



Edwin M. Lee
Mayor

DAVID GRUBER
PRESIDENT

Delene Wolf
Executive Director

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

CALVIN ABE
DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
KENT QIAN
DAVID WASSERMAN

Tuesday, July 14, 2015
at 6:00 p.m.
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Abe; Crow; Gruber; Hung; Marshall; Mosbrucker;
Qian.
Commissioners not Present: Dandillaya; Mosser; Wasserman.
Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of June 9, 2015.
(Marshall/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Tenant Sally Frye of 3219 – 23rd St. #1 (AL150071) told the Board that she is currently paying 40% above her original rent, which is too much. Ms. Frye contends that she has given much to her fellow tenants and the building, but the property needs better care or, “what are we paying for?”

B. Attorney Saul Ferster, representing the landlord in the case at 1143 Taylor (AT150063), said that “enough is enough” as the tenant waited twelve years to file a petition alleging decreased housing services but didn’t include the alleged shower removal that the tenant is now complaining of. The tenant waited a year to file the current appeal, which is “way too long.” A letter from the tenant’s doctor says she is suffering from stress but does not say she is incapable and, therefore, there is no good cause for the late filing.

C. Subtenant David Burke of 1933 Oak (AT150061) said that he hopes the Board accepts his new room measurements as credible and that the amenities that were provided by the master tenant were over-valued at \$100.00

D. Tenant Manuel De La Torre of 95 Carrizal (AL150066) told the Board that the landlord lied in his appeal when he said that he didn't increase the rent for four years, as there had been a \$75 increase.

E. Nathan Jauvtis, the tenant at 491 – 20th Ave. (AT150064), told the Board that he missed his hearing because he was unaware of the date. The landlord receives mail for the building, and may have withheld the hearing notice. Mr. Jauvtis said that the issues he raised in his petition are important to him.

F. Representative Jim Faye spoke on behalf of the tenant at 88 Cumberland (AT150058), saying that the tenant did not receive the Memorandum explaining that the landlord's capital improvement petition would be decided without a hearing absent tenant objection. Mr. Faye expressed his opinion that tenants shouldn't have to pay for all of the new windows in the building, as he does not believe that they constitute a structural amenity.

G. Landlord Danielle Conrad of 4347 – 20th St. (AT150057) told the Board that the tenant has vacated the unit.

H. Tenant Jim Reid of 3424 – 16th St. (AT150065) told the Board that he is a contractor and completely remodeled his unit. Unfortunately, he and the landlord did not discuss the possibility of a capital improvement passthrough at the time he did the work. Mr. Reid maintained that the landlord has an obligation to replace the water heater and bring the building up to code, and said that he should just have to pay the difference between the cost of the old water heater and the new one that the landlord put in.

I. Jie Sun, the landlord in the case at 438 Masonic (AL150067-69), told the Board that she retained a room in the unit for her own use, but the subtenants kicked her out.

J. Landlord Blake Westrate of 1050 Post (AT150062) told the Board that the trash chute in the building was terminated for good, required reasons. Five of nine tenants showed up at the hearing on this issue and all of them withdrew their petitions.

K. Steve Bach, the landlord in the hardship appeal regarding 3219 – 23rd St. (AL150071), said that the tenant claims not to be able to afford the extra \$40 for the O&M increase but hasn't provided any proof that she's been looking for work. Mr. Bach maintained that the tenant writes well and has skills and said that he found 450 current job openings. Mr. Bach doesn't feel he should have to supplement the tenant's rent based on an "unproven assumption."

L. Another individual spoke to the appeal regarding 3219 – 23rd Street, saying that it should be the tenant's responsibility to re-apply for a hardship deferral, and the burden shouldn't be on the landlord.

V. Consideration of Appeals

A. 491 – 20th Ave., In-Law

AT150064

The tenants' petition alleging decreased housing services was dismissed due to their failure to appear at the properly noticed hearing. On appeal, the tenants claim not to have received the Notice of Hearing, and attach the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Marshall/Mosbrucker: 5-0)

B. 3219 – 23rd St. #1

AL150071

The tenant's hardship appeal of the landlord's 7% operating expense increase was granted for as long as the tenant's rent exceeds 30-35% of her gross income. On appeal, the landlord argues that: the tenant is well educated and employable; the burden of proving the tenant's financial situation has been unfairly shifted to the landlord; and, should the tenant find a job, she should be retroactively liable for the operating expense increase.

MSC: To accept the landlord's appeal and remand the case to the Administrative Law Judge on the record to issue a new decision finding that the tenant's hardship appeal is granted until July 14, 2016. At that time, should the tenant require continued relief from imposition of the operating expense increase, she must re-open her hardship appeal. In the interim period, should the tenant's financial circumstances change so that she is no longer paying more than a third of her income towards rent, she shall so notify the landlord in writing. Likewise, if the landlord has evidence that the tenant's financial circumstances have changed so that she no longer qualifies for the hardship deferral, the landlord may make a written request to the Rent Board to re-open the case.
(Mosbrucker/Marshall: 5-0)

C.1050 Post, Apt. 27

AT150062

The tenants' petition alleging decreased housing services was dismissed due to the tenants' failure to appear at the properly noticed hearing. The tenants appeal the dismissal because one of the tenants had a last-minute family medical emergency and had to leave the country.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenants again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

D. 1143 Taylor St.

AT150063

The tenant's petition alleging decreased housing services was denied because the ALJ found that the tenant failed to prove that there was a shower in her downstairs bathroom that was removed by the prior landlord twelve years ago. The tenant appeals the decision, claiming that she is willing to pay for reinstallation of the shower herself, but the landlord will not let her.

The tenant's appeal was filed almost a year late because the tenant alleges that she experienced harassment from the landlord and other tenants in the building.

MSC: To recuse Commissioner Gruber from consideration of this appeal.
(Mosbrucker/Marshall: 5-0)

MSC: To find no good cause for the late filing of the appeal. The Decision is therefore final. (Abe/Mosbrucker: 4-0)

E. 1933 Oak St.

AT150061

The subtenant's petition alleging that he paid a disproportional share of the rent was denied. On appeal, the subtenant claims that: the decision is based on an incorrect square foot measurement of the rooms in the unit provided by the Master Tenant; the Master Tenant prevented him from measuring the other occupied rooms until after he moved out of the unit; and the amenities provided by the Master Tenant are worth less than the \$100 valuation assigned by the ALJ.

MSC: To deny the appeal. (Abe/Gruber: 5-0)

F. 88 Cumberland St.

AT150058

The landlord's petition for certification of the costs of replacing wood frame windows to all 4 units was granted without a hearing. One tenant appeals the decision because she claims to have only received the Memorandum saying that the case would be scheduled for a hearing, and not the subsequent Memorandum saying that the case would be decided without a hearing unless any tenant objected. The tenant maintains that the new windows only affected units in the front of the property and she received no benefit from their installation.

MSC: To accept the appeal and remand the case for a hearing only on the issue of the allocation of the costs of replacing the windows.
(Marshall/Mosbrucker: 5-0)

G. 2502 – 25th St.

AL150070

The tenants' petition alleging decreased housing services due to the landlord's unreasonable withholding of consent for a replacement roommate was granted and the landlord was found liable to the tenants in the amount of \$12,043.22. The landlord appeals

the decision on the grounds that: the tenants were not truthful at the hearing and she did not have with her the necessary documents to dispute their contentions; the ALJ denied her request that the hearing be rescheduled; and the tenants did not follow the provisions in the lease pertaining to roommate replacement.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only to determine the proper date for termination of the rent reduction as the tenants vacated the unit; a hearing will be held only if necessary. The appeal is denied as to all other issues. (Marshall/Mosbrucker: 5-0)

H. 205 – 16th Ave.

AL150059

The landlord's petition for certification of the costs of a mandatory seismic retrofit project for 11 of 14 units was granted, in part. On appeal, the landlord maintains that the costs for soft story screening and associated reports as well as temporary relocation of one of the tenants are incidental to the capital improvement work and should have been certified.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

I. 4347 – 20th St.

AT150057

The tenant's petition alleging an unlawful rent increase from \$4,056.75 to \$6,800.00 was denied because the ALJ found that the tenant had not established a direct landlord-tenant relationship with the landlord and the increase was therefore warranted under Costa-Hawkins. On appeal, the tenant claims that: he established a tenancy by signing a lease with the prior landlord, relaying repair requests and receiving rent increase notices with his name on them; the language of the landlord's contract with third parties should not have any bearing on his tenancy rights; the landlord failed to meet their burden of proving that the rent increase is warranted; and the ALJ misapplied the law to the uncontested facts of the case.

MSF: To accept the appeal and remand the case for a supplemental hearing on the issue of whether the tenant established a direct landlord-tenant relationship with any of the prior owners of the property.
(Mosbrucker/Marshall: 2-3: Abe, Gruber, Hung dissenting)

MSC: To deny the appeal. (Abe/Gruber: 3-2; Marshall, Mosbrucker dissenting)

J. 807 Ashbury #5

AT150060

The landlord's petition for certification of capital improvement costs to 5 of 6 units was granted. The tenant in one unit appeals the certification of the costs of remodeling the bathroom in the unit, claiming that the work was initiated as a repair and the costs should be split between repairs and actual capital improvements.

MSC: Pursuant to the landlord's withdrawal of the bathroom remodeling work in unit #5, to accept the tenant's appeal and remand the case to the

Administrative Law Judge to issue a corrected decision.
(Marshall/Gruber: 5-0)

K. 95 Carrizal St.

AL150066

The landlord's appeal was filed approximately three weeks late because the landlord experienced technological difficulties when preparing the appeal.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Gruber: 5-0)

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$2,737.50 due to habitability defects on the premises. On appeal, the landlord claims that: his request for more time to prepare his case was denied by the ALJ; he has never received notices from the Department of Public Health or Building Inspection documenting that some of the conditions have been cleared; the window was not broken by the wind but, rather, by a rock probably thrown by the tenant's children; the tenant failed to provide access to the unit in order for the repairs to be made; and the tenant committed perjury at the hearing and failed to sustain his burden of proof.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

L. 3424 – 16th St.

AT150065

The landlord's petition for certification of the costs of a new water heater and double paned windows to the tenant in one unit was granted. The tenant appeals the decision on the grounds that: since the landlord is required to provide a water heater, only the cost of relocating the appliance should be certified; the landlords failed to keep their agreement regarding installation of the windows; and the ALJ did not require that the landlords serve him with a copy of the landlords' submissions.

MSC: To deny the appeal. (Abe/Gruber: 3-2; Marshall, Mosbrucker dissenting)

M. 3634 – 16th St.

AT150072

MSC: To recuse Commissioner Crow from consideration of this appeal.
(Mosbrucker/Abe: 5-0)

The landlord's petition seeking a determination pursuant to Rules §1.21 and/or Costa-Hawkins was granted as the ALJ found that the original occupant of the unit no longer permanently resided there and the appellee was a subtenant who did not reside in the unit prior to January 1, 1996. On appeal, the tenant argues that: a tenancy was created by consent and the landlord's acceptance of his rent through the daughter of the owner; and, a notice of Costa-Hawkins rent increase cannot be served until the last original occupant no longer resides on the premises, and not before.

MSC: To deny the appeal. (Gruber/Abe: 3-2; Marshall, Mosbrucker dissenting)

N. 438 Masonic

AL150067-69

The tenants' petitions alleging decreased housing services and unlawful rent increases were granted and the landlord was found liable to the tenants in the amount of \$275.50 and \$95.00 due to rent overpayments and \$1,200.00 each for a period of time when the landlord moved in to their rental unit. On appeal, the landlord maintains that: the decision contains factual errors; her evidence was not given adequate weight by the ALJ; the rent reduction for her occupancy of the unit is excessive; the tenants were informed and agreed that the enclosed living room area was for the landlord's use as a bedroom; and the tenants rented individual bedrooms in the apartment, but all of the common areas were to be shared.

MSC: To deny the landlord's appeals. (Marshall/Mosbrucker: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of May, 2015.

B. Articles from the Los Angeles Times, the S.F. Chronicle, 48hills, the S.F. Examiner, the S.F. Business Times, BeyondChron and the S.F. Weekly.

VII. Director's Report

Executive Director Wolf let the Board know that Attorney Karen Uchiyama has been issuing civil court subpoenas to compel persons' attendance at Rent Board hearings under threat of civil penalties and contempt of court. Ms. Wolf sent a letter to Ms. Uchiyama letting her know that the Rent Ordinance does not authorize the use of subpoenas to compel attendance at Rent Board hearings, and civil subpoenas are limited to actions that are filed in court. Ms. Wolf requested confirmation that Ms. Uchiyama will stop this practice and will report to the Board at the next meeting as to Ms. Uchiyama's response.

Senior ALJ Tim Lee told the Board that the court of appeal in the Dropolas case held that an unlimited rent increase was not authorized by Costa-Hawkins (Civil Code §1954.53(d)(2)) for two separate reasons: (1) a minor child who moved into the unit at the inception of the tenancy was an original occupant; and (2) a subtenant at the time of service of the notice of Costa-Hawkins rent increase resided in the unit prior to January 1, 1996. Additionally, Attorney Andrew Zacks has filed a state court lawsuit challenging the validity of the Campos 2 Ellis relocation payments ordinance on various grounds. Plaintiffs named the City as a defendant and the Tenderloin Housing Clinic as a real party in interest. Plaintiffs' request for a temporary restraining order was denied by Judge Quidachay.

VIII. Old Business

Discussion of application procedures for capital improvement petitions where the work totals more than \$25,000 and the no-hearing alternative for certain capital improvement petitions was continued to the next meeting.

IV. Remarks from the Public (cont.)

M. Tenant Sally Frye of 3219 – 23rd St. told the Board that health problems entered into her situation, as she suffered from a heart attack and back issues in the past year. She also pointed out that she is pushing 60. She assured the Board that there will be no problem with her notifying the manager should she get her dream job.

N. The subtenant in the case at 1933 Oak (AT150061) asked the Board what constitutes “gross injustice?”

O. Danielle Conrad, the landlord in the case at 4347 – 20th St. (AT150057) said that the Notice of Hearing says that it’s the tenant’s burden of proving an unlawful rent increase and that, if that is not the case, perhaps the notice should be re-worded.

P. The landlord in the case at 438 Masonic told the Board that she paid all of the utilities for the unit while living there, even when she was away. She has now been displaced from her own home and is living somewhere else because “the tenants are law students and know how to manipulate the system.”

IX. Calendar Items

August 18, 2015

14 appeal considerations

Old Business:

- A. Status Report on Letter from Executive Director re Use of Civil Subpoenas in Rent Board Proceedings
- B. Application Procedures for CI Petitions Where the Work Totals More than \$25,000
- C. No-Hearing Alternative for Certain Capital Improvement Petitions

X. Adjournment

President Gruber adjourned the meeting at 8:15 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.