

CITY OF OAKLAND



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

Community and Economic Development Agency  
Rent Adjustment Program

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

**APPEAL DECISION**

**CASE NUMBER:** T04-0344, Chang v. Lui & Martinez  
**DATE OF HEARING:** September 9, 2005  
**PROPERTY ADDRESS:** 354 Vernon St., Apt. 305, Oakland, California  
**APPEARANCES:** Te Jung Chang (Tenant)  
Kevin Brown (Landlord representative)

**Background**

This case was heard by the Board at the meeting of July 28, 2005. After hearing all of the arguments and considering the issues raised by both parties, the Board voted to affirm the Corrected Hearing Decision (dated February 24, 2005), except on the issue of the successor landlord's liability for overcharges collected by the former owner. The Board asked the City Attorney to prepare a memorandum of law regarding a successor landlord's liability to be presented at the meeting of September 9, 2005.

**Issues**

Both parties appealed. A landlord appeal was filed by Kevin Brown. The landlord alleged that the decision was not supported by substantial evidence and that he did not receive a sufficient opportunity to present his case.

In her appeal, the Tenant alleged as improper, that the landlord's appeal was filed late; the Hearing Officer did not formally enter the landlord's default; the Hearing Decision contained inadequate findings of fact; application of a three year limitation on restitution was improper; interest on the restitution was improperly denied; that the landlord had no standing to appeal; there were errors in the calculations; and, also assigned other errors to the decision.

Appeal Decision

After considering all of the extensive argument presented and the issues raised by the parties, the Board affirms the decision of the Hearing Officer, based on the landlord's failure to appear at the hearing before Staff.

**NOTICE TO PARTIES**

Pursuant to Ordinance No(s). 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Code of Civil Procedures, Section 1094.6.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.

Action taken by the following vote:

Ayes: S. Sanger, D. Taylor, R. Hunter, L. Arreola, S. Kennedy

Nay: None

Abstain: None

Absent: H. Bolt Trippe

Date: \_\_\_\_\_

\_\_\_\_\_  
Housing, Residential Rent and  
Relocation Board  
By Rick Nemcik-Cruz, Board Designee

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## **CORRECTED HEARING DECISION**

**CASE NUMBER:** T04-0344 (Chang v. Lui & Martinez)

**PROPERTY ADDRESS:** 354 Vernon St., #305, Oakland, CA

**HEARING DATE:** January 21, 2005

**PARTIES PRESENT:** Te Jung Chang (Tenant)

### **INTRODUCTION**

The party listed above appeared at the hearing and was given full opportunity to present relevant evidence and argument. The tenant testified under oath. Although the record reveals that a copy of the petition in this case was served on the landlord by the Rent Adjustment Program and by the tenant, the landlord did not file a formal response nor appeared at the hearing.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The subject property is a 24 unit apartment building. The petitioner has resided in unit 305 since November 18, 1997. The petition in this case was filed on November 5, 2004 and is challenging the following rent increases as being greater than the CPI increases allowed for the periods involved:

Effective Date	Increase From	Increase To
7/1/1999	\$495.00	\$515.00
7/1/2000	\$515.00	\$530.00
7/1/2001	\$530.00	\$545.00
8/1/2002	\$545.00	\$561.00
9/1/2003	\$561.00	\$581.00
12/1/2004	\$581.00	\$593.00

In addition, based on the sworn allegations in the petition and the testimony of the tenant, the landlord did not give her the required Rent Program Notice until October 19, 2004.

#### LACK OF RENT PROGRAM NOTICE

A landlord is required to give a form notice of the existence and scope of the Rent Ordinance (known as a "Rent Program Notice" or "Notice to Tenants"), including the tenant's right to petition against rent increases, both on or before the commencement of the tenancy and concurrent with any notice of increase in rent. If the proper notice is not given at the inception of tenancy, the landlord may cure the deficiency, but may not validly serve a notice of rent increase for 6 months from the date of service of the notice.

In this case, the tenant credibly testified that her landlord first gave the Notice to Tenants on October 19, 2004. Therefore, none of the challenged rent increases are valid. The rent for the entire period of this tenancy is the initial rent, \$495.00 per month.

#### RENT OVERPAID

The rent the tenant actually paid during the entire tenancy is shown on the following chart. The chart also includes the calculation of overpayment. The amount of rent paid each month was verified at the hearing by an examination of each cancelled check and money order receipt for the entire period of the tenancy. There were no discrepancies found between the allegations in the petition and the cancelled checks and money order receipts during the relevant time periods.

From	To	No. months	Rent paid	Maximum rent	Overpayment
7/1/1999	6/30/2000	12	\$515.00	\$495.00	\$240.00
7/1/2000	6/30/2001	12	\$530.00	\$495.00	\$420.00
7/1/2001	7/31/2002	13	\$545.00	\$495.00	\$650.00
8/1/2002	8/31/2003	12	\$561.00	\$495.00	\$792.00
9/1/2003	11/30/2004	14	\$581.00	\$495.00	\$1204.00
12/1/2004	1/1/2005	2	\$585.00	\$495.00	\$180.00
				TOTAL	\$3486.00

The total amount of overpaid rent through January 31, 2005 is three thousand four hundred eighty-six dollars (\$3,486).

Restitution must be paid by setoff against the monthly rent over the period of twelve months, unless a longer period is warranted by extraordinary circumstances. Amortized over a 12 month period, the setoff is \$290.50 per month. Therefore, the rent is temporarily reduced to \$204.50 per month for a period of 12 months, ending February 28, 2006.

## ORDER

1. The tenant petition is granted.
2. The base rent for the subject unit is \$495.00 per month.
3. Restitution in the amount of three thousand four hundred eighty-six dollars is ordered payable by a temporary reduction in the maximum allowable rent to \$204.50 for the period March 1, 2005 through February 28, 2006.
4. The landlord will become eligible to impose rent increases to which he may be entitled beginning on April 19, 2004.
5. Right to Appeal: Because this corrected decision was necessary to correct clerical errors in the decision, but the issues have not changed, the current appeals will continue be processed.

Dated: February 24, 2005

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RICK NEMCIK-CRUZ

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4. The landlord will become eligible to impose rent increases to which he may be entitled beginning on April 19, 2004.
5. Right to Appeal: This decision is the final decision of the Hearing Officer. Either party may appeal the Hearing Officer's decision within twenty (20) days after service by mail of a copy of the decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the ground(s) for the appeal. The date of service of this decision is shown on the proof of service attached to this decision. If the last day to file is a weekend or holiday, the period of time to file the appeal is extended to the next business day.

Dated: February 2, 2005

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RICK NEMCIK-CRUZ