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**IN PROCEEDINGS BEFORE THE RENT STABILIZATION BOARD**  
**CITY OF EAST PALO ALTO**

GILBERT WOPARA,  
Petitioner/Appellee,

v.

KRISTIAN WIDJAJA,  
Respondent/Appellant.

Case No.: 20210156

**Findings and Decision**

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**I. PROCEDURAL HISTORY**

This matter arises from petition filed by Gilbert Wopara, (hereinafter, "Petitioner" or "Appellee") against Kristian Widjaja (hereinafter, "Respondent" or "Appellant") on July 4, 2022, in connection with Petitioner's tenancy at 2070 Glen Way, Apartment F, East Palo Alto, CA, 94303 (hereinafter, "Property").

On March 29, 2022, Hearing Examiner Derek Chantler conducted a virtual hearing on this matter. Present at the hearing were Petitioner GILBERT WOPARA and Respondent's property manager Mr. Jose Parra who represented Mr. Widjaja at the hearing. Upon conclusion of the hearing, the Hearing Examiner left the record open for seven (7) days, until close of business on April 5, 2022, to allow time for Petitioner to submit additional documentation that had not been received by the Hearing Examiner prior to the hearing, to be added to the record and used as exhibits for consideration in this petition. The Hearing Examiner received all documents by April 5, 2022, and issued his decision on June 8, 2022.

The Hearing Examiner made the following determinations relevant to the appeal:

1. At the time of the filing of the petition, the Property contained at least three separate dwelling units and should have been registered with the RSP.
2. The Property was not registered with the RSP according to the requirements of the Rent Stabilization Ordinance (hereinafter "RSO").

3. The Maximum Allowable Rent (hereinafter "MAR") was therefore the initial rent of One Thousand One Hundred and Fifty Dollars (\$1,150.00) per month.
4. Petitioner's request for a rent rebate is GRANTED in part and DENIED in part.
5. Petitioner's request for a rent refund based on an infestation of ants and/or spiders is GRANTED.
6. Petitioner's request for a rent refund based on unsanitary conditions, lack of security and cloudy water is DENIED.
7. Respondent shall issue a rent refund check directly to Petitioner in the amount of Two Hundred and Thirty Dollars (\$230.00)
8. Responded is also required to register the property with the RSP.

Petitioner filed a timely appeal on July 4, 2022, alleging the Hearing Examiner erred in his decision arguing: 1) Registration of the property; 2) Habitability based on safety; and 3) Habitability based on cloudy water.

On September 14, 2022, the Rent Stabilization Board ("Board") adopted Resolution No. 22-04 setting the schedule for the appeal and determining that the Board shall conduct this appeal hearing on the record available to the Hearing Examiner.

## **II. ISSUES PRESENTED**

Whether the Hearing Examiner erred or abused his discretion in finding that:

1. Petitioner failed to carry his/her burden that there a violation of the warranty of habitability based on lack of safety; and
2. Petitioner failed to carry his/her burden that there a violation of the warranty of habitability based on based on cloudy water.

## **III. FINDINGS**

The Board makes the following findings regarding the Property at 2070 Glen Way

1. Respondent testified that the main security gate was left open to facilitate residents parking their vehicles in the driveway. This, however, allowed non-residents to enter the Property. This is a situation that took place per the

1           Petitioner. The gate should have been closed when not in immediate use as it  
2           compromised security for the residents.

- 3           2. The Board finds that while the Petitioner cites cloudy and discolored water as a  
4           basis for a rent refund, the Respondent had informed the Petitioner that the water  
5           was cloudy from the water supplier. The Respondent also had a vendor test the  
6           water. The vendor found the water was safe to drink.

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8           **IV. SCOPE OF REVIEW**

9           The Rules and Regulations (hereinafter “Regulations”) of the Board provide the standard  
10          of review for appeals before the Board. Per the Regulations, this Appeal is considered on the  
11          administrative record submitted to the Hearing Examiner unless the Board decides to review the  
12          Hearing Examiner’s decision *de novo*. Therefore, the Board shall disregard any evidence,  
13          discussion or comment regarding factual matters that were not in the record before the Hearing  
14          Examiner or officially noticed. (Regulations §1500.G.2.h.)

15          The parties may discuss or comment upon the legal matters in question or other pertinent  
16          matters raised by the appeal. However, the parties may not include, in their discussion or  
17          comments, factual matters or evidence that were not presented to the Hearing Examiner or  
18          officially noticed. Documents and information not presented at the Hearing Examiner  
19          proceeding cannot be included as part of the record on appeal and must be disregarded on appeal  
20          as beyond the scope of appellate review.

21          The burden of proof is upon Appellant to establish there was either an error or abuse of  
22          discretion on the part of the Hearing Examiner. (Regulations §1500.G.2.b.) The terms “error”  
23          and “abuse of discretion” are not defined in the RSO. The Board adopts the meaning of “abuse  
24          of discretion” as it is used in the context of judicial review of administrative decisions.

25          To establish that the Hearing Examiner abused his discretion, the Appellants must prove  
26          that (a) the Hearing Examiner did not proceed in the manner required by law, (b) the decision is  
27          not supported by the findings, or (c) the findings are not supported by the evidence. (Cal. Code  
28          of Civ. Proc. §1094.5(b).)

1 The vote of four Board members is required to affirm, modify, remand or reverse the  
2 decision of the Hearing Examiner. (Regulations §1500.G.2.h.)

### 3 **III. CONCLUSIONS OF LAW**

4 The Board makes the following conclusions of law:

#### 5 **A. Habitability Issues**

6 In order to evaluate whether the Hearing Examiner erred or abused his discretion in  
7 finding that the conditions violated the warranty of habitability, we must review the standards of  
8 habitability.

##### 9 1. State Law

10 State law provides guidance regarding the standards habitability. California Civil Code  
11 section 1941.1 provides that if a dwelling unit lacks the following characteristic, then it is unfit  
12 for human habitation: “[e]ffective waterproofing and weather protection of roof and exterior  
13 walls, including unbroken windows and doors.” (Cal. Civ. Code § 1941.1(a)(1).)

14 The California Supreme Court has concluded that a warranty of habitability is implied by  
15 law in residential leases in California. (Green v. Superior Court of San Francisco, 10 Cal. 3d  
16 616, 718-719.) Under the implied warranty, a residential landlord covenants that premises he  
17 leases for living quarters will be maintained in a habitable state for the duration of the lease. (Id.)  
18 The warranty of habitability does not require that a landlord ensure that leased premises are in  
19 perfect, aesthetically pleasing condition, but it does mean that "bare living requirements" must be  
20 maintained. (Id.)

##### 21 2. Local Law

22 In East Palo Alto, a landlord’s failure to maintain a premise in habitable condition is  
23 considered an increase in rent. (EPA Muni. Code § 14.04.130.) The Program Rules and  
24 Regulations provide that the following are grounds for reductions in Rent or a rent rebate:

25 a. Failure to comply with the “Warranty of Habitability” set forth in California Civil  
26 Code Sec. 1941.1 as it currently exists or is amended or interpreted in the future.

27 b. Failure to comply with building and housing codes or other legal requirements  
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1 for the maintenance and operation of rental housing which affect the livability and/or rental value  
2 of the premises.

3 c. Decreases in Housing Services or failure to provide adequate maintenance without a  
4 corresponding reduction in Rent.

5 **VI. CONCLUSION**

6 Based on the foregoing, the Board affirms in part and reverses in part the decision of the  
7 Hearing Examiner as follows:

8 The Board affirms the following findings of the Hearing Examiner:

- 9 1. The Property is subject to the RSO and no exemption was applicable at the time the  
10 Hearing Examiner made his determination.<sup>1</sup>  
11 2. The Appellee did not meet the burden of proof that the water supplied to the  
12 Property was not safe for use and so no rent refund will be issued.

13 The Board reverses in part the following finding of the Hearing Examiner:

- 14 3. That Petitioner failed to meet his/her burden of a violation of the warranty of  
15 habitability security reasons. Appellants must pay Appellee an additional \$230 due  
16 to the main security gate being left open allowing non-residents onto the property.

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18 The Board find the Appellants are to pay the Appellee a total amount of \$460, \$230 for the main  
19 security gate and \$230 for the ant infestation approved in the original petition.

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21 **SO ORDERED.**

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23 DATED: January 18, 2023

RENT STABILIZATION BOARD

24  
25 By: 

26 Laurence Jones  
27 Chairperson

28 <sup>1</sup> Although appellant contends that the Hearing Examiner failed to note the implications of a failure to register rental units, this is not a cognizable basis for appeal.