \$396.76 [$\$689.25 \times 5\% = \$34.46 \times 5 \text{ months} = \172.30] + [$\$748.36 \times 5\% = \$37.41 \times 6 \text{ months} = \224.46]. Woodland Park may reimburse Franklin that amount or apply it as a credit against June 2024 rent.
3. Until the backyard patio has been adequately repaired, Franklin's rent is reduced to \$710.95 monthly.
4. When the backyard patio has been repaired, Woodland Park is to notify the Rent Program who will confirm with Franklin that the backyard patio has been adequately repaired. If Franklin concurs, the monthly rent may be restored to \$748.36.
5. If there is a disagreement that the backyard patio has been adequately repaired, the matter will be returned to the Hearing Officer for further consideration.
6. In all other respects, the petition is denied.
7. The Hearing Officer retains jurisdiction over this matter as provided herein.

Michael H Roush

Dated: May 22, 2024

Michael H. Roush, Hearing Officer