

P.O. BOX 70243, OAKLAND, CA 94612-2043

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **HEARING DECISION ON REMAND**

**CASE NUMBER:** T13-0123 Bullock v. Yamada

**PROPERTY ADDRESS:** 95 41<sup>st</sup> Street, #210, Oakland, CA

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**DATE OF HEARING:** January 13, 2014

**DATE OF DECISION:** January 23, 2014

**APPEARANCES:** Joseph Bullock Tenant

No appearance by the Owner

### **SUMMARY OF DECISION**

The tenant's petition is granted. The legal rent for the tenant's unit is set forth in the Order below.

### **INTRODUCTION**

The tenant filed a petition on April 15, 2013, contesting a rent increase from \$1,300.00 to \$1,600.00 per month, effective June 1, 2013, on the following grounds:

- The increase exceeds the Consumer Price Index (CPI) Adjustment and is unjustified; and,
- The contested increase is the second rent increase in a 12-month period.

The owner did not file a timely response to the petition. Therefore, on June 21, 2013, an *Administrative Decision*, granting the tenant's petition was sent to all parties. The owner's representative, Panos Lagos, thereafter appealed the *Administrative Decision* arguing that he had never received proper notice of the original tenant petition. The RAP Board remanded the case back to the Hearing Officer to determine if the owner had good cause for failing to respond to the tenant petition.

In response to the Board's decision a *Notice to Re-Open Hearing and Order to File a Response* was mailed to the owner's representative on November 22, 2013, setting a new hearing for January 13, **2013** at 10:00 a.m. This *Notice* had a typographical error in setting the hearing for 2013 rather than 2014. Thereafter an *Amended Notice to Re-Open Hearing and Order to File a Response* was mailed to the owner's representative on December 17, 2013, setting the new hearing for January 13, 2014.

In response to these *Notices* the owner's representative filed a *Landlord Response* on December 5, 2013, and claimed an exemption based on new construction.

Pursuant to the *Notice to Re-Open Hearing* on January 13, 2014, the Hearing was held. The Hearing Officer waited for the arrival of the owner and/or his representative until 10:15 a.m. before starting the hearing. Neither the owner nor his representative appeared at the Hearing.

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### THE ISSUES

- (1) Did the owner have good cause for failing to respond to the initial tenant petition?
- (2) When the owner representative is not present, can the owner's claim for an exemption be considered?
- (3) Is the rent increase notice valid?

### EVIDENCE

The tenant testified as follows: He has been living in the subject unit since August of 2005 at an initial rent of \$1,275.00. He received the Rent Adjustment Program Notice (RAP Notice) when he moved into the property.

In July of 2012, the tenant received a rent increase notice, purporting to increase his rent from \$1,275.00 a month, to \$1,300.00 a month, effective October 1, 2012. Included with that notice was a RAP Notice. On or about March 12, 2013, the tenant received a rent increase notice purporting to increase his rent from \$1,300.00 a month to \$1,600.00 a month, effective June 1, 2013.

On or about June 1, 2013, the tenant sent a letter to the owner, attaching a check for \$1,300.00 and explaining that he had filed a claim with the Rent Adjustment Program<sup>1</sup>. He wrote the letter to explain why he was paying \$1,300.00 for rent and not \$1,600.00. The letter included a copy of the letter the tenant had recently received from the RAP stating his case number.

The owner's representative in this case is an attorney. He produced a declaration, as an attachment to the Landlord's Response, in which he acknowledged receipt of Mr. Bullock's June 1, 2013, correspondence but denies having received the original tenant petition until after the *Administrative Decision* was served.

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<sup>1</sup> Exhibit 1, pp 1-3. This exhibit was admitted into evidence without objection.

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

### **Did the owner have good cause for failing to file a timely response to the tenant petition?**

The owner sought to establish good cause for failing to file a timely response to the tenant petition when it was initially served. While the owner's representative filed a declaration setting forth certain facts regarding his claim that he did not receive the tenant's petition, neither the owner nor the representative appeared at the Hearing to be questioned further about these allegations. Without appearing at the Hearing, good cause was not established.

Even if the Hearing Officer were to consider the representative's declaration, it is clear from the tenant's testimony and the declaration that Mr. Lagos was put on notice of the tenant's petition by the letter he received from the tenant with the June 2013 rent payment<sup>2</sup>. Included with the tenant's letter was a copy of a letter the RAP sent to the tenant that set forth the tenant's petition number.

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The *Administrative Decision* in this case was mailed on June 21, 2013. Had Mr. Lagos called the RAP office to determine why he had not gotten notice of the tenant's petition when he received the tenant's letter early in June he would have had adequate time to file a Landlord Response prior to the mailing of the *Administrative Decision*. This is a separate and independent reason why the owner did not have good cause for failing to file a timely Landlord Response.

### **Can the owner's request for an exemption be considered?**

The RAP has no jurisdiction over units that were newly constructed and have a certificate of occupancy issued on or after January 1, 1983.<sup>3</sup> However, there are multiple reasons why the owner's request for an exemption cannot be considered here. First, without a timely filed *Landlord's Response*, the owner has not made a valid claim that the property is exempt from the RAP. Second, even if the *Landlord Response* was considered, an owner has the burden of proof to establish that an exemption exists<sup>4</sup>. Without the owner or his representative appearing at the Hearing there was no one to present any evidence that the unit in question is exempt from the RAP. For both of these reasons, the owner's claim for an exemption cannot be considered.

### **Is the rent increase notice valid?**

The rent increase in question purported to increase the tenant's rent from \$1,300.00 to \$1,600.00 a month, a 23% increase. The allowable CPI rent increase in June of 2013 was 3%. If an owner wants to contest a tenant petition, he or she must file a timely

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<sup>2</sup> Exhibit 1.

<sup>3</sup> O.M.C. § 8.22.030(A)(5)

<sup>4</sup> O.M.C. § 8.22.030(B)

*Landlord Response*, produce the appropriate documentation and appear at the Hearing to authenticate any necessary documents. Because the landlord failed to file a timely response, to appear at the hearing and to produce any documents to establish that the unit is exempt from the RAP, the rent increase notice is invalid.

The tenant's rent remains \$1,300.00 a month.

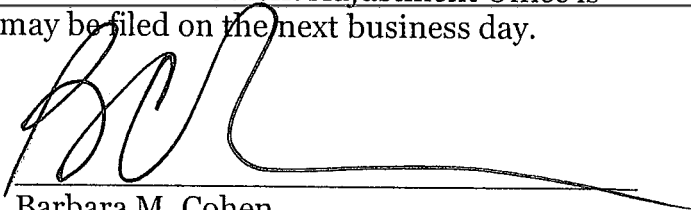
**ORDER**

1. Petition No. T13-0123 is granted. The rent remains \$1,300.00 a month.

2. **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.

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Dated: January 23, 2014



Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

## PROOF OF SERVICE

Case Number T13-0123

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, 5<sup>th</sup> Floor, Oakland, California 94612.

Today, I served the attached **Hearing Decision On Remand** 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

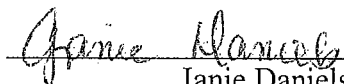
Joseph T. Bullock II  
95 41<sup>st</sup> Street, #201  
Oakland, CA 94611

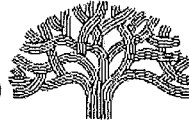
Jim Yamada  
[REDACTED]

Panos Lagos, Esq.  
[REDACTED]

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 **January 24, 2014** in Oakland, California.

  
Janie Daniels  
Oakland Rent Adjustment Program



P.O. BOX 70243, OAKLAND, CA 94612-2043

Community and Economic Development Agency  
Rent Adjustment Program

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

**Housing, Residential Rent  
and Relocation Board (HRRRB)**

**APPEAL DECISION**

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**CASE NUMBER:** T13-0034, Bobrow, et al. v. Chang

**APPEAL HEARING:** October 10, 2013

**PROPERTY ADDRESS:** 340 Lenox Ave., #1A

**APPEARANCES:** Symon Chang (Landlord Appellant)  
Jennifer Bobrow (Tenant Respondent)

Procedural Background

The petition in this case was filed by the tenants on January 28, 2013, alleging that their housing services have been decreased due to inadequate heat and loss of on-site laundry services. The landlord filed a timely response to the petition, which denied that housing services had been decreased.

The Hearing Decision

On May 1, 2013, a Hearing Decision was issued, granting the petition in part. That portion of the Decision regarding on-site laundry services found that "the sporadic and then total loss of laundry services from July 2012 through March 2013 decreased the tenants' housing services by an average of 5% per month" during that period of time.

Grounds for Appeal

The landlord filed an appeal on May 20, 2013, asserting that the decision was incorrect in that it was not supported by substantial evidence.

Appeal Decision

The appeal came before the Board on October 10, 2013. The Board affirmed that portion of the Decision regarding inadequate heat and amended that portion of the Decision regarding the value of on-site laundry services to \$20 per month for the relevant time period, and remanded the case to staff to perform the proper calculation.

#### Re-Calculation

The loss of laundry services from July 2012 through March 2013 decreased the tenants' housing services by \$20 per month, a total of \$180.

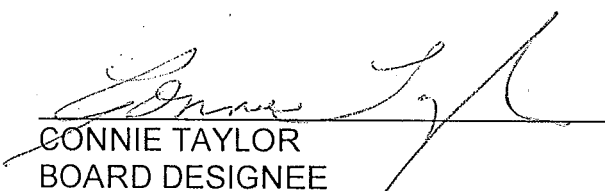
As shown on the Table on the following page, because of decreased housing services due to inadequate heat and loss of laundry services, the tenants overpaid rent in the total amount of \$715.05. This overpayment is ordered repaid over a period of 6 months. The rent is temporarily reduced by \$119.18 per month, from \$1,285.25 to \$1,166.07 per month, beginning with the rent payment in December 2013 and ending with the rent payment in May 2014.

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#### **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 Procedure, 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.

  
CONNIE TAYLOR  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD

10/28/13  
DATE

Passed by the following vote:

Aye: M. Bowie, T. Singleton, B. Scott, L. Lonay  
Nay: E. Lai, B. Williams, N. Frigault

Abstain: None

### VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Heat	15-Oct-12	25-Dec-12	\$1,270	10%	\$ 127.00	3	\$ 381.00
Heat	1-Jan-13	20-Mar-13	\$1,270	3%	\$ 38.10	3	\$ 114.30
Heat	1-Apr-13	17-Apr-13	\$1,325	3%	\$ 39.75	1	\$ 39.75
Laundry	1-Jul-12	15-Mar-13	\$1,325		\$ 20.00	9	\$ 180.00
				<b>TOTAL LOST SERVICES</b>			<b>\$ 715.05</b>



# PROOF OF SERVICE

Case Number T13-0034

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, 5<sup>th</sup> Floor, Oakland, California 94612.

Today, I served the attached **Appeal 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

Symon Chang

Patty Chang

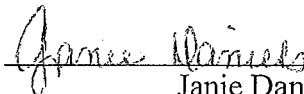
Jennifer Bobrow

340 Lenox Avenue, # 1A  
Oakland, CA 94610

Michael LaCroix  
340 Lenox Avenue, #1A  
Oakland, CA 94610

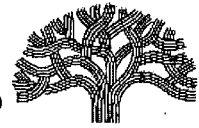
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 **October 30, 2013** in Oakland, California.



Janie Daniels

Oakland Rent Adjustment Program



P.O. BOX 70243, OAKLAND, CA 94612-2043

Community and Economic Development Agency  
Rent Adjustment Program

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

## **HEARING DECISION ON REMAND**

**CASE NUMBER:** T12-0277, McFarland v. Ma

**PROPERTY ADDRESS:** 270 Hanover Ave. No. 202  
Oakland, CA

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**DATE OF HEARING:** January 17, 2013

**DATE OF DECISION:** March 8, 2013

**APPEARANCES:** Michela McFarland Tenant  
Sanford Ma Owner

### **SUMMARY OF DECISION**

The Board voted to remand the Hearing Decision for recalculation of Banking and inclusion of a Banking worksheet. The Owner is granted Banking in the amount of \$115.64.

### **CONTENTIONS OF THE PARTIES**

**Tenants:** Tenants Michela McFarland and Reyena McFarland contest a rent increase in the amount of \$115.00 on the grounds that it exceeds the CPI adjustment and is unjustified and they also claim the following decreased housing services: Hot water turned down; two stove burners do not work; dishwasher doesn't work properly.

**Owner:** The owner contends that the rent increase is justified on the basis of Banking. He also contends that there are no decreased housing services.

### **THE ISSUES**

- Is the owner entitled to increase the tenants' rent and if so, by what amount?
- Did the tenants suffer decreased housing services? If so, in what amount?

## **EVIDENCE**

**Rent History and Banking:** The tenants' petition and testimony establish that they moved into their unit in October 2005 at an initial monthly rent of \$1,250.00. Tenant Michela McFarland testified that she first received the Notice of the existence of the Rent Adjustment Program in 2005. She currently pays \$1,380.00 monthly. The tenant received the notice of the rent increase on August 12, 2012, effective October 1, 2012.

The owner testified that the rent increase is justified on the basis of Banking.

### **Decreased Housing Services**

**Water Temperature:** The tenant testified that it takes about five minutes for the water temperature to get hot in the kitchen and bathroom, and she told the owner about six months ago about this complaint. The owner testified that it may take five minutes for the water to get hot and may depend on the time of the day. The subject building was built in the 1970s and has a circulation pump. If someone else is using the hot water it may take a little longer to get hot.

**Stove:** The tenant testified that two of the four burners did not work and she told Marco, the maintenance man, about the problem maybe in September 2012. The owner testified that he inspected the tenant's unit right away and the stove was in good condition but there was a hard crust on the burners and a lot of grease build up on the stove burners which caused two grease fires and he decided to buy the tenant a new stove in October 2012.

**Dishwasher:** The tenant testified that she has had a problem with her dishwasher for about a year. The dishwasher leaves fine grains like cream of wheat on her dishes after a wash cycle. Marco, the maintenance man, removed some tubing about three weeks ago and the dishwasher is working fine now. The owner testified that he has been to the tenant's unit several times and told the tenant she needs to rinse off her food scraps before she puts her dishes in the dishwasher. A lot of stuff accumulates and gets trapped in the bottom of the dishwasher.

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

**Banking:** An owner is allowed to bank increases and use them in subsequent years, subject to certain limitations<sup>1</sup>. However, the total of CPI Adjustments imposed in any one rent increase, including the current CPI Rent Adjustment, may not exceed three

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<sup>1</sup> O.M.C. §8.22.070(A).

times the allowable CPI Rent Adjustment on the effective date of the Rent increase notice<sup>2</sup>. As shown in the attached Banking Table, the owner's rent increase based on Banking, in the amount of \$115.64, is valid. The tenant's base rent effective October 1, 2012, is \$1,495.65.

#### Decreased Housing Services

The items listed by the Tenant are not major hazardous or uninhabitable conditions. Section 17920.3 (a)(5) of the California Health and Safety Code states that lack of hot and cold running water to plumbing fixtures in a dwelling unit to the extent that it endangers the life, limb, health, property, safety, or welfare of the public or the occupants constitutes a substandard building. The condition described by the tenant does not constitute a serious condition affecting habitability. There is an issue as to whether the problem with the two stove burners was due to tenant misuse and the stove was replaced within one month by the owner. The complaint of fine grains being left on dish plates after a wash cycle does not constitute a serious condition affecting habitability. Compensation for these items is denied.

#### **ORDER**

1. Petition T12-0275 is DENIED.
2. The owner may increase the tenant's base rent by \$115.64 based on Banking. The tenant's base rent is \$1,495.64 effective October 1, 2012.
3. The tenant has underpaid rent in the amount of \$1,156.40 which shall be repaid in ten months, commencing with the August 2013 rent and ending with the May 2014 rent.
4. The tenant's rent is stated below as follows:

Base rent	\$ 1,495.64
Plus rent underpayments totaling \$1,156.40 (\$115.64 x 10)divided by 12 \$115.64	\$ 115.64
Rent payment commencing August 1 , 2013 and ending May 2014	\$ 1,611.28

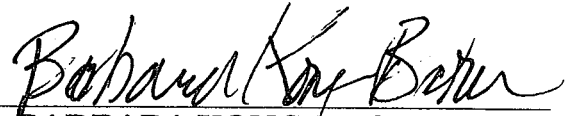
**Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed

<sup>2</sup> Regulations Appendix, Section 10.5.1

appeal using the form provided by the Rent Adjustment Program. The appeal must be received within (20) days after service of this decision. The date of service is shown on

the attached Proof of Service. If the last day is a weekend or holiday, the appeal may be filed on the next business day.

Dated: July 31, 2013

A handwritten signature in black ink, appearing to read 'Barbara Kong-Brown', written over a horizontal line.

**BARBARA KONG-BROWN, ESQ.**

Hearing Officer  
Rent Adjustment Program

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**P.O. Box 70243  
Oakland, CA 94612  
(510) 238-3721**

Initial move-in date	1-Oct-2005	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>CHANGE ONLY YELLOW CELLS</b> </div>	Case No.:	
Effective date of increase	1-Oct-2012		Unit:	
Rent charged before Increase	\$1,380			
Prior cap. imp. pass-through				
Base rent when calc.begins	\$1,250			
Date calculation begins	1-Oct-05	If the planned increase includes other than banking put an X in the box→		

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Banking before 10/1/2005 or Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/1/2012				3.0%	\$ 43.56	\$ 1,495.64
10/1/2011				2.0%	\$ 28.47	\$ 1,452.08
10/1/2010				2.7%	\$ 37.43	\$ 1,423.61
10/1/2009				0.7%	\$ 9.64	\$ 1,386.18
10/1/2008				3.2%	\$ 42.68	\$ 1,376.54
10/1/2007				3.3%	\$ 42.61	\$ 1,333.86
10/1/2006				3.3%	\$ 41.25	\$ 1,291.25
10/1/2005				-	-	\$1,250

Prior base rent	\$1,380.00
Banking limit this year (3 x current CPI)	9.0%
Banking available this year	\$ 115.64
Banking this year + base rent	\$ 1,495.64
Prior capital improvements recovery.	\$ -
Rent ceiling w/o other increases	\$ 1,495.64

1. IF YOU ENTER BANKING ACCRUED AFTER 1/10/2005 ON THIS TABLE, THE RESULT WILL BE WRONG.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.

# PROOF OF SERVICE

Case Number T12-0277

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, 5<sup>th</sup> Floor, Oakland, California 94612.

Today, I served the attached a **Hearing Decision on Remand** 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

Michela McFarland  
269 Hanover Avenue, #202  
Oakland, CA 94606

Alfonzo McFarland  
269 Hanover Avenue, #202  
Oakland, CA 94606

Sanford Ma

Reyena McFarland  
269 Hanover Avenue, #202  
Oakland, CA 94606

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 1, 2013**, in Oakland, California.



Janie Daniels  
Oakland Rent Adjustment Program