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TENANTS' REPORT

on

RENT ARBITRATION

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Preface

Oakland's Residential Rent Arbitration Board (RRAB) was established by City Council in October, 1980 as part of the campaign to defeat rent control in Oakland. Although Council stated that the RRAB is intended to stop speculation and rent-gouging, the RRAB's real effects have been very different. From the tenant's point of view, Oakland's RRAB is a weak and ineffective law which is absolutely incapable of offering any real protection against the double danger of rent increases and evictions.

City Council started discussing the idea of a Rent Board as early as the spring of 1980, following the Oakland Tenant Union's campaign for a city-wide rent freeze. The city's Rent Control Task Force, which was dominated by landlords and real estate interests, toyed with the idea for months without taking any action.

Meanwhile, tenants were organizing the ballot initiative which would place a genuine rent control ordinance before Oakland's voters at the November, 1980 general election. Not until the final weeks of the campaign for Measure E did City Council unveil its plan for a more "moderate" alternative to rent control -- the Residential Rent Arbitration Board.

The Oakland Tenants Union opposed enactment of the RRAB right from the start. It was our view that voters should get the chance to cast their ballots on Measure E before any alternative measures were adopted.

Landlords and realtors, particularly the Small Owners for Fair Treatment (SOFT) and the Oakland Board of Realtors, had taken a strong role in formulating the new RRAB. Naturally, they applauded its appearance at a time when Measure E was attracting widespread public support. They used the RRAB as a way of undermining support for Measure E without really conceding anything at all. The campaign line which landlords employed extensively against Measure E urged voters to "Give the new Rent Board a chance to work."

The RRAB was never intended to be a real solution to Oakland's rental housing crisis. Rather, it was conceived as a political maneuver for defusing tenants' efforts to achieve genuine rent controls in Oakland. No sooner was Measure E out of the way than the landlords turned around to attack the RRAB for offering tenants too much protection!

Because of this, the RRAB is not designed to deal adequately with rent increases, evictions, notifications to tenants and a host of other issues which any serious Rent Board must be capable of handling. The consequences of the RRAB's deep-rooted weaknesses have been felt by tenants throughout Oakland who have tried to protest rent increases before the Board. In the report which follows, the Oakland Tenants Union will examine the record of the RRAB's decisions in order to demonstrate that the RRAB has failed utterly to offer tenants any real protection. Far from being a shield for tenants, Oakland's Residential Rent Arbitration Board is actually another weapon for the city's landlords.

TENANTS' REPORT ON RENT ARBITRATION

Report of the Board Watch Committee
of the Oakland Tenants' union

Oakland's Residential Rent Arbitration Board has now held thirteen hearings. The first was December 29 and the most recent was March 5. Members of the Board Watch Committee of the Oakland Tenants' Union have attended every hearing, as well as every work session, and have maintained a detailed record of the proceedings.

Under the terms of Ordinance 9980, establishing the board, the burden of filing a petition to get a hearing falls on the tenant. So far, according to spokespeople for the board's office at 1417 Clay St., about 320 Oakland tenants have filed petitions to protest rent increases in excess of 10 percent for occupied units, or 12 percent for units that are vacant.

Of these 320 or more tenant petitioners, 115 (slightly more than a third) have got so far as to be listed on the board's hearing calendar. That is, their cases have been presented to the board on an evening's hearing agenda. We count each tenant petition as an individual case, regardless whether a tenant was heard by the board separately or was consolidated with other petitioning tenants in the same building.

What has been the fate of these 115 tenant petitioners? The following table gives a broad overview.

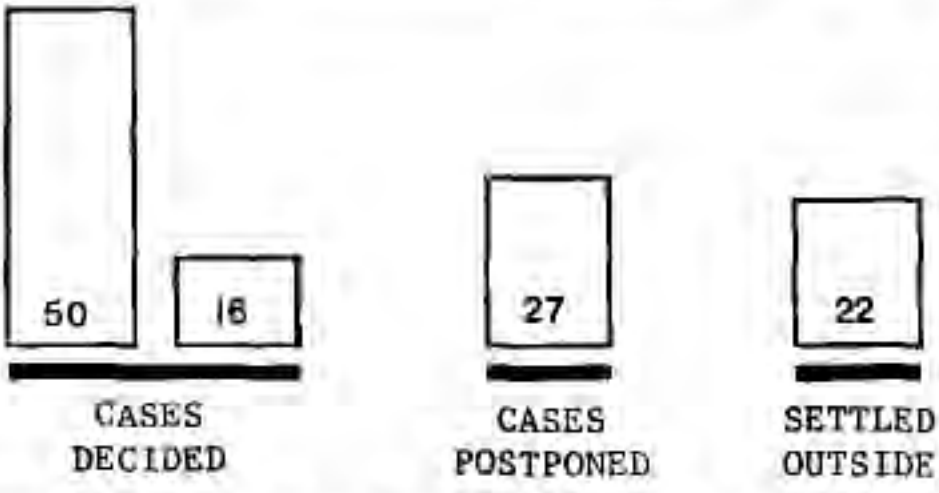

TABLE: FATE OF THE FIRST 115 TENANTS IN ARBITRATION

Landlord got increase in excess of ceiling	50	(44%)
Rent increase reduced to ceiling	16	(14%)
Case postponed, currently "on hold"	27	(23%)
Settled outside, petition dropped	22	(19%)

This table shows by far the largest group of tenant petitioners have met with denial before the board. In 44 percent of the cases to reach the hearing agenda, the tenant's request to have the rent increase reduced to the 10 percent (or 12 percent) ceiling has been rejected.

The second largest group of petitioners has met with delay from the board. Their case, though listed on the agenda, did not come to a hearing, or, if heard, did not reach a decision. They have to come back a second night, or third, or fourth, or fifth.

The third largest group, amounting to nearly one out of five (19%), has decided to settle their cases outside the rent arbitration process, and has withdrawn the petitions.

Finally, at the tail end of this procession of 115, comes the category of 16 tenants — one out of seven -- whose rent increases have been reduced to the legal ceiling. Even this slim figure, however, gives a greatly deceptive and exaggerated picture of the degree of satisfaction that the tenants of Oakland have got from rent arbitration. One fourth of these tenant "wins", as we will show, resulted in the tenant's receiving an eviction notice; and nearly every other case in this group came about as a result of the landlord's default.

To give a more complete picture of rent arbitration in action, we will now proceed to break these figures down in more detail.

Of the 115 cases presented to the board, some 66 tenant petitioners have got a decision one way or the another. We will study first these decided cases, amounting to 57 percent of the total, and then the cases that have been postponed.

I. DECIDED CASES. (A) What Landlords Got.

Of the 66 tenant petitions which the board decided one way or another, the decision allowed a rent increase in excess of the ceiling in 50 cases (76%). The rent increase was reduced to the ceiling in 16 cases (24%).

TABLE: SUMMARY OF DECISIONS

Rent increase granted in excess of ceiling	50 (76%)
Rent increase reduced to the ceiling	16 (24%)

It is obvious that in three decisions out of four, the landlords got an exemption from the ceiling.

The 50 decisions in favor of the landlords' exemption can be further broken down.

In 44 of these 50 cases, the landlords got the entire rent increase they asked for. The landlords'

rent increase was rubberstamped. (In a number of cases, in fact, the board informed the landlords that they could have gotten larger increases than they asked for.) This group of cases is the largest single group of cases in the whole 115 to appear on the board agenda. More tenants encountered this outcome than any other outcome. This is the ground for concluding that rubberstamping landlords' rent increases is the principal activity of the rent arbitration board.

The rent increases which the board rubberstamped ranged from a low of 20 percent to a high of 100 percent. The average increase passed along to the tenant came to 34 percent, more than triple the ceiling.

Tenants living in the larger apartment buildings have received the coldest reception before the board. In the prototype case, involving a group of tenant petitioners in the 88-unit building at 257 Vernon Street, the owners were represented by a professional CPA with a three inch thick folder of papers. The board majority swallowed without question the landlords' version of events, even allowing a pass-through of the cost of coin-operated laundry machines and of copying machines in the management offices, of no benefit to tenants. Tenant spokespeople were repeatedly ruled out of order and denied the right to share their experiences. The board approved increases averaging 30 percent, nearly all for cosmetic improvements to "primp" the property before putting it up for sale.

In another case, a tenant from a run down 45-unit East Oakland building came before the board protesting rent increases totalling 52 percent. The board again rubberstamped the landlord's requests. The tenant afterward wrote the board stating "the only thing the rent arbitration board did was to attempt to make me believe that the owner of the apartments is justified in his diligent effort to take advantage of the underprivileged."

No tenant from a larger residential building has yet won a rent reduction to the ceiling. The only case where the board cut a request down to the flat 10 percent involved a downtown Oakland semi-transient hotel. In only one case was a tenant from a larger residential building able to bargain the landlord down within range of the ceiling during a board hearing. This involved an old 60-unit building in the East Oakland flatlands where the tenants suffered roaches, fleas, broken locks and no heat for the past 18 months. Their rent was raised 13 percent.

Tenants petitioning from medium and smaller buildings did not necessarily fare better. The board rubberstamped a 33 percent rent hike on a tenant of 12 years' tenure in a 12-unit building on Lake Street--a woman who is an invalid, living on a fixed income and unable to attend her hearing. The biggest increase on record, 100 percent, was dealt to a tenant in an owner-occupied fourplex. Another tenant in an owner-occupied duplex got no relief from a 33 percent hike. One tenant renting a single-family home got hit with a raise of 59 percent plus the water bill.

In the six cases where the board approved rent increases greater than the ceiling, but less than what the landlord asked for, the tenant petitioners did not fare significantly better than the other 44 who got rubberstamped. The rent increases of these six averaged 33 percent, practically the same as the 34 percent increase in the average rubberstamp case.

The board's new formula on debt service, adopted Feb. 17, has provided tenants with scarcely any significant shelter against rent gouging and big lump-sum increases due to new owners taking second mortgages and other high-risk financing. The 13 tenant petitioners whose cases have been computed so far under the new formula have been hit with rent increases averaging 40 percent. The formula has given the landlords an average of 89 percent of what they asked for, and three landlords were told that they could have asked for more -- including the landlord who raised the invalid woman on a fixed income by 33 percent.

The board has shown flagrant bias toward landlords--and disregard for its own procedures -- in evaluating evidence. Under the board's policies and procedures, landlords requesting increases in excess of the ceiling are supposed to bring documents proving their costs. In practice, the board is accepting estimated and projected costs without firm grounding in reality, and in at least two cases has granted rent increases when the landlord has brought in no documentation whatever. This is a mockery of due process.

In more than a dozen cases, the board has permitted the landlords to raise rents when evidence has been presented of long-standing code violations in the building. Buildings that are not even habitable by the legal definition have been approved for rent increases. In other cases, landlords have received approval for rent raises even though they failed to comply with state law requiring 30-day notice to tenants before rent increases. These are further illustrations of glaring bias toward landlords.

Tenants at the hearings have also repeated complaints about the biased conduct of the chair. More than once, the tenants' requests regarding the order of the hearing cases in an evening have been ignored and their landlords' requests catered to. Many tenants who have sat through the hearings have remarked that the evidence presented by tenants is frequently ruled "irrelevant" or "out of order," while the landlords scarcely ever hear the gavel.

(B) What the Tenants Got.

Only 16 out of the 115 petitioning tenants so far to come before the board have "won" a reduction of their rent increases to the 10 percent (or 12 percent) ceiling. However, this figure, amounting to only 14 percent of the petitioners -- about one out of seven -- greatly exaggerates what satisfaction tenants have got from the board.

Four of the 16 tenants were able to bring out at their hearings -- despite being ruled out of order by the chair -- that they had received eviction notices shortly after filing petitions to the board.

They "won" their cases at the cost of losing their apartments. They had to bear the costs of moving. Their landlord was not punished in any way. If the tenants had overpaid the last month's rent, it was up to them to try to collect a refund from the landlord.

The rent arbitration system provides tenants with no warning that they are exposing themselves to the danger of eviction for filing a petition. It provides them with no protection if eviction occurs. Moreover, tenants will be ruled out of order if they attempt to place the fact of their eviction onto the hearing record. This is intolerable.

In addition to the four tenants who received eviction notices and then "won" their cases, we know of several others who received eviction notices and then lost their cases or were put "on hold."

Subtracting the four evicted tenants from the 16 tenant "wins" leaves 12 petitioners whose increases were cut to the ceiling.

In one of these cases, the board denied the landlord $45 of the requested increase, but allowed the landlord to shift a $47 water bill and the job of lawn maintenance to the tenant. It is difficult to count this case, either, as a tenant "victory."

That leaves eleven tenant "wins". It is a significant commentary on the nature of the rent arbitration system that in ten of these eleven cases, the landlords either did not show up at the hearings at all, or showed up in person but filed no written material with the board. (In eight cases the landlord did not show; in two cases the landlord showed but did not file.)

In other words, ten out of eleven tenant "wins" came about by landlord default. In only one case (eviction cases apart) out of the 115 petitioners did the board rule in favor of the tenants when the landlords filed written material and showed up at the hearings. To put it another way, eviction cases apart, every landlord who followed the rent arbitration procedure enough to file and show, except one case, got approval for a rent increase in excess of the ceiling.

In addition it must be emphasized that even a ten percent rent increase is a substantial blow to the budgets of average and low income renters in these hard times. Although the board has listened to scores of hours of landlords reciting their real and pretended economic woes, it has never once asked tenants to outline their own cash flow problems to determine the impact of a 10 percent rent hike on their budgets.

Other Bay Area cities that have some form of rent regulation allow less than the 10 percent permitted to the owners of Oakland residential property. Hayward, San Jose, and San Francisco set a ceiling at seven percent. Berkeley allows five percent. The landlords who appear at Oakland's rent arbitration hearings, by the way, are frequently not Oakland residents. The beneficiaries of rent arbitration include residents of Sunnyvale, Danville, Piedmont, Walnut Creek, San Leandro and cities and towns outside the Bay Area.

It must also be noted that a perverse effect is taking place whereby the ten percent "ceiling" is turning into a floor. We have learned on usually reliable authority that realtors and lenders are directing landlords of Oakland property to take a full 10 percent increase at this time, whether their actual costs warrant it or not. The most definite material impact of rent arbitration on the housing scene in Oakland, therefore, appears to be the legis-

lative imposition of a general increase in rents throughout the city. This makes a big contribution to all-around inflation to the benefit of landlords, realtors and banking institutions.

II. CASES UNDECIDED. CONTINUANCES -- WHO AND WHY.

We will now look at the 49 cases presented to the board in which no decision was or has been reached. Since little is reliably known about the cases settled outside the hearing process, we are focusing here on the problem of the postponed cases. How widespread is the practice of postponing (continuing) cases? Who and what is responsible for it?

Currently, as of the end of the March 5 hearing, some 27 tenant petitioners are "on hold." Their cases have come up on the agenda, but either not been heard yet, or heard but not decided yet. This group of 27 petitioners makes up the second largest group, after the tenant petitioners whose petitions were denied.

This figure, however, gives only a dim idea of the whole wall of delay, postponement, stalling and run-around which the board imposes on the mass of petitioners. The board has postponed a petitioner's case in so many instances that we can only give approximate figures. By our count there are 124 instances of a petitioner being delayed at least one time by a decision or ruling of the board.

Of these instances, 45 petitioners were postponed "only" one time. An additional 21 were postponed twice. Three were postponed three times, and seven petitioners (in a consolidated case) were postponed four times.

An additional number of tenant petitioners had their hearings delayed by a decision of RAB staff, without prior review by the board.

The most common length of postponement during the earlier weeks of hearings was three weeks. During February, a tenant whose hearing was postponed typically faced a delay of six weeks until the next hearing.

Furthermore, during February the board slowed the pace of its hearings to one session per week. This occurred at the same time as the office was receiving, according to its secretary, Mrs. Henrietta Scott, enough new petitions each day to fill one meeting's agenda.

Consequently, new cases now coming in are usually not even scheduled for a hearing until dates considerably after the May review of the Rent Arbitration Board by City Council. Petitions now coming in, amounting to a backlog of more than 200 cases, are being automatically delayed and postponed in a bloc to dates long past the 30-day deadline a tenant is allowed for filing.

Postponement means that a tenant is entitled under the ordinance to pay only a 10 percent increase (or 12 percent for vacant units) until the case is decided. But if the tenants then lose, they may have to pay the whole back rent in one lump sum. Postponement also means that if the petitioning tenant "wins" it will be too late for the other tenants in the building to file for equal reductions. Even if tenants should "win" their case remains isolated within the building. The rent increase reduction does not spread. This is of great importance to the owners of the larger apartment buildings.

Who and what is responsible for the mass of delay and postponement? The hearings allow a clear answer to this question.

The chief cause of delay is landlord noncompliance. When landlords are notified that a tenant of theirs has filed a petition, they have 14 days to file a

response. The landlords widely evade this provision. Sometimes the hearings sound like a bad night at the emergency room of County Hospital. This landlord is sick, that one was in a car accident; another broke his leg, one got mugged, another has sick children, a death in the family, or their interpreter is in the hospital. Others manage to drag themselves in but have no documents. They say their mailbox was robbed, their accountants don't answer the phone, their secretaries won't give them messages, their purse was stolen, etc. These are all actual examples from the hearing record. In each case the landlord is attempting to deny the tenant the right to a hearing before the board. A hearing delayed is akin to a hearing denied.

Yet so far we have not witnessed one case where a tenant was unable to proceed with a hearing due to illness or accident. In one case where a tenant was unable to appear in person, she sent a representative with a signed doctor's certificate. Only a single case has been delayed, to our knowledge, at the request of the tenants.

In a fair and impartial procedure, most of the landlords who request postponements would in due course be denied, found in contempt, and made to forfeit their rent increases. However, the landlord element enjoys the cooperation of its fifth column on the arbitration board, in the person of the landlord representatives and their "neutral" allies. The landlords on the board have wasted countless hours catering to the outside landlords' stalling tactics. They have carried on an effective sabotage of the hearing process.

We have a record of the board members' motions to continue a case. The record is quite clear. The motion to continue a case was moved ten times as often by the two landlord members of the board as by the two appointed tenant representatives. Moreover, one of the two landlord representatives initiated or seconded continuance motions at least twice as often

as the other. Statistics show unambiguously that the number one proponent of delay on the board is landlord representative Steven Strauss.

In an almost equally large number of cases, the decision to postpone a hearing is made by ruling of the chair, without a vote. Since the chair is always a "neutral", the "neutrals" must take a large share of the blame for delaying the hearings.

Two additional factors making for delay are built into the framework of the ordinance. Lack of guidelines for resolving the debt service issue held up the cases of about ten tenant petitioners through several postponements, until the board evolved its own policy formula. The fact that the ordinance provides no compensation for board members, and no proper staff of the board, is without a doubt a contributing factor to the slow pace of hearings and the long backlog.

The basic cause of the delays with which tenant petitioners have had to put up with was shown at the hearings February 19. Despite good weather, only the two tenant representatives and one "neutral" showed up. The two landlord representatives were absent without excuse. There was no quorum. Hearings had to be cancelled. An audience of more than 20, including tenants and landlords, had to get their cases rescheduled.

In a word, the responsibility for holding up the hearings process lies entirely with the landlord element. Even though the rent arbitration ordinance is the landlords' own brainchild, born in the context of last November's elections, in the context of today the landlords show widespread reluctance to honor any part of the law apart from the automatic 10 per cent/12 percent rent hikes. The duty of posting rents in vacant units, and of supplying tenants with addendums to leases, are two additional examples of legal duties at which the landlords of Oakland are thumbing their collective noses with impunity.

In brief summary, the number of tenant petitions received by the rent arbitration board during its brief existence is a telling sign of the continuing housing crisis in the city of Oakland. We estimate that for every tenant who assumes the risk and expense of filing a petition, there are scores of others who are entitled to file but fear landlord retaliation. The Residential Rent Arbitration Board has proved itself in practice overwhelmingly biased toward the landlords. By its decisions and by its indecision it has forfeited any right to claim the tenants' confidence. The principal material effect of the rent arbitration ordinance has been to bring about a general rent increase of at least 10 percent throughout the housing market in the city of Oakland.

Update

Here is an update on the arbitration board's actions up to our press time. There have been two more hearings. A total of 47 tenant petitions came up on the agenda. It was business as usual: The landlords got an increase in excess of the ceiling in 18 of the cases (39%). The rent increases in these cases averaged 36 per cent, slightly higher than before. Eleven tenants had their cases postponed. Ten cases were reported settled outside. Only eight tenants out of the 47 had their rent increase cut to the ceiling, and in seven of these cases the landlord did not show up or did not file papers. At least two tenants got served eviction notices after filing their petitions!

(April 2, 1981)

In view of the foregoing considerations, the Oakland Tenants Union makes the following demands:

1. Tenants petitioning the board must be protected against retaliatory eviction. Eviction is permitted for just and proper cause only, and the burden of showing cause is on the landlord. Any eviction coming within six months of the tenant filing a petition is presumed to be retaliatory. Retaliatory eviction invalidates any rent increase. Tenants who suffer retaliatory eviction must receive compensatory and punitive damages from the landlord.

2. The burden of petitioning must be shifted from the tenants to the landlord. Instead of tenants having to file in order to protest rent increases, landlords must be made to register and file in order to get rent increases.

3. The amount of rent increase which a landlord may get without having to file must be lowered to one-third of the Consumer Price Index so long as the vacancy rate in the Oakland residential housing market remains below the crisis level of five percent.

4. The rent board should be elected rather than appointed. However, so long as the appointive principle prevails, there must be changes in the composition of the board. The number of tenant representatives must be made proportional to the percentage of tenants in Oakland's population (around 60 percent). Tenant representation must reflect the minority communities.

5. The debt service pass-through policy of the board must be substantially tightened up so as to afford tenants significant protection against real estate speculation, excessive financing costs, inflated purchase prices, and other abuses. No debt service pass-through for capital improvements, especially those of a cosmetic nature, is to be allowed unless the express consent of the affected tenants has been obtained.

6. Landlords must be compelled to comply with the provisions of the ordinance regarding the posting of vacancies and the furnishing of addendums. Landlords found not in compliance must refund any rent increases. No rent increase is to be granted on oral testimony alone; the landlord must present valid documents. No landlord is to get an increase if in violation of state law regarding 30-day notices. No rent increase is to be permitted in units while violations of the housing code impair their habitability. Landlords who fail to comply with decisions of the board will be subject to penalties.

7. Provided the above demands have been in substance complied with, City Council must provide the board members with adequate pay for their work and with staff of sufficient strength to make for a speedy handling of cases.

March 10, 1981

The OAKLAND TENANTS UNION is a social change organization fighting for improved living conditions for tenants and for more control over housing, either by changing the laws, or by organizing our buildings and neighborhoods.

We are a membership organization supported solely by our members; financially through dues and donations and otherwise by volunteer staff, organizers, counsellors, etc. Membership in OTU is only $5 per year and includes a subscription to our monthly newsletter, the Oakland Tenants Tribune, and a vote at general membership meetings.

With the power of numbers and the willingness to work together, we can take control of housing from the landlords and put it back into the hands of tenants, where it belongs.

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