

RENT STABILIZATION BOARD

CITY OF EAST PALO ALTO

Rosaleen Nee,

Petitioner,

vs.

Woodland Park Communities,

Respondent.

CASE NO. 2023-0003 and 2023-0004

DECISION AFTER HEARING

PARTIES AND HEARING DATE

Petitioner Rosaleen Nee filed on November 15, 2023 a petition with the Rent Stabilization Program against Respondent Woodland Park Communities ("Woodland Park"). Nee's petition states that she is a tenant at 45 Newell Road, # 206, East Palo Alto, California.

A hearing on the petition was held on May 17, 2024 at 1:00 p.m. Present at the hearing was Nee and, on behalf of Woodland Park, Pabel Zumarraga, General Manager, Aura Andrade, Community Manager, and Andrea Bumagat, Compliance Manager.

ISSUES PRESENTED

Nee's petition seeks a rent reduction based on (a) a violation of rent limits (habitability problems in the rental unit) and (b) reduction in maintenance, services, and/or habitability and/or failure to provide maintenance and services required by law, and code violations. As to the reduction in maintenance and services and failure to maintain, the petition identifies ongoing problems with roaches, vermin, urine and feces on the balcony from an above neighbor, and noise complaints from the above neighbor.

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 Nee has notified Woodland Park of a problem in the rental unit, Woodland Park has addressed the problem in a timely manner. Woodland Park also offered to move Nee to a different unit.

RELIEF REQUESTED

The petition requests that Nee's rent be reduced and/or rebated.

EVIDENCE

Nee has been a tenant in his rental unit for 14 years. Since 2015, Nee has brought to the attention of whoever was managing the complex (most recently, Woodland Park) that from time to time her unit was experiencing an infestation of roaches. Typically, there would be a response to her complaints, e.g., spraying, but that the condition would only be temporary and the infestation would begin again in three or four months. Nee pointed out that the adjoining tenant tends to store garbage and empty food boxes on the adjacent patio and these lead to conditions conducive to roach infestation. Nee also reported that for some period in 2023 she had observed rats on her balcony. A major issue for Nee has been (since 2021) noise from the tenant directly above Nee's unit. That tenant makes noise after "quiet hours", e.g., playing loud music and playing with her large dog, that prevents Nee and her daughter from sleeping. Nee has reported these noise complaints to the company that provides security to the complex but the company has not always been responsive. She has made similar complaints to the police department. Moreover, there was a time a couple of years back when urine and feces from a dog in the rental unit above Nee's unit rendered the use of Nee's balcony unusable; the balcony had to be sanitized before it could be used.

Mr. Zumarraga testified that Woodland Park has been responsive to these issues by having a pest control company eradicate the roaches and vermin, by giving notices of lease violations to the tenant who stores garbage and empty food boxes on that tenant's patio, and by giving similar notices to the tenant in the rental unit above Nee that she is to observe "quiet hours" or be subject to having her lease terminated. As mentioned, Woodland Park has also offered to relocate Nee to a different unit but those efforts, for one reason or another, have not been successful.

Nee testified that Woodland Park needed to do more to address the ongoing roach problem and her complaints about the noise from the tenant above her unit.

From May 2021 to May 2022, Nee's rent was \$1010.79 monthly; from May 2022 to May 2023, \$1023.60 monthly. From May 2023 to the present, the rent was \$1111.39/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 untenantable 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

Nee's testimony supports a finding that periodically there has been a reduction in maintenance and services and a habitability problem, i.e., her unit has not been free of roaches and rats and, for some time, her balcony was not useable due to feces and urine from the dog belonging to the tenant in the unit directly above Nee. While true when Nee has brought these conditions to the attention (most recently) to Woodland Park, it has taken steps to address the problem. The difficulty is that the roach infestations return time and time again, indicating that whatever remedial steps Woodland Park is taking are not sufficient to address the problem long term. Presumably if the balcony of the tenant adjacent to Nee were kept free of garbage and used food boxes, the likelihood of a roach infestation or the attraction to rats and other vermin would be reduced, but Woodland Park must bear the responsibility for allowing that tenant to violate the lease conditions and to remain in the unit. Similarly, although Nee's balcony has now been cleaned and sanitized, it is incumbent on Woodland Park, as the manager, to hold the tenant with the offending dog accountable.

The Hearing Officer is sympathetic to the concerns voiced by Nee concerning the noise from the tenant in the unit above her disturbing her peaceful enjoyment of her rental unit. Noise issues and disturbing the peaceful enjoyment of property, however, do not appear to come within any of the reasons set forth in the Rent Ordinance or the Regulations as grounds for a rent rebate or rent reduction. Those reasons pertain to reductions in maintenance and services or habitability

problems. Although rent includes housing services and, as stated above, housing services are broadly defined, those services focus on the physical characteristics of the rental unit. It is a landlord's failure to repair and maintain those physical characteristics that the Rent Ordinance and Regulations provide relief to an affected tenant. Housing services do include other benefits connected to the use or benefit of the rental unit but the Hearing Office is not inclined to give "benefit" too broad a reading. On the other hand, Woodland Park appears to be somewhat remiss in not taking more affirmative steps to remedy the noise complaints that Nee had made for some time.

Woodland Park has been on notice of the periodic roach infestation since at least 2022. Accordingly, Nee has carried her burden of proof that she is entitled to a rent reduction/rebate based on Woodland Park's past failure to provide a long term maintenance solution to this particular problem. A rent reduction of 7.5% from May 2022 to June 2024 is reasonable and takes into account not only the periodic roach infestation but also the presence of rats in 2023 and that Nee's balcony was not useable for a period of time due to the urine and feces from the upstairs tenant's dog. In that there was no evidence that these particular conditions exist at this time, there is no reduction in rent prospectively.

DECISION

1. The petition for a rent reduction/rebate based on a reduction in maintenance/failure to maintain is granted; the rent is reduced by 7.5% from May 2022 to June 2024.
2. Nee is entitled to a reimbursement of rent in the amount of \$2004.79 [$\$1023.60 \times 7.5\% = \$76.77 \times 12 \text{ months} = \921.24] + [$\$1111.39 \times 7.5\% = \$83.35 \text{ month} \times 13 \text{ months} = \1083.55]. Woodland Park may reimburse Nee that amount or apply it as a credit against future rent.
3. In all other respects, the petition is denied.

Michael H Roush

Dated: May 23, 2024

Michael H. Roush, Hearing Officer