



Residential Rent Stabilization and Arbitration Board
City & County Of San Francisco

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Posibleng maapektuhan ng abisong ito ang inyong mga karapatan bilang nagpapaupa (landlord) o umuupa (tenant). Kung kailangan ninyo ng tulong upang maintindihan ang abisong ito, pakitawagan ang 415-252-4600.

Proof of Service

Proof of Service page 1

CASE NO. T200768

I am over the age of 18, not a party to this case, and am employed at 25 Van Ness Avenue #320, San Francisco, California, 94102. I served a copy of the attached:

Decision

regarding the property at **1783 33rd Avenue** by placing a true copy in a sealed envelope with postage prepaid in the United States mail at San Francisco, California, on the date shown below, and addressed to the parties as shown below.

Name	Property Address	Mailing Address
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Landlord Respondent

Steven Van Dyke

1565 Turquoise Drive
Carlsbad, CA 92011

Landlord Attorney

Laura L. Campbell

425 California Street #2100
San Francisco, CA 94104

Tenant Petitioner

Alan S. Johnson Jr.

1783 33rd Avenue
San Francisco, CA 94122

1783 33rd Avenue
San Francisco, CA 94122

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on the date shown below at San Francisco, California.

Signed: _____

Dated: 1/26/2021

1 Law Construed:
2 Ordinance Sections: 37.2(r); 37.3(d)(1)(A); 37.8(f)(1)
3 Rules and Regulations Sections: 1.17
4 Index Codes: A75, A76, K12

5 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**

6 **CITY AND COUNTY OF SAN FRANCISCO**

7 IN RE: 1783 33RD AVENUE

CASE NO. T200768

8 ALAN S. JOHNSON, JR.,

HEARING: NOVEMBER 5, 2020

RECORD CLOSED: NOVEMBER 10, 2020

9 TENANT PETITIONER,

10 and

DECISION

11 STEVEN VAN DYKE,

12 LANDLORD RESPONDENT.

13 **INTRODUCTION**

14 This case involves a tenant petition filed on August 10, 2020 and amended on
15 September 9, 2020, alleging that the landlord unlawfully increased the rent over the allowable
16 limits. Specifically, the tenant disputes a monthly rent increase from \$1,500.00 to \$4,200.00
17 effective December 1, 2020, imposed pursuant to Civil Code Section 1954.52(a)(3)(A) of the
18 Costa-Hawkins Rental Housing Act.

19 A hearing in this case was held by remote audio and video conferencing on November 5,
20 2020, at which time the following people appeared: Alan S. Johnson, Jr., tenant petitioner;
21 Steven Van Dyke, landlord respondent; and Laura L. Campbell, attorney representative for the
22 landlord respondent. At the hearing, the parties had full opportunity to present relevant evidence
23 and argument. Those who testified did so under oath.

24 The record was held open until November 9, 2020 for the landlord to submit additional
25 evidence. The landlord made an untimely submission on November 10, 2020. In the interests of
26 justice and a complete record, the record was reopened to accept the landlord's submission and
27 the record closed on November 10, 2020.

28 **FINDINGS OF FACT**

1. The subject property located at 1783 33rd Avenue in San Francisco is a two-level

1 single-family house. The property consists of three bedrooms, living room, dining room, one and
2 one-half bathrooms, family room and a one-car garage. The family room is located on the
3 garage level and is accessible through an interior stairway and through the garage. Steven Van
4 Dyke (hereinafter "the landlord") has owned the property since year 2011.

5 2. The landlord testified that, in or about 2014, Lorraine Day and her then-boyfriend
6 (along with Ms. Day's then-minor daughter) began occupying the entire property pursuant to a
7 written rental agreement with the landlord.

8 3. The landlord further testified as follows. Sometime thereafter, Ms. Day's
9 boyfriend gave notice to the landlord and vacated the property. Despite losing a source of
10 income to pay the rent, Ms. Day and her daughter remained and continued to occupy the
11 property. By August 2018, however, the \$3,500.00 monthly rent that Ms. Day was paying
12 became a financial burden. Therefore, in August 2018, Ms. Day sought the landlord's
13 permission to obtain a housemate to help pay the rent, and the landlord consented. The
14 landlord and Ms. Day did not discuss any living arrangements that would be made between Ms.
15 Day and a housemate. At that time, the landlord simply understood that there would be a "co-
16 tenant" at the property, but did not know what specific area the co-tenant would occupy. Ms.
17 Day then advertised online for a housemate, had applicants complete the rental applications,
18 met the applicants, and later introduced Alan S. Johnson, Jr. (hereinafter "the tenant") to the
19 landlord as the recommended housemate.

20 4. The tenant testified as follows. He responded to Ms. Day's online (Trulia) rental
21 advertisement of "a room with a view" for \$1,500.00 per month. When the tenant went to see the
22 room, Ms. Day informed the tenant he could have two bedrooms for \$1,500.00 and that the
23 living arrangements would be as follows: the tenant would exclusively occupy two bedrooms;
24 Ms. Day and her (now adult) daughter would exclusively occupy the third bedroom, the living
25 room, the dining room, and the family room on the lower level; and all three occupants would
26 share the kitchen and the bathrooms. After waiting a couple of weeks for Ms. Day to meet other
27 applicants, Ms. Day notified the tenant that he was the most qualified applicant. Ms. Day then
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1 introduced and recommended the tenant to the landlord via email, and the tenant submitted his
2 rental application to the landlord.

3 5. The landlord and the tenant concurred as follows. After the tenant submitted the
4 rental application to the landlord, the landlord approved it and prepared a written rental
5 agreement for the tenant. Then, on or about October 1, 2018, the landlord and the tenant signed
6 a written rental agreement for a term of one-year commencing on October 1, 2018, at a monthly
7 rent of \$1,500.00. The parties submitted a copy of an unsigned copy of the rental agreement
8 with the tenant. (Attachment to Petition, pages 1-10 and 20-21; and Landlord Pre-Hearing
9 Submission, received November 2, 2020, pages 5-16) The agreement requires a security
10 deposit in the amount of \$1,500.00. (Landlord Pre-Hearing Submission, received November 2,
11 2020, page 5)

12 6. The landlord testified that, on or about October 1, 2018, he and Ms. Day also
13 signed a written rental agreement for a term of one-year commencing on October 1, 2018, but
14 at a monthly rent of \$2,000.00. The landlord submitted a copy of an unsigned copy of the new
15 rental agreement with Ms. Day. (Landlord Post-Hearing Submission, received November 10,
16 2020, pages 3-14) Regarding a security deposit, this agreement references "\$1,500.00 security
17 deposit paid in 2014" by Ms. Day. (Landlord Post-Hearing Submission, received November 10,
18 2020, page 3)

19 7. Both rental agreements dated October 1, 2018 state, among other things, the
20 following same terms: (a) the premises is identified as "1783 - 33rd Avenue," which is the entire
21 property; (b) the appliances provided are "stove, refrigerator, microwave, dishwasher, garbage
22 disposal"; (c) the term is from 10/1/18 through 9/30/19; (d) parking is provided "in one car
23 garage and legally parked in driveway only"; (e) and the tenant is required to pay all utilities,
24 except for water, sewer, and trash. (Landlord Pre-Hearing Submission, received November 2,
25 2020, pages 5 and 7-8; and Landlord Post-Hearing Submission, received November 10, 2020,
26 pages 3 and 5-6) While nothing about a total rent of \$3,500.00 is stated in either rental
27 agreement, neither agreement specifies any exclusive areas for the tenant or Ms. Day.
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1 8. The landlord testified that he believed preparing the two rental agreements was
2 the proper process of adding a co-tenant to an existing tenancy. He further testified as follows.
3 When Ms. Day was advertising for a housemate, the landlord knew she was seeking \$1,500.00
4 monthly rent from a housemate because, according to Ms. Day, she could only afford the
5 balance of \$2,000.00, for a total existing monthly rent of \$3,500.00. Ms. Day's new rental
6 agreement therefore specifies the \$2,000.00 rent she could afford and the tenant's rental
7 agreement specifies the balance of \$1,500.00, for a total monthly rent of \$3,500.00. The
8 landlord and the tenant never had any discussions regarding the living arrangements between
9 the tenant and Ms. Day. The only discussion between the landlord and the tenant before signing
10 the lease was about the approval of the rental application, that the landlord would prepare a
11 lease, and that the tenant would be moving in on October 1, 2018.

12 9. The tenant testified that he was unaware of any discussions between the
13 landlord and Ms. Day concerning his occupancy of the house, their new rental agreement, or
14 the \$3,500.00 total monthly rent. The tenant further testified that he believed he was signing a
15 lease to exclusively occupy two bedrooms in a house shared with two other occupants, and that
16 he was starting a separate tenancy with the landlord. The tenant acknowledged that he never
17 had any discussions with the landlord regarding the living arrangements between he and Ms.
18 Day.

19 10. It is undisputed that the tenant gave his security deposit and paid \$1,500.00
20 monthly rent directly to the landlord during all relevant times. It is also undisputed that, pursuant
21 to the new rental agreement, Ms. Day paid \$2,000.00 monthly rent directly to the landlord during
22 all relevant times.

23 11. On March 3, 2020, Ms. Day gave written notice to the landlord that she would
24 vacate the property within 30 days. (Landlord Pre-Hearing Submission, received November 2,
25 2020, page 23) The landlord testified that Ms. Day vacated the property pursuant to her notice.
26 He further testified as follows. Ms. Day's daughter vacated the property later in mid-April 2020,
27 after the landlord "inadvertently" had the lock to the property changed. Ms. Day paid her rent
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1 through mid-April 2020 when her daughter vacated, and the landlord returned her security
2 deposit. (Landlord Pre-Hearing Submission, received November 2, 2020, page 25) The tenant
3 testified that Ms. Day vacated the property sometime in April 2020 and that her daughter moved
4 out in or about May or June 2020 after the landlord's father changed the lock to the front gate.

5 12. The landlord testified that, according to Ms. Day, she and her daughter vacated
6 the property because the tenant made co-living difficult for them. The landlord submitted an
7 email dated October 29, 2020 he received from Ms. Day that states, in relevant parts: "The
8 *current tenant made the situation completely uncomfortable and unlivable, we chose to leave*
9 *[sic]. He was the only reason.*" (Landlord Pre-Hearing Submission, received November 2, 2020,
10 page 25) The tenant disputed that Ms. Day vacated the property because of him; he believed
11 that she had vacated pursuant to a notice of termination served by the landlord. The tenant
12 further testified that Ms. Day had harassed him for approximately one-year before she vacated
13 the property. The landlord testified that he did not serve a notice of termination on Ms. Day, and
14 that Ms. Day voluntarily vacated the property pursuant to her March 3, 2020 notice.

15 13. Meanwhile, on March 4, 2020, the landlord served the tenant with a written 60-
16 day notice of termination of tenancy that did not specify any reason for the termination. The
17 tenant testified as follows. When he received the notice, he called the landlord and inquired of
18 the reason for the notice. The landlord responded that, since he was the owner, he could do
19 what he desired and he wanted the tenant to vacate the property. The tenant then attempted to
20 negotiate with the landlord about his occupancy, but the landlord rebuffed the attempt. The
21 landlord testified that, at that time, he was unaware of the "just cause" requirement of the
22 Ordinance. The landlord further testified that, when he found out about the requirement, he
23 immediately rescinded the notice of termination of tenancy.

24 14. The tenant testified that, after Ms. Day and her daughter vacated the property, he
25 expected the landlord to rent out their former area to other people.

26 15. Instead, on August 4, 2020, the landlord served the tenant a written Notice of
27 Change of Terms of Tenancy stating that, effective December 1, 2020, the terms of the tenant's
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1 tenancy would change as follows:

2 "1. As of December 1, 2020, you will have the exclusive right to occupy the
3 entire single-family dwelling unit located at 1783 33rd Avenue, San Francisco,
4 CA 94122, without any pre-existing roommates. The single-family dwelling
5 unit located at 1783 33rd Avenue, San Francisco, CA 94122 is alienable
6 separate from title to any other dwelling unit as defined by Civil Code Section
7 1954.52.

8 2. Your rent will be increased to \$4,200.00 per month."

9 (Landlord Pre-Hearing Submission, received November 2, 2020, pages 18-19) Along with this
10 notice, the landlord included a cover letter to the tenant that states the following in relevant parts:

11 "Enclosed with this letter is a notice of change of terms of tenancy. Specifically, I
12 want to update your terms of tenancy to reflect that the oral provision of your
13 lease under which you shared the house with another individual is no longer a
14 term of your tenancy – as of the effective date of the notice, you have sole and
15 exclusive control of the entire house. The attached notice reflects that change,
16 and your lease agreement covers renting the entire house."

17 (Landlord Pre-Hearing Submission, received November 2, 2020, page 21)

18 16. The tenant testified that he still exclusively occupies only the two bedrooms and
19 uses the common area kitchen and bathrooms. He further testified that he does not use Ms.
20 Day's former exclusive areas and that those areas remain vacant.

21 17. As of the hearing on November 5, 2020, the tenant had paid \$1,500.00 in
22 monthly rent through November 30, 2020.

23 18. The landlord contends that the subject unit is a single-family dwelling exempt
24 from the rent increase limitations of the Ordinance pursuant to the Costa-Hawkins Rental
25 Housing Act.

26 19. The tenant contends that there are two rental units in the building, that he still
27 only rents his unit (which is the exclusively occupied two bedrooms and the shared kitchen and
28 bathrooms), and that the landlord may not force the tenant to rent the entire house.

CONCLUSIONS OF LAW

Jurisdiction

1. The issue in this case is whether the tenant's rental unit is exempt from the rent
control provisions of the Ordinance as a single-family dwelling under Civil Code Section

1 1954.52(a)(3) of the Costa-Hawkins Rental Housing Act ("the Act"). Civil Code Section
2 1954.52(a)(3) of the Act and Ordinance Section 37.3(d)(1)(A) provide that "a dwelling or unit
3 which is alienable separate from the title to any other dwelling unit" is exempt from the rent
4 increase limitations of the Ordinance if the tenancy commenced on or after January 1, 1996.
5 Section 1954.51(e) of the Act further provides that "[r]esidential real property' includes any
6 dwelling or unit that is intended for human habitation."

7 2. In this case, the tenant argued that, notwithstanding the legal description of the
8 property as a single-family home, the property should be treated as a multi-unit building since the
9 landlord rented out separate bedrooms under separate rental agreements. The determinative
10 issue is whether the landlord divided the property into two units by renting separate areas of the
11 premises to the tenant and Ms. Day.

12 3. Based on the specific facts of this case, the undersigned Administrative Law Judge
13 finds that the subject rental unit was not divided into two rental units by the landlord. Rather, the
14 evidence established that the landlord rented the entire single-family house to Ms. Day and her
15 then-boyfriend in 2014. It further established that, in October 2018, Ms. Day brought the tenant in
16 as a housemate to help her pay the rent – i.e., she advertised for a housemate, screened
17 applicants, and recommended the tenant to the landlord as the selected housemate. While the
18 landlord prepared and entered into two separate rental agreements for Ms. Day and the tenant,
19 the terms of the two agreements are identical except for the respective shares of the rental
20 amounts – i.e., \$2,000.00 for Ms. Day and \$1,500.00 for the tenant, for a total existing monthly
21 rent of \$3,500.00. Furthermore, the rental agreements did not specify any exclusive areas for
22 either Ms. Day or the tenant, but instead identified the entire house as the rented premises.

23 Put another way, the evidence did not establish that the tenant's agreement with the
24 landlord provided for his exclusive occupancy of a portion of the house. Instead, the evidence
25 established that Ms. Day and the tenant had shared use of the entire house at their discretion,
26 without any contractual limitations or interference by the landlord. Although the landlord entered
27 into separate tenancy agreements (for different rental amounts totaling the existing rental
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1 amount), it was still entirely up to Ms. Day and the tenant to decide how to share occupancy of
2 the house. Indeed, the evidence established that Ms. Day and the tenant agreed to a specific
3 habitation agreement, but that agreement was not part of the rental agreements with the landlord.
4 To be clear, specific exclusive use of certain rooms was never one of the terms of occupancy for
5 either of the tenants. This is supported by the parties' concurring testimonies that they never
6 discussed any exclusive areas when they signed the tenant's rental agreement, as well as the
7 two rental agreements' identification of the entire house as the leased premises (as opposed to
8 any specific designated exclusive areas) and the same terms contained therein (except for the
9 monthly rental obligations of each tenant that adds up to the existing total rent of \$3,500.00). The
10 fact that the tenants were severally liable under the two separate leases (as opposed to being
11 jointly and severally liable under one lease) does not negate the fact that they shared use of the
12 entire house at their discretion without any contractual limitations or the landlord's interference.

13 In sum, the landlord met his burden of proving that the subject rental unit is separately
14 alienable from the title to any other dwelling unit as required under Civil Code Section
15 1954.52(a)(3)(A). Accordingly, the subject rental unit is exempt from the rent increase limitations
16 of the Ordinance. [Ordinance Section 37.2(r)] The December 1, 2020 increase in the tenant's
17 monthly rent from \$1,500.00 to \$4,200.00 is therefore authorized by Civil Code
18 Section 1954.52(a)(3)(A) of the Costa-Hawkins Rental Housing Act.

19 ORDER

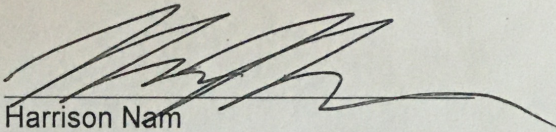
20 Wherefore, all the evidence having been heard and considered, it is the order of this
21 Administrative Law Judge that:

22 1. Petition No. T200768 as amended is denied. It is determined that the landlord is
23 entitled to increase the rent pursuant to Civil Code Section 1954.52(a)(3)(A) of the Costa-
24 Hawkins Rental Housing Act, and the December 1, 2020 rent increase to \$4,200.00 is therefore
25 lawful.

26 2. This Decision is final unless the Rent Board vacates the Decision following an
27 appeal to the Board. The parties must file appeals no later than fifteen calendar days from the
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1 date of the mailing of this Decision, *on an appeal form available from the Rent Board*. If the
2 fifteenth day falls on a weekend or legal holiday, then the parties may file their appeals on the
3 next business day. [Ordinance Section 37.8(f)(1)]
4

5 Dated: January 26, 2021


6 Harrison Nam
Administrative Law Judge