



## **HEARING PROCEDURES FOR APPEALS REGARDING LANDLORD/TENANT DISPUTES FOR NON-PAYMENT OF RENT DUE TO FINANCIAL IMPACTS RELATED TO COVID-19**

Introduction: Purpose of the hearing is to provide due process and a fair hearing to all parties.

### **I. Appeal for Hearing**

A. Residential tenant submits Appeal to the City and the landlord, using the City's form ("COVID-2019 Appeal Form") within 10 days after the landlord notifies the tenant in writing (including by an email or text) that the landlord disagrees with the tenant's determination regarding the tenant's inability to pay all or a portion of the full rent.

B. Staff determines if COVID-19 Appeal Form is complete.

C. Staff transmits the complete COVID-19 Appeal Form and supporting documents to the Standing Committee of the City Council appointed to hear disruptive tenant hearings ("Subcommittee"), other Council Members appointed by the Mayor, or the Rent Stabilization Commission ("Commission"), as applicable ("Decision-Making Body").

D. If any member of the Decision-Making Body has a conflict of interest or bias for or against a party to the proceedings, please notify staff of the Rent Stabilization Division or the City Attorney's Office immediately.

### **II. Hearing**

A. The hearing must be scheduled within 15 days after a complete COVID-19 Appeal Form is filed with the City and shall be held within 15 days thereafter.

B. The Rent Stabilization Division will provide written notice of the hearing to the landlord and tenant at least 5 business days prior to hearing (by email or regular mail).

C. Prior to opening the hearing:

1. Staff describes the hearing process and provides a statement that the prerequisites of the hearing set forth in Section I have been satisfied.

2. Decision-Making Body members disclose any oral or written communications between the member and any party or witness.



3. City Attorney's office administers an oath to all witnesses at once: "Do you promise and swear that the testimony you are about to give is the whole truth and nothing but the truth so help you?"

4. Decision-Making Body establishes time limits (minimum 10 minutes each for landlord and tenant presentations, adjusted for translation and reasonable accommodation) and for rebuttal (minimum 5 minutes). If the record is extensive or if a party asks for more time, the Decision-Making Body should grant reasonable time periods, which are the same, to both parties. The purpose is to provide due process and a fair hearing to all concerned.

D. Landlord and tenant are entitled to assistance from any person, including an attorney.

E. Staff tape records the proceedings.

F. Decision-Making Body opens the presentation portion of the hearing to the parties but controls the hearing and maintains decorum.

1. Recesses can be used when discussion or testimony is heated.

2. If someone cannot control himself or herself, after at least one recess (preferably two), ask the person to leave the room/telephone call/video conference. If he or she does not leave, recess the hearing again and request staff to call a police officer (for hearings conducted at City Hall). (Important to demonstrate that the person has disrupted the proceedings.)

3. Typical order of proceedings:

i. Tenant's presentation, including tenant's testimony and written documentation.

ii. Testimony by others in support of Tenant's Appeal.

iii. Landlord's presentation, including landlord's testimony and written documentation.

iv. Testimony by others in support of Landlord.

v. Tenant's rebuttal/closing.



- vi. Portion of hearing for presentations by the parties is closed (unless hearing is continued to allow additional testimony or evidence to be presented at a future date).
- vii. Decision-Making Body deliberations.
- viii. Decision-Making Body votes to (a) uphold the tenant's determination regarding the amount of rent the tenant is able to pay (including \$0.00 per month, if applicable) as set forth in the tenant's COVID-19 notification form; or (b) to reject one or more of the tenant's contentions that a substantial financial impact exists, the financial impact is related to COVID-19, or regarding the amount of rent the tenant has determined the tenant can pay.

To take any of the actions, 2 votes are required by the Subcommittee or other Council Members designated by the Mayor and 4 votes are required by the Commission.

- ix. Assuming there are 2 votes or 4 votes to take any action, as applicable, the City Attorney will memorialize the decision in writing for review and approval by the Decision-Making Body.
- x. If there are not 2 votes by the Subcommittee or Councilmembers designated by the Mayor one way or the other, the Tenant's Appeal is granted and the tenant's Determination stands. If there are not 4 votes by the Members of the Commission one way or the other, then the matter shall be referred to the Subcommittee or Councilmembers designated by the Mayor for final determination.

G. Formal rules of evidence are not followed. Generally, all evidence is admitted unless it is irrelevant to the proceedings, in which case the Subcommittee, the two members of the Council Subcommittee appointed by the Mayor, or the Chair of the Commission, as applicable, can admonish a party that they are using their time to address irrelevant topics or ask the City Attorney's Office for a ruling about whether evidence is relevant and/or to admonish a witness or party to address relevant issues.

1. All evidence submitted by the tenant with the tenant's COVID-19 notification form or COVID-19 Appeal Form will be provided to Decision-Making Body. Any



supplemental documentation must be submitted to the Decision-Making Body and the other party (landlord or tenant, as applicable), at least two business days before the date of the hearing.

H. Cross examination of witnesses (including parties who testify) by other parties and members of the Decision-Making Body shall be allowed immediately after each witness is called by a party to testify.

J. The burden of proof is on the landlord to prove by a preponderance of the evidence that the landlord's determination is correct.

1. This means that the landlord must present relevant evidence that is more credible and convincing than the evidence presented by the tenant.

2. Adequate evidence can be in the form of testimony, documents and authenticated written statements.

III. Write and Issue Determination

A. Consult with the City Attorney's Office as needed regarding legal issues.

B. Assuming 2 votes or 4 votes, as applicable, to take an action on the Appeal, give direction to the City Attorney's Office regarding the evidence that the Decision-Making Body found to be relevant and credible in support of the Decision-Making Body's decision.

C. Decision-Making Body may recess the meeting to allow the City Attorney's Office to complete the decision form for review and approval by the Decision-Making Body.

D. Staff will email or mail by regular mail the notice of decision to the landlord and tenant within business 2 days of the issuance of the Decision-Making Body's written determination.