

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING**

April 25, 2019

7:00 P.M.

**CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
- 3.. CONSENT ITEMS
 - a. Board Minutes for approval, March 28, 2019
 - b. Board Minutes for Approval, April 11, 2019

 - c. Board Minutes for Review, March 21, 2019
 - d. Board Minutes for Review, April 4, 2019
4. OPEN FORUM
5. OLD BUSINESS
 - A. Discussion of Ad Hoc Committee
 - B. Board Attendance Policy
6. NEW BUSINESS
 - A. Appeal Hearings in:
 - i. L18-0081, Vu v. Tenant
 - ii. T17-0529, Beane v. Tilt Up Development
7. SCHEDULING AND REPORTS
8. ADJOURNMENT

Accessibility. This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email sshannon@oaklandca.gov or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandca.gov o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandca.gov 或致電 (510) 238-3715 或 711 California relay service。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

Service Animals/Emotional Support Animals: The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Full Board Meeting
March 28, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:10 p.m. by Board Chair Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. Hall	Tenant	X		
E. Lai	Homeowner Alt.			X
R. Stone	Homeowner	X		
J. Warner	Homeowner	X		
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.			X
T. Williams	Landlord Alt.	X		

Staff Present

Kent Qian	Deputy City Attorney
Chanee Franklin Minor	Program Manager
Barbara Kong-Brown	Senior Hearing Officer
Kelly Rush	Acting Program Analyst 1

3. CONSENT ITEMS

None

4. OPEN FORUM SPEAKERS

James Vann

5. OLD BUSINESS

A. Staff Recommendation Re Board Attendance Policy

J. Warner moved to defer this item to future new business. R. Stone seconded. The Board approved this item by consensus.

B. Request for Increase in Rent Adjustment Program Fees

Ms. Franklin-Minor reported on the RAP request for an increase in the RAP Fee from \$68.00 to \$101.00. The reason for the fee increase included a more pro-active outreach/enforcement unit, and greater outreach. The outreach program has expanded its hours from 14 to 30, and a workshop has been conducted for owners and tenants in owner occupied duplexes and triplexes.

The vision is for an outreach/enforcement unit, a hearings unit and an administration unit for the Rent Adjustment Program. The Board discussed the focus on enforcement and there were questions on whether there was a better way to achieve landlord compliance with the rules.

C. RAP Annual Report

Ms. Franklin-Minor reported on the key points of the annual report and that RAP has submitted the annual report to the City Council for its April 2, 2019, meeting.

D. Discussion of Ad Hoc Committee

The Board discussed formation of an adhoc committee and RAP ability to staff these committee meetings. Ms. Franklin-Minor stated that currently there is no staff available to staff such meetings, and staff availability is dependent on the fee increase. J. Warner requested that this item be tabled for a future meeting in order to allow E. Lai, alternate neutral member, to participate in the discussions.

6. NEW BUSINESS

a. Appeals Hearings

i. L17-0241, Faussner v. Tenants

Appearances: Clifford Fried	Owner Appellant Representative
Clay Hays	Tenant Appellee
Christina White	Tenant Appellee
Kendra Brennan	Tenant Appellee

The owner appealed from a hearing decision which denied a capital improvement pass-through for windows on the grounds that there was no evidence that the owner

obtained a permit for the windows; and that the other work, including stucco, was caused by water intrusion which led to dry rot which was deferred maintenance.

The owner contended that he had a permit for the windows, which was inspected and approved by an inspector; that the window permit was provided at the hearing as Exhibit 11, pages Bate stamp 176-177 in the Board packet. There was handwriting which stated:

"Replacement of 9
aluminum windows
w/ rail or vinyl
windows ok per zoning.

Ng x 3878"

APPROVED
City of Oakland Planning & Zoning
Signature: Neil Gray Date: 5/19/18

The owner further contended that the dry rot did not cause the buckling of the stucco and the hearing officer did not have the expertise to determine that the dry rot was caused by the buckling of the stucco. There was no evidence that the stucco buckled because of water intrusion. The two reports of water leaks were in another part of the building and the tenants did not sustain their burden of proof.

Tenant Brandon Blandy submitted a written statement in lieu of appearance. One tenant repeated her statement submitted regarding the appeal. One tenant contended that there was a lot of delayed leaks due to water intrusion from the rain

The tenants contended there was no window permit; there was no construction until October 2016 which continued for well over a year, for dry rot, which was not addressed for several years; there is currently dry rot construction going on without a permit; construction was a major inconvenience and disruption and they lived in darkness. The stucco was ripped off and there was just sheetrock which exposed the tenants to the elements; the workmen were there from 9 to 6 with their equipment and played their radio non stop, which included some Saturdays.

J. Warner moved to remand the hearing decision, with a friendly amendment by R. Stone, to direct the hearing officer to review the inspection report from the building records regarding the building permit for the windows, and review the record regarding the stucco work, to determine if some, all, or any of the work was due to deferred maintenance.

The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, K. Friedman, T. Williams

Nay: 0

Abstain: 0

The motion was approved by consensus.

ii. T18-0012, Edwards v. Bay Apartment Advisors

Appearances: John Edwards Tenant Appellant

Tyler Kellner, Owner Appellee Representative

The tenant appealed from a hearing decision which denied restitution for decreased housing services. He contended that he had to constantly complain in order to have his issues resolved although the complaints were reasonably handled.

The owner appellee representative contended that he responded within a reasonable period time to the tenant's complaints.

After arguments made by the parties, questions and Board discussion, T. Williams moved to affirm the hearing decision based on substantial evidence. K. Friedman seconded. The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, K. Friedman, T. Williams

Nay: 0

Abstain: 0

The motion was approved by consensus.

iii. L17-0231, Arms v. Tenants

Appearances:

Greg McConnell Owner Appellant Representative

Ann Salassi Tenant Appellee

Shanna Vance Tenant Appellee

The owner appealed from a hearing decision which granted \$241,467 out of \$639,586 requested for a capital improvement pass-through. The hearing officer denied some of the expenses for work that was done before the issuance of a permit. She denied the expenses for the windows on the grounds that the owner did not have a permit for the windows. She denied expenses for the security camera on the grounds that there was no proof of payment.

The owner appellant contended that the owner did some initial work and upon investigation, found that he needed to do more extensive work and then obtained a permit. The permit was issued, inspected and all the work was finalized and approved by a building inspector. The Rent Ordinance does not state when the permit has to be obtained, only that it is finalized and permitted.

Regarding a window permit the owner representative contended that no windows were installed; that the permit was for sliding glass doors, and the glass was for glass panes in the sliding door, not windows. If the work was for windows the inspector would have indicated this on the permit.

Regarding the security cameras, the owner representative contended that the owner meticulously submitted hundreds of pages in advance in support of his request, and the omission of the proof of payment was a mistake, and the hearing officer did not request this document which they had at the hearing and could have been produced.

The tenants contended that the projects were excessively long, and one of the tenants stated she could not use her patio for ten months due to construction. They kept switching contractors. Scaffolding was left on the building and people tried to break in. The work was delayed due to problems with the permits. Some tenants still have leaks in their units. Rain was coming down from the gutter. There are issues with the management.

The owner representative responded that the tenants were not at the underlying hearing and the comments made at this appeal hearing constitute impermissible new evidence.

Appeal Decision

After questions to the owner appellant's representative and Board discussion R. Stone moved to remand the hearing decision to the hearing officer for the limited purpose of 1) clarifying whether the work performed after the permit was issued, included sliding glass doors with glass panes for which a window permit is not required, or windows, for which a window permit is required; 2) review the documents regarding the security system which were not considered at the hearing and presented at the appeal hearing (Bate stamp 275-278) to determine whether the security system should be included.

The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, T. Williams

Nay: K. Friedman
Abstain: 0

The motion carried.

- b. Revisions to Regulations for Just Cause for Eviction Ordinance to Eliminate Exemption Procedure for Owner-Occupied Duplexes and Triplexes.

6. OLD BUSINESS

- a. None

7. SCHEDULING & REPORTS

a. Board Attendance Policy-February 28, 2019 Board Meeting-This item was tabled to the next full board meeting

b Board Officer Elections-K. Friedman nominated R. Stone for the position of Board Chair. E. Lai nominated J Warner for the position of Board Chair. R. Stone stated that he would be amenable to serving as Vice-Chair. The Board voted and by consensus agreed that J. Warner would be the Board Chair and R. Stone will serve a Vice chair.

c.Request for RAP fee increase-This item is tabled to the next full board meeting

d. RAP Annual Report-This item is tabled to the next full board meeting

8. ADJOURNMENT

J. Warner moved to extend the Board meeting past 10:00 p.m. R. Stone seconded.

The Board voted as follows:

Aye: R. Stone, J. Warner, T. Williams
Nay: K. Friedman, T. Hall
Abstain:

The motion carried. The meeting was adjourned by consensus at 10:05 p.m.

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Full Board Meeting
April 11, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:10 p.m. by Board Chair Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. Hall	Tenant	X		
H. Flanery	Tenant Alt.	X		
E. Lai	Homeowner Alt.			X
R. Stone	Homeowner	X		
J. Warner	Homeowner	X		
K. Friedman	Landlord			X
B. Scott	Landlord Alt.	X		
T. Williams	Landlord Alt.	X		

Staff Present

Kent Qian	Deputy City Attorney
Barbara Kong-Brown	Senior Hearing Officer
Kelly Rush	Acting Program Analyst 1

3. CONSENT ITEMS

a. Approval of Minutes from March 14, 2019

J. Warner moved to approve the minutes with changes.

The Board voted as follows:

Aye:	T. Hall	Tenant	X
	H. Flanery	Tenant Alt.	X
	R. Stone	Homeowner	X
	J. Warner	Homeowner	X
	B. Scott	Landlord Alt.	X
	T. Williams	Landlord Alt.	X

Nay: 0
Abstain:0

The Board approved the minutes by consensus.

4. OPEN FORUM SPEAKERS

James Vann

5. OLD BUSINESS

a. Discussion of Ad Hoc Committee

J. Warner moved to table this discussion pending the attendance of Board member E. Lai. R. Stone Seconded. The Board voted as follows:

Aye:	T. Hall	Tenant	X
	H. Flanery	Tenant Alt.	X
	R. Stone	Homeowner	X
	J. Warner	Homeowner	X
	B. Scott	Landlord Alt.	X
	T. Williams	Landlord Alt.	X

Nay: 0
Abstain:0

The motion was passed by consensus.

b. Staff Recommendation Re Board Attendance Policy

The Board members discussed the proposed board attendance policy and had questions about the policy. J.Warner objected to having board members finding a replacement if a member is unable to attend a board meeting and asked what was the purpose of publishing board attendance on the Rent Adjustment Program website. T. Williams asked when the six month period for missing 50% of regular board meetings begins. Hall asked for clarification whether attendance at a panel meeting counts as attending a regular board meeting. The Board requested a follow up on these questions for the next full Board meeting.

6. NEW BUSINESS

a. Appeals Hearings

i. T17-0446, Martin v. Dang/Do

Appearances:	David Martin	Tenant Appellant
	Kim Do	Owner Appellee

The tenant appealed from a hearing decision which denied his petition regarding a rent increase and determined it was valid based on Banking. The tenant also appealed the hearing decision's denial of a claim for decreased housing services which included loss of telephone intercom system, front door stop loose and that windows have not been cleaned.

The tenant contended that the intercom did not require a landline, and the owners advertised his unit as one with great views and the windows had not been cleaned since 2015, the front door stop was loose and falls down.

The owner contended that the issues with the intercom were resolved in two prior cases in 2015 and 2016 and involved the same issues and were dismissed. The door stop works and she checked it just yesterday. Cleaning the windows is not part of the housing services. The intercom system worked with the cell phones until 2015.

After questions to the parties and Board discussion B. Scott moved to affirm the hearing decision based on substantial evidence. T. Hall seconded.

The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, T. Williams, B. Scott

Nay: 0

Abstain: H. Flanery

The motion carried.

ii. L17-0177, Dischoso v. Tenants

Appearances: Kelly Dichoso Owner Appellant

No Appearance by Tenants

The owner appealed from a hearing decision which granted an exemption for one unit of a two unit building on the grounds that the non exempt unit was formerly a single family residence and the prior use of this unit was residential.

The owner contended that the single family residence was demolished and only two walls remained of the original structure and everything else was new.

After arguments made by the parties, questions and Board discussion, R. Stone moved to remand the hearing decision for a determination of whether the upper unit is new construction based on consideration of the documents submitted with the Board packet, and to review Bate stamp page 129 in the Board packet. B. Scott seconded.

R. Stone then moved to remand the hearing decision to determine whether the upper unit was new construction based on review of the evidence submitted at the underlying hearing and a review of the inspection record in the Building Department. B. Scott seconded.

J. Warner made a substitute motion to affirm the hearing decision based on substantial evidence. T. Williams seconded. The Board voted as follows:

Aye: T. Hall, J. Warner, T. Williams
Nay: H. Flanery, R. Stone, B. Scott
Abstain: 0

The motion failed.

J. Warner moved to remand the hearing decision based on the existing record to determine whether the single family residence was lifted or demolished and rebuilt. The lower unit is exempt from the Rent Adjustment Ordinance.

The Board voted as follows:

Aye: T. Hall, R. Stone, T. Williams, B. Scott
Nay: 0
Abstain: J. Warner

The motion carried.

- b. Revisions to Regulations for the Just Cause Eviction Ordinance To Eliminate Exemption Procedure for Owner-Occupied Duplexes and Triplexes

After staff presentation regarding the revisions J. Warner moved to accept The Revisions. H. Flanery seconded.

The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, T. Williams, H. Flanery
Nay: B. Scott
Abstain:

The motion carried.

7. SCHEDULING & REPORTS

- a. Response to Board regarding questions concerning Board Attendance Policy

8. Board Meeting Extension beyond 10:00 p.m.

J. Warner moved to extend the Board meeting past 10:00 p.m. R. Stone seconded. The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, T. Williams, H. Flanery, B. Scott
Nay: 0

Abstain: 0

The Board approved the motion by consensus.

9. ADJOURNMENT

The meeting was adjourned by consensus at 10:05 p.m.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**PANEL MEETING
March 21, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:06 p.m. by Panel Chair, Robert Stone.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Tanaia Hall	Tenant	X		
Robert Stone	Homeowner	X		
Terrance Williams	Owner	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney, Office of the City Attorney
Linda M. Moroz	Hearing Officer, Rent Adjustment Program
Kelly Rush	Acting Program Analyst I, Rent Adjustment Program

3. OPEN FORUM

No speakers.

4. NEW BUSINESS

- i. Appeal Hearing in cases:
 - a. T17-0477, Dobbe v. Marshall
 - b. T17-0577, Patrick v. Um, et al. – this case was re-scheduled
 - c. T17-0418, Jackson v. Barnaby

a. T17-0477, Dobbe v. Marshall

Appearances:

Rosalie Marshall
Jonathan Lee

Owner Appellant
Tenant Representative

The owner appealed the Hearing Decision which granted the tenant petition and invalidated all prior rent increases due to no RAP Notice served and granted a decrease in housing services due to a hole in bathroom caulking, totaling the restitution amount to \$4,242.00. The owner appealed on the ground that the base rent was set to an incorrect amount since the master tenant moved out, the decrease in housing services claim was false because the hole in the caulking was repaired right after she received the notice of the claim and that she did not receive any notification from the City of Oakland about providing the RAP Notice in 3 languages and therefore it was a violation of due process.

Board Discussion

After arguments made by the owner and the tenant representative and Board discussion, T. Williams moved to affirm the Hearing Decision based on substantial evidence. T. Hall seconded.

The Board panel voted as follows:
Aye: T. Hall, R. Stone, T. Williams
Nay: 0
Abstain: 0

The Motion passed by consensus.

b. T17-0418, Jackson v. Barnaby

Appearances:

Charles Alfonso
Nakisha Jackson

Attorney for Owner Appellant
Tenant Appellee

The owner appealed the Hearing Decision which granted restitution in the amount of \$6,682.25 for past decreased housing services relating to various items and also ordered a 21% rent decrease for ongoing conditions. The owner appealed, stating that the Hearing Decision violates due process and denies equal protection because the Hearing Officer disallowed the owner to present evidence, including evidence of good cause that was submitted several months prior to the hearing, and rebut testimony relating to the mold claim but allowed the tenant to present evidence that was not timely submitted as it was presented on the date of the hearing.

Board Discussion

After arguments made by the tenant and the attorney for the owner, questions to both parties and Board discussion, T. Williams moved to remand the matter back to the Hearing Officer for reconsideration of evidence as one party did not get due process. R. Stone offered a friendly amendment, which was accepted, to limit the review of evidence to evidence previously submitted by the parties for transparency. T. Williams seconded.

The Board panel voted as follows:

Aye: R. Stone, T. Williams

Nay: T. Hall

Abstain: 0

The Motion carried.

5. SCHEDULING AND REPORTS

None.

6. ADJOURNMENT

The meeting was adjourned at 7:55 p.m.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**PANEL MEETING
April 4, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:07 p.m. by Panel Chair, Edward Lai.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Hannah Flanery	Tenant	X		
Edward Lai	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Kent Qian	Deputy City Attorney, Office of the City Attorney
Barbara M. Cohen	Hearing Officer, Rent Adjustment Program

3. OPEN FORUM

James Vann welcomed Hannah Flanery to the Board.

4. NEW BUSINESS

- i. Appeal Hearing in cases:
 - a. T18-0057, McGill v. Horn
 - b. T17-0439; Williams v. FABS, Inc.
T17-0440, Brown v. FABS, Inc.
T17-0441, Leloup v. FABS, Inc.
T17-0442, Bell v. FABS, Inc.

a. T18-0057, McGill v. Horn

Appearances:

Jamie Horn	Owner Appellant
Rob McGill	Tenant Appellee

The owner appealed the Hearing Decision which granted the tenant petition in part and awarded the tenant a rent reduction for a total overpaid rent of \$187.50, payable by a rent reduction of \$62.50 for three months. The Hearing Decision also ordered that the owner could no longer request the tenant pay a share for common area utilities. The owner appealed on the ground that sharing the cost of utilities is not a decreased housing service, since it has been ongoing since the inception of the tenancy and the tenant's petition was untimely.

Board Discussion

After arguments made by the owner and the tenant, questions to both parties and Board discussion, B. Scott moved to affirm the Hearing Decision based on substantial evidence. H. Flanery seconded.

The Board panel voted as follows:
Aye: H. Flanery, B. Scott, E. Lai
Nay: 0
Abstain: 0

The Motion was approved by consensus.

**b. T17-0439; Williams v. FABS, Inc.
T17-0440, Brown v. FABS, Inc.
T17-0441, Leloup v. FABS, Inc.
T17-0442, Bell v. FABS, Inc.**

Appearances: There was no appearance by the owner appellant
Susan Beal Tenant Appellee
Geraldine Leloup Tenant Appellee

E. Lai moved to dismiss the appeal pending a showing of good cause. B. Scott seconded.

The Board voted as follows;

Aye: E. Lai, B. Scott, H. Flanery
Nay: 0
Abstain: 0

The motion was approved by consensus

6. ADJOURNMENT

The meeting was adjourned at 7:34 p.m.

CHRONOLOGICAL CASE REPORT

Case No.: L18-0081
Case Name: Vu v. Tenant
Property Address: 6915 Krause Ave., Oakland, CA
Parties: Julie Vu (Owner)
Anthony Leung (Owner Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	April 4, 2018
No Tenant Response filed	-----
Hearing Decision mailed	September 26, 2018
Owner Appeal filed	October 4, 2018

RECEIVED

D 418-0081 MS/LM

Griffin, Debora... v

APR -4 2018

Rent Adjustment Program

Property Owner Petition 9646

RENT ADJUSTMENT PROGRAM
Housing and
Oakland
Community
Development

Case Management
Print/Oracle BI
Resources
Public Dashboard

Case Number L18-158
 Owner Julie Vu
 20848 Chester Street, #5
 Castro Valley, CA, CA 94546
 (510) 302-7090
 vurealty@yahoo.com

Filer Anthony Leung
 Law Office of Anthony S. Leung
 1110 Franklin Street
 Suite #2
 Oakland, CA 94607
 (510) 452-9111

Business License Number

Have you paid your business license? Yes No

Have you paid the Rent Adjustment Program service fee? Yes No

Is there more than one street address on the parcel? Yes No

Unit Type

Total Number of Units

Range

2-4 Units (Duplex, Tri)

Griffin, Debora... v

Rent Adjustment Program

Date of which you aquired the building

06-29-2017

Housing and Community Development

Case Management

Print/Oracle BI

Resources

Public Dashboard

RAP Notice given to tenants in each unit affected by petition?

Yes No

On what date was the RAP Notice given?

10-01-2017

Mediation Requested

Yes No

Save

Cancel

Reason for Petition

Add · Remove

TYPE REASON

Increased Housing Service Costs

1 record

Rent Increase Information

Add · Remove

<input type="checkbox"/>	UNIT	NOTICE GIVEN	NOTICE DATE	EFFECTIVE DATE	INCREASE FROM	INCREASE TO
<input type="checkbox"/>		True	7-1-2017	8-1-2017	1500	1565

1 record

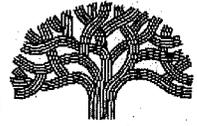
Tenants

Add · Remove

<input type="checkbox"/>	TENANT NAME	BUSINESS NAME	ADDRESS	RENT AMOUNT	PHONE NUMBER	EMAIL A
<input type="checkbox"/>	Angelica Godinez		6915 Krause Avenue		(510) 915-3564	
<input type="checkbox"/>	Jesus Godinez		6915 Krause Avenue		(510) 915-3564	

2 records

For more information regarding the Rent Adjustment Program, Please contact: City of Oakland, Rent Adjustment Program, Dalziel Building 250 Frank H. Ogawa Plaza Suite -



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Community and Economic Development Agency
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

ADMINISTRATIVE DECISION

CASE NUMBER: L18-0081, Vu v. Tenant
PROPERTY ADDRESS: 6915 Krause Ave., Oakland, CA
DATE OF DECISION: September 26, 2018
PARTIES: Julie Vu, Owner
Anthony Leung, Owner Representative

BACKGROUND AND EVIDENCE

On April 4, 2018, the owner filed a Property Owner Petition for Approval of Rent Increase based on Increased Housing Service Costs.

On June 19, 2018, a Tenant Notification of Landlord Petition was mailed to the tenant Jesus Godinez, with a proof of service. No mail was returned as non-delivered. The tenant did not file a response.

On June 19, 2018, a Notice of Hearing was mailed to the owner and tenant with a proof of service, scheduling the hearing date for October 1, 2018. The Notice of Hearing instructs the parties that all evidence must be submitted not less than seven (7) days prior to the Hearing.

REASON FOR ADMINISTRATIVE DECISION

An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing and there are no material facts in dispute.

Increased Housing Service Costs

Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to,

insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services.¹

In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. For example, if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered.²

In this case, the owner did not submit any documents relating to total annual operating expenses for the two years prior to the year of the proposed rent increase.

DISMISSAL – NO EVIDENCE

The petition is dismissed because no evidence relating to the annual operating expenses were submitted seven days prior to the hearing.

ORDER

1. Petition L18-0081 is dismissed.
2. The hearing set for October 1, 2018, is cancelled.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: September 26, 2018



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

¹ Regulations, Appendix A, 10.1

² Regulations, Appendix A, 10.1.1

PROOF OF SERVICE
Case Number L18-0081

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included
Administrative Decision

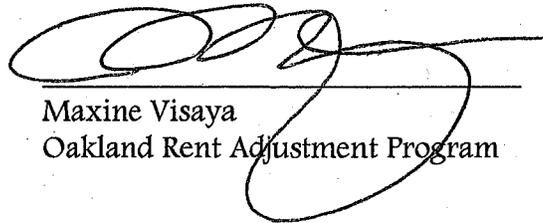
Owner
Julie Vu
20848 Chester Street, #5
Castro Valley, CA, CA 94546

Owner Representative
Anthony Leung
Law Office of Anthony S. Leung
1110 Franklin Street Suite #2
Oakland, CA 94607

Tenant
Jesus Godinez
6915 Krause Avenue
Oakland, CA 94605

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 26, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
For date stamp:

PM 12:09

MS

APPEAL



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

Appellant's Name <i>Julie Vu</i>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>6915 Krause Ave Oakland 94605</i>			
Appellant's Mailing Address (For receipt of notices) <i>1110 Franklin Street # 2 Oakland CA 94607</i>		Case Number <i>L18-0081</i>	
		Date of Decision appealed <i>September 26, 2018</i>	
Name of Representative (if any) <i>Anthony S. Leung</i>		Representative's Mailing Address (For notices) <i>1110 Franklin St # 2 Oakland CA 94607</i>	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: _____.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •
 I declare under penalty of perjury under the laws of the State of California that on _____, 20____, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Jesus Godinez
Address	6915 Krause Ave
City, State Zip	Oakland CA 94605
Name	
Address	
City, State Zip	

	10-4-18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

1 Anthony S. Leung, SBN 132887
1110 Franklin Street, # 2
2 Oakland, CA 94607
Telephone 510 452 9111

3 Attorney for Appellant
4 JULIE VU

5 CITY OF OAKLAND

6 RENT ADJUSTMENT PROGRAM

7
8 JULIE VU,

CASE NUMBER: L18-0081

9 Appellant,

Appeal for Decision Dated
September 26, 2018 on the
ground that decision is not
supported by substantial
evidence.

10 v.

11 Jesus Godinez,

12 Respondent.

13 The petition to increase in rent was based on the ground of increase in
14 housing services. The petitioner purchased the subject premises with
15 substantial increase in property tax and mortgage payment. The prior owner
16 has no mortgage payment. The increase in property tax was based on the
17 purchased price. The mortgage payment and property tax statement was served
18 on Margaret Sullivan by first class mail with postage prepaid on September
19 18, 2018. A copy of the certificate of service by mail is attached as Exhibit
20 A. The decision on September 26, 2018 is based on the ground that no
21 evidence was submitted in support of the petition. The decision is not
correct because document was timely served on September 18 by mail.

22 Dated: October 4, 2018

23 Respectfully submitted,

24 

25 Anthony S. Leung
Attorney for Appellant

CERTIFICATE OF SERVICE BY MAIL

ANTHONY S. LEUNG hereby certifies:

1. I am an active member of the State Bar of California. I am over the age of eighteen and not a party to the within cause. My business address is 1110 Franklin Street, Suite # 2 Oakland, Ca 94607
2. On September 18, 2018, I caused an envelope to be address:

Margaret Sullivan
Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612-2034

And that I enclosed and sealed in said envelope a copy of:

Statement of mortgage payment and 2 years of property tax statement

And that I deposit said envelope in the United States Mail to the person named in the envelope with postage paid.

Dated: September 18, 2018

ASL
Anthony S. Leung

Exhibit A

CERTIFICATE OF SERVICE BY MAIL

ANTHONY S. LEUNG hereby certifies:

1. I am an active member of the State Bar of California. I am over the age of eighteen and not a party to the within cause. My business address is 1110 Franklin Street, Suite # 2 Oakland, Ca 94607
2. On October 4, 2018, I caused an envelope to be address:

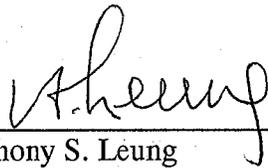
Margaret Sullivan
Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612-2034

And that I enclosed and sealed in said envelope a copy of:

Notice of Appeal, CASE # L18-0081

And that I deposit said envelope in the United States Mail to the person named in the envelope with postage paid.

Dated: October 4, 2018



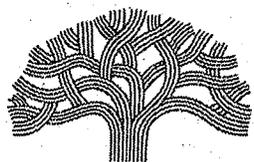
Anthony S. Leung

CHRONOLOGICAL CASE REPORT

Case No.: T17-0529
Case Name: Beane v. Tilt-Up Development
Property Address: 1000 43rd Street, Oakland, CA
Parties: Amanda Beane (Tenant)
Albert Sukoff (Agent for Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	September 14, 2017
No Owner Response filed	-----
Hearing Decision mailed	August 23, 2018
Owner Appeal filed	September 11, 2018



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp: **RENT ADJUSTMENT PROGRAM**
2017 SEP 14 PM 2:57
TENANT PETITION

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

Please print legibly **T17-0529 RC/SK**

Your Name AMANDA BEANE	Rental Address (with zip code) 1000 43rd St #9 OAKLAND CA 94608	Telephone: 510 909 3724
Your Representative's Name	Mailing Address (with zip code)	E-mail: gazelle.designs@gmail.com
Property Owner(s) name(s) ALBERT SUKOFF TILT UP Development	Mailing Address (with zip code) 1214 GIEN AVE BERKELEY CA 94708	Telephone:
Property Manager or Management Co. (if applicable) SHAUNA BERGH	Mailing Address (with zip code) 1000 43rd St #13 OAKLAND CA 94608	E-mail:

Number of units on the property: **30**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

X	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
X	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
X	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
X	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
X	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: 2010 Initial Rent: \$ 1200 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?	
		From	To		Yes	No
4/1/17	6/1/17	\$ 1800	\$ 1950	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4/1/15	6/1/15	\$ 1600	\$ 1800	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4/1/14	6/1/14	\$ 1450	\$ 1600	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
1/13/13	4/1/13	\$ 1325	\$ 1450	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
1/13/13	5/15/13	\$ 1200	\$ 1325	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

T17-0287, was unable to attend hearing

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

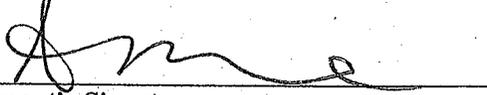
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

IV. VERIFICATION: The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.



Tenant's Signature

9/14/17

Date

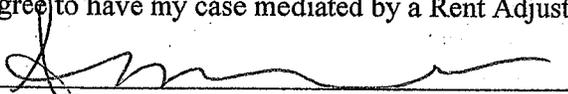
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature

9/14/17
Date

VI. IMPORTANT INFORMATION:

Time to File

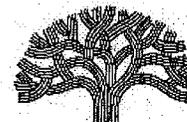
This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

File Review

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): internet search



250 FRANK OGAWA PLAZA, OAKLAND, CA 94612 CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: T17-0529, Beane v. Tilt Up Development
PROPERTY ADDRESS: 1000 - 43rd St., Oakland, CA
DATES OF HEARING: March 29 & July 19, 2018
DATE OF DECISION: August 23, 2018
APPEARANCES: Amanda Beane (Tenant)
Albert Sukoff (Agent for Owner)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on September 14, 2017, which alleges that a proposed rent increase from \$1,200 to \$1,325 per month, effective March 15, 2013, and subsequent rent increases, exceed the CPI Adjustment and are unjustified or greater than 10%; that the contested rent increases exceeded an overall increase of 30% in 5 years; that she has never received the form Notice to Tenants (RAP Notice); and that her housing services have been decreased. The owner did not file a response to the tenant's petition.

BACKGROUND

The file contains a Proof of Service signed by a staff member of the Rent Adjustment Program, which states that on October 12, 2017 she mailed to the owner a packet of documents, including copies of the tenant petition in this case and a blank response form. One document in the packet was a cover letter which states, in part:

000038

YOU MUST FILE A WRITTEN RESPONSE TO THE ATTACHED TENANT PETITION(S) WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR A DECISION MAY BE MADE AGAINST YOU. (Boldface type in the original)

The owner did not file a response and a Hearing was held on March 29, 2018. Because the owner did not file a response to the tenant's petition, the owner's participation was limited to questioning the tenant and presenting a summation.

There was a prior Rent Adjustment case involving this property, being Case No. T17-0287. The tenant's petition in that case was dismissed because the tenant did not appear at the Hearing. However, the owner filed a response in that prior case, in which he alleged that the subject building is exempt from the Rent Adjustment Program as being newly constructed. The owner also filed a copy of a Certificate of Occupancy for the subject building in that case.

At the Hearing on March 29, 2018, Mr. Sukoff argued that, although he had not filed a response to the tenant's petition, the contents of the prior case should be admitted in the present case. This contention was rejected, and Mr. Sukoff was not allowed to testify or submit any document into evidence.

However, because a central issue in this case involves the jurisdiction of the Rent Adjustment Program, it was proper to continue the Hearing. Therefore, on April 5, 2018, the parties were sent a document entitled "Notice of Hearing," which set a date for a further Hearing on July 19, 2018. This document states, in part, "it is proper to continue the Hearing to allow the owner to file a response to the tenant's petition, to offer the Certificate of Occupancy into evidence in the present case, and to present evidence of the prior use of the subject property." The owner never filed a response to the tenant's petition.

THE ISSUES

- (1) Is there a valid reason for the owner failing to file a response to the tenant's petition?
- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Are any of the contested rent increases justified and, if so in what amounts?
- (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

No Response: Prior to the Hearing of July 19, 2019, Mr. Sukoff submitted a number of documents, but did not file a response to the tenant's petition. Mr. Sukoff testified that he did file a "response," and that the Notice of Hearing does not say the format or type of response that was required. This Hearing Officer found that this was not a valid reason for failure to file a response on the required form, and limited Mr. Sukoff's participation to questioning the tenant and presenting a summation. Mr. Sukoff did not question the tenant or present a summation. Rather, mid-way through the July 19, 2018 Hearing, he shouted and left the Hearing.

RAP Notice: At both Hearings, the tenant testified that she has never received the RAP Notice.

Rent History: In the tenant's sworn petition, she contested the following monthly rent increases:

Effective March 15, 2013: \$1,200 to \$1,325
Effective April 1, 2013: \$1,325 to \$1,450
Effective June 1, 2014: \$1,450 to \$1,600
Effective June 1, 2015: \$1,600 to \$1,800
Effective June 1, 2017: \$1,800 to \$1,950

The tenant testified that she paid each of these rent increases, and that she intends to continue paying rent of \$1,950 per month until she receives a Hearing Decision.

Decreased Housing Services: On page 3 of her petition, the tenant checked boxes alleging that her housing services have been decreased. Below these boxes, the petition form states: "If you answered 'Yes' to any of the above . . . please attach a separate sheet listing a description of the reduced service(s) and problem(s)." The tenant did not attach anything to her petition form.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

No Response: The Rent Adjustment Ordinance¹ requires an owner to file a response to a tenant petition within 30 days after service of a notice by the Rent Adjustment Program that a tenant petition was filed. "[T]he owner **must** provide the following: . . . A completed response . . . on a form prescribed by the Rent Adjustment Program."² (emphasis added).

Mr. Sukoff did submit a response on the proper form in the prior case between the parties, and he was therefore well aware that the word "response," as used in a Rent Adjustment context, has a particular meaning. He was given two opportunities to file a proper response in this case, and did not do so. Therefore, Mr. Sukoff's testimony that he was unaware of the proper format for a response is found to be disingenuous, at best.

For the purpose of this Decision, it simply does not matter what documents were filed in a prior case. The Rent Adjustment Ordinance prescribes procedures that must be followed in each case. Therefore, it was proper to limit Mr. Sukoff's participation in both Hearings and to deny him an opportunity to testify or present documentary evidence.³

RAP Notice: It is found that the tenant has never received the RAP Notice.

Rent Reduction Due to Lack of the Required Notice: The Rent Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP) at the start of a tenancy⁴ and together with any notice of rent increase.⁵ A tenant may file a petition to contest

¹ O.M.C. Section 8.22.090(B)

² O.M.C. Section 8.22.070(C)

³ Santiago v. Vega, Case No. T02-0404

⁴ O.M.C. Section 8.22.060(A)

⁵ O.M.C. Section 8.22.070(H)(1)(A)

any rent increase. However, a tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives written notice of the existence and scope of the RAP, whichever is later.⁶

Since the tenant has never received the RAP Notice, she may properly challenge all rent increases alleged in her petition. The rent is first reduced to the initial rent amount of \$1,200 per month. However, a tenant's claim for rent overpayments is limited, by Board decision, to three years.⁷ Therefore, the rent overpayments on the following Table are computed for the period September 2015 through August 2018.

The tenant has overpaid rent in the amount of \$23,850. Overpayment is usually ordered repaid over a period of 12 months.⁸ However, because of the large amount of restitution, the overpayment is ordered repaid over a period of 24 months. The rent is temporarily reduced by \$993.75 per month, to \$206.25 per month, beginning with the rent payment in September 2018 and ending with the rent payment in August 2019.

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Sep-15	30-May-17	\$1,800	\$1,200	\$ 600.00	21	\$12,600.00
1-Jun-17	31-Aug-18	\$1,950	\$1,200	\$ 750.00	15	\$11,250.00
TOTAL OVERPAID RENT						\$23,850.00

RESTITUTION

MONTHLY RENT	\$1,200
TOTAL TO BE REPAID TO TENANT	\$23,850.00
AMORTIZED OVER 24 MONTHS BY HEARING OFFICER	\$993.75

ORDER

1. Petition T17-0529 is partly granted.
2. The current rent, before reduction to restore rent overpayments, is \$1,200 per month.
3. The tenant has overpaid rent in the amount of \$23,850. This overpayment is repaid to the tenant by a rent reduction of \$993.75 per month.

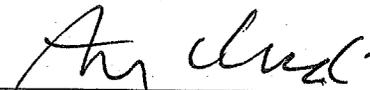
⁶ O.M.C. Section 8.22.090 (A)(2)

⁷ T06-0051, Barajas/Avalos v. Chu; T08-0139, Jackson-Redick v. Burks

⁸ Regulations, Section 8.22.110(F)

4. If the rent is not otherwise increased, the current rent is \$206.25 per month, beginning with the rent payment in September 2018 and ending with the rent payment in August 2019.
5. The owner may be entitled to increase the rent, with an effective date not less than 6 months after the tenant is provided with the RAP Notice.
6. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 22, 2018



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number: T17-0529 (Beane v. Tilt Up Development)

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

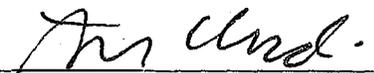
Amanda Beane
1000 - 43rd St., #9
Oakland, CA 94608

Albert Sukoff
Tilt Up Development
1214 Glen Ave.
Berkeley, CA 94708

Shauna Bergh
1000 - 43rd St., #13
Oakland, CA 94608

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

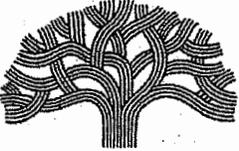
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 23, 2018, in Oakland, California.



Stephen Kasdin
Oakland Rent Adjustment Program

000043

2018 SEP 11 PM 3:02
(For date stamp)

 <p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721</p> <p>CITY OF OAKLAND</p>	<p style="text-align: right;"><u>APPEAL</u></p>
--	--

Appellant's Name TILT-UP DEVELOPMENT LLC		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant
Property Address (Include Unit Number) 1000 43 RD STREET; #9		
Appellant's Mailing Address (For receipt of notices) 1214 GLEN AVENUE BERKELEY, CA 94708	Case Number 17-0529	
Name of Representative (if any) ALBERT SUKOFF		Date of Decision appealed 23 AUG 2018 Representative's Mailing Address (For notices) SAME

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):

- a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
- b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
- c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
- d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
- e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

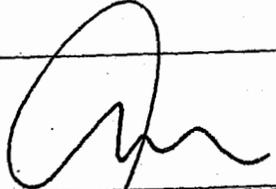
For more information phone (510) 238-3721.

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 17.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •
 I declare under penalty of perjury under the laws of the State of California that on 11 SEPT, 2018.
 I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	AMANDA BEANE
<u>Address</u>	1000 43 rd STREET #9
<u>City, State Zip</u>	ORLANDO, CA 94608
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	7 SEPT 18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

RECEIVED

SEP 15 2018

RENT ADJUSTMENT PROGRAM
OAKLAND

PROOF OF SERVICE

Case Number T17-0529

I am a resident of the State of California at least eighteen years of age. I am not a party to the Rent Adjustment Program case listed above.

Today I served the attached an **APPEAL** by placing a true copy of it in a sealed envelope in a US Post Office mail collection receptacle with first class postage thereon fully prepaid. Said copy of the **APPEAL** was addressed to:

Amanda Beane

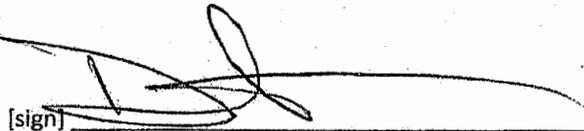
1000 43rd Street #9

Oakland, CA 94608

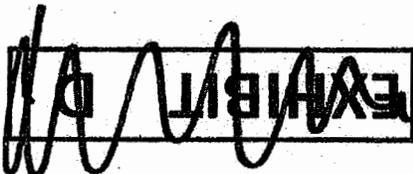
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executer on September 12, 2018 in Oakland, CA.

[print name] DAN McDJNN

[sign] 

1214 GLEN AV
BERKELEY 94708



BACKGROUND

BORDER LOFTS at 1000 43rd Street in Oakland is a converted warehouse comprised of 30 live/work units. The owner of BORDER LOFTS is Tilt-Up Development LLC (TU). **The conversion was completed in 2008 and is considered new construction under the City's rent control law and therefore exempt from the authority of the City of Oakland Rent Adjustment Program.**

The exempt status of Border Lofts notwithstanding, in 2017, Amanda Beane (AB), the tenant in # 9, filed with the Rent Adjustment Program (RAP) that her rent was raised by more the allowable limit. The intake is date-stamped May 2, 2017. The petition was designated T-17-0287. The following is a chronology of events thereafter:

- A hearing for T-17-0287 was set for September 14, 2007. TU responded to the petition, **including submittal of the required Property Owner Response (POR) form and the Certificate of Occupancy (CO) dated October 17, 2008.** In an e-mail dated August 1, 2017, Keith Mason of the RAP acknowledged receipt of the CO. (See Exhibit A.)
- AB failed to appear at the September 14th hearing and the case was dismissed.
- AB refiled and was granted a new hearing; case then designated as T-17-0529
- Both parties attended a hearing on March 29th. The Hearing Examiner, Stephen Kasdin (SK) refused to consider evidence from the previous petition and in fact acknowledged that he was unaware of the prior case **despite it being shown on the new petition for T-17-0529 as a previously filed case.** SK denied TU affirmative participation in hearing for lack of properly-filed response. TU asserted that proper form was submitted under T-17-0287 and believed that to be compliance with the regulation requiring the POR form. SK ruled otherwise and limited TU's participation in the hearing to cross examination of AB.
- In a [non]decision, SK recognized the prior case (T17-0287) and reset a second hearing for T17-0529 for July 19, 2018. In the Notice of Hearing (See Exhibit B), SK asked for specific information, i.e. the CO and evidence of non-residential use of the property before conversion. (See Exhibit A.) **Unlike previous notices, this Notice said nothing about the POR as a required form.**
- As requested, TU resubmitted the CO for Border Lofts and a statement from the developer (TU) and from contractor John Morrison Inc that the building in question was a [non-residential] warehouse before conversion. (See Exhibit C.)
- At the July 19th hearing, SK again refused affirmative participation because of the lack of submittal of the required POR form. At the hearing, TU reread the Notice and asserted that the form was NOT specified as required. Review of the recording of the hearing

confirm that SK acknowledged this assertion and nevertheless doubled down on his prohibition of participation by TU other than for cross examination. On cross examination, TU asked if AB had received certain documents from TU. AB affirmed that she had. TU asked AB if there was a CO among those documents. SK disallowed the question. After a heated discussion, TU left the hearing in total frustration as it was clear that SK had no intention of addressing the obvious and only relevant issue, i.e. that the RAP had no authority over the subject property.

- After the hearing, Patrick Zimski, attorney for TU send communication to SK which asserted that Border Lofts was exempt from Oakland rent control and that his agency had no jurisdiction over the property. SK acknowledged receipt in an e-mail but stated that he could not and would not consider submittal. (See Exhibit D.)
- SK issued a decision dated August 23rd. On page two, SK **acknowledged submittal of the CO** under the dismissed T17-0287 but refused consider the same CO submitted under T17-0529 because there was no POS for T17-0529. On page three, SK **acknowledged the T17-0289 POR submittal** (cited as evidence that TU knew of requirement). (See Exhibit E, highlighting added.) SK ruled that, for failure to submit the POS form with T17-0529, all rent increases since the initial occupancy of the tenant are disallowed. TU was ordered to repay AB almost \$24,000 over a 24-month period.
- On September 11, 2018 TU filed this **Appeal** to the decision in T17-0529. Grounds for the Appeal are submitted on the following two pages.

EXHIBITS

- **Exhibit A** - e-mail from the RAP acknowledging receipt of Certificate of Occupancy
- **Exhibit B** - *Notice of Hearing* set for July 19, 2018 with *no request* for the Property Owner Response form.
- **Exhibit C** - *Certificate of Occupancy* from City of Oakland dated October 17, 2008 and statements establishing prior non-residential use of 1000 43rd Street, Oakland
- **Exhibit D** - Letter from Attorney Patrick Zimski to Hearing Examiner Steven Kasdin
- **Exhibit E** - *Hearing Decision* with added highlighting.

APPEAL

This Appeal is filed on four grounds specified in on the Appeal form at 2)a, 2)d, 2)e and 2)f.

2)a *The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulation or prior decisions of the Board.* OMC 8.22.350H specifies that **new construction** after the passage of this [2003] law establishing rent control **is not subject to the Ordinance**. Board practice is that a Certificate of Occupancy is determinative of the date newly constructed housing is deemed to be put into service. BORDER LOFTS, the subject property, was granted a Certificate of Occupancy dated October 17, 2008. (See Exhibit C.) **The subject property is therefore EXEMPT from the authority of the Rent Adjustment Program** and the decision in this case is null and void.

Tilt-up Development LLC was compliant in its participation the Case T-17-0529 and the predecessor Case T-17-0287. However, any deficiencies in meeting the requirements of the Rent Adjustment Program would be of no consequence. **Any failures to meet the exacting demands of the hearing examiner in this case do not give the Rent Adjustment Program the authority to strip Tilt-Up Development LLC of its exemption from rent control under both local and state law. The Oakland Rent Adjustment Program has no such authority.**

2)d *The decision violated federal, state and local law.* Both local law (see 2)a above) and State law exempt from rent controls all housing built after a certain state. The Costa/Hawkins Rental Housing Act (CA Civil Code Sec. 1954.50-1954.535) exempts all new construction after 2000 from rent controls. **Border Lofts is therefore exempt under both state and local law.**

2)e *The decision is not supported by substantial evidence.* Before any hearings were set in this case (T-17-0529) or the identical prior case (T-17-0287), evidence that the property was exempt from OMC Chapter 8.22 rent controls was presented to both the applicant and the Rent Adjustment Program. Tilt-Up Development LLC proved its exemption status. Neither the applicant nor the Rent Adjustment Program sought or presented any evidence that the property was not exempt from the Ordinance.

2)f *I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.* In his decision, the hearing examiner confirms, heighthed on page two of Exhibit E, that he had in his possession all the specific information he asked for in his Notice for the July 19, 2018 hearing (i.e. a Certificate of Occupancy and statements concerning prior use of the property). He also acknowledges, on page three, the he had the Property Owner Response form the prior petition which was identical to the current petition. He had all the information

he demanded and which he insisted was required. In a act that can only be described as petty bureaucracy run amok, he denied full participation in the hearings because the Property Owner Response in his files had the old rather than the new case number.

For the Mach 29th hearing, Tilt-Up made the logical assumption that the Property Owner Response for T-17-0287 would suffice for the identical T-17-0529. For the July 19th hearing, no Property Owners Response form was requested. The hearing examiner's statement on page two of the decision that the owner never filed a response to the tenant's petition is simply not true. **All the necessary and requested information was submitted.** The hearing examiner chose to ignore it.

EXHIBIT A

From: Mason, Keith <KMason@oaklandnet.com>
Sent: Tuesday, August 01, 2017 9:20 AM
To: Albert Sukoff <arch1303@comcast.net>
Subject: RE: Petition T17-0287, Beane vs Tilt-Up Development LLC

Good Morning Mr. Sukoff,

Thank you for your email and the attached Certificate of Occupancy in response to the deficiency letter sent to you. I have printed out your email and the Certificate of Occupancy for the Hearing Officer to review.

Per your request, I am confirming that I have received your message; however, the Hearing will go forward as scheduled, per the Hearing Officer.

If I can be of further assistance, feel free to contact me.

Kind Regards,

Keith Mason
Program Analyst II
Rent Adjustment Program
The City of Oakland
510-238-6205
kmason@oaklandnet.com

EXHIBIT B

CITY OF OAKLAND



P. O. BOX 70243, OAKLAND, CALIFORNIA 94612-0243

Department of Housing and Community Development
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

NOTICE OF HEARING

File name: Beane v. Tilt Up Development
Property address: 1000 - 43rd St., #9, Oakland, California
Case number: T17-0529

The further Hearing in your case will begin:

Date: July 19, 2018
Time: 10:00 A. M.
Place: 250 Frank H. Ogawa Plaza, Ste. #5313
Oakland, CA

The Hearing is public and will continue from day to day until completed.

Reason for a Further Hearing: The tenant filed a petition contesting rent increases and claiming decreased housing services, and a Hearing was held on March 29, 2018. The owner did not file a response to the tenant's petition. In keeping with long-established precedent, the owner's participation was limited to questioning the tenant and presenting a summation. The owner was not allowed to testify or submit any document into evidence.

There was a prior Rent Adjustment case involving this property, being Case No. T17-0287. The tenant's petition in that case was dismissed because the tenant did not appear at the Hearing. However, the owner filed a response in that prior case, in which he alleged that the subject building is exempt from the Rent Adjustment Program as being newly constructed. Official Notice is taken of a Certificate of Occupancy that was filed in that case. A copy of that Certificate has been placed in the file in the present case.

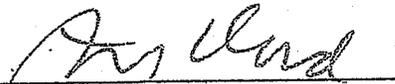
Because this issue involves the jurisdiction of the Rent Adjustment Program, it is therefore proper to continue the Hearing to allow the owner to file a response to the tenant's petition, to offer the Certificate of Occupancy into evidence in the present case, and to present evidence of the prior use of the subject property.

Order to Produce Evidence

ALL TANGIBLE EVIDENCE, INCLUDING BUT NOT LIMITED TO DOCUMENTS AND PICTURES, MUST BE SUBMITTED TO THE RENT ADJUSTMENT PROGRAM NOT LESS THAN SEVEN (7) DAYS PRIOR TO THE HEARING. EVIDENCE PRESENTED LATER MAY BE EXCLUDED FROM CONSIDERATION BY THE HEARING OFFICER.

ALL OTHER PROVISIONS IN THE NOTICE OF HEARING REMAIN IN EFFECT.

Dated: April 5, 2018


STEPHEN KASDIN
Hearing Officer
Rent Adjustment Program

skasdin@aklandnet.com
SID: 238: 2980

BORDER LOFTS

13 July 2008

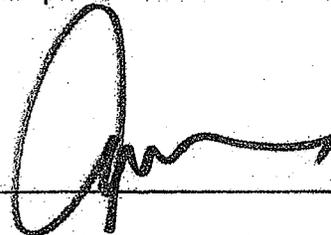
TO WHOM IT MAY CONCERN:

The building at 1000 43rd Street in Oakland, CA, was built sometime in the fifties. (About five percent of the building is in Emeryville.) Beginning in 2006, it was converted from a warehouse with ancillary office space into the 30-unit live-work facility it is today. Prior to conversion, the property had residential component.

I, Albert Sukoff, was the principal actor in this process. My role included the following activities:

- Finding the property and identifying it as viable for conversion.
- Finding sufficient others to participate in the investment opportunity.
- Negotiating a purchase of the property.
- Guiding the property through the entitlement process with the City of Oakland.
- Arranging construction financing for the project.
- Engaging a contractor to perform the conversion.
- Acting as the owner's representative to the the contractor.
- Arranging for permanent financing of the finished project.
- Leasing the project upon completion.
- Managing the property from then until now.

I am therefore in a position to know the entire history of BORDER LOFTS from day-to-day in every detail for a dozen years. I know absolutely, and herein so attest, that this property had no residential component before its conversion to its current use.



Albert Sukoff

JOHN MORRISON, INC.
GENERAL CONTRACTOR
ELECTRICAL & HVAC
1955 MOUNTAIN BLVD., SUITE 115
OAKLAND, CALIFORNIA 94611
TELEPHONE 510-655-5404 FAX 510-655-5414
STATE LIC. #509695
www.johnmorrisoninc.com

July 9, 2018

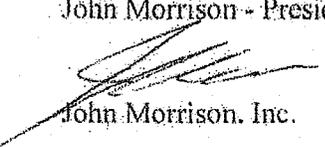
To Whom It May Concern:

John Morrison, Inc. is a licensed contractor in the State of California.
License number 509695 classes B, C10, C20.

In the period 2007-2008 John Morrison, Inc. entered into a contract with Tilt Up Development LLC to convert a warehouse located at 1000 43rd Street on the Oakland-Emeryville border into 30 live/work units.

Prior to the conversion, the building was a warehouse with a small office. There was no residential component whatsoever.

John Morrison - President



John Morrison, Inc.

**PATRICK D. ZIMSKI
ATTORNEY AT LAW**

EXHIBIT D

5767 BROADWAY, SUITE, Suite 102
OAKLAND, CALIFORNIA 94618
TELEPHONE: 510.595.7708
FACSMILIE: 510.595.7712
patrick@patrickzimski.com

July 29, 2018

Via Email
skasdin@oaklandnet.com

Stephen Kasdin
Hearing Officer
Rent Adjustment Program
PO Box 70243
Oakland, CA 94612

Re: Beane v. Tilt Up Development
1000 – 43rd Street, # 9, Oakland, CA
Case No: T17-0529

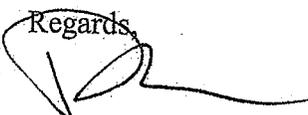
Dear Mr. Kasdin:

I represent Tilt Up Development ("Tilt Up") with respect to the above-described matter. The purpose of this letter is to object, on behalf of Tilt Up, to Tilt Up having been brought into a Rent Adjustment Program ("RAP") petition process when the apartment unit in question, #9, and the 30-unit project ("Project") in which it is situated, are exempt from RAP. A property exempt from RAP is not subject to any of process and the rules regarding Rent Adjustment.

Since late March of this year, RAP, through you, has been possession of a copy of the October 17, 2008 Certificate of Occupancy for the Project which was provided to you in a previous RAP matter with the same tenant regarding the same unit. That petition was dismissed when petitioner failed to appear at the hearing.

By July 17, 2018 email from Tilt Up principal Albert Sukoff, RAP, through you, was again provided a copy of the Project certificate of occupancy. In addition, you were provided a copy of letter from Mr. Sukoff, dated July 13, 2008 (sic – it should have stated 2018) stating in detail that the property never had a residential component prior to conversion to residential units, and a July 9, 2018 letter from John Morrison, the general contractor who constructed the Project residential improvements, stating the property prior to conversion had been a warehouse. These documents, copies of which are included herein for your convenience and reference, establish beyond question that the Project and unit # 9 are exempt from RAP, which includes RAP processes and rules. Accordingly, this is a demand that the above-described petition immediately be dismissed, and that RAP not facilitate or process any future petition process with respect to the Project and/or unit # 9.

Regards,


Patrick D. Zimski

11
000057

From: "Kasdin, Stephen" <SKasdin@oaklandca.gov>
Date: July 31, 2018 at 9:05:49 PM GMT+2
To: Patrick Zimski <patrick@patrickzimski.com>
Cc: "Leshin, Maryann" <MLeshin@oaklandca.gov>, "Kong-Brown, Barbara" <BKong-Brown@oaklandca.gov>

Subject: RE: Beane v. Tilt Up Development-1000 - 43rd Street, # 9, Oakland, CA-Case No: T17-0529

Mr. Zimski – I will print this email, and your letter and the attachments, and place them in the case file.

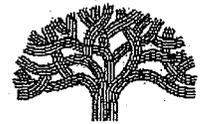
However, for your information, I do not consider anything that is said or written outside of a Hearing.

Of course, your client has the right to appeal, if he chooses to do so, after I have issued my Hearing Decision.

Very truly yours,

Stephen Kasdin

EXHIBIT E



250 FRANK OGAWA PLAZA, OAKLAND, CA 94612

CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: T17-0529, Beane v. Tilt Up Development
PROPERTY ADDRESS: 1000 - 43rd St., Oakland, CA
DATES OF HEARING: March 29 & July 19, 2018
DATE OF DECISION: August 23, 2018
APPEARANCES: Amanda Beane (Tenant)
Albert Sukoff (Agent for Owner)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on September 14, 2017, which alleges that a proposed rent increase from \$1,200 to \$1,325 per month, effective March 15, 2013, and subsequent rent increases, exceed the CPI Adjustment and are unjustified or greater than 10%; that the contested rent increases exceeded an overall increase of 30% in 5 years; that she has never received the form Notice to Tenants (RAP Notice); and that her housing services have been decreased. The owner did not file a response to the tenant's petition.

BACKGROUND

The file contains a Proof of Service signed by a staff member of the Rent Adjustment Program, which states that on October 12, 2017 she mailed to the owner a packet of documents, including copies of the tenant petition in this case and a blank response form. One document in the packet was a cover letter which states, in part:

000059

13

YOU MUST FILE A WRITTEN RESPONSE TO THE ATTACHED TENANT PETITION(S) WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR A DECISION MAY BE MADE AGAINST YOU. (Boldface type in the original)

The owner did not file a response and a Hearing was held on March 29, 2018. Because the owner did not file a response to the tenant's petition, the owner's participation was limited to questioning the tenant and presenting a summation.

There was a prior Rent Adjustment case involving this property, being Case No. T17-0287. The tenant's petition in that case was dismissed because the tenant did not appear at the Hearing. However, the owner filed a response in that prior case, in which he alleged that the subject building is exempt from the Rent Adjustment Program as being newly constructed. The owner also filed a copy of a Certificate of Occupancy for the subject building in that case.

At the Hearing on March 29, 2018, Mr. Sukoff argued that, although he had not filed a response to the tenant's petition, the contents of the prior case should be admitted in the present case. This contention was rejected, and Mr. Sukoff was not allowed to testify or submit any document into evidence.

However, because a central issue in this case involves the jurisdiction of the Rent Adjustment Program, it was proper to continue the Hearing. Therefore, on April 5, 2018, the parties were sent a document entitled "Notice of Hearing," which set a date for a further Hearing on July 19, 2018. This document states, in part, "it is proper to continue the Hearing to allow the owner to file a response to the tenant's petition, to offer the Certificate of Occupancy into evidence in the present case, and to present evidence of the prior use of the subject property." The owner never filed a response to the tenant's petition.

THE ISSUES

- (1) Is there a valid reason for the owner failing to file a response to the tenant's petition?
- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Are any of the contested rent increases justified and, if so in what amounts?
- (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

No Response: Prior to the Hearing of July 19, 2019, Mr. Sukoff submitted a number of documents, but did not file a response to the tenant's petition. Mr. Sukoff testified that he did file a "response," and that the Notice of Hearing does not say the format or type of response that was required. This Hearing Officer found that this was not a valid reason for failure to file a response on the required form, and limited Mr. Sukoff's participation to questioning the tenant and presenting a summation. Mr. Sukoff did not question the tenant or present a summation. Rather, mid-way through the July 19, 2018 Hearing, he shouted and left the Hearing.

RAP Notice: At both Hearings, the tenant testified that she has never received the RAP Notice.

Rent History: In the tenant's sworn petition, she contested the following monthly rent increases:

- Effective March 15, 2013: \$1,200 to \$1,325
- Effective April 1, 2013: \$1,325 to \$1,450
- Effective June 1, 2014: \$1,450 to \$1,600
- Effective June 1, 2015: \$1,600 to \$1,800
- Effective June 1, 2017: \$1,800 to \$1,950

The tenant testified that she paid each of these rent increases, and that she intends to continue paying rent of \$1,950 per month until she receives a Hearing Decision.

Decreased Housing Services: On page 3 of her petition, the tenant checked boxes alleging that her housing services have been decreased. Below these boxes, the petition form states: "If you answered 'Yes' to any of the above . . . please attach a separate sheet listing a description of the reduced service(s) and problem(s)." The tenant did not attach anything to her petition form.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

No Response: The Rent Adjustment Ordinance¹ requires an owner to file a response to a tenant petition within 30 days after service of a notice by the Rent Adjustment Program that a tenant petition was filed. "[T]he owner must provide the following: . . . A completed response . . . on a form prescribed by the Rent Adjustment Program."² (emphasis added).

Mr. Sukoff did submit a response on the proper form in the prior case between the parties, and he was therefore well aware that the word "response," as used in a Rent Adjustment context, has a particular meaning. He was given two opportunities to file a proper response in this case, and did not do so. Therefore, Mr. Sukoff's testimony that he was unaware of the proper format for a response is found to be disingenuous, at best.

For the purpose of this Decision, it simply does not matter what documents were filed in a prior case. The Rent Adjustment Ordinance prescribes procedures that must be followed in each case. Therefore, it was proper to limit Mr. Sukoff's participation in both Hearings and to deny him an opportunity to testify or present documentary evidence.³

RAP Notice: It is found that the tenant has never received the RAP Notice.

Rent Reduction Due to Lack of the Required Notice: The Rent Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP) at the start of a tenancy⁴ and together with any notice of rent increase.⁵ A tenant may file a petition to contest

¹ O.M.C. Section 8.22.090(B)

² O.M.C. Section 8.22.070(C)

³ Santiago v. Vega, Case No. T02-0404

⁴ O.M.C. Section 8.22.060(A)

⁵ O.M.C. Section 8.22.070(H)(1)(A)

any rent increase. However, a tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives written notice of the existence and scope of the RAP, whichever is later.⁶

Since the tenant has never received the RAP Notice, she may properly challenge all rent increases alleged in her petition. The rent is first reduced to the initial rent amount of \$1,200 per month. However, a tenant's claim for rent overpayments is limited, by Board decision, to three years.⁷ Therefore, the rent overpayments on the following Table are computed for the period September 2015 through August 2018.

The tenant has overpaid rent in the amount of \$23,850. Overpayment is usually ordered repaid over a period of 12 months.⁸ However, because of the large amount of restitution, the overpayment is ordered repaid over a period of 24 months. The rent is temporarily reduced by \$993.75 per month, to \$206.25 per month, beginning with the rent payment in September 2018 and ending with the rent payment in August 2019.

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Sep-15	30-May-17	\$1,800	\$1,200	\$ 600.00	21	\$12,600.00
1-Jun-17	31-Aug-18	\$1,950	\$1,200	\$ 750.00	15	\$11,250.00
TOTAL OVERPAID RENT						\$23,850.00

RESTITUTION

MONTHLY RENT	\$1,200
TOTAL TO BE REPAID TO TENANT	\$23,850.00
AMORTIZED OVER 24 MONTHS BY HEARING OFFICER	\$993.75

ORDER

1. Petition T17-0529 is partly granted.
2. The current rent, before reduction to restore rent overpayments, is \$1,200 per month.
3. The tenant has overpaid rent in the amount of \$23,850. This overpayment is repaid to the tenant by a rent reduction of \$993.75 per month.

⁶ O.M.C. Section 8.22.090 (A)(2)

⁷ T06-0051, Barajas/Avalos v. Chu; T08-0139, Jackson-Redick v. Burks

⁸ Regulations, Section 8.22.110(F)

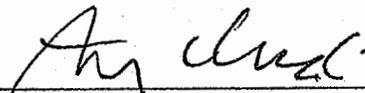
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4. If the rent is not otherwise increased, the current rent is \$206.25 per month, beginning with the rent payment in September 2018 and ending with the rent payment in August 2019.

5. The owner may be entitled to increase the rent, with an effective date not less than 6 months after the tenant is provided with the RAP Notice.

6. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 22, 2018



Stephen Kasdin
Hearing Officer
Rent Adjustment Program