

Vang, Mai (CI-StPaul)

From: Jack Cann <jcann@hjcmn.org>
Sent: Tuesday, September 27, 2022 3:31 PM
To: Vang, Mai (CI-StPaul); *CI-StPaul_LegislativeHearings
Cc: Angela Wilhight; Mterry@Bernicklifson.com
Subject: Additional arguments for 9/29 hearing on 261 5th St. E.
Attachments: Letter to Legislative Hearings 9_27_22.pdf

Think Before You Click: This email originated outside our organization.

Please note that the updated staff report references staff approval of a 9.59% rent increase, but without any explanation of how that was derived. The staff report also references letter sent to management with this approval. No copy of that letter has been provided to the appellant.



Sept. 27, 2022

St. Paul City Council
Legislative Hearings
310 City Hall
15 W. Kellogg Blvd.
St. Paul MN 55102

Re: Additional arguments to be considered at September 29 hearing;
Appeal by Angela Wilhight of City approval of rent increase in violation of City Rent
Stabilization Ordinance at 261 5th St. E., St., St. Paul

To City Staff and Hearing Officer:

Please include this letter in the file for this appeal, scheduled for hearing on Thursday, Sept. 29.

There are five additional arguments arising during and after the last hearing which we would like the Hearing Officer to consider:

First, at the last hearing, DSI Director Wiese confirmed that "there is a misconception within the landlord community that utilities can be added onto a 3% increase and not be considered a rent increase." Hearing minutes, pg. 7. The discussion of parking fees in the staff Report further confirms that "any money received by the Landlord, regardless of its classification as "rent," "fee" or "charge" could fall within the current definition of "rent."

Second, also at the hearing, Sara Davis' bill for September demonstrated that tenants' apportioned utility payments do not go to the utility company, they go instead to the Landlord in one lump sum that also includes rent and parking fees. The Landlord then makes all utility payments, as an operating expense, just as before the implementation of the utility apportionment scheme. Mr. Terry nevertheless continued to insist that the apportioned utility payments were not "rent" but rather tenant payments to the utility company because "The utilities are actually consumed by the tenant" and that's what distinguishes the apportioned payment from actual rent. Hearing Minutes at 9.

Once again, Mr. Terry has his facts wrong. there are two reasons why the apportioned utility bills do not in any meaningful way represent actual utility consumption by the tenants. First, the utility costs apportioned include the cost of providing utilities to the building's common areas which include: management office, the lobby and mail area; halls and stairwells including sizable open area off the elevator on each floor, community room, gym, gym area bathroom, elevators, front entry used by restaurant guests, and two levels of parking. The apportionment formulas do not in any way separate out the cost of providing utilities to these common areas from the cost of providing utilities to apartments. The apportionment to tenants therefore simply does not represent the cost of utilities consumed by tenants. Mr. Terry is wrong for an additional reason: no apportionment formula will ever represent actual consumption by each tenant as it lumps all tenants together - those that are careful about utility usage and those that are not.

Jack Cann, Attorney
1774 Portland Avenue • St. Paul, MN 55104 • 651-645-7378

Dedicated to expanding and preserving the supply of affordable housing in Minnesota and nationwide

There is simply no way to characterize the owner's utility payments as something other than rent paid to the landlord to cover an operating cost.

Third, the fact that the apportioned utility costs include the cost of providing utilities to common areas creates another legal problem for the owner. Minn. Stat. § 504B.215, Subd. 2a(2) provides that apportioning utility costs requires the landlord to "put in writing for all leases an equitable method of apportionment." An apportionment method is not equitable if it requires each tenant to pay a share of the owner's cost of providing utilities to common areas, as this owner's apportionment method does. The only equitable apportionment method is one which apportions part of each utility bill to common areas and then apportions only the remaining amount among tenants. The new Rayette lease utility apportionment provisions violate the requirement of this statutory provision and are therefore unenforceable.

Fourth, Ms. Wilhight's unit 604 is not included in the Landlord's request for a staff approved exception to the 3% limit. Therefore, the Landlord is limited to, at most, the 8% increase permitted through its self-certification request. The new lease presented to Ms. Wilhight increases her rent by 3%. That means that any additional increase associated with utility apportionment cannot exceed 5%. But the \$130-\$150 increase projected for apportioned utility payments represent an 8.3%-9.5% increase. The new lease treats the utility apportionment as a lump sum; it does not limit the apportionment to a 5% increase and so the entire lease provision representing the apportionment violates the rent stabilization ordinance.

Finally, the attached email exchange between management and Ms. Wilhight demonstrates that no increase of her rent in 2022 can be attributed to capital improvements, as the owner's increase for capital improvements was already imposed with a \$100/month increase in the lease executed in 2021.

Yours truly,



Jack Cann

ATTACHMENT TO 9/27 LETTER TO HEARING OFFICER

From: Joy Habrat/USA <Joy.Habrat@cushwake.com>
Sent: Tuesday, March 9, 2021 11:46 AM
To: Angela Wilhight <Angela.Wilhight@mpls.k12.mn.us>
Subject: [EXTERNAL] Re: RESPONSE Upcoming May Lease Expiration

Hello Angela,

Thank you for reaching out about this!

We do know that the increase is substantially more than the typical 3-5% which most communities give at renewal. The reason behind the rent increase is due to the renovation project, and the pressure to move residents out of their current units, and into our already renovated units.

Rather than giving non-renewal notices, the increase is a way to encourage residents to transfer and take advantage of the 1 Month Free transfer special. This way we can begin renovating all of the apartments in this building. Our renovated apartments are between \$1399 - \$1699 depending on view and size, and feature new quartz countertops, white tile backsplash, new cabinet hardware, new kitchen faucet and sink, and a full paint throughout. We will have your same floor plan on the 2nd and 4th floor, facing 5th street, available at \$1575 with 1 Month Free. If you decide to transfer with this special and split your \$1575 credit throughout your lease, you could save \$131 a month, making your average monthly rent \$1444, which is less than what you are paying now!

Let me know if you have questions about this and if you would like information on the units available. I would be happy to walk you through one of the renovated units so you can see what the upgrades would include. I value each one of our residents and want to keep all of our longstanding tenants, and I apologize that this increase in rent comes at a difficult time.

I look forward to hearing back from you.

Warm regards,

Joy Habrat

Property Manager

Rayette Lofts

From: Angela Wilhight <Angela.Wilhight@mpls.k12.mn.us>
Sent: Friday, March 5, 2021 6:16 PM
To: Joy Habrat/USA <Joy.Habrat@cushwake.com>
Cc: Angela Wilhight <Angela.Wilhight@mpls.k12.mn.us>
Subject: RE: RESPONSE Upcoming May Lease Expiration

External Mail

Hi Joy,

Thank you for your email.

I am reaching out to you with great concern to ascertain the reason why my rent for a one-bedroom is increasing by **\$100 more a month**. Please justify the 6.78% increase during volatile times of employment uncertainties, especially with no salary increases.