



Meeting Minutes - Action Only

Rent Stabilization Appeal Hearings

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Thursday, September 15, 2022

9:00 AM

Room 330 City Hall & Court House

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**9:00 a.m. Hearings**

**Rent Stabilization Appeals**

- 1     **RLH RSA 22-3**     Appeal of Jack Cann, Housing Justice Center, representing Hannah Gray, to a Rent Stabilization Determination at 787 HAMPDEN AVENUE #213.

Sponsors:     Jalali

*Recommendation is forthcoming.*

**Referred to the City Council due back on 10/19/2022**

- 2     **RLH RSA 22-2**     Appeal of Jack Cann, Housing Justice Center, representing Katherine Banbury, to a Rent Stabilization Determination at 720 SEVENTH STREET EAST #330.

Sponsors:     Prince

*Recommendation is forthcoming.*

**Referred to the City Council due back on 10/19/2022**

**11:00 a.m. Hearings**

- 3     [RLH RSA 22-5](#)     Appeal of Patrick Hogan, on behalf of North End Apartments, LLC, to a Rent Stabilization Determination at 325 BIRMINGHAM STREET.

Sponsors:     Prince

*Recommendation forthcoming.*

*Patrick Hogan, North End Apartments, LLC, appeared*

*Moermond: we have two units in play and unit 327 went through self certification for 8%. Staff determination on it found it would be eligible for 11/8% should he wish to pursue that. What he is actually going to charge is 5.45%. So under the 8% granted. That unit is not under appeal. The unit we are talking about is 325 and in the staff determination process was approved for 10.85% increase. You were looking for a 15%*

increase because it would be closer to what Public Housing would allow for under its section 8 reimbursement criteria.

Hogan: my appeal was for more than 15% to get to that, through the course of our conversation last time you said the maximum allowable was 15%. Just so we are clear on that.

Moermond: right. Right now staff are saying you are good with a 10.85% increase based on the numbers you provided. This is going to be a section 8 unit so as a section 8 unit your tenant pays a proportion of their income for rent. The balance of the rent is paid for by the Section 8 program. So the impact of the rent increase wouldn't be experienced by the tenant as their portion is still income based. The increase in the rent would be covered by section 8. One of the things going on when we last spoke was we knew the City Council was looking at amendments to the ordinance that pertain to affordable housing that may or may not apply to this circumstance. Whether or not changes would exempt this unit because it is Section 8 with these particular characteristics. That is not a settled matter still. It probably won't be for a while.

The second part was whether you could deal with the amount of increase that staff is recommending from their analysis and up it January 1 should you find that this unit is exempt from the ordinance once the changes go through. I can't advise you on that point about any sort of escalator within your lease agreement that would be effective January 1 if the law changes. I would say based on my understanding of the program that that is something you would work out with case manager who would review the lease. I imagine this is such early days with the ordinance enforcement that they are going to have to put their thinking caps on about how this would apply for them. I believe, and you need to confirm this on your own, that there is a specific length of lease required for a Section 8 tenant. I believe it is a year. There is analysis that needs to happen at Public Housing with respect to your Section 8 certificate that will affect you. There are ordinance provisions that may affect you. All on January 1. I can for sure say I recommend the Council allow you have an exception to the 3% rent control and grant you the ability to increase to 10.85%

Hogan: not 15%?

Moermond: no, I don't think the numbers are there. That argument was largely based on the fact that you could get more under the section 8 rules and I can't use that under the 7 criteria I'm analyzing your case under. We do know that this is potentially a 3 month deal. You may want to discuss this with the Council, you certainly can. In your case I will rely on the staff analysis, which I do think is correct. I get this isn't the tenant that would be hit with the increase. It allows you to do things to improve the housing for the tenant. My hands are tied under the ordinance I'm operating under. And it won't be this exact law as of January 1. We'll put this in writing so you have it. I'm sorry I can't give you more of a guarantee of how you can manage this situation moving forward. Everything is so in flux, which I know you know.

Sass: in light of what we talked about earlier, we would allow the landlord to take either a proportional increase or the flat allowable increase per month. If he took a proportion increase between the 2 units, it is actually an 11.31 % increase.

Moermond: so the one unit that has been approved for 11.8% and this one for 10.85%, split the difference and go to 11:31%. I'm happy to go with that.

Hogan: so 325 we can increase by 11.31%?

Moermond: yes.

Hogan: were you saying that this amount needs to be based on the total rent or is it based on the tenants share?

Moermond: I was trying to establish a record for the future that the rent increase you are asking for would not impact what the tenant is paying. Rather, the rent increase would impact the amount of reimbursement received from the section 8 program. Let's say the tenant, based on the section 8 analysis, would owe \$500 in rent. You are charging \$1,500. That \$1,000 is paid by Section 8. If you get a rent increase to \$1,750, the tenant is still paying 500 since it is based on their income, and section 8 would pay that extra \$250. I wanted that clear in the public record since you are the first section 8 landlord to go through this process. I think that distinction is important. The tenant would be unimpacted.

Hogan: based on that you still have the same conclusion as before?

Moermond: I don't have the ability to create an exemption based on this being affordable housing or housing that is Section 8. Or what the federal reimbursement guidelines are. None of those things are in the list of exceptions that can be made under the ordinance as it is written now.

Hogan: what are those 7 things allowable to get that increase?

Moermond: increases or decreases in property taxes, unavoidable increases or decreases in operating expenses, capital improvements, number of tenants, substantial deterioration beyond normal wear and tear, failure to provide adequate housing services, and then the pattern of recent rent increases or decreases. When you filled out the Maintenance of Net Operating Income (MNOI) worksheet you are answering questions that apply to those points.

Hogan: so it is already baked into the cake when I filled that out.

Moermond: yes, the worksheet is intended to capture those 7 situations where an exception could be made. Your situation wanting an exception because it is affordable, Section 8 housing, those aren't in those 7. They arguably in the revised version which hasn't been adopted, it is all up in the air. I can't tell you what the world will look like January 1.

Hogan: the part I'm still not understanding is you have these 7 categories, which I get, what are the cases where once that staff decision is made that an appeal would be granted in this setting to go beyond that. What I'm hearing is there are no cases—

Moermond: no, I would say there are definitely cases. What you are appealing is the staff determination.

Hogan: so the only grounds be if there was an error in staff decision based on calculations?

Moermond: that is one path for an appeal. Or misinterpreting the rules. The rules are adopted by the administration. That is how they are enforcing the ordinance. What I concern myself with primarily is the actual ordinance on the books. This is the law. DSI interprets the law. My interpretation of this is that your argument for increasing beyond what you are allowed isn't something allowable under the law. You could

*provide another way to analyze your information under the rules that may present a better case. Let's say the MNOI worksheet didn't calculate cash flow of the way you manage your business in a logical way. You wanted to say, I do business this way, the worksheet you gave me doesn't take that into account. Hearing officer, if you look at the way I presented the numbers rather than the way staff does, you get this conclusion. That is what happened in the first case I heard. The owner was doing improvements as they became vacant. That is standard practice, and they wanted to increase rents together, with the understanding that over 3 years all units would eventually have those improvements. The worksheet goes unit by unit. I am not seeing your situation is a square peg in a round hole. I am seeing it is something outside of what the Code provides for.*

*Hogan: I guess I didn't completely understand.*

*Moermond: we're all learning. You're the first section 8 landlord. It would be to your benefit to reach out to your Section 8 caseworker to see what this may look like.*

*Hogan: sounds like that's my only option.*

*Moermond: well you get an exception now, and what can happen January 1 depends on the ordinance and what Section 8 works with you on the lease.*

*Hogan: what I don't understand is the calculation itself. We're talking about these periods from 2021 to 2019 the income increased by 1.9% and operating expenses increased by 41%. I don't see how this calculation considers the numbers continuing at that rate. Sooner or later the expenses will be higher than the income.*

*Sass: the MNOI is based on your net operating income. So even though your expenses increased at a large percentage, it is looking at a raw sum Net Operating Income (NOI) number and a new raw NOI number and adjusting to making sure that new number is comparable, including inflation, to your old number. It is trying to keep up with the amount of money you were making in a raw dollar form to the number you made previously.*

*Hogan: then my NOI went down from 2019 to 2021 by \$2,300 which would be roughly 9%.*

*Moermond: I hear what you are saying and splitting apart the arguments you are making. I was hearing section 8 reimbursement as your argument. You're now coming back with an MNOI analysis which does merit discussion. But I didn't hear that last time.*

*Hogan: I did mention that last time. That ultimately is why I am here. I wouldn't be here if operating expenses hadn't gone up 41% and income only went up 1.9%.*

*Moermond: why was your rent increase less than allowed?*

*Hogan: they have been there 5 years. We try not to increase people's rent by an exorbitant amount to make sure it is still affordable. Their rent is \$1,375 if I did the full 11% my fear was that was a hardship to those tenants who have been there a long time.*

*Moermond: the same cash flow analysis applies to both units though. That you are losing money on this eventually.*

Hogan: well sure, that is true.

Sass: the NOI has decreased by around \$2,000, but the allowable increase for the property is around \$4,000 to make up for that now decrease in NOI as well as adjusting upwards for Consumer Price Index (CPI). If Mr. Hogan were to take the maximum allowable increase for both units it would make up for that loss. Since a smaller increase is being taken on the occupied unit you can't take and make it no longer evenly distributed and put all of the weight on the new unit to make up for that. That's the issue you are running into.

Moermond: and where do you derive that regulation?

Sass: best practices is that it has been divided equally among the units.

Moermond: I want to give more thought to the argument you are making. Tell me more about it now if you have more. You are scheduled to go to Council next week since you wanted someone in October 1. I know it is pressure to say make your argument now, but do you want to walk through any numbers to help inform this?

Hogan: Mr. Sass can you clarify the part about maximum allowable amounts. I'm not understanding how when someone's NOI goes down by 10%, their income only goes up by 1.9%, and their operating expenses increase by 40% how you arrive at 10.85%. Are you still saying that 10.85% is the maximum?

Sass: the way the MNOI document looks at this is comparing your base year NOI to your current year NOI. There is that gap of a couple thousand it has decreased. We take that base year NOI and adjust it upwards by CPI, saying that is your fair value. Your fair value is the amount you were making in the base year as our comparison year.

Hogan: so if you take the base year, and the future year I should expect to make that plus the CPI percentage. What is that amount?

Sass: 6.05% for those 2 years comparison.

Hogan: so if the base year NOI was \$26,397.08 and you are saying I am entitled to make an additional 6.05%, totaling \$27,994.10.

Sass: correct, for the entirety of property. There are two units on this property.

Hogan: so if I made \$24,099.91 you are saying I should be able to make an additional \$3,894.

Sass: correct, between the 2 units.

Hogan: split evenly? Or based on what their rent is?

Sass: that part is up to you. That divided by the 2 units, divided by 12 months is \$162.26 per unit per month to make that.

Hogan: assuming an equal 50% split. But it doesn't need to be?

Sass: best practice is equal distribution. That could be they each get the 50%, or maybe a proportional amount based on percentage of income of the property. I don't

see how, if you give 80% to one and 20% to the other is necessarily fair to the tenants occupying those units.

Hogan: where are the criteria of how fairness is measured?

Sass: it is best practices as this point.

Moermond: so that's your recommendation. I'm not sure if Public Housing has regulations about comparable units being charged comparable rates.

Hogan: the price we are charging now is the cost of about a 2 bedroom apartment and this is four-bedroom.

Moermond: no, I meant you have two units on the property and are you charging the same for the two units. Would Section 8 say that is ok?

Hogan: more updates have taken place for the side that is rented for the higher amount.

Moermond: tell me more.

Hogan: that is one piece of it, in terms of comparable units, just because one unit is an isolated event, it doesn't change the entire market for comparable rents.

Moermond: follow through on your argument that you've done improvements on this unit and that means it isn't as comparable to the adjacent unit as one would assume.

Hogan: for example, right now we have to change out the carpet in the unit, full repainting of the unit. During the course of the time they lived there we did other Section 8 repairs. The turnover alone we're at \$5,000 worth of improvements that the other unit hasn't experienced.

Sass: those are considered capital improvements.

Hogan: we are in the process of doing it right now, so I don't have numbers. I can get them to you.

Moermond: do you have bids?

Hogan: I do.

Moermond: that will work. Email them to me. I will make sure staff get them as well. We're trying to parse out where they aren't comparable. I'm happy to hear anything along those lines. I appreciate you providing affordable housing in this regulatory environment. I will look at it as soon as I get it. This goes to Council next Wednesday and literally says my recommendation forthcoming. We'll be doing an amendment to fill the blank in based on our conversation today and the forthcoming information.

Hogan: can you repeat the timeline on that? I'll try to get you this information today. What are we thinking on your recommendation? Just so I have a sense because I have that resident who wants to move in.

Moermond: you wouldn't be able to do that until the Council vote anyway. They are the decision-maker. In most cases I would be able to tell you that if you are ok with my recommendation the Council goes with my recommendation without discussion.

*However, that is for ordinances that have been in place for 50 years. This the Council may want to talk about because we don't have that deep understanding. So I can't guarantee you it wouldn't be a discussion item and subject to change at the table. Next Thursday you would have a very clear idea. I'll do my best to have that by close of business Monday. Reach out to my staff at any time. We'll do our best.*

**Referred to the City Council due back on 9/21/2022**