

Mai Vang

From: *CI-StPaul_RentAppeals
Sent: Monday, June 10, 2024 4:43 PM
To: Abbie Hanson
Cc: Jim Poradek; Melvin Carter; *CI-StPaul_RentAppeals; #CI-StPaul_Ward4; #CI-StPaul_Ward7; #CI-StPaul_Ward5; #CI-StPaul_Ward6; #CI-StPaul_Ward1; #CI-StPaul_Ward3; #CI-StPaul_Ward2; Brynn Hausz
Subject: RE: Rent Increase Appeal under Saint Paul's Rent Stabilization Ordinance

Dear Ms. Hanson, et al.

Thank you for email on this subject. My apologies for the significant delay as there have been significant staff changes and I have been on a partial medical for 6 months. I anticipate emailing a recommendation letter to you by July 8th to review with your client, with consideration by the City Council at a public hearing on July 24th.

I understand the frustration you describe. However, the appeal of DSI's determination on the application was paused and no rent increase is applicable retroactively. This delay should not have financially impacted the tenant during this time. As indicated previously, the public record is open until the Council's public hearing is closed. If there are additional information you would like me to consider, please continue to submit.

Sincerely, Marcia Moermond



Marcia Moermond

Sr. Policy Analyst & Legislative Hearing Officer
Pronouns: she/her
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From: Abbie Hanson <ahanson@hjcmn.org>
Sent: Monday, June 10, 2024 2:59 PM
To: #CI-StPaul_Ward7 <Ward7@ci.stpaul.mn.us>; #CI-StPaul_Ward6 <Ward6@ci.stpaul.mn.us>; #CI-StPaul_Ward5 <Ward5@ci.stpaul.mn.us>; #CI-StPaul_Ward4 <Ward4@ci.stpaul.mn.us>; #CI-StPaul_Ward3 <Ward3@ci.stpaul.mn.us>; #CI-StPaul_Ward2 <Ward2@ci.stpaul.mn.us>; #CI-StPaul_Ward1 <Ward1@ci.stpaul.mn.us>
Cc: Jim Poradek <jporadek@hjcmn.org>; Melvin Carter <Melvin.Carter@ci.stpaul.mn.us>; *CI-StPaul_RentAppeals <RentAppeals@ci.stpaul.mn.us>
Subject: Rent Increase Appeal under Saint Paul's Rent Stabilization Ordinance

Dear Councilmembers:

Please see the attached letter concerning the Rent Stabilization Appeal of Ms. Sumeya Mohamed, RLH RSA 23-13.

Any questions may be directed to either Jim Poradek (jporadek@hjcmn.org) or me (ahanson@hjcmn.org).

Best,
Abbie Hanson (she/her/hers)
Housing Justice Litigator
651-391-8393
ahanson@hjcmn.org





June 10, 2024

Council President Mitra Jalali
Councilmember Anika Bowie
Councilmember Rebecca Noecker
Councilmember Saura Jost
Councilmember HwaJeong Kim
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Councilmember Cheniqua Johnson
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Re: Rent Increase Appeal under Saint Paul’s Rent Stabilization Ordinance

Dear Council Members:

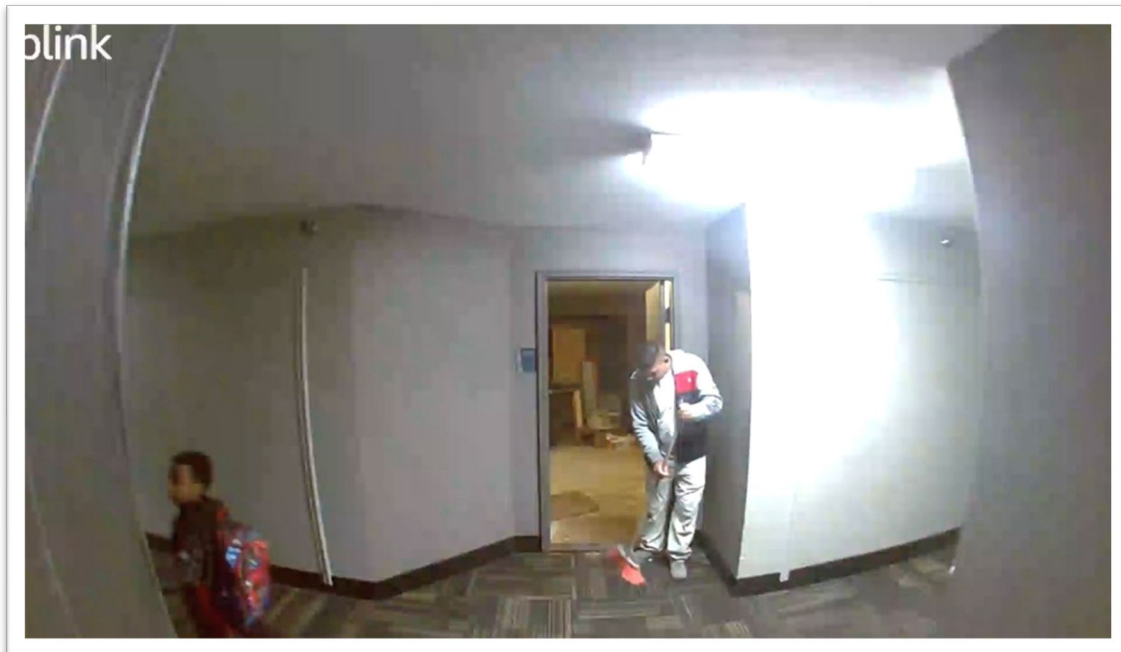
We are attorneys with the Housing Justice Center who represent Sumeya Mohamed, her mother Rukia Bile, and the other four members of their household in the appeal of a proposed 26.48% rent increase at The Haven of Battle Creek (“Haven”), a 216-unit apartment complex located on the East Side of Saint Paul. **We write because Ms. Mohamed and her family have been waiting for 11 months for a recommendation on the proposed rent increase from the Legislative Hearing Officer (“LHO”)—a proposed increase against which Ms. Mohamed appealed on July 7, 2023.**

Ms. Mohamed has submitted extensive evidence in the appeal that Marquette Management (“Marquette”) knowingly engaged in egregious violations of asbestos safety law at Haven from the moment they took over operation of the property in May 2021—violations that exposed Haven tenants to an extreme risk of life-altering asbestos-related lung disease. The gravity of Haven’s asbestos-safety violations is displayed in the following screenshot image taken from Ms. Mohamed’s doorcam of a young Haven tenant walking in front a worker who is sweeping

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Dedicated to expanding and preserving the supply of affordable housing nationwide

around—and sending airborne—suspect asbestos dust knocked loose by Defendants’ illegal renovation of the unit behind the open door:



The inordinate delay in ruling on the appeal has directly harmed Ms. Mohamed and her family by creating untenable financial uncertainty that is now forcing them to move from their home of nine years at Haven. Moreover, the inordinate delay has emboldened Marquette to raise rents on many units at Haven nearly 26.48%. **In a very real sense, the delay in a final determination on Haven’s exorbitant rent increases has itself functioned as a displacement mechanism at Haven.**

We are at a loss at what to do about this harmful procedural delay except to respectfully request that the Council directs the LHO to immediately issue a recommendation on Ms. Mohamed’s appeal—which will then permit the City Council to adopt or reject that recommendation at the following City Council meeting.

A. Marquette Conducted Unsafe Renovations to Price-Out and Displace Haven’s Diverse Tenant Population.

A brief background on the Haven property is helpful to understand the context in which Ms. Mohamed challenges the proposed rent increase.

In May 2021, Marquette Companies, an Illinois-based affiliate of Marquette, acquired Haven in a joint venture between it and a New York based real-estate investment firm. Soon thereafter, Marquette was installed as Haven’s property manager and began to implement an “investment strategy,” under which it would “drive [up] rents” and “improve the renter profile,”

with the ultimate goal of re-selling the Haven property after just five years for an anticipated \$11 million in gross profit.¹

INVESTMENT STRATEGY The Haven of Battle Creek (formerly known as Phoenix Apartments) was developed in 1976. In May 2021, Marquette acquired the property in a joint venture with DRA Advisors and has underwritten a five-year hold period. The opportunity to realize value type returns exists on the following levels:

Interior Value-Add – The majority of the unit interiors are in original condition or were updated many years ago. Marquette will update all of the units with stainless-steel appliances, quartz countertops, vinyl plank flooring, and other upgrades to the kitchens, baths, and common areas. In addition to the operational improvements, these interior upgrades will allow Marquette to drive rents and improve the renter profile.

The “renter profile” that Marquette seeks to “improve” at Haven is in fact a racially diverse tenant population notable for its large number of multigenerational Somali families and Section 8 Housing Choice Voucher holders, including many children and senior citizens. It is these renters whom Marquette is seeking to replace.

Central to Marquette’s tenant displacement strategy is an aggressive plan to renovate most of Haven’s 216 units and common areas. Critically, when performing these building-wide renovations, Marquette must adhere to various health and safety laws that are designed to minimize exposure to asbestos hazards. It must do so not only because Haven is an older building and certain materials are presumed by law to contain asbestos, *see* 29 C.F.R. § 1926.1101, but also because prior testing at Haven has **confirmed** that some materials, specifically flooring and ceiling texture, contain asbestos (No. 20; *see also* No. 17, p. 13).²

But, until recently, Marquette performed its widespread renovation and maintenance without adhering to these safety laws. As a result, for much of 2021, 2022, 2023, and the beginning of 2024, Marquette placed Haven tenants at unacceptable risk of asbestos exposure. It was only after counsel at Housing Justice Center put continuous legal pressure on Marquette that it finally agreed in May to enter into a court-enforceable stipulated preliminary injunction in which it is required to conduct future maintenance and renovations in an asbestos-safe manner.

It is against this background—almost three years of unlawful renovations that endangered the health of the very tenants Marquette is trying to displace—that Ms. Mohamed is challenging Marquette’s approved rent increase.

¹ <https://marquette-companies.s3.us-east-2.amazonaws.com/Marquette+-+2022+Investment+Strategies.pdf>

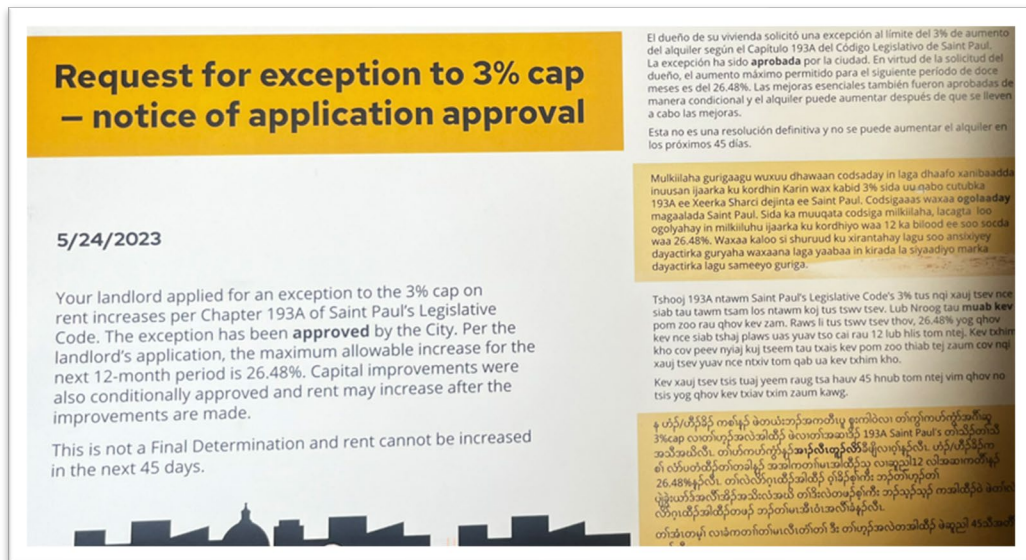
² Cites correspond to materials that have been submitted to the Legislative Hearing Officer. The materials are found here: <https://stpaul.legistar.com/LegislationDetail.aspx?ID=6306717&GUID=C362DC0E-615C-4BD3-B657-6445062E5652&Options=&Search=>. Any Exhibit (“Ex.”) corresponds to an exhibit found in the referenced material.

B. Ms. Mohamed’s Attempts to Contest the Proposed Rent Increase Have Been Met with Silence.

In February 2023, Ms. Mohamed learned that Marquette had applied for an exception to the Rent Stabilization Ordinance’s (“RSO”) 3% rent cap. Given her experience with Marquette, Ms. Mohamed felt a rent increase above the 3% cap was unjustified and would surely cause financial hardship for her household, as well as other Haven households.

To contest the proposed increase, Ms. Mohamed submitted a detailed complaint (No. 7, Ex. 2) to DSI on February 15, 2023. The complaint challenged Marquette’s eligibility for an exception to the rent cap on various grounds, including that Marquette had failed to substantially comply with state rental housing law, withheld maintenance, and unreasonably increased operating expenses. The complaint also explained that Marquette was putting the health of Haven tenants in danger by performing extensive renovations in a manner that violated state and federal health and safety laws, including those related to asbestos. Marquette’s violations of asbestos safety law were breaches of Minnesota’s implied warranty of habitability, Minn. Stat. § 504B.161, and as a result, Marquette was ineligible for a rent increase under the RSO. SPLC § 193A.06(c) (“The city will not grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161.”). Ms. Mohamed’s counsel later submitted to DSI a report by an environmental consultant, who provided his opinion that Marquette was engaging in dangerous renovations that violated asbestos-safety law (No. 7, Ex. 3), as well as a class action complaint that alleged further violations by Marquette of landlord-tenant, anti-discrimination, and consumer law (No. 7, Ex. 1). Despite this extensive evidence, DSI did not reach out to Ms. Mohamed with any questions, requests for additional evidence, or determinations concerning her complaint.

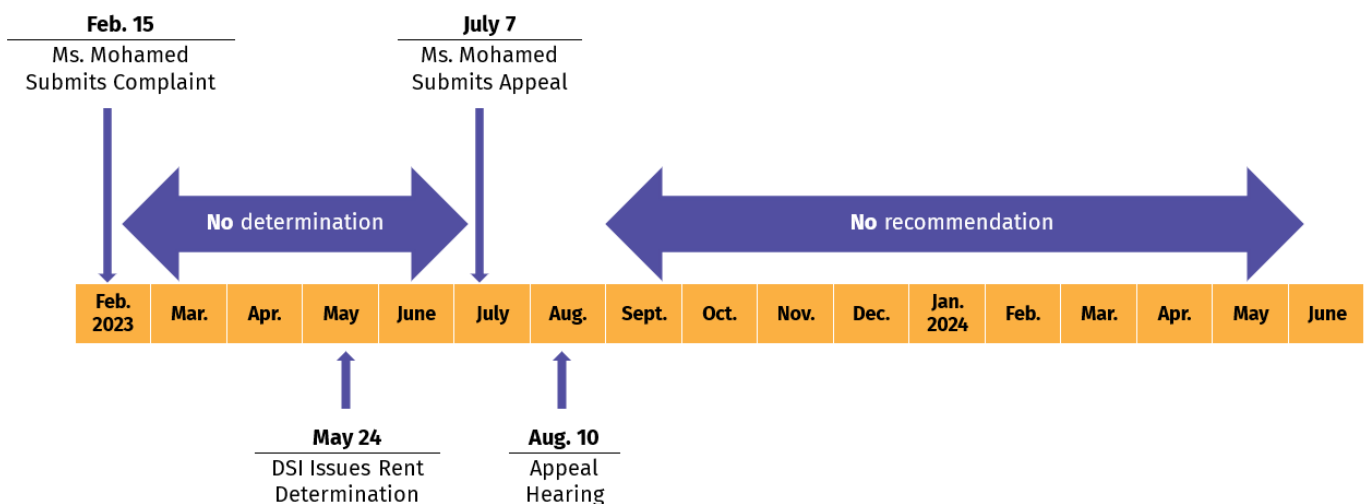
It was only after Ms. Mohamed received a postcard in the mail that she learned Marquette had been approved for a **26.48%** rent increase and the possibility for an even greater increase based on conditionally approved capital improvements. The postcard contained **no** explanation as to *why* Marquette qualified for an increase nearly 9 times greater than the 3% generally allowed under the RSO.



Ms. Mohamed immediately reached out to her counsel and informed them of her desire to appeal the rent increase. With the help of counsel, she timely submitted an appeal on July 7, 2023, RLH RSA 23-13 (Nos. 1, 4-7). Similar to arguments put forth in her complaint, Ms. Mohamed challenges the proposed rent increase on a number of grounds, including that Marquette is failing to substantially comply with state and local rental housing law through its lack of maintenance and pest-control services, unlawfully charges tenants utilities in violation of Minnesota law, retaliates and discriminates against tenants, and unreasonably increased operating expenses over the span of just 2.5 years (including a 77% increase in “management services” costs). (No. 4, p. 4-14). And in her appeal Ms. Mohamed again argues that Marquette is ineligible for an exception to the rent cap because its extensive renovations—on which it bases much of its rent-increase application—were done in a manner that put tenants at risk of asbestos exposure. Consequently, Marquette breached Minnesota’s implied warranty of habitability and is precluded from receiving an exception to the RSO. (No. 4, p. 3-4). Marquette submitted no evidence prior to the hearing to contest Ms. Mohamed’s assertions.

The LHO held an appeal hearing on August 10, 2023. In addition to argument, Ms. Mohamed provided photographs and testimony from both herself and an environmental expert, to support the argument in her complaint that widespread violations of habitability law were occurring at Haven. Marquette produced no evidence to dispute this. At the conclusion of the hearing, the LHO indicated that her goal was to release her recommendation by the week of September 4, 2023, so that the recommendation could be considered by the City Council at its September 13, 2023 meeting.

It has now been 11 months since the appeal was filed (and nearly 10 months since the appeal was heard) and Ms. Mohamed and her family are still waiting for the LHO’s recommendation. A visual representing the months-long delay in addressing not only Ms. Mohamed’s appeal, but also her initial complaint, is produced below.



This inordinate delay has obviously been frustrating for Ms. Mohamed, who is simply trying to exercise her tenant rights under the RSO. But the delay has had impacts that extend beyond mere frustration.

First, Marquette appears to be raising rents in units across Haven, even though it is undisputed that Marquette has been involved in widespread habitability violations that would preclude any grant of a rent increase. Not only did Ms. Mohamed challenge the rent increase on behalf of herself and all other tenants, but she also based her complaint and appeal on building-wide problems, ranging from asbestos-law violations and unlawful utility charges, to pest infestations and unreasonable expense increases. Thus, the LHO's decision would have applicability to all units at Haven. And if the LHO's decision is based on habitability violations related to renovation—an argument for which Marquette has provided no countervailing evidence—the City would be foreclosed from granting a rent increase. *See* SPLC 193A.06(c) (“The city will not grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161.”). Yet, with no LHO recommendation, Marquette has proceeded to advertise rents well above the three percent limit and often approaching the maximum increases allowed by DSI.

Second, the uncertainty surrounding Ms. Mohamed's rent has contributed to her family's decision to move out of Haven. For nearly a year, it has been unclear whether Ms. Mohamed's rent will remain relatively stable or jump over 25%. The potential for such a dramatic change in housing costs has made it difficult for Ms. Mohamed and her family to adequately plan for future expenses. Because of this financial limbo, and with no clear idea of when the LHO plans to release her recommendation, Ms. Mohamed and her family are now forced to leave their home of nine years and seek housing elsewhere. The inordinate delay in receiving a final determination has itself functioned as a displacement mechanism.

But beyond the months-long delay, Ms. Mohamed has encountered additional obstacles in her attempt to exercise tenant rights under the RSO.

- **Information Imbalance.** Throughout the complaint and appeal process, Ms. Mohamed has had difficulty accessing information concerning the proposed rent increase. For example:
 - The notice postcard informing Haven tenants of the rent increase contained **no** explanation as to why Marquette qualified for a 26.48% increase. The lack of any rationale on the notice severely prejudiced Ms. Mohamed in her appeal, and unquestionably compromised the legal rights of other tenants. In fact, it was only because Ms. Mohamed's counsel had previously submitted a data practices request seeking information about Marquette's rent-increase application that Ms. Mohamed had some idea of the basis on which DSI may have granted an increase. Tenants seeking to challenge a rent increase should not have to submit a data practices request to understand the basis for their landlord's application.
 - During the appeal hearing, DSI staff read into the record a “staff report” that explained the basis for its grant of Marquette's rent-increase application. This was the first time that DSI's reasoning had been communicated to Ms. Mohamed. Tenants should not have to wait until the appeal hearing to learn why a landlord's rent-increase application was approved.

- In October 2023, Ms. Mohamed learned that DSI had submitted to the LHO two memoranda that addressed her appeal arguments. In writing the memoranda, DSI quoted statements made in the hearing. They did this by referencing a draft transcript. Ms. Mohamed immediately requested the hearing transcript, and later the minutes and audio recording. In April 2023—over 5 months after her initial request—Ms. Mohamed received the audio recording. She is still waiting on the minutes and a transcript.³ The provision of at least one of these materials (transcript) to DSI, and the subsequent failure to timely provide the same materials to Ms. Mohamed, put her at a disadvantage in responding to supplemental arguments that criticized her appeal.
- **Lack of Communication.** Beyond the limited information that has been provided to Ms. Mohamed, DSI and the LHO have only offered minimal and sporadic communication to Ms. Mohamed and her counsel about her submissions and/or the appeal process. For example:
 - In the months following Ms. Mohamed’s submission of a complaint, DSI never reached out to her to ask questions, confirm information, or provide a department determination. This is in stark contrast to the *significant* amount of interaction between DSI and Marquette that occurred over that same span of months. (No. 9, p. 8; No. 31).
 - In September 2023, after the LHO’s initial recommendation release date had passed, Ms. Mohamed inquired with LHO staff as to when she should expect a recommendation. In response, LHO staff indicated that it was their goal was for the recommendation to appear before the Council in October 2023. That did not occur. In April 2024, Ms. Mohamed requested a second hearing before the LHO to address the new developments that had occurred in the eight months since the initial hearing. Alternatively, Ms. Mohamed asked for an estimate of when the LHO’s recommendation would be released. The LHO declined to hold a second hearing. LHO staff provided no specific recommendation timeline, only stating that the LHO would “send a formal letter of her recommendation as soon as she can.” The recommendation has not yet come and Ms. Mohamed has no idea of when she should expect it.

For these reasons, we respectfully request the City Council to direct the LHO to immediately issue a recommendation on Ms. Mohamed’s rent stabilization appeal.

Best regards,

s/James Poradek
James Poradek
Director of Litigation, Housing Justice Center

³ Through a data practices request made to DSI, Ms. Mohamed received a copy of the draft transcript in April 2024. But the office of the LHO has yet to directly provide Ms. Mohamed either a transcript or a draft transcript.

CC: Mayor Melvin Carter, *via email at* melvin.carter@ci.stpaul.mn.us
Office of the Legislative Hearing Officer, *via email at* RentAppeals@ci.stpaul.mn.us