

BEHIND CLOSED DOORS INSIDE A MOCK MEDIATION OF A LANDLORD/TENANT DISPUTE

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FACT PATTERN

Former tenants Carol and Jessica are suing the owner and landlord, Olivia, for claims arising from habitability defects, tenant harassment, and loss of a rent-controlled unit.

For most of Carol and Jessica's tenancy, Carol was a single mother working full-time as a hairstylist to support her family. Her daughter, Jessica, has suffered from severe anxiety and agoraphobia for many years. Jessica's fear of strangers and extreme anxiety made it difficult to allow repair workers into their apartment, contributing to the issues they experienced. Carol and Jessica lived in the rent-controlled apartment in East Oakland for five years, from 2017 to 2022.

Nearly seven years ago, after her mother became ill, Olivia took over managing the apartment complex. Olivia also lives in the building herself, which she believes allows her to be more responsive to tenant issues. The apartment complex was built in the 1960s and, while Olivia has managed some renovations over the years, the building still has its original plumbing, windows, and insulation.

Carol and Jessica complained of the following habitability issues during their tenancy:

- Trash and debris piling up in common areas due to criminal activity near the complex;
- A broken window and bullet lodged in the wall from a neighborhood shooting for five months;
- A broken gate allowed unauthorized individuals to access the backyard of the complex.
- A gaping hole in the kitchen floor that went directly to the apartment below for more than three years;
- Missing and buckling shower tiles for five months;
- No shower or bathroom for three weeks;
- Missing and unevenly installed shower tiles
- Water leaks, plumbing leaks, and windows that leaked during rainstorms for more than two years, leading to excessive dampness and mold growth and causing Carol to suffer serious asthma attacks.
- No stove vent, causing moisture to accumulate in the kitchen and living room for the duration of their tenancy.
- Water damage and a flood.
- Rats and mice.

Olivia has been unsure how to manage problems arising from neighborhood elements. After the pandemic began, the neighborhood around the building started to decline due to criminal activity emanating from the nearby park. Some of this spilled over into the apartment complex, including some dumping, tent setups, and package thefts.

Carol operated a small hairdressing business out of the apartment, which was a violation of her lease. The unapproved installation of a professional shampoo bowl, which connected to the building's old plumbing system, caused a flood that led to additional water damage in the apartment. Olivia claims that this unauthorized modification contributed to habitability issues, including mold and further plumbing problems.

While Olivia tried to address some of the other repair issues, her efforts were often delayed due to Jessica's anxiety and fear of strangers, which made it difficult to gain access to the apartment. Olivia claims that she made multiple attempts to coordinate repairs but was met with resistance or delayed access. Carol claims that Olivia often let herself inside, or aggressively banged on the door demanding to enter the tenants' without notice or lawful purpose. Carol repeatedly asked Olivia not to enter their home without advanced written notice, but she continued to do so. Carol claims these intrusions were not only disruptive, but were also traumatizing for Jessica because of her disability. On at least one occasion when Olivia was attempting to gain access, Jessica suffered a panic attack so severe that she had to seek emergency medical treatment.

Olivia became frustrated with Carol and Jessica and sometimes verbalized that frustration to her tenants. On one occasion when Carol made a repair request, Olivia shouted "For the little bit of rent you are paying you should not complain so much!"

Complaints from other tenants arose over Jessica's behavior in the common areas, which sometimes caused disruption. Olivia also had difficulty navigating the delicate situation caused by Jessica's pre-existing anxiety, which Carol claimed was exacerbated by the building's conditions. Olivia would sometimes say to Carol: "What is wrong with Jessica?"

During the last year of Carol and Jessica's tenancy, Olivia repeatedly told Carol: "If it's so bothersome for me to not follow tenants rights, then you should just move!" On another occasion, she shouted at Plaintiffs, "You should just leave!" Olivia also said, "I can get more

money for this unit!” and again shouted “You should just get out!”

Carol reported feeling stressed and humiliated due to the conditions of the apartment and Olivia’s handling of the situation. She felt that Olivia was not responsive to her repair requests, while Olivia counters that the lack of access and unauthorized alterations made it difficult for her to resolve all the issues in a timely manner. Olivia wants an apology from Carol for publicly disparaging her.

As a result of the building’s conditions and the strain of living in a declining neighborhood, Carol and Jessica decided to move out of the rent-controlled apartment. The family relocated to a more expensive unit in another Bay Area city. Carol claims that she had no choice but to move because of the uninhabitable conditions and landlord harassment, Olivia questions whether financial considerations or a desire for a better living situation were also factors. Moreover, Jessica’s long-term anxiety predated her time living at the apartment complex.

Carol is seeking the following damages:

1. 50% of rent paid in the last two years of tenancy
2. Future rent differential (trebled)
3. Moving costs (trebled)
4. Personal property
5. Emotional distress (trebled) - \$900,000
6. FEHA violation
7. Attorney fees and costs through trial

Her damages in her mediation brief total almost \$1.5 million. Olivia’s insurance policy limits are \$1 million. This mediation is pre-litigation.

SPEAKERS

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Plaintiff's Brief



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October 22, 2024

Debra Bogaards
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Re: *Carol v. Olivia*
Alameda County Superior Court Case No. 24CV041135

PLAINTIFFS' CONFIDENTIAL MEDIATION BRIEF

I. INTRODUCTION

This is an action for negligent maintenance of property, trespass, nuisance, tenant harassment, disability discrimination, bodily injury, property damage, and wrongful and constructive eviction. Our firm represents Carol, and her adult daughter Jessica, the former tenants at 1234 Spencer Avenue, Unit B, Oakland.

For most of Plaintiffs' tenancy, Carol was a single mother, working full-time to support her family. Her daughter Jessica is disabled and did not work because she suffers from debilitating agoraphobia, a fear of strangers, as well as severe anxiety. During their five-year tenancy, their landlord, Defendant Olivia, forced Plaintiffs to endure severe habitability defects including leaking windows and roof, flooding, moldy and damp conditions, buckling bathroom tiles, a hole in the kitchen floor, weeks without a bathroom, and rodent issues. Defendant also never took any steps to abate security hazards including a broken security gate and glass window, and nuisance conditions including heaps of garbage, tents, campfires, and human feces, urine, and blood in the common areas. Instead of timely addressing these uninhabitable and disturbing conditions, Defendant harassed Plaintiffs, ridiculing them for their below-market rate, mocking Jessica's disability, and trespassing dozens of times. Ultimately, in response to these conditions and Defendant's illegal demands to vacate, Plaintiffs felt they had no choice but to vacate their rent-controlled home of four years.

Erin Poppler of Edlin Gallagher Huie & Blum represents Defendant. Ms. Poppler is defending under an insurance policy with limits of \$1,000,000. The policy covers bodily injury, property damage, loss of use, and wrongful eviction. Attorney fees taxed against the insured are not covered. The policy does not specifically exclude treble or statutory damages.

II. RENTAL HISTORY & UNINHABITABLE CONDITIONS

The property is a two-story fourplex built in 1966. It is located in East Oakland, only two blocks away from public transportation, restaurants, shops, and has easy access to the 580 and 880 freeways. Plaintiffs' prior unit is a spacious one-bedroom, one-bathroom flat with an extra nook space on the second story. It has a laundry room, large living room, and sunny, fenced in yard. Per expert appraisal, Plaintiffs' rent of \$1,586 was at least \$535 less than fair market value at the time of their displacement. Because of the affordable rent, size and layout of the unit, backyard access, and close proximity to Carol's clients, public transportation and the major highways, Plaintiffs had hoped to stay in the unit for at least five to ten more years. Unfortunately, for the last few years of their tenancy, Plaintiffs faced the following uninhabitable conditions and health and safety hazards:

- Trash and debris piling up in common areas due to criminal activity near the complex, including tent setups in the driveway, package thefts, and unauthorized dumping. One evening, a vagrant attempted to break into the property three different times in one night, eventually shattering the glass in the lower unit's window. The vagrant was arrested by the Oakland Police Department, but Defendant still refused to secure the property. And, instead of replacing the window, Defendant glued a piece of wood over the broken glass.
- A broken gate allowed unauthorized individuals to access the backyard, where they set up tents, left garbage, and defecated. Plaintiffs found human feces, vomit, blood, glass, and drug paraphernalia around the property.
- A broken window and bullet lodged in the wall from a neighborhood shooting, which Defendant refused to ever fix or make the window secure, instead insinuating that it was Plaintiffs' fault their unit was shot at.
- A gaping hole in the kitchen floor that went directly to the unit below for more than three years.
- Missing and buckling shower tiles for five months.
- Water leaks, plumbing leaks, and windows that leaked during rainstorms for more than two years, leading to excessive dampness and mold growth and causing Carol to suffer serious asthma attacks. Despite the extensive water damage and mold, Defendant never hired a water or mold abatement contractor to professionally remediate the conditions.
- No shower or bathroom for three weeks as a result of Defendant hiring a day laborer to demolish Plaintiffs' bathroom several months after Plaintiffs' first complaint of leaks. Despite it being early 2021 when the COVID-19 pandemic was in full effect, Defendant refused to pay to relocate Plaintiffs to a location where they had a toilet and shower. Plaintiff were forced to drive around multiple times a day to find open public restrooms and ask friends to use their showers during a pandemic when everyone was literally scared to death of interacting with others outside their home. After the bathroom demolition, the wood framing was visibly wet, and the wood was damaged from years of water intrusion.

- A massive roof leak in January 2020, causing water to pour from the ceiling of the living room and hallway. There was so much water in the attic that the weight of the water caused the attic access door to collapse into the hallway. The water leak damaged the walls and ceiling, leaving giant paint bubbles in the living room and spare bedroom.
- No stove vent, causing moisture to accumulate in the kitchen and living room for the duration of their tenancy.
- Every window in the house leaked when it rained. As a result of the water intrusion, Plaintiffs suffered hundreds of dollars of property damage including damage to a mattress, television, couch, and stove, as well as clothing, shoes, and other belongings.
- An interior plumbing flood and resultant property damage.

Although Defendant entered Plaintiffs' unit regularly in response to Plaintiffs' complaints and requests for repairs, Defendant rarely fixed anything. And, when she did, she hired inexperienced laborers who did piecemeal repairs, leaving the uninhabitable conditions unabated.

III. DEFENDANT'S NEGLIGENT SELF-MANAGEMENT & TRESPASSES

For Plaintiffs' entire tenancy, the property was owned and self-managed by Defendant Olivia. Defendant has been an Oakland landlord with multiple rental properties for more than a decade. Defendant lives in the same building as Plaintiffs and has been self-managing it since she inherited it from her mother.

When Carol moved in, she initially developed a friendship with Defendant, who is also a single woman of around the same age. Although Carol enjoyed having a landlord with whom she could also connect with and confide in, Carol quickly realized that the friendship meant Defendant did not respect the landlord-tenant boundaries and instead treated the entire property as if she could access tenants' homes at her leisure. Defendant often strolled up to Plaintiffs' front door and let herself inside, or aggressively banged on the door demanding to enter Plaintiffs' unit without notice or lawful purpose. When Plaintiffs refused entry, Defendant pushed passed them into the home. Plaintiffs repeatedly asked Defendant not to enter their home without advanced written notice, but she continued to do so. These intrusions were not only disruptive, but were also traumatizing for Jessica because of her disability. Even after Carol advised Defendant that her unannounced visits caused her daughter to suffer severe panic attacks, Defendant still continued to trespass and refuse prior notice. Jessica was brought to the emergency room on one occasion while suffering a panic attack caused by Defendant's trespass.

Throughout the tenancy, Defendant was not shy about her dislike of Plaintiffs and desire to no longer have them as tenants. She openly and unapologetically harassed them on an almost daily basis. She called Plaintiffs names including "fussy" and blew off their repair requests by saying the requests were "ridiculous." Defendant scolded, "**For the little bit of rent you are paying you should not complain so much!**" Defendant taunted and mocked Jessica's disability, saying, "**What is wrong with her?**" When speaking to Carol about her daughter, Defendant often disapprovingly exclaimed, "**There's something wrong with her!**" Third-party witness Iris will testify at trial that she heard Defendant exclaim to Plaintiff Carol about her

daughter, **“It’s not my fault, she’s weird.”** In March 2020, when a stranger’s stray bullet shattered the kitchen window and lodged into the wall, Defendant callously remarked, **“I’m not fixing it! For all I know someone was shooting at you!”**

During the last year of Plaintiffs’ tenancy, Defendant made retaliatory demands that Plaintiffs move out every time they asked her to make repairs or give advanced notice to enter the unit. In retaliation for Plaintiffs’ lawful requests, Defendant demanded, **“If it’s so bothersome for me to not follow tenants’ rights, then you should just move!”** On another occasion, Defendant shouted at Plaintiffs, **“You should just leave!”** In April 2020, Defendant told Plaintiffs, **“I can get more than \$2,000 for this unit!”** and again demanded, **“You should just get out!”** Third-party witness Iris also heard Defendant tell Carol that she can get more rent than Carol was paying. Another third-party witness, Susie, will testify she overheard Defendant tell Plaintiffs that if they did not like how the repairs were going, they could move out.

IV. CONSTRUCTIVE & WRONGFUL EVICTION

Carol runs a small hairdressing business out of her home. In March 2020, when the pandemic hit and shelter in place orders were issued, Carol was among the many who were unable to work. She immediately advised Defendant that she would be unable to pay the March 2020 rent and also advised her of the State and local moratorium on evictions. Even so, Defendant illegally demanded Plaintiffs pay the March 2020 rent and continued to demand she pay the rent until she vacated. Defendant’s hope – which ultimately came to fruition – was that Plaintiffs would eventually find the situation unbearable and move out of their rent-controlled home so she could sell the property.

On August 31, 2020, after five years of living with untenable conditions, unabated nuisances related to the squatters and trash, constant harassment, illegal demands to vacate, and trespasses, Plaintiffs moved out.

V. DAMAGES

Plaintiffs will recover at least fifty percent of the rent paid for the last two years of their tenancy, totaling \$19,032, for enduring habitability defects, severe harassment, discrimination, retaliatory demand to vacate without cause, nuisances, and trespasses. Plaintiffs will also recover future rent damages of \$32,040 and \$850 for their moving costs. Plaintiffs will also be entitled to recover \$5,200 for their personal property damaged by the water intrusions, including two mattresses, bedding and sheets, clothes, shoes, and a television.

At the time Plaintiffs were forced to vacate, their rent was \$1,586, and the fair market value for a similar unit in their neighborhood was approximately \$2,120. Accordingly, the monthly rent differential is at least \$534. Because the unit was spacious and near Carol’s work, Plaintiffs had no plans to move. Had Defendant addressed the repair issues and stopped the harassment, Plaintiffs would have lived there for at least five more years. This amounts to \$32,040 in future rent differential. The future rent differential will be tripled to \$96,120. Plaintiffs also spent \$850 in moving costs, which will trebled to \$2,550.

Although emotional distress damages are unpredictable, it is not a stretch to assume Plaintiffs will be awarded at least \$150,000 each for the loss of their rent-controlled unit. These damages will be tripled to \$450,000 for each Plaintiff because it is likely a jury will find Defendant acted in knowing violation, or at least reckless disregard, of the Rent Ordinance. For more than a decade, Defendant has been a landlord of multi-unit residential rental properties in Oakland and is familiar with the Oakland Just Cause Ordinance.

In addition to the wrongful eviction damages, under the tenant harassment cause of action, Plaintiffs are entitled to seek at least a fifty percent refund of rent of \$19,032 for the severe harassment during the last twelve months of their tenancy and their property damage of \$5,200 due to the unabated water leaks. These damages will be trebled to \$28,548 and \$7,800, respectively.

As a result of Defendant's FEHA violation, Jessica is entitled to at least \$38,064, which is fifty percent of rent paid during their tenancy while Defendant failed to provide the requested accommodations. In addition, Plaintiff Jessica will recover \$200,000 in emotional distress sustained as a result of this discrimination.

Plaintiffs are also entitled to attorney fees pursuant to the lease and the Oakland Rent Ordinance, Oakland Tenant Protection Ordinance, Civil Code section 1942.5, and the Fair Employment and Housing Act. Through trial, Plaintiffs' attorney fees and costs will amount to at least \$350,000. The total damages at trial could easily exceed \$3.5 million, including fees, making this a case in excess of the \$1,000,000 insurance policy.

Thank you again for your assistance. Please let us know if you need any additional information. We look forward to the mediation.

Sincerely,

Jacqueline Ravenscroft
TOBENER RAVENSCROFT LLP

Defendant's Brief

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10
11 TENANTS CAROL and JESSICA,)
Individuals,)
12 Plaintiffs,)
13 vs.)
14 OAK PARK ASSOCIATES, LP and OWNER)
15 OLIVIA,)
16 Defendants.)

Case No. C23-00111
**DEFENDANTS OAK PARK
ASSOCIATES, L.P. AND OWNER
OLIVIA'S CONFIDENTIAL MEDIATION
BRIEF**
Trial: January 13, 2025
Mediation: October 22, 2024

1 **I. INTRODUCTION**

2 OWNER OLIVIA (“Olivia”) considered TENANT CAROL (“Carol”) to be her friend.
3 Olivia went out of her way for Carol given Carol’s difficulties with her daughter, Jessica. They
4 even started a community group to help pick up litter at the nearby park. Relations begin to sour
5 after a flood in Carol’s Unit caused by an overflow of a professional grade shampoo bowl, which
6 Carol installed in violation of the lease and without Olivia’s knowledge. During the emergency
7 flood response, Olivia discovered concerning issues with the Unit, including a hole in the floor,
8 water damage, discoloration, and mold growth. Oliva tried to be understanding based on her
9 existing relationship with Carol and knowing that Carol’s business suffered during the pandemic,
10 which was why Carol started running her hairdressing business out of the Unit. But Olivia’s
11 patience started to wear thin when Carol made it difficult to make repairs following the flood,
12 saying her daughter was too anxious to let repair people into the Unit. After the flood, Carol
13 started constantly complaining about problems in her Unit and even blamed Olivia for the uptick
14 in crime in the neighborhood.

15 Oliva acknowledges she exchanged stern words with Carol a few times, but she never
16 came close to harassing her. When Carol told Olivia she had found an apartment with two
17 bedrooms in a safer neighborhood, Oliva even waived the standard 30-day notice requirement.

18 Just months after Carol moved out, she sued Oliva claiming she was entitled to fifty
19 percent (50%) of rent paid during the last two years of her tenancy, an unsupportable rent
20 differential damages extending five (5) years into the future, personal property loss from the
21 flood, attorneys’ fees, and astronomical non-economic damages based on Jessica’s anxiety and
22 emotional distress, conditions Jessica struggled with long before moving into the Unit.

23 Carol is not seeking to be “made whole” from an allegedly intolerable living experience.
24 Carol is seeking to leverage her voluntary decision to move out into a larger apartment in a safer
25 neighborhood, and her daughter’s challenging pre-existing conditions, to recover a windfall from
26 Oliva, based on allegations completely divorced from reality. Olivia is participating in mediation
27 in good faith to resolve this matter short of trial. For this mediation to succeed, however, Carol
28 will have to be honest and reasonable and apologize for very publicly disparaging Oliva’s

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1 character and professional reputation. Indeed, Olivia was so distraught by the claims Carol made
2 in the lawsuit that she gave up managing the building, a great source of pride, and moved away.

3 **II. FACTS**

4 **A. THE LEASE AGREEMENT**

5 In June 2017, Carol entered a lease for a 1 bedroom, 1 bathroom apartment at the Park
6 Oak complex in Oakland, California, for \$1,586. When she signed the Lease, Carol
7 acknowledged she inspected the Unit, and it was in “good and habitable order and repair.” The
8 Lease provided instructions on how to avoid mildew and mold growth. Carol agreed she would
9 promptly notify Olivia of any leaks, moisture problems or mold growth, in writing and verbally.

10 The Lease included a further notice to tenants that, “[W]e are not liable to any resident,
11 guest, or occupant for personal injury or damage or loss of personal property from any cause,
12 including but not limited to: fire, smoke, rain, flood, water and pipe leaks, hail, ice, snow,
13 lightning, wind, explosions, earthquake, interruption of utilities, theft, or vandalism unless
14 otherwise required by law.” Additionally, the Lease stated the Unit was to be used as a private
15 residence only, and conducting any business at the residence was prohibited. Finally, the Lease
16 provided for a mutual attorneys’ fees provision, which stated that in event of litigation, the
17 prevailing party is entitled to costs, including reasonable attorneys’ fees, “not to exceed a
18 maximum of \$1,000 fees costs.”

19 **B. CAROL’S RESPONSE TO OLIVIA’S ALLEGED MAINTENANCE ISSUES**

20 It was not until the summer of 2021, when Olivia responded on an emergency basis to a
21 flood in Carol’s Unit, that Olivia became aware of plumbing issues, moisture and discoloration
22 in the bathroom, and a hole in the floor of the Unit. Olivia also discovered Carol had installed a
23 professional-grade shampoo bowl in the bathroom. The plumbing report indicated the shampoo
24 bowl overtaxed the building’s old plumbing system, caused the flood, and had been slowly
25 leaking for months. Even though the flood was caused by Carol’s breaches of the Lease, Olivia
26 paid for the property damage repairs to the Unit and the downstairs unit. As a result of the flood
27 and necessary repairs, Carol and Jessica could not use their bathroom for three weeks.

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1 After the flood, Carol started complaining about issues in her Unit on a weekly basis and
2 claimed the repair work was shoddy. Initially Olivia sent a maintenance person to inspect each
3 time, but he was often denied entry due to Jessica’s fear of strangers.

4 **C. AGREEMENT TO PERMIT CAROL TO BREAK THE LEASE WITHOUT PENALTY**

5 In the Lease, Carol agreed to provide 30 days’ notice of her intent to vacate. Olivia
6 waived this requirement when Carol came to her and said she had found a larger place, with two
7 bedrooms, and had to move out immediately to secure the place and avoid paying double rent.
8 Carol’s move to a newer apartment complex and into a larger unit with 2 bedrooms and 1.5 baths
9 was completely voluntary. After Carol left the Unit, the Unit was vacant for three months. Olivia
10 re-let it for \$1,786, \$200 more than Carol paid.

11 **III. LIABILITY & DAMAGES ANALYSIS**

12 **A. RENT PAID**

13 There is no factual or legal justification for Carol’s demand to be reimbursed 50% of her
14 rent for two years of her tenancy due to alleged inhabitable conditions. First, Olivia’s failure to
15 provide habitable conditions must be substantial. In June 2017, when Carol entered the Lease,
16 Carol affirmed she had an opportunity to inspect the rental unit and that it was in “good and
17 habitable order and repair.” Annual inspections confirmed this through early 2021. It was not
18 until the flood event in mid-2021, caused by the impermissible installation of the shampoo bowl,
19 that Olivia discovered the concerns including excessive moisture, mold and a hole in the floor.

20 Carol is not entitled to a rental reduction for these conditions given she substantially
21 failed to: (1) properly use and operate the plumbing fixtures; (2) impermissibly altered the
22 plumbing equipment; and (3) failed to use the Unit solely for living. Moreover, Carol had a duty
23 to notify Olivia of the alleged issues. Here, the primary habitability issues Carol complains of
24 were discovered through an emergency response *and* caused by Carol’s breaches of the Lease.

25 **B. “LOSS OF USE” DAMAGES**

26 Contrary to Carol’s claims she that was “constructively evicted,” Olivia was responsive
27 and accommodating when Carol advised her that she found a bigger apartment in a safer
28 neighborhood and needed to move immediately. Unlike the cases Carol relies on where landlords

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1 wrongfully evicted tenants so they could raise the rent, Carol left voluntarily, and Olivia even
2 agreed to waive the 30-day notice period. The short notice, made it more difficult for Olivia to
3 re-let the apartment. When it was re-let, the new tenants paid only \$200 more.

4 Carol calculates her loss of use damages by claiming she is entitled to the difference in an
5 unsupported average monthly rent figure and the amount she was paying for the Unit,
6 extrapolated on a monthly basis over a five-year period. First, Carol's projected fair market value
7 for similar units (a 33% increase) is not supported by comparables and fails to account for the
8 overall market decline and high vacancy rates in the neighborhood due to increased crime over
9 the past two years. The best evidence of the rental value is the re-let value of the Unit Carol
10 vacated, which leased for only \$200 more than Carol paid in 2017 (when the neighborhood and
11 economy were stronger). Second, based on their initial friendship, Olivia knows the Unit was
12 only meant to be temporary for Carol and Jessica because they needed more space than a one-
13 bedroom. The limitations of the pandemic kept them in place longer than anticipated. There is no
14 justification for Carol's current claim she had no plans to move let alone she would be there for
15 five more years.

16 **C. PERSONAL PROPERTY**

17 Carol is not entitled to recover her destroyed personal property because 1) Carol caused
18 the flood that destroyed the property; and 2) even if she had not, the lease bars recovery of
19 personal property in a flood event; and (3) Carol produced no evidence to support the fair market
20 value of the property at the time the harm occurred.

21 **D. ATTORNEYS' FEES**

22 As a threshold issue to recover statutory attorney's fees, Carol must show Olivia
23 constructively evicted her and Olivia's conduct violated the applicable rent ordinances. As
24 discussed, Carol cannot make this preliminary showing. Further, Carol overlooks the fact the
25 Lease includes a valid limitation on the recovery of attorneys' fees and costs not to exceed a total
26 of \$1,000.

27 **E. NON-ECONOMIC DAMAGES**

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1 While pain and suffering can range greatly from jury to jury and County to County, the
2 award typically turns on the jury's determination of the egregiousness of the landlord's conduct.
3 Here, although Carol contends she and Jessica were subjected to an "atrocious" living situation
4 for years, the real-time correspondence and communications between Carol and Olivia tell a
5 different story. Namely, before the flood event, Olivia made substantial efforts to promptly
6 resolve each of Carol's issues, which were minor and infrequent. In each instance, Carol
7 sincerely thanked Olivia for her efforts. It was not until after the flood incident caused by Carol
8 that the complaints became constant all while Olivia was denied access to investigate the claims.

9 The other mitigating factors weighing against Carol's claim is Jessica's long and well
10 documented history of anxiety pre-dating their residence at the Unit, and the utter absence of any
11 medical records related to Jessica's condition being aggravated by living at the Unit.

12 **IV. INSURANCE**

13 There is a general liability and a pollution policy at issue. Carol's far-ranging habitability
14 allegations, and the date-neutral complaints, have created an issue regarding the scope of
15 available coverage under each policy.

16 **V. SETTLEMENT NEGOTIATIONS**

17 There have been no settlement negotiations to date.

18 **VI. CONCLUSION**

19 Olivia is coming to mediation in good faith to work toward a reasonable resolution. For
20 mediation to succeed, Carol must stop exaggerating her claims to increase her potential recovery
21 and understand that her public allegations have deeply detrimentally effected Olivia.

22 Date: October 22, 2024

EDLIN GALLAGHER HUIE & BLUM LLP

24 By: 

25 _____
26 ERIN K. POPPLER
27 Attorneys for Defendants
28 OAK PARK ASSOCIATES, LP and
OWNER OLIVIA