

RENT ORDINANCE REGULATION 20-02

IMPLEMENTING REGULATION CONCERNING DECREASES IN HOUSING SERVICES, LIVING SPACE OR AMENITIES; SUBSTANTIAL DETERIORATION OF THE RENTAL UNIT, THE LANDLORD'S FAILURE TO COMPLY WITH THE CURRENT RENT CONTROL ORDINANCE AND/OR WITH PREVIOUSLY ADOPTED RENT CONTROL/STABILIZATION ORDINANCES OR THE LANDLORD'S AFFIRMATIVE ACTS THAT DISTURB THE PEACE AND QUIET ENJOYMENT OF A TENANT

Whereas, on September 17, 2019, the City Council of the City of Alameda adopted a Rent Ordinance 3250 (beginning at Section 6-58.10 and following of the Alameda Municipal Code), restating previous Ordinances concerning rent control, limitations on evictions and relocation payments to certain tenants; and

Whereas, from time to time, Rent Ordinance 3250 may be amended or further restated; and

Whereas, Section 6-58.155, Alameda Municipal Code (all further section references are to the Alameda Municipal Code unless stated otherwise) provides that the Program Administrator has the authority to promulgate regulations to implement the requirements of the Ordinance; and

Whereas, subsection A of Section 6-58.75 provides that a Tenant may file a petition with the Program Administrator to request a downward adjustment of the Maximum Allowable Rent; and

Whereas, subsection H of Section 6-58.75 provides that in making an individual downward adjustment of Rent, the Hearing Officer may consider: decreases in Housing Services, living space, or amenities; substantial deterioration of the Rental Unit other than as a result of ordinary wear and tear; the Landlord's failure to comply with applicable housing, health and safety codes; or the Landlord's failure to comply with the Ordinance; however, these factors are not the exclusive grounds that the Hearing Officer may consider in making an individual downward adjustment rent; and

Whereas, previously adopted rent control and stabilization ordinances adopted by the City provided that if a Landlord failed to provide a certain notice to a Tenant concerning the availability of the Rent Review Advisory Committee to review a Rent Increase, the Rent Increase would be null and void and a Hearing Officer in considering an individual downward adjustment of rent may consider whether a Landlord complied with providing such notice to a Tenant.

Now, therefore, the following Regulation is adopted to implement and clarify provisions of subsection H of Section 6-58.75.

1. Grounds for Downward Rent Adjustments.

- A. *Decreases in Housing Services or Living Space.* The Rent shall be adjusted downward where a Tenant suffers a decrease in Housing Services, as defined in Section 6-58.15, from the Housing Services that were in effect at the inception of the Tenant's tenancy or to suffer a decrease in living space from the living space that was provided at the inception of the tenancy without a corresponding decrease in rent.
- B. *Inadequate Housing Services and Substantial Deterioration.* The Rent shall be adjusted downward for any substantial deterioration in a Rental Unit and/or for any failure to provide adequate Housing Services occurring during the tenancy without a corresponding decrease in rent. A substantial deterioration means a noticeable decline in the physical quality of the Rental Unit resulting from the failure to perform reasonable or timely maintenance of the Rental Unit. Failure to provide adequate Housing Services means a failure to provide Housing Services necessary to operate and maintain a Rental Unit in compliance with all applicable state and local laws and with the terms of any Rental Agreement, as defined in Section 6-58.15.
- C. *Code Violations and Breach of the Warranty of Habitability.* A substantial lack of any of the affirmative standard characteristics of habitability set forth in Civil Code, Section 1941.1 shall be deemed a breach of the warranty of habitability and the allowable Rent shall be decreased by no less than 10% until the condition is corrected. A breach of the warranty of habitability occurs when the Rental Unit is not in compliance with any applicable building or housing code standards that materially affect health and safety.
- D. *Landlord's Failure to Comply with Rent Control or Rent Stabilization Ordinances.* The rent shall be adjusted downward where the Landlord has failed to comply with the current Rent Control Ordinance and/or where the Landlord has failed to comply with any other

previously adopted rent control or rent stabilization ordinances of the City, in addition to any regulations promulgated to implement such ordinances (“Rent Laws”).

- E. *Activities Over Which the Landlord Has Control.* The Rent shall be adjusted downward where the Landlord has engaged in, caused, or failed to address reasonably, work or other activities at the rental property, such as construction or other noise inducing activities over which the Landlord has control, that over a period of time unreasonably disturbs the peace and quiet enjoyment of a Tenant; provided, however, the downward rent adjustment process shall not be available and may not be utilized to address impacts created by other Tenants(s), such as Tenant noise or Tenant activities which may disturb the peace and quiet enjoyment of another Tenant.

- F. *Doubling of Rent Increase.* The Rent decrease under subsections A or B of this Section 1 shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Program Administrator within 35 calendar days of the mailing of the Hearing Officer's decision unless the Landlord establishes to the Program Administrator's satisfaction that the violation cannot be corrected within that time frame due to circumstances beyond the control of the Landlord but that the Landlord is diligently pursuing efforts to correct the violation.

- 2. Adjustments. If a Hearing Officer finds that the preponderance of evidence supports a downward adjustment of rent, the adjustment may be retroactive and/or prospective, depending on the facts.

- 3. Calculation of Corresponding Downward Rent Adjustment. The Hearing Officer shall calculate the amount of rent decrease by taking into consideration factors including, but not limited to, the Landlord's knowledge of the issue resulting in the reduction in services, the current rent of the Rental Unit, the extent to which the reduction in services affects the Tenant, and the prevailing market value of the Housing Service. In determining the amount of the downward adjustment of rent, the Hearing Officer may consider the reasonable replacement cost of the Housing Service/living space in question. If a Housing Service is temporarily interrupted as the necessary result of needed repairs, the Hearing Officer may use this fact to decide against a corresponding reduction in Rent when the Landlord restores (or if the Landlord has restored) the reduced Housing Services within a reasonable amount of time. The Hearing Officer shall not grant a

decrease in the Maximum Allowable Rent due to a decrease in Housing Services or living space that is the direct result of intentional action on the part of the Tenant, the Tenant's guests or invitees, to purposely cause a decrease in Housing Services or living space, or as a result of a fire, flood, earthquake or other natural disaster, or other event beyond the control of the Landlord and the Landlord did not cause or contribute to the condition that gave rise to the decrease in Housing Services or living space. Where the Hearing Officer grants a downward adjustment of Rent due to the Landlord's failure to comply with Rent Laws or activities over which the Landlord has control, the Hearing Officer may consider the length of the Landlord's failure to comply or the length of the disturbing work or other activities, whether the Landlord is currently in compliance with the Rent Laws, has ceased the disturbing work or other activities, or has taken steps to render the work or other activities non-disturbing, and whether the failure to comply with the Rent Laws or the activities over which the Landlord has control have had a negative fiscal impact on the Tenant. Where the grounds upon which the Hearing Officer has granted a downward adjustment of Rent exist at the time of the hearing, the Hearing Officer will retain jurisdiction of the matter to determine, for example, if the Landlord has submitted sufficient proof that the condition that gave rise to the downward adjustment of Rent no longer exists.

4. Reimbursement or Rent Credit to Tenant. If the Hearing Officer has granted a downward adjustment of Rent resulting in a lump sum reimbursement to the Tenant ("reimbursement"), the Landlord shall pay the Tenant the entire reimbursement within 20 days of the date of the Hearing Officer's decision, unless the Hearing Officer orders the payment of the reimbursement to be over a longer period of time. In this latter case, if the tenancy ends before the Landlord has paid the tenant the full amount of the reimbursement, the Landlord must within 30 days of the end of the tenancy pay the tenant for any unpaid amount of the reimbursement. The Hearing Officer may provide in the Hearing Officer's decision that, in lieu of the Landlord's providing reimbursement to the Tenant, the Landlord may apply the reimbursement as a credit against the Tenant's future rent. If the Hearing Officer's decision provides this option for the Landlord, the Hearing Officer shall indicate over how many months the credit will be applied, in addition to the precise monthly amount the Tenant shall withhold from the rent until the credit is completely drawn down; provided, however, that if the tenancy ends before all the credit has been applied, then the Landlord must within 30 days of the end of the tenancy pay the Tenant the full amount of any remaining reimbursement.

5. Effective Date of Rent Reductions. The downward adjustment of the rent under this Regulation shall be effective from the date the Landlord first knew or should have known of the reduction in Housing Services or living space, substantial deterioration or inadequate Housing Services, code violation(s), conditions that constitute a breach of the warranty of habitability, failure to comply with the current Ordinance or previously adopted rent control or rent stabilization ordinances or conditions that unreasonably disturb the peace and quiet enjoyment of a Tenant.

6. Termination of a Downward Rent Adjustment.
 - A. Where a Hearing Officer has granted a downward adjustment of Rent based on then existing conditions, a Landlord must file a written request for the Rent to be restored to its allowable level, on a form provided by the Program Administrator. The form must be accompanied by proof to substantiate the conditions for which the reduction was granted no longer exist.

 - B. The Program Administrator shall inform the affected Tenant(s) in writing that such a request has been made. Within fifteen calendar days of the date of this notice, the affected Tenant(s) may file a written statement objecting to the request to terminate the downward rent adjustment, on a form provided by the Program Administrator and including any relevant documents or evidence to support the objection.

 - C. If no timely objection is filed, the Tenant shall pay the allowable Rent on the date the next Rent payment is due.

 - D. If the Tenant files a timely objection, the Hearing Officer shall make a determination if the downward adjustment of Rent will be terminated after evaluating the statements and evidence presented.

 - E. The termination of the downward rent adjustment does not constitute a Rent Increase, and, following a restoration of the rent to its allowable level, a Landlord may notice a permissible Rent Increase as set forth in the Ordinance.

7. Time Limits. The reduction of rent may not exceed three years retroactive from the date of the Tenant files the petition for such adjustment. Where a landlord imposed a Rent Increase in violation of a previously adopted rent control or rent stabilization Ordinance, the Hearing Officer shall reset the

Rent to the correct Rent, regardless of when the Tenant has filed a petition but the Hearing Officer shall order reimbursement for no more than three years before the date the Tenant filed the petition.

8. Tenant's Notice of Housing Service Reduction. A Tenant who files a petition for a downward adjustment of rent must establish the basis for the reduction including establishing when the Landlord first received notice of the decreased Housing Services or living space, substantial deterioration or inadequate Housing Services, code violations, breach of the warranty of habitability, failure to comply with the current Ordinance or previously adopted rent control or rent stabilization ordinances, or of the conditions that unreasonably disturbed the peace and quiet enjoyment of a Tenant. Notice may be actual or constructive and a Landlord is deemed to have notice of any condition at the inception of the tenancy that would have been disclosed by a reasonable inspection of the Rental Unit.
9. Overlap of Grounds for a Downward Rent Reduction. To the extent the Hearing Officer finds that the grounds for a downward adjustment of Rent overlap, for example, a particular condition could be a substantial deterioration and a code violation, the percentage reduction shall not be cumulative. The Hearing Officer, however, must consider each of the grounds for a downward adjustment of the Rent separately and, if such exists, render a decision concerning each of the grounds.
10. Remedies. A Tenant may pursue all other remedies under applicable law in addition to submitting a petition for a reduction in housing services. If a Hearing Officer finds that a reduction of Housing Services affects more than one Tenant, the Hearing Officer may order the Landlord to provide a similar adjustment of Rent to Tenants similarly affected.

Date: May 26, 2020

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Rent Program Administrator

