

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 24, 2018

Final Decision Date Deadline: January 24, 2018

STATEMENT OF THE ISSUE: Section 11.100.070(c) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") provides Tenants and Landlords with an opportunity to submit a petition to the Rent Board for an upward or downward adjustment of the Maximum Allowable Rent. The following Section 11.100.070(d) specifies the Board shall enact rules and regulations governing hearings and appeals of individual rent adjustments. To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared draft procedural regulations for the Rent Board's consideration.

INDICATE APPROPRIATE BODY

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| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

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- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- | | | |
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| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input checked="" type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: Adopt Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

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AGENDA REPORT

DATE: January 24, 2018

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Michael Roush, Legal Counsel

SUBJECT: ADOPTION OF PETITION PROCESS AND HEARING PROCEDURE REGULATIONS

STATEMENT OF THE ISSUE:

Section 11.100.070(c) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (“Rent Ordinance”) provides Tenants and Landlords with an opportunity to submit a petition to the Rent Board for an upward or downward adjustment of the Maximum Allowable Rent. The following Section 11.100.070(d) specifies the Board shall enact rules and regulations governing hearings and appeals of individual rent adjustments. To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared draft procedural regulations for the Rent Board’s consideration. At the January 17, 2018 Regular Board meeting, the Board and community members discuss concerns/questions and asked the Executive Director to address these concern/questions. This agenda report addresses those questions and concerns.

RECOMMENDED ACTION:

ADOPT Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board regulations and PROVIDE DIRECTION to staff – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

FISCAL IMPACT:

The cost to administer the Rent Adjustment Petition process is accounted for in the Fiscal Year 2017-18 Rent Program Budget. The proposed draft regulations do not provide for a filing fee at this time, but allows the Rent Board to establish such a fee in the future if deemed appropriate. At the January 17, 2018 Regular Board meeting, Board members raised no objection to a policy whereby there would be no fee for filing a petition, but directed the Executive Director and staff to come up with a fee for filing an

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appeal that is comparable to other rent control agencies charge. Staff is recommending a filing fee of no more than \$75.

DISCUSSION:

Background

For most multifamily rental properties in the City of Richmond, rent increases are limited to the annual change in the Consumer Price Index (a measure of inflation).

The Richmond Rent Board is tasked with establishing standards for allowing individual rent increases and decreases due to a rental unit's conditions, historic rental rates, operating costs, and other reasons.

Before the Rent Board considers and then eventually adopts the substantive fair return and other standards for determining changes in the Maximum Allowable Rent, staff members recommend the Board consider and adopt regulations governing the petition process and hearing procedures. Prior to adopting these procedural petition process regulations, staff is addressing the following questions brought up by the Board and community members at the January 17, 2018 Board meeting.

Overview of Procedural Regulations

The table below contains concerns/questions posed by Board members and the public regarding the proposed draft procedural regulations, along with a brief explanation or answer(s) to the concern or question:

NOTE: BOXES IN GRAY INDICATE NO CONCERNS OR QUESTIONS ASKED/DISCUSSED

| Subchapter A – Petition Process (DRAFT) | | Concern/Question | Answer to Concern or Question |
|--|---|-------------------------|--|
| Section (DRAFT) | Topic (DRAFT) | | |
| 801 | Acknowledges petition process | | |
| 802 | Addresses situations where a petition has been filed for the same Rental Unit within the previous 12 months | | |
| 803 | Establishes that there is no fee for filing a petition, but that the Board may institute such a fee at a later date | | |

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| | within which a party wishing to object to the petition may do so within 21 days of the mailing of the notice required in Section 808 | has caused the damage that they are filing a rent reduction petition for? | caused the damage, the landlord may have Just Cause to damage caused by tenant(s), can be used as a defense/objection against a tenant petition for rent reduction. |
| 811 | Provides that all Landlord petitions pertaining to Tenants in the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate | Can tenants file a “collective” petition for an issue which impacts all tenants in a building? | There is nothing prohibiting a consolidated petition to be filed in a collective manner, but a hearing examiner may decide that it is more appropriate to have the case filed and heard in a non-collective manner, if there is showing of good cause that a collective petition is not administratively practical (e.g. issues brought forth is to varied). |
| 812 | Confidentiality standards for documents filed in connection with an individual rent adjustment | | |
| 813 | Addresses instances meriting an expedited hearing | | |
| Subchapter B – Hearing Procedure (DRAFT) | | | |
| Section (DRAFT) | Topic (DRAFT) | | |
| 821 | General principles for hearings | | |
| 822 | Powers of the Hearing Examiner | | |
| 823 | Evidence and Standard of | | |

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| | Proof | | |
| 824 | Establishes that the Board may hold a hearing on any individual rent adjustment petition without the petition being first heard by a Hearing Examiner | | |
| 825 | Requires that a notice of the time, date, and place of the hearing shall be mailed to all parties no later than ten days before the scheduled date of the hearing | | |
| 826 | Provides for a continuance of the hearing under specific circumstances | | |
| 827 | Situations or interests that would disqualify a Hearing Examiner or Board Member from taking part in a hearing or appeal | | |
| 828 | Establishes that a Hearing Examiner may by order or subpoena require any necessary documentation from any party | | |
| 829 | Standards for stipulations | | |
| 831 | Requires that there be no communications regarding any pending case outside of the hearing between the hearing examiner and any party, representative, or witness in any case pending before the examiner before the examiner has completed the written decision in that case | | |
| 832 | Permits the parties to make a prehearing agreement. Any agreement must be made on the record and tape recorded. | | |
| 833 | All hearings shall be open to the public | | |
| 834 | Rights of parties to provide | | |

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| | evidence and receive assistance from professionals | | |
| 835 | Describes what is included in the hearing record | | |
| 836 | Provides that the record shall be available for inspection or copying by any person | | |
| 837 | Provides the Board shall send a notice of the hearing examiner's decision to all parties to the hearing. | | |
| 838 | The hearing examiner's decision shall be the final decision of the Board in event no appeal is made | | |
| 841 | Right of any party to appear | | |
| 842 | Describes the timeline and process for submitting an appeal | <p>Is there a standard in peer jurisdictions for time limits for appellant to present their case before the Board?</p> <p>Can the Board revise this regulation to allow more time for petitioners who require language translation?</p> | <p>Regulations in peer cities have a similar time limit for presenting appeals to the Board.</p> <p>Yes, the Board can allow for more time for appellants who need translation/interpreter services. Staff has revised that the time be double for appellants who require translation/interpreter services.</p> |
| 843 | Establishes that there is no fee for filing an appeal, but that the Board may institute such a fee at a later date | Should there be a filing fee for petitions? Should there be a filing fee for appeals? | 803 states that there is no filing fee for petitions. Staff recommends a filing fee of \$75 for appeals in light of the significant staff resources expended through the appeal |

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| | | | process. The \$75 fee is comparable to appeal fees charged by peer jurisdictions. |
| 844 | Establishes that the Board shall take final action on any rent adjustment petition within 120 days following the date of proper filing | | |
| 845 | Specifies the conditions for obtaining an individual rent adjustment | | |
| 846 | Provides requirements for the rent increase notices following the granting of individual rent increases | | |
| 847 | Clarifies the effective date for rent decreases | | |
| 848 | Allows for the hearing examiner to notice and conduct a hearing if there is a dispute among any of the parties about compliance with a decision | What if a landlord doesn't comply with a hearing examiner's decision? | This regulation directly addresses this question. Additionally, non-compliance with a hearing examiners decision can lead to denial of AGA increases and can be used as a defense to an eviction lawsuit under the Ordinance. |
| 849 | Allows the Rent Board or Executive Director to initiate a hearing after an investigation has resulted in a determination that there may be substantial violations of the Ordinance | What are some examples of Board initiated hearings? | Landlord continues to refuse to pay the Rental Housing Fee, refund tenants rent overcharges/security deposit, or in some other way is substantially violating the Ordinance. As a result the Board could initiate a hearing to further compel the landlord to comply. |
| 851 | The Rent Program does not | What is the cost | The cost is very |

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| | have an escrow process, but one may be established | associated with establishing an escrow account? | minimal for opening a new account for escrow purposes. Additional staff costs are also minimal: only cost associated would be for staff to process payment and make deposit. |
| 852 | Establishes standards to be applied to escrow determinations | | |
| 853 | Requires the deposit of disputed rents into an escrow account pending the hearing | | |
| 854 | Requires the establishment of escrow accounts pending appeal | | |
| 855 | Specifies that a Tenant's acceptance of a full refund of rent overcharges is deemed to have waived the right to appeal the amount of the refund and notwithstanding a Tenant's appeal of the hearing examiner's decision, the landlord's tender of the full amount of rent overcharges shall constitute compliance with the refund order | | |
| 856 | Addresses disbursement of funds held in an escrow account | | |
| 857 | Provides that a Tenant's deposit of rent into an escrow account shall be a defense to an action brought by the Landlord for nonpayment of rent. | | |

Proposed Timeline and Next Steps

| Proposed Date | Event |
|---------------------------------------|---|
| January 17, 2018 – Rent Board Meeting | Rent Board considers procedural regulations |

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| Mid-January 2018 | Public review period begins; staff hold review sessions with community members |
| January 24, 2018 – Rent Board Meeting #2 (<i>Special Meeting</i>) | Rent Board considers substantive regulations; possible adoption of procedural regulations |
| Late February 2018 | Public review period ends; feedback incorporated; Hearing Examiner onboarded |
| February 21, 2018 – Rent Board Meeting #3 | Rent Board considers additional substantive regulations |
| February 28, 2018 – Rent Board Meeting #4 (<i>Special Meeting</i>) | Rent Board adopts regulations; first hearings are scheduled |

DOCUMENTS ATTACHED:

Attachment 1 – Revised Draft Proposed Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board Regulations

Attachment 2: Petition Process Flowchart

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Subchapter A. Petition Process

801. Petitions

(A) Any landlord or tenant seeking an individual adjustment of the maximum allowable rent under Section 11.100.070 of the Ordinance must file a petition in accordance with the procedures set forth in this Chapter.

(B) The petitioner must attach to the petition documentation that is adequate to establish eligibility for the rent adjustment that is requested. The necessary documentation will vary according to the petition and is specified in the appropriate regulation and in the petition form. If the necessary documentation is unavailable, the petitioner's verification of the petition or declaration under penalty of perjury may substitute for the unavailable documentation. It is the policy of the Rent Board that each party submit all supporting evidence as early as possible prior to the hearing. The hearing examiner may refuse to accept documentary evidence at the hearing unless there is good cause for petitioner's failure to submit it prior to the hearing.

802. Previous Recent Hearing

Notwithstanding any other provision of this Chapter, the Board or the Executive Director or their designee may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the recent ceiling for such unit within the previous twelve months.

803. No Petition Filing Fee

There shall be no fee for filing a petition for individual adjustment of the maximum allowable rent. The Board may institute such a fee at a future date, with any waivers and reductions that it deems appropriate.

804. Proper Filing of the Petition

(A) Proper filing of the petition is the responsibility of the petitioner. Provided that the requirements of Regulations 804 (Proper Filing of the Petition) and 805 (Acceptance of Petitions) are satisfied, a petition is deemed properly filed on the date it is received by the Board if it is acceptable.

Board staff will make a preliminary review of each petition after it has been submitted. Petitions that are not signed by the petitioner, illegible, incomprehensible, erroneously completed, incomplete, lack a proof of service on the opposing party or for which the required fees have not been paid will not be considered acceptable.

(B) No landlord petition for an individual rent adjustment will be accepted for filing unless the unit for which the adjustment is requested has been properly registered and all rental increase and change of terms of tenancy notices filed with the Rent Board for at least 30 days. A unit is

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considered properly registered only if the completed registration statement has been filed with the Board, and the registration fee (plus any late fee) has been paid in full.

(C) A petition by a former tenant pursuant to these Regulations shall be commenced within three years from the date the tenant vacated the unit in question.

(D) No individual rent adjustment proceedings will take place for petitions that are not properly filed. The procedures for determining proper filing and allowing an unacceptable petition to be corrected are set out in Regulation 805 (B) (4) and (C) (4).

805. Petition and Noticing Procedures

(A) For rent increase petitions, the following procedure applies:

(1) Rent increase petitions may be filed under the following regulations: 8XX (Fair Return), 8XX (Capital Improvements), 8XX (Change in Space or Services/Code Violations), 8XX (Occupancy Level), 8XX (Debt Service), 8XX (Restoration of Annual General Adjustment), and 8XX (Historically Low Rent).

(2) A copy of the rent increase petition and, except as provided in Regulation 8XX (Capital Improvements), supporting documentation must be served on the tenants of all units affected by the petition.

(3) The landlord shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail or in person of the petition and documentation on each affected tenant. The landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform with Board regulations and within five (5) working days shall either mail notice to the landlord that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 806 Acceptance of Petitions) or mail a Notice to Opposing Parties to the tenants and landlord, as provided in Regulation 809 (Notice to Opposing Parties and Board). For petitions filed pursuant to Regulations 8XX (Fair Return), the review period shall be fifteen (15) working days. If a petition is found unacceptable, the landlord may refile at any time.

Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor. A landlord may, at any time prior to submission of the matter for an administrative decision, request that a hearing be held.

(5) The notice to the tenant shall include a notice that the tenant has a right to object to the petition, and that if the tenant does not object within twenty-one (21) days of the mailing of the notice, or if the tenant's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be increased by the applicable amount, based on the information in

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the landlord's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition.

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless no tenant files an objection within the time allowed, the landlord has not requested a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

(B) For tenant petitions, the following procedure applies:

(1) Tenant petitions may be filed pursuant to 8XX (Change in Space or Services/Code Violations), 8XX (Occupancy Level), 8XX (Overcharges) and Rent Withholding Petitions pursuant to Chapter YY.

(2) A copy of the tenant petition and supporting documentation must be served on the petitioner's landlord.

(3) The tenant shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail or in person of the petition and documentation.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform to Board regulations and within five working days shall either mail notice that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 805 Petition and Noticing Procedure) or mail a Notice to Opposing Parties to the landlord and tenants, as provided in Regulation 808 (Notice to Opposing Parties and Board). If a petition is unacceptable, the tenant may refile at any time. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor.

(5) The notice to the landlord shall include a notice that the landlord has a right to object to the petition, and that if the landlord does not object within twenty-one (21) days of the mailing of the notice, or the landlord's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be decreased by the applicable amount, based on the information in the tenant's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless neither the landlord nor the tenant requests a hearing within the time allowed and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

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(C) The time limits set forth in this section will prevail over any other time limits set out elsewhere in these regulations.

806. Supplemental Information

(A) The petitioner shall notify the Board and each opposing party of any material change in the information set forth in the petition, especially a change in the identity of any opposing party, as soon as possible prior to the hearing. When there is a change in the opposing party, the petitioner shall serve the new party in accordance with Sections 805 (Petition and Noticing Procedures). Notice and proof of service shall be in accordance with Section 809 (Notices to Opposing Parties and Board). The new party shall thereafter be provided by the Rent Board with notice of the right to object to the petition.

(B) Changes in or additions to the information set forth on the petition may be grounds for a continuance, and may constitute good cause for delaying final Board action under Section 8XX (Time for Decision) of these regulations.

(C) The party responding to the petition shall notify the Board and each opposing party of any material change in the information set forth in the response to the petition, including any additional objections, as soon as possible prior to the hearing.

807. Parties

Parties are the landlord of the affected property, the tenants in each affected rental unit (with all the tenants in one unit constituting one party), and any representatives designated pursuant to Section 834 (Rights of Parties). The person listed as the landlord in a tenant petition for rent adjustment shall be the landlord party, unless the Board is notified to the contrary.

808. Notices to Opposing Parties and Board

(A) Manner of Notice. Notice(s) to opposing parties shall be served by first-class or certified mail, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service.

(B) Notice after Petition Filed. The Board shall notify the opposing parties of the filing of a petition and send each opposing party a response form that includes notice that the party has a right to object to the petition, a statement of possible objections, notice that the party's failure to object within the time specified may constitute a waiver of the right to have a hearing on objections to the petition, and a brief description of the hearing process.

(C) Other Notices. The Board shall send a copy of all notices, and parties shall send a copy of all documents or communications filed with the Board after the filing of the initial petition, except

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for documents or communications which are filed during the bearing or are confidential, to each party.

809. Response to Petition

(A) A party wishing to object to the petition may do so on the form provided within twenty-one (21) days of the mailing of the notice required under Section 808 (B) (Notice after Petition Filed). Failure to respond may constitute a waiver of the respondent's right to object to the petition. Notwithstanding a party's failure to respond, no petition for an individual rent adjustment shall be granted unless the adjustment is authorized by these regulations and supported by a preponderance of the evidence.

(B) Response to Petitions Filed for Violations of Rent Ceiling. In response to a petition filed solely on the basis of violations of rent ceilings, the landlord may defend as to the issue of violations of rent ceilings, but may not counterclaim for an increase of the lawful rent ceiling. To make such counter-claims, the landlord must file a separate petition in accordance with Chapter 8, and Section 802 shall not prevent such a petition from being accepted.

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811. Consolidation

(A) All landlord petitions pertaining to tenants in the same building and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

(B) In their discretion, the Board or the Hearing Examiner may consolidate petitions pertaining to different buildings on the same property or different properties of the same landlord.

812. Confidentiality

(A) Documents filed in connection with an individual rent adjustment proceeding shall be public records unless a party receives a determination by the hearing examiner that a particular document shall be confidential. For any such determination of confidentiality to be made it must be demonstrated that the document in question is exempt under the California Public Records Act (Government Code Section 6250 et seq) or that the public interest served by not making the document public clearly outweighs the public interest served by disclosure of the document. Unless otherwise specified by the hearing examiner, documents determined to be confidential will be available for inspection by the opposing party but not by the general public.

(B) A party seeking a determination that: a particular document shall be treated as confidential shall make such a request in writing. The request shall be made at the time that the document in question is offered as evidence or is otherwise required to be produced. The examiner may determine that only a portion of the document is to be treated as confidential, and may make such rulings regarding disclosure to both the opposing party and the general public as are consistent with this Section. The request and the ruling thereon shall be included in the record.

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813. Expedited Hearings

(A) The Rent Board recognizes that consistency in rulings by the Rent Board and the courts is desirable. Therefore, in order to provide consistency of decisions in cases where both a Rent Board petition and an unlawful detainer action have been filed, the purpose of this Regulation is to ensure that the Rent Board rules on issues which are involved in petitions before it and in unlawful detainer cases prior to the Court ruling on the same issue.

B. Priority in the scheduling of hearings and in the issuance of decisions shall be given to pending petitions and appeals involving rental units on which eviction proceedings have commenced. An eviction is deemed to commence when either a 3 or 30 day notice to quit is served. A party may request that a petition or an appeal be given priority by filing a request to expedite, accompanied by a copy of either the notice to quit or the unlawful detainer complaint with the Rent Board and serving a copy of the same on the opposing party.

814 – 820. RESERVED

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Subchapter B. Hearing Procedure

821. Hearing

It is the policy of the Rent Board that all petitions and objections be decided on their merits, consistent with due process of law and orderly administrative procedures. The regulations of this Chapter are intended to insure that each party is given notice of the grounds for a petition and all objections thereto in advance of the hearing so that all parties will be prepared to present their case at the hearing. Accordingly, the hearing shall be limited to the issues raised by the petition and the objections filed thereto, unless the hearing examiner determines that, in the interest of fairness, additional issues or objections should be considered and thereafter takes all necessary steps to insure that all parties have a full and fair opportunity to respond to new issues, objections or evidence.

822. Hearing Examiner

(A) A hearing examiner shall conduct a hearing to determine whether the individual adjustment petition should be granted. The hearing examiners shall have the following powers with respect to cases assigned to them:

- (1) To administer oaths and affirmations;
- (2) To grant requests for subpoenas and to order the production of evidence;
- (3) To rule upon offers of proof and receive evidence;
- (4) To regulate the course of the hearing and rule upon requests for continuances;
- (5) To call, examine, and cross-examine witnesses, and to introduce evidence into the record;
- (6) To decide the petition administratively without a hearing if no hearing is requested by the petitioner, the responding party fails to timely file objections, and the record is sufficient to render a decision on the petition without hearing live testimony;
- (7) To make and file decisions on petitions in accordance with this Chapter;
- (8) To take any other action that is authorized by this Chapter.

823. Evidence and Standard of Proof

(A) The hearing examiner may require either party to a rent adjustment hearing to provide any books, records and papers deemed pertinent. All required documents shall be made available to the parties involved, at least ten (10) days prior to the hearing or its continuation, at the offices of the Board.

(B) If the hearing examiner finds good cause to believe that the Board's current information does not reflect the current condition of the rental unit, the examiner shall conduct or request the City

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to conduct an appropriate building inspection. Any party may also request the examiner to order such an inspection prior to the hearing.

(C) The hearing examiner need not conduct the hearing according to technical courtroom rules of evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of business regardless of any common law or statutory rule which might exclude such evidence in court proceedings. The hearing examiner may exclude unduly repetitious or irrelevant evidence.

(E) No adjustment in Maximum Allowable Rent shall be granted unless supported by the preponderance of the evidence submitted at the hearing.

824. Board Action

The Board, on its own motion or on the request of any party, may hold a hearing on any individual adjustment petition without the petition first being heard by a hearing examiner. For purposes of these regulations, the Board shall be considered a hearing examiner when holding a hearing under this Section. In the event that the Board elects to hold a hearing, the decision of the Board shall be the final decision of the Board, except in cases where the Board decision is to send the issue to a Hearing Examiner for further review.

825. Notice of Hearing

Notice of the time, date and place of hearing shall be mailed to all parties no later than ten (10) days before the scheduled date of the hearing.

826. Continuances

(A) The date and time of the hearing may be continued, either before the hearing or at the hearing, if the Hearing Examiner finds good cause to do so. Such good cause shall be stated in the record and may include, but is not limited to, the failure of a party to receive notice, the illness of a party or witness or other emergency which makes it impossible for them to appear on the scheduled date, or the failure of a party to provide the hearing examiner with required pertinent information in a timely manner. Mere inconvenience or difficulty in appearing shall not constitute good cause. Continuances may also be granted upon consent of all parties.

(B) Requests for continuances shall be made as soon as possible. A written request for a continuance and the reasons for it must be received by the Board and all other parties at least 48 hours prior to the scheduled hearing, unless good cause is shown for a later request. The written request shall contain acceptable alternative dates and an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance. The request shall be served on both the Board and all opposing parties in accordance with the requirements of Section 808 (Notices to Opposing Parties and Board).

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(C) The hearing examiner or Senior Hearing [Examiner, may deny a request for a continuance if it has not been made in compliance with subsection (B) or where a continuance has previously been granted to the requesting party in the same case.

(D) The Board shall notify the parties if a continuance is granted, and the date and place of the rescheduled hearing.

827. Disqualification of Hearing Officer or Board Member

(A) No hearing examiners or Board members shall take part in any hearing or appeal on a petition for an individual rent adjustment in which they have a personal financial interest in the outcome (such as being the landlord of, or a tenant residing in the property that is involved in the petition), or a personal bias for or against any party. The hearing examiners' or Board members' general status as landlords or tenants, or political or philosophical beliefs shall not constitute personal bias.

(B) Hearing examiners or Board members shall disclose to all parties any prior communication with a party concerning the subject of the petition, as well as any possible or apparent personal financial interest or personal bias.

(C) Hearing examiners or Board members may disqualify themselves at any time. In addition, any party may file a written request for disqualification, stating the grounds, with the Director (for hearing examiners) or the Board Chairperson (for Board members) at least 72 hours prior to the hearing. However, if the identity of the hearing examiner or Board member was not known soon enough to allow this, the written request shall be filed as soon as possible but in no event later than the taking of any evidence at the hearing. Any such request shall be ruled upon prior to the taking of any evidence at the hearing.

828. Subpoenas

The hearing examiner may by order or subpoena require that either party or any other person provide her/him with any books, records, papers, or other evidence deemed pertinent to the petition or that any witness appear and testify. All documents required under this provision shall be made available to the parties at least ten (10) days prior to the hearing, at the office of the Board. Parties to the hearing shall have the right to request the examiner to issue subpoenas on their behalf, but the responsibility for service of such subpoenas remains with the requesting party. The subpoena shall disclose on its face at whose request it has been issued and that it is issued in the name of the Board.

829. Stipulations

The parties, by written stipulation filed with the hearing examiner, may agree upon some or all of the facts or evidence involved in the hearing. Stipulations may also be made orally at the hearing. Any fact or evidence which is the subject of a stipulation shall be treated as having been established by a preponderance of the evidence.

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831. Ex Parte Communications

There shall be no communications regarding any pending case outside of the hearing between the hearing examiner assigned to the case and any party, representative or witness in any case pending before the examiner until the examiner has completed the written decision in that case, except for discussions about requests for continuances, building inspections or determinations of confidentiality, prehearing discussions pursuant to Regulation 832 (Agreement Prior to Hearing), where both parties or their representatives have an opportunity to be present, or orders by the examiner to produce evidence pursuant to Regulation 826 (Subpoenas). There may be communications on any matters with other Board staff.

832. Agreement Prior to Hearing

(A) The parties may make a prehearing agreement. The Board staff may contact the parties in an effort to clarify the issues and/or to reach agreement on the individual adjustment prior to the hearing. Any agreement between the parties prior to a hearing must be approved by the Hearing Examiner in accordance with the provisions of this chapter.

(B) Any agreement made by the parties at the prehearing or hearing shall be made on the record and tape recorded. The terms of the agreement shall be read to the parties, and the parties shall state that they understand the terms of the agreement, that they do not want a hearing on the petition, and that they voluntarily agree to the terms of the agreement.

(C) Parties shall submit any proposed joint agreement in writing to the Board. The Hearing Examiner shall approve or reject the agreement as soon as possible. Written notice of the determination shall be mailed to the parties. The notice shall contain the reasons for any rejection. The agreement and its approval or rejection shall be entered into the record.

(D) Parties who prior to a hearing reach an agreement on an individual adjustment which is approved by the Hearing Examiner shall be deemed to have waived their rights to a hearing or appeal on the petition. Such an approved agreement shall also be deemed a hearing for the purposes of Section 802 (Previous Recent Hearing) of these regulations.

However, upon demonstration of fraud, misrepresentation, or similarly compelling reasons, either party may request that the Hearings Unit withdraw the settlement and set the matter for hearing. If such a request is denied, the party may appeal such denial to the Board.

833. Open Hearings

All individual rent ceiling adjustment hearings shall be open to the public.

834. Rights of Parties

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(A) All parties to a hearing shall have the right to appear at the hearing and present evidence and argument in person, and/or have assistance from attorneys, legal workers, recognized tenant organization representatives or any other designated persons. Before a representative is allowed to advocate for, or in any way represent, a party, the party must present to the Board a signed, written statement designating their representative. Representatives shall file written statements with the Board that they are assisting the named party, with the name, address and phone number of the representative. All parties shall also have the right to call, examine, and cross-examine witnesses, to request the examiner to issue orders or subpoenas for witnesses or evidence, and to exercise any other rights conferred by the Ordinance or this chapter.

(B) Unless otherwise specified by regulation or by order of the Rent Board or hearing examiner, any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of a document shall be extended by five days if the document was served by mail.

(C) Except for the failure to timely file an appeal in accordance with Regulation 842 (Appeal Process) the Rent Board or hearing examiner may relieve a party of the consequences of a failure to perform an act on or before a date certain and allow additional time to perform the act where the party demonstrates that there was a good cause for the failure. Application for this relief shall be made within a reasonable time, in no case exceeding thirty days, after the date certain and shall be accompanied by a sworn declaration attesting to the facts alleged to constitute the good cause.

835. Hearing Record

The official record of the hearing shall include the following: an audio recording of the hearing; all exhibits, papers, and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted; a statement of all material officially noticed; all recommended and final decisions, orders, and/or rulings; and the reasons for each final decision, order and/or ruling. This official record shall constitute the exclusive record for the decision on the issues raised at the hearing.

836. Availability of Record

The Board shall make the official record available for inspection and copying by any person and provide a copy of all or part of the official record at a reasonable copying cost.

837. Notice of Decision

The Board shall send a notice of the hearing examiner's decision to all parties to the hearing. Such notice shall include a copy of the findings of fact and law supporting the decision, as well as a statement of their right to and the time limit for any appeal to the Board and/or judicial review of the decision.

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838. Finality of Decision

The hearing examiner's decision shall be the final decision of the Board in the event no appeal is made to the Board.

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841. Right of Appeal

Any party may appeal a hearing examiner's decision to the Board. On appeal, the Board may affirm, reverse, remand or modify the decision of the hearing examiner. The Board may conduct a new hearing or may act solely on the basis of the official record before the hearing examiner. The decision on appeal shall be the final decision of the Board, and the Board shall send a notice of the decision to all parties to the appeal, which shall include a statement of their right to judicial review. Decisions remanded to the hearing examiner shall be limited to instances where additional findings of fact are required.

842. Appeal Process

(A) Any appeal shall be filed on a form provided by the Board no later than thirty (30) days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in subdivision (E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) days from the date the appeal is filed.

(B) The hearing examiner's decision shall be stayed pending appeal. In its decision, the Board shall order the appropriate party to make retroactive payments over a reasonably appropriate period to restore the parties to the positions they would have occupied had the examiner's decision been the same as that of the Board or had not been stayed.

(C) At least fourteen (14) days prior to the date set for Board action on the appeal, a staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the examiner for further hearing. Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least fourteen (14) days prior to the date set for Board action. Any objection to a staff request for official notice of such matters shall be filed no later than seven (7) days prior to the date set for Board action.

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(D) At least fourteen (14) days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. Copies of the staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Public Information Unit of the Board at least 14 days prior to the date set for Board action. Parties may submit written comments to the Board up to seven (7) days prior to the Board action.

(E) At the Board meeting at which action on the appeals is scheduled, each party or their representative will be allowed seven minutes to address the Board at the beginning of the hearing in the following order: appellant for five minutes, respondent for seven minutes, appellant for two minutes. **Appellants or respondents who require translation or interpretation services shall be allowed double the amount of time to address the Board in the following order: appellant for ten minutes, respondent for fourteen minutes, appellant four minutes.**

(F) Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not in the record before the hearing examiner or officially noticed. The vote of three (3) Board members is required to affirm, modify, remand or reverse the decision of the hearing examiner. If the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied.

(G) The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.

(H) Continuances. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Director only for good cause shown. A written request and the reasons for it must be received by the Rent Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

(I) Reconsideration.

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(1) At the discretion of the executive director or his or her designee, an appeal may be treated as a request for reconsideration and referred back to the hearing examiner for such reconsideration only if it is claimed by the appellant that:

- (a) there was good cause for a failure to respond to a petition; or
- (b) there was good cause for a failure to appear at a settlement conference or hearing; or
- (c) they wish to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.

(2) In the event that reconsideration under subsection (K) (1) is ordered, the parties will be so notified within 15 days of the filing of the appeal and, thereafter, all correspondence shall be directed to the hearing examiner. The threshold issue on reconsideration shall be whether a preponderance of the evidence supports the assertion that good cause existed for the failure to respond to a petition or to appear at a settlement conference or hearing or that the newly offered evidence could not, with reasonable diligence, have been discovered and produced at the hearing. Only if good cause for the failure is found, may the hearing examiner reconsider the merits of the petition. .

843. No Appeal Filing Fee

There shall be no fee for filing an appeal to the Board regarding a hearing examiner decision on a petition for individual adjustment of the maximum allowable rent. The Board may institute such a fee at a future date, with any waivers and reductions that it deems appropriate.

844. Time for Decision

The Board shall take final action on any individual adjustment petition within 120 days following the date of proper filing, unless the conduct of the petitioner or other good cause is responsible for the delay. Good cause may include, but is not limited to, continuances granted, the submission of additional information by the petitioner, the filing of a motion for reconsideration, or a request by petitioner to disqualify the hearing examiner or Board member(s).

845. Conditions for Obtaining Individual Rent Adjustments

An individual upward adjustment of a rent ceiling for a rental unit may be awarded but shall not become effective so long as the landlord:

- (A) has failed to register any rental unit on the property with the Board;
- (B) has demanded, accepted, received or retained rent in excess of the lawful rent ceiling for the affected unit;
- (C) has failed to comply with any order of the Board concerning the affected unit or a former tenant of the affected unit; or

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(D) has failed to bring the affected rental unit into compliance with the implied warranty of habitability.

846. Notice for Rent Increases

Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord, following the decision of the hearing examiner or Board, gives the tenant at least a thirty (30) day written notice of such rent increase and the notice period expires.

847. Effective Date for Rent Decrease

(A) If the hearing examiner or Board makes a downward individual adjustment of the rent ceiling, the rent decrease pursuant to such adjustment shall take effect on the date of the next regularly scheduled rent payment, but no later than thirty (30) days after the date of the decision by the hearing examiner or Board.

(B) Where a rent decrease is reversible after correction of a defect in the unit or violation of the provisions of the ordinance or its implementing regulations, the landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date that the landlord corrected the situation that warranted the decrease. The landlord shall notify the tenant and the Hearing Examiner of the correction and provide evidence of compliance.

(C) The compliance notice to the tenant shall include a notice that the tenant has a right to object, and that if the tenant does not object within twenty-one (21) days of the mailing of the notice, or if the tenant's objection does not specify in what way the landlord is not in compliance, the rent for the tenant's unit may be increased by the applicable amount, based on the information in the landlord's notice and the Board's files. Failure to file an objection may constitute a waiver of the right to a compliance hearing.

848. Compliance Hearings

(A) If there is a dispute among any of the parties (or any successor in interest) as to whether there has been compliance with a previously issued decision, the hearing examiner may notice and conduct a hearing to determine whether compliance has in fact occurred, and may issue an appropriate decision which sets forth the extent of compliance, the date of such compliance, and any adjustments to the original decision which are necessary in light of such compliance or non-compliance.

(B) The party or parties (and any successor in interest) who were originally ordered to make repairs, pay back rent, properly register the parcel, or otherwise comply with an order of the Board, shall be required to demonstrate compliance by a preponderance of the evidence submitted at the compliance hearing.

(C) Any party to the original proceeding, and any successor in interest, may request that a compliance hearing be noticed and held. Such request shall set forth the area of disagreement,

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and a copy of the request must be served upon all adverse parties (and any successor in interest of any adverse party) by the party requesting the hearing.

(D) The procedures set forth in Subchapter B (beginning with Regulation 821) shall apply to compliance hearings.

849. Board Initiated Hearings

(A) The Rent Board or the Executive Director, who may designate such function to appropriate staff, may initiate a hearing after an investigation by the Rent Board or the Executive Director has resulted in a determination that there are substantial grounds to believe that major violations of the Rent Ordinance or Regulations promulgated thereunder have occurred, and that 120 days have passed from the date of the first occurrence of the violations.

(B) The investigation of possible violations of the Ordinance or Regulations may be conducted as a result of the review of the records of the Rent Program or the records of courts and governmental agencies. Investigations of possible violations may also be conducted on the basis of complaints and allegations received orally or in writing by the Executive Director.

(C) If an investigation by the Rent Board or its designee has found substantial grounds to believe that major violations of the Ordinance or Regulations have occurred, a notice of a prehearing shall be prepared and served on the landlord and tenants of the affected units. The notice of prehearing shall state clearly the sections(s) of the Ordinance or Regulations which has (have) allegedly been violated, along with a brief statement of the evidence found during the investigation which supports the determination that an alleged violation has occurred. The notice shall also set forth a proposed order which may be rendered against the alleged violator.

(D) The procedures set forth in Subchapter B. (beginning with Regulation 821) shall apply to Board initiated hearings.

(E) At a Board initiated hearing, the designee of the Executive Director shall present the Board's case. The issues in the hearing shall be disposed of in a final decision and order of a Hearing Examiner, which may be appealed to the Rent Board.

(F) Intervention by any current landlord, current tenant, former tenant and former landlord shall be permitted. Intervention by any other person or entity may be allowed upon a showing that some right, interest, liability or obligation of the person or entity seeking to intervene may be materially affected as a result of the hearing. Requests to intervene shall be made in writing, and should be filed and served upon all parties at least five (5) days before the hearing. However, upon a showing of a substantial interest in the outcome requests to intervene may be made and acted upon at any time prior to the conclusion of the hearing.

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851. Deposit of Disputed Rents into Escrow

The Rent Program does not currently have an escrow process. Once the Executive Director establishes an escrow process, regulations 852 – 857 shall apply.

852. Standards to Be Applied to Escrow Determinations

In deciding whether or not to require the payment disputed amounts in escrow, the Hearing Examiner or the Appeals Panel of the Board shall consider:

- {A) The likelihood that the party requesting the escrow account will prevail on the merits;
- {B) The likely sum or sums involved;
- {C) The likely length of the escrow;
- (D) The likelihood that either party may be prejudiced by the creation of denial of an escrow account;
- (E) The desires of the parties;
- (F) The tenant rent payment history, including any reasons for late or nonpayment of rent;
- (G) The parties' history of compliance or noncompliance with the Ordinance, Regulations and Orders of the Board; and
- (H) All other relevant facts which may affect the right of the tenant not to be required to pay rent in excess of that which is lawful.

853. Requiring Deposit of Disputed Rents into Escrow Pending Hearing

(A) Whenever a petition for individual rent adjustment is filed and it is alleged, or reasonably appears from the circumstances, that the rent charged or demanded by the landlord is in excess of that permitted by the Ordinance and Regulations, any party to the proceedings may make a written request for an order requiring the deposit of rent into an escrow account. Said request shall be made on a form approved by the Board.

(B) Upon receipt of such written request, the Hearing Examiner shall, at the prehearing conference, consider whether an escrow account should be established and may order that reasonably disputed amounts be paid into escrow pending the hearing and the hearing examiner's decision on the petition. The hearing examiner may also condition any continuance or later scheduling of a hearing upon an agreement that rent shall be either paid to the landlord and/or into escrow as may be appropriate.

(C) Pending the Hearing examiner's decision on the petition, an order by the hearing examiner creating, modifying or terminating an escrow account may be appealed to the Board.

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(D) Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

854. Establishment of Escrow Accounts Pending Appeal

(A) Within twenty (20) days of the date of mailing of the final decision of the Hearing Examiner to the parties, any party may make written application to the Hearings Unit for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Board. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

(B) Upon receipt of such written application, the Executive Director or designee may:

- (1) Continue, terminate, or modify any escrow created by the Hearing Examiner; or
- (2) Order that reasonably disputed amounts be paid into escrow pending the decision on any appeal.

(C) In the event that the party applying for the escrow order does not file an appeal within thirty-five (35) days of the date of mailing of the Hearing Examiner's final decision to the parties, any order requiring the maintenance or creation of an escrow account shall automatically be dissolved unless otherwise ordered by the Hearing Examiner. Upon such dissolution, the funds held in escrow shall be disbursed in accordance with the final decision of the Hearing Examiner.

(D) Within twenty-one (21) days of the date of mailing of the appeal, any non-appealing or cross-appealing party may make written application to the Hearing Unit for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Board. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

(E) Upon receipt of such written application, the Hearings Unit may:

- (1) Continue, terminate, or modify any escrow created by the Hearing Examiner; or
- (2) Order that reasonably disputed amounts be paid into escrow pending the decision on the appeal;

(F) Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

(G) In the Decision on Appeal, the Appeals Panel shall order disbursement of any funds held in escrow to the appropriate party.

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855. Landlord's Compliance with Rent Overcharge Refund Order Subject to Appeal

(A) A tenant who accepts a full refund of rent overcharges, pursuant to Regulation 8XX, after receiving written notification that acceptance of the refund will extinguish the tenant's right to appeal the amount of rent overcharges, is deemed to have waived the right to appeal the amount of the refund order. The written notification shall be in language approved by the Board.

(B) Notwithstanding a tenant's appeal of the hearing examiner's decision, the landlord's tender of the full amount of rent overcharges as ordered by the hearing examiner shall constitute compliance with the refund order provided that the amount tendered, if not accepted by the tenant, is deposited into an escrow account established and maintained by the Rent Board. If, on appeal, the Rent Board modifies the hearing examiner's decision and orders additional amounts refunded, a landlord who has tendered the full amount of the original refund order remains in compliance with the refund order so long as the landlord tenders to the tenant the additional amount of rent overcharges within 30 days of the date of the Rent Board's decision on appeal.

856. Disbursement of Funds Held in Escrow

Upon issuance of an order of the Hearing Examiner or an Appeals Panel of the Board, the Executive Director, or their designee, shall cause the funds held in escrow to be disbursed in accordance with the order. Any interest which has accrued on the funds shall be disbursed and distributed in the same proportion as the principal.

857. Effects of Escrow Accounts on Eviction Actions

A tenant's deposit of rent into an escrow account pursuant to an order of the Hearing Examiner or the Board shall be a defense to any action brought by the landlord for nonpayment of that rent.

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