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

Tuesday, August 18, 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: Crow; Gruber; Marshall; Mosbrucker; Mosser; Qian; Wasserman.
Commissioners not Present: Hung.
Staff Present: Lee; Wolf.

Commissioner Abe appeared on the record at 6:07 p.m.; Commissioner Dandillaya arrived at the meeting at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 14, 2015.
(Marshall/Gruber: 5-0)

IV. Remarks from the Public

A. The secretary for OK Investments, the landlord in the case at 2159 Lombard (AL150080), told the Board that the property was substantially rehabilitated in 1997, at which time a Certificate of Final Completion and Occupancy (CFCO) was issued. At the time another unit in the building was determined to be under rent control, the landlord had a pending lawsuit in Superior Court that they didn't want to jeopardize. The landlord has fought for 8 years to correct an erroneous assumption made by the City.

B. Tenant Oscar Gonzalez of 5 Leo (AT150077) told the Board that he took his landlord to Small Claims Court, but the landlord provided forged documents. Mr. Gonzalez maintained that the landlord has known about mice in his unit since 2012; has given him illegal rent increases since the beginning of his tenancy; has threatened to call the INS on

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Mr. Gonzalez' wife; and has sexually harassed her. Mr. Gonzalez alleged that the landlord "discriminates and manipulates the system" and said that the Board should "stop him." Mr. Gonzalez doesn't care about the money, but, rather, "it's the principal."

C. Landlord Grant Uti of 867 Ashbury (AL150079) told the Board that his passthrough of mandatory soft story seismic retrofit work was denied for one unit because of the 6-Month Rule. Mr. Uti said that this life/safety issue arose after the tenant moved in, and couldn't have been foreseen. The irony is that the unit that was disallowed is the one that benefits most from the work. Mr. Uti questioned whether it is good public policy to discourage landlords from doing the work as expeditiously as possible.

V. Consideration of Appeals

A. 947 Madrid

AT150073

The tenant's appeal was filed two weeks late because he has no access to the mailbox at his current address.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Mosbrucker: 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 \$1,250.00. Both the landlord and tenant appealed the decision. The tenant's appeal was accepted and remanded only for the Administrative Law Judge (ALJ) to reconsider and make specific findings regarding the tenant's sanitation claim. As the tenant failed to appear at the remand hearing, the prior Decision was affirmed without modification. On further appeal, the tenant claims not to have received notice of the remand hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

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

B. 21 Guerrero #2

AL150087

The master tenant's appeal was filed one day late because the master tenant was unable to meet with his lawyer over the July 4th holiday.

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

The subtenant's petition alleging that she paid rent to the master tenant in excess of the amount the master tenant paid to the landlord was granted and the master tenant was found liable to the subtenant in the amount of \$8,939.52. The master tenant appeals the

decision, arguing that: the subtenant's rent was considerably less than market; he provided a furnished apartment with amenities; and he experienced harassment from the subtenant.

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

C. 505 – 26th Ave., Apt. 2C

AL150081

The tenant's petition alleging unlawful rent increases due to charges for utilities originally included in the base rent was granted and the landlord was found liable to the tenant in the amount of \$392.59. The landlord appeals the decision, claiming that the tenant's rent should not have been reduced for lack of a heating source in the bedroom because there is a heating source in an adjoining study, which arrangement was agreed to by the tenant.

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

D. 832 Vallejo

AL150085

The subtenant's petition alleging that he paid a disproportional share of the rent was granted and the master tenant was found liable to the tenant in the amount of \$1,848.41. The subtenant's claim of decreased housing services was denied. On appeal, the master tenant claims that the subtenant did not pay rent for several months, which should be deducted from the amount she owes him.

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

E. 5 Leo #5

AT150077

The tenants' petition alleging decreased housing services was granted, in part. The tenants' appeal on the issue of illegal wiring connections inside and outside the apartment was remanded for further consideration by the ALJ. In the Decision on Remand, the ALJ found that the tenants failed to prove their claim of unlawful electrical siphoning since the date of a mediation agreement entered into by the parties; that the light dimming problem only occurred once, which is not substantial; and that the entry light outside the tenants' door only benefits their unit and is properly connected to their meter. A claim of inadequate sockets and wiring was granted, however, and the landlord was found liable to the tenants in the amount of \$20.00 per month. The tenant again appeals, claiming that: the ALJ exhibited bias against the tenants and ignored the Code of Ethics; Notices of Violation from 2003 have yet to be abated; the landlord lied and presented fraudulent evidence at the hearing; the landlord has never responded to habitability issues in the unit in a timely manner; and the landlord has failed to repair and maintain the unit from July, 2006 to March of 2014.

MSC: To deny the appeal. (Abe/Gruber: 4-1; Marshall dissenting)

F. 180 Carl #4

AL150074

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$1,291.50 for reduced storage space, loss of on-site laundry facilities and removal of the rear entrance and stairs to their unit. On appeal, the landlord argues that: the landlords have actively undertaken upgrades to the building since their acquisition; the tenants refused the landlord's offer of replacement laundry facilities in their unit; the amounts granted are excessive and not empirically based; and the new storage space is smaller but superior in every other respect.

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

G. 307 – 30th Ave.

AT150075

The tenants' petition alleging decreased housing services due to alleged lack of access to a gate in the back yard was denied because the housing service was added after the commencement of the tenancy for no additional consideration and the ALJ found that the claim was not substantial. The tenants appeal the decision, claiming that: the ALJ improperly referenced evidence from a prior case and exhibited bias against the tenants; the landlord failed to prove that he provided the tenants with a key to the back gate prior to February 23, 2015; and the tenants' evidence was omitted from the Decision and not considered by the ALJ.

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

H. 1049 Market #606

AL150078

The tenant's petition seeking a determination of the proper rent and finding unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$6,333.00. The ALJ found that six units on the same floor of the building had lawfully been converted to live/work but that there had never been a Certificate of Final Completion and Occupancy issued for the subject unit which makes it subject to Rent Board jurisdiction. The landlord argues on appeal that his request for postponement of the hearing due to unavailability of counsel should have been granted.

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

I. 867 Ashbury #606

AL150079

The landlord's petition for certification of the costs of a mandatory soft-story retrofit project was granted except for one unit, which tenancy began within six months of the commencement of the project. On appeal, the landlord maintains that: the "6-Month Rule" should not be applied in this case because the need for the work was not known or could have been foreseen at the time the unit was rented; the landlord is being punished for responding expeditiously to a life-safety issue, which is not good public policy; the ALJ erred as to the date work commenced on the project; and the Rent Board's website does not cite the "6-Month Rule" in the section discussing mandatory seismic work.

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

J. 3285 Cesar Chavez

AL150082

The tenants' petition alleging unlawful rent increases and decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$9,045.00 for rent overpayments, \$1,448.72 for improper water charges and \$157.50 for a defective entryway door lock. On appeal, the landlord claims that: the subject unit is an exempt single family dwelling; and, since there is a secure lock on the front gate, the property was not cited by the Building Inspector for the non-locking door.

MSC: To accept the appeal and remand the case for a supplemental hearing to consider the new evidence and any other evidence the parties may submit on the issue of whether this unit comes under Rent Board jurisdiction.
(Abe/Gruber: 5-0)

K. 2159 Lombard #A

AL150080

The tenants' petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenants in the amount of \$2,000.00. The landlord appeals on the following grounds: the unit is exempt from rent control because the entirety of the building was substantially rehabilitated in 1997, at which time a new Certificate of Final Completion and Occupancy was issued; the requirements for certification of substantial rehabilitation contained in the Rules and Regulations do not appear in the Ordinance; and a prior Rent Board Decision regarding another unit in the building is irrelevant.

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

L. 340 Spruce St.

AL150076

The landlord's petition for a rent increase based on comparable rents was denied because the ALJ found that the initial rent for the unit was not set low due to fraud perpetrated by the tenant. On appeal, the landlord argues that: the ALJ failed to consider the "some other reason" justification for a comps increase, which in this case was the prior landlord's intent to regain control of the building after a foreclosure sale; the landlord was not afforded the opportunity to respond to the tenant's post-hearing submission; and the ALJ failed to take into account repairs and improvements made and promised by the prior landlord in determining the proper base rent for the unit.

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

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

M. 491 Madrid

AT150083

The tenant's petition alleging an unlawful rent increase and decreased housing services was decided as to the unlawful rent increase claim only, as the ALJ found that the Rent Board lacks jurisdiction over the unit as it is a single family dwelling and exempt under

Costa-Hawkins. The tenant appeals the decision, arguing that the building has a separate in-law unit, which makes it a two-unit building subject to Rent Board jurisdiction.

MSF: To accept the appeal and remand the case to the Administrative Law Judge with instructions to consider the history of the building as consisting of two units and find that the subject unit is not exempt.
(Marshall/Mosbrucker: 2-3; Abe, Gruber, Dandillaya dissenting)

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

N. 3423 – 20th St.

AL150084

The tenants' petition alleging an unlawful rent increase from \$420.00 to \$2,900.00 was granted because the ALJ found that the tenants had established a direct landlord-tenant relationship with the landlord and therefore no Costa-Hawkins increase was warranted. On appeal, the landlord argues that: since the landlord did not receive written notice that the original occupant no longer permanently resided on the premises, or that the subtenants had moved in, acceptance of rent from the subtenants did not waive their right to a Costa-Hawkins increase; the Declaration from the prior property manager relied upon by the ALJ was perjurious; and approval or disapproval of new tenants was outside the scope of the prior property manager's authority and therefore knowledge about those actions on his part should not be imputed to the former landlords.

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

VI. Communications

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

A. Legislation introduced by Supervisor Kim on June 16th providing additional tenant eviction protections.

B. The office workload statistics for the month of June, 2015.

C. Articles from the [S.F. Chronicle](#), the [S.F. Examiner](#), [48hills](#), [truth-out.org](#), the [S.F. Weekly](#), [businessinsider.com](#), [BeyondChron](#) and [bayareanewsgroup.com](#).

VII. Director's Report

Executive Director Wolf told the Board that the rental unit fee for the coming year will be \$37.00 per unit. She let the Commissioners know that she recently conducted training on the Rent Ordinance and Just Cause eviction for eligibility workers at the Housing Authority and also appeared before the SRO Task Force.

VIII. Old Business

A. Status Report Letter to Attorney Regarding Unauthorized Use of Civil Subpoenas in Rent Board Proceedings

At the July 14th meeting, Executive Director Wolf told the Board 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 had sent a letter to Ms. Uchiyama letting her know that the Rent Ordinance does not authorize the use of subpoenas to compel attendance and that civil subpoenas are limited to actions that are filed in court. Ms. Wolf requested confirmation by July 24th that Ms. Uchiyama would stop this practice, and agreed to let the Board know Ms. Uchiyama's response.

On August 6th, Ms. Wolf received a letter from Ms. Uchiyama confirming that she would no longer issue civil subpoenas for Rent Board hearings and stating that she had been misinformed about their use. After discussion, the following motion was made, but failed:

MSF: To direct staff to contact the City Attorney for advice as to how to proceed with a referral to the State Bar. (Marshall/Mosbrucker: 2-3; Abe, Gruber and Dandillaya dissenting)

After further discussion, the Board asked staff to continue to monitor Ms. Uchiyama's compliance, talk to the City Attorney as to the Board's options, and report back at a future meeting.

B. Ordinance Section 37.7(f)(3): Application Procedures for Capital Improvement Petitions Where the Work Totals More Than \$25,000 &

C. Backlog Reduction Measures: the "No-Hearing Alternative" for Certain Capital Improvement Petitions

The Board continued discussion of these issues to a future meeting in order for staff to report back as to whether capital improvement petitions where the work totals more than \$25,000 are still being bifurcated, thereby contributing to the hearing backlog.

IX. Calendar Items

September 15, 2015

12 appeal considerations

Executive Session: Personnel

X. Adjournment

President Gruber adjourned the meeting at 7:40 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.