



CITY OF SAINT PAUL

OFFICE OF THE CITY COUNCIL

310 CITY HALL

15 WEST KELLOGG BOULEVARD

SAINT PAUL, MN 55102-1615

Marcia Moermond, Legislative Hearing Officer

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October 31, 2022

Angela Wilhight
261 Fifth Street East, #604
Saint Paul, MN 55101

Jack Cann
Housing Justice Center
275 4th St E., Ste 590
St. Paul, MN 55101

VIA EMAIL:

angela.wilhight@mpls.k12.mn.us

VIA EMAIL: jcann@hjcmn.org

Re: Rent Control Appeal of Jack Cann on behalf of Angela Wilhight for property at 261 Fifth Street East, Unit 604

Dear Ms. Wilhight and Mr. Cann:

The Legislative Hearing Office received your appeal of the proposed rent increase for this apartment unit on August 8, 2022. To summarize, you are appealing the proposed rent increase for your unit, indicating that it exceeds the 3% cap specified in the Saint Paul Legislative Code Chapter 193A Residential Rent Stabilization. You cited that the proposed rent increase for the annual lease renewal for September 1, 2022 – August 31, 2023 was 2.98%, an increase of \$47 (\$1,575 to \$1,622). However, you also indicated that utilities which have been provided to date under your lease will now be billed separately, bringing your rent increase well above the 3% cap. Based on the experience of such billing with a comparable unit, the utility charges would add \$130-\$150 to the expenses associated with renting your unit. These utilities include water, sewer, trash and natural gas. Taken together, the increase in costs falls between 11.2% to 12.5%. Whether or not this proposal for revising how your rent is paid is allowable under the rent control ordinance and the level of the proposed increase in charges related to your unit are the issues of this appeal. The increase in rent has been stayed during the appeal process.

Legislative Hearings were conducted on September 8, September 28 and October 13, 2022. The Department of Safety and Inspection (DSI) staff also conducted an audit of owner's 2 applications and met with the owner/representative to clarify information. What follows are my findings and recommendation for the City Council to consider in the appeal.

FINDINGS:

- On May 13, 2022 DSI received 2 applications from Rayette for this building:



- One application was to self-certify some of the units for an 8% increase. DSI automatically generated a letter which granted this request for an exception to the 3% rent cap.
- The other application filed was for a staff determination to increase the rent for more than 8%. This second application lacked specifics and supporting documentation, and, therefore, it was not processed and staff reached out to the applicant.
- This appeal was filed August 8, 2022. In the course of the appeal process, the owner completed the intake application for *staff determination* on a proposed rent increase in excess of 8%. Ownership listed the reasons for an exception to the rent cap were: 1) an increase in real property taxes; 2) an unavoidable increase in operating expenses; and 3) a capital improvement project. The same reasons were submitted for the self-certification process for an exception to the rent cap.
- The information garnered in the review of the staff determination application was used to audit the justification for the self-certified increase of 8%.
- DSI staff describe the intake form in this way – the intake form asks applicants to enter three pieces of information from the Maintenance of Net Operating Income (MNOI) worksheet: (1) income adjusted by CPI; (2) allowable rent increase; and (3) allowable increase unit per month. The premise of MNOI is that an owner is entitled to the same rate of return on investment in the current year as they received in the base year. This premise assumes there is some profit margin attained that is allowed to remain. As part of the self-certification process, the applicant received a confirmation email including their determination letter and a fillable flier for tenant notification.
- Under the DSI Rules, the base year for calculating allowable rent increases in the MNOI is 2019. However, as Rayette Lofts was acquired by the current owner mid-2019 and the owners lacked complete data for that year, DSI determined that 2020 could be used as the base year, which is permitted under the DSI Rules.
- DSI's findings were as follows:
 - In the DSI staff review of the portion of the application requesting more than an 8% increase in rent, staff found Rayette Lofts to be eligible for a 9% rent increase. Importantly, the application listed specific apartments for which they were seeking more than an 8% increase.
 - Because the staff review looked at building data, the units in the rest of the building which were covered by the self-certification application qualified for the 8% requested. The self-certification application was submitted indicating it was intended the units in the building not listed in the above staff review application.
- Notably, ownership was clear in its contention that no exception to the rent cap was necessary for this unit, as the change in how utilities were being charged to the tenant did not constitute a change in rent above 3%. However, the completion of the self-certification application covered all the units in the building which were not submitted for greater than an 8% increase.
- Natural gas, water and sewer charges are considered a part of a proposed rent increase, based on the definitions of rent and housing services from the Residential Rent Stabilization ordinance. Here is the link to the Residential Rent Stabilization Ordinance for you reference:
https://library.municode.com/mn/st._paul/codes/code_of_ordinances?nodeId=PTIILECO_TITXICOPR_CH193AREREST I have provided the relevant provisions below.

Unless otherwise expressly stated, the following terms shall, for the purposes of this chapter, have the meanings indicated in this section:

- ...
- (d) **Housing services.** *Housing services include but are not limited to repairs, maintenance, painting, light, hot and cold water, elevator service, window shades and screens, storage units, kitchen, bath, and laundry facilities and privileges, janitorial services, utilities that are paid by the landlord, refuse removal, furnishings, telephone services, vehicle parking spaces, the right to have a specified number of occupants, and any other benefit, privilege, or facility connected with the use or occupancy of any rental unit. Housing services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the unit is contained.*
- ...
- (g) **Rent.** *All monetary consideration charged or received by a landlord concerning the use or occupancy of a rental unit pursuant to a rental agreement.*
- (h) **Rental agreement.** *An agreement, oral, written, or implied, between a landlord and a tenant for the use or occupancy of any rental unit.*
- (i) **Residential rental unit, rental unit, or unit.** *Any dwelling unit, or portion of a dwelling unit, that is rented or otherwise made available for rent for residential use or occupancy, together with all housing services connected with the use or occupancy of such property. This term shall not include the following:*
- ...
- (j) **Residential rental property.** *Residential rental property shall have the same meaning as residential rental unit, rental unit, or unit as defined in section 193A.03(i) of the Code.*
- (k) **Tenancy.** *The right or entitlement of a tenant to use or occupy a rental unit under the terms of a rental agreement.*
- (l) **Tenant.** *A person who is occupying a rental unit in a residential building under a rental agreement that requires the payment of money or exchange of services, as well as other regular occupants of that unit.*

– **Emphasis added.**

- The rent charged to Ms. Wilhight in her previous lease agreements included the provision of natural gas, water, and sewer charges. They are “housing services,” per the ordinance’s definition. Rent is defined simply to include “all monetary consideration charged or received by a landlord concerning the use or occupancy of a rental unit pursuant to a rental agreement.”
- The change in accounting practice for the owner, in modifying the monthly payment arrangement to separate rent and utility payments for this unit does not change the way the ordinance is applied.

RECOMMENDATION:

The recommendation to the City Council is to grant this appeal in part. The rent for this unit may the rent increase be limited to 8%, inclusive of the natural gas, water, and sewer charges. Ownership may separate the utility charges for billing purposes, but the sum total of the utility charges and rent increase in the proposed lease may not represent greater than an 8% increase over the current lease. If ownership increases the monthly rent and separately billed utilities by 8%, it would add \$126 to the current \$1,575, bringing the monthly payment(s) to \$1,701.

COUNCIL PUBLIC HEARING:

This matter will go before the City Council at Public Hearing on **Wednesday, November 9, 2022 at 3:30 pm. in room 300 City Hall.** If you are contesting the recommendation you may

appear in person or send written testimony to be added to the record to rentappeals@ci.stpaul.mn.us or by voicemail at 651-266-6805. **Should you wish to address Council directly but not appear in person, you must register in person by noon on Tuesday, November 8, 2022 here: <https://www.stpaul.gov/department/city-council/city-council-public-hearing-live-testimony>.**

If you have any questions, please contact the Rent Stabilization Appeals Executive Assistant Sonia Romero at 651-266-8568 or email rentappeals@ci.stpaul.mn.us

Sincerely,

/s/

Marcia Moermond

Legislative Hearing Officer

c: Malcolm P. Terry, Bernick Lifson, 600 Hwy 169 S., Ste 1700, Minneapolis, MN 55426

VIA EMAIL: mterry@bernicklifson.com

Rent Stabilization Staff