

## NOTICE OF PETITION EXPLANATION OF ISSUE TYPES

- General** Basic information is provided below on the types of issues raised by the petition.
- The Rental Dispute Mediation and Arbitration Ordinance and the Program Regulations govern the petition and hearing process. General information on the Ordinance and the hearing process is enclosed with the Notice of Petition. Refer to the Ordinance and regulations for more complete information. A copy of the Ordinance and Regulations can be provided at your request.
- %** The petition claims that a rent increase in excess of 8% has been proposed. A cost worksheet is enclosed which should be returned to this office at or before your first hearing. **Pending a decision by the Hearing Officer, the amount of rent in excess of 8% is deferred and only an 8% rent increase should be demanded or paid.** (Ord. Sect. 17.23.180, 210, 330, 530, and 540).
- Frequency** The petition claims that more than one rent increase has been proposed within a 12-month period. This is, with certain exceptions, prohibited by Ord. Sect. 17.23.200. You have the burden of proving that the proposed increase is not within 12 months of the last increase or that one of the exceptions applies. You may submit evidence such as rent records and rental agreements. **The Hearing Officer may disallow increases, which violate this section of the Ordinance.** (Ord. Sect. 17.23.200)
- Service** The petition claims that benefits, privileges or facilities have been reduced without a corresponding reduction in rent. This may be a type of rent increase. The tenant has the burden of proving their claim. You may also submit evidence, such as maintenance records, photographs or testimony. If the claim is proven the Hearing Officer will determine the percentage that the usability of the rental unit was reduced and the duration of the reduction. If the rent increase is unreasonable, **the hearing officer may reduce a rent increase, order a credit against rent paid, and/or order a permanent or temporary reduction in future rent.** (Ord. Sect. 17.23.110, 130 and 140).
- Housing Code** The petition claims that there are health and safety defects which violate the San Jose Housing Code and/or California Civil Code Sections 1941.1 or 1941.2. The burden of proof is on the tenant. City of San Jose Code Enforcement inspection reports are considered presumptive evidence; unless there is sufficient evidence to the contrary, violations listed in the report are considered to have been proven to exist. Issues of this type may also be service reductions. **Hearing Officers may reduce, disallow or reasonably condition any rent increase based on the severity of any Housing Code violations.** (Ord. Sect. 17.23.460)
- Rights** The rent increase notice submitted by the tenant did not conspicuously contain the required notice of the tenant's right to file a petition. You may submit evidence that the required notice was given. The Ordinance provides for civil suits by tenant when the required notice is not given and some courts have held that the rent increase is invalid when the required notice is not given. (Ordinance Sections 17.23.270 and 540).

## **SERVICE REDUCTIONS**

Service reduction claims must be made in writing on or before the first hearing. Although both the landlord and the tenant may present evidence on service reduction claims, the burden of proof is on the tenant. The tenant must prove four things:

1. The basic service level – What the service was required to be by law or an agreement, including an implied agreement.
2. The actual service level – What service level was before the reduction
3. That the service was reduced – That the service is or was reduced from the required level, and that this was a material reduction.
4. That the service was reduced within the past 12 months – Unless the reduction is also a Housing Code violation, it must have begun within the past year.

Evidence on several other items should also be presented. The value of a service reduction depends on the area affected, the amount of time the tenant was exposed to the condition, the degree of discomfort, the extent to which the reduction caused the tenant to find the premises uninhabitable and other similar factors. The Hearing Officer's decision on some types of service reductions may also be affected by whether and when the landlord was notified and by the timelines and effectiveness of the landlord's attempt to restore the service.

## **HOUSING CODE VIOLATIONS**

The tenant making the claim that there is a violation of the San Jose Housing Code has the burden of proving that the claimed violations exist. An inspection report issued by a San Jose Code Enforcement Inspector may be considered presumptive but not conclusive proof of violations of the San Jose Housing Code. If the tenant has received such a report they may bring it to the hearing. Housing Code inspections may be requested by contacting the City of San Jose's Code Enforcement Division at (408) 535-7770. Please be aware, however, that workload or other considerations may affect whether an inspection report can be issued before the scheduled hearing.

## **EVIDENCE**

Both the landlord and the tenant may present evidence such as photographs, samples, written statements, inspection reports, witnesses, and personal testimony for consideration by the Hearing Officer. Physical evidence will be retained by the Hearing Officer and made a part of the case file. Copies of documents may be submitted in place of the original.

The parties are requested to submit physical evidence in advance of the hearing. You may review any evidence submitted prior to the hearing at the Rental Rights and Referrals Program office. If the evidence is not submitted until the hearing itself, please bring three extra copies: one of each for the case file, the hearing officer and the other party. Videotapes or other types of evidence requiring special equipment may also be presented, however, you should bring any necessary special equipment to the hearing.

**NOTICE OF REPRESENTATION**

I, the undersigned, am the owner/tenant of \_\_\_\_\_  
(*cross out one*) (address)

located in San José, California, being the rental unit involved in the City of San José Mediation Hearing to which I am a party.

Regardless of whether I attend the hearing or not, I authorize

\_\_\_\_\_ as my representative.  
(name)

She/He may provide, request and receive information on my behalf and in addition to me and should be placed on the mailing list. (Separate notices of representation must be prepared for each representative). In the event that I am absent from a hearing the designated representative may provide evidence and testimony; and negotiate and sign on my behalf a voluntary agreement regarding the amount of rent and other matters in the dispute.

**Address of representative:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Phone number:** \_\_\_\_\_

I declare that I am the owner/tenant of the property located at the above-mentioned address.  
(*cross out one*)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)