

City and County of San Francisco



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Residential Rent Stabilization and Arbitration Board

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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

Tuesday, September 15, 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; Dandillaya; Gruber; Marshall; Mosbrucker; Mosser; Qian; Wasserman.
Commissioners not Present: Hung.
Staff Present: Gartzman; Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of August 18, 2015.
(Abe/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Tenant Attorney Jaime Rush of the Aids Legal Referral Panel (ALRP) spoke on behalf of the tenants at the Midtown Park Apartments (1415 Scott St. #107; AT150094). Ms. Rush told the Board that rent increases have been issued, ranging from 6% to 456%, with an average increase of 103%. Ms. Rush said that the City's rent modification program provides for tenants paying less than 30% of their household income for the next four years. However, Ms. Rush said that there is no guarantee that, if a tenant's circumstances were to change, their rents would be adjusted downward. Ms. Rush maintained that she and the other attorneys in the case are "just trying to keep people in their housing."

B. Midtown resident Olivia Deidrich told the Board that, in past years, the tenants' rents have increased by the annual allowable increase amounts permitted under the Rent Ordinance. Ms. Deidrich maintained that the Mayor's Office of Housing has the ability to

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allow these units to continue under rent control. Ms. Deidrich believes that rent increases are warranted, but that the proposed amounts are unreasonable.

C. Midtown tenant Felocious Wyatt, Jr. was on the Board of Directors of Midtown. Mr. Wyatt wants to “uphold our right to remain under rent control,” and pursue the possibility of ownership, “as promised.”

D. Midtown tenant Rufus Watkins said that the Board “told us to come back when our rents go up.” Mr. Watkins told the Board that the tenants are just “following their lead.”

E. Tenant Alex Mora of 53 Miguel (AT150086) told the Board that he didn’t get a chance to be heard, and would appreciate another chance. Mr. Mora said that his rent has been quadrupled, which constitutes a hardship.

F. Tenant Mala Gehr of Midtown said that the room was predominantly filled with people of color, who are being pushed out of the City, while the Board only has four Commissioners of color. Ms. Gehr theorized that, when white people look at people of color, their synapses don’t fire, which is why they are incapable of empathy. Ms. Gehr believes that this is the reason the Board “won’t give them their rent control.”

G. Eric Arguello, an organizer in the Mission, said that he was there supporting Midtown because there is mass displacement in the City.

H. Tenant Patricia Smith of Midtown said she lived there through very hard times in the ‘60’s. Ms. Smith believes that the tenants are being asked to leave now that the City is “going to make it something desirable.”

I. Richard Stowe said that he has been evicted a few times, so was there in solidarity. He told the Board “you have an empathy switch – find it.”

J. Midtown tenant Terry Major told the Board that he lost his job so his income has been cut in half, but his rent is still the same. Mr. Major said that vacant units are not being rented, but are being used to house maintenance workers. Mr. Major had brain surgery and is “highly stressed.”

K. Midtown tenant Jay Guzman told the Board that the tenants were made a promise that, when the mortgage was paid off, they could acquire equity ownership. Mr. Guzman said “Shame on you, San Francisco.”

L. Tenant Deanna Azmer said she has lived at Midtown for over 30 years and that her grandmother passed away recently because of “stress from the City.” Ms. Azmer believes that the City is “moving us out of San Francisco so others can move in” and asked the Board to make a “fair and rightful decision.”

M. Tenant Mary Watkins has lived in Midtown for 45 years but now they’re “fixing and beautifying everything.” Ms. Watkins believes that the City wants people with money and

feels that Mercy Housing is “disrespectful.” Ms. Watkins said the Board told them their last appeal was premature. She now asked the Board to “have a heart and do the right thing.”

N. Tenant representative Rosa Cavalho of the Tenderloin Housing Clinic spoke on behalf of the tenant appellants at 371 Turk Street (AT150102 thru -07). Ms. Cavalho told the Board that the tenants’ appeals were late because of language difficulties. Ms. Cavalho also expressed her support and solidarity with the Midtown residents, and in favor of keeping people of color in the City.

O. Midtown Tenant Attorney Joshua Arce told the Board that if the property was owned by a private landlord, rent control would apply. Mr. Arce also said that the dispute is going to be resolved in the courts.

P. Natalia Roberts is a journalist writing about Midtown, where she believes “egregious” things are happening. Ms. Roberts asked the Board to “honor rent control for tenants who’ve always had rent control” and “right the wrongs of urban renewal.”

Q. Andy Blue said that he is fighting displacement in the Mission and that the Midtown community must be preserved.

R. Landlord George Miller of 2229 Northpoint (AT150095) said that the Administrative Law Judge (ALJ) made a “fair and thorough ruling” and asked the Board to uphold it.

V. Consideration of Appeals

A. 3410 – 22nd St. #4

AT150091

The landlord’s petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in seven units. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand hardship the case for a hearing on the tenant’s claim of financial hardship. (Marshall/Mosbrucker: 5-0)

B. 371 Turk # 11, 21, 24, 53, 61 & 62

AT150102 thru -07

The landlord’s petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 19 of 25 units. The tenants in six units appeal the decision on the grounds of financial hardship.

MSC: To recuse Commissioners Mosser and Wasserman from consideration of these appeals. (Abe/Gruber: 5-0)

The tenants in unit # 11 filed their appeal a week late because the tenants had difficulty in translating the documents and obtaining information.

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

MSC: To accept the appeal of the tenants in unit #11 and remand the case for a hearing only if the tenants provide Hardship Applications for all of the adult occupants of the unit. (Mosbrucker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #21 and remand the case for a hearing on the tenants' claim of financial hardship.
(Mosbrucker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #24 and remand the case for a hearing on the tenants' claim of financial hardship.
(Mosbrucker/Marshall: 5-0)

The tenants in unit # 53 filed their appeal a week late because the tenants had difficulty in translating the documents and obtaining information

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

MSC: To accept the appeal of the tenants in unit #53 and remand the case for a hearing only if the tenants provide Hardship Applications for all of the adult occupants of the unit. (Mosbrucker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #61 and remand the case for a hearing on the tenants' claim of financial hardship.
(Mosbrucker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #62 and remand the case for a hearing on the tenants' claim of financial hardship.
(Mosbrucker/Marshall: 5-0)

C. 640 Mason #405

AT150096

The tenant's application for hardship relief from a capital improvement passthrough was denied because the evidence showed that the tenant would be paying 31.5% of her income towards rent with the passthrough, rather than the required 33%. On appeal, the tenant claims that she is elderly and will not be able to continue working for long, as well as being in debt and living from paycheck to paycheck.

MSC: To deny the appeal without prejudice to the tenant re-filing should her financial circumstances change. (Mosbrucker/Abe: 4-1;
Marshall dissenting)

D. 427 – 34th Ave. #3

AL150088

The tenant's petition alleging imposition of a capital improvement passthrough without Rent Board approval and a charge for parking previously included in the base rent was granted and the landlords were found liable to the tenant in the amount of \$137.04 and \$2,000.00, respectively. On appeal, the landlords claim that the ALJ erred in his calculation of the parking overcharges and that they have not received a signed agreement from the tenant's subtenant.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only to amend the decision to state that, if the tenant stopped paying the \$200 parking fee before July 31, 2015, the parties shall make the appropriate adjustment to the amount of the overpayment.
(Marshall/Mosbrucker: 5-0)

E. 789 Carolina #9

AT150097 thru -0100

The tenant's previously granted hardship deferrals of capital improvement passthroughs and an operating expense increase were not extended because the ALJ found that the tenant failed to prove that funds received by the tenant for a business transaction were paid to a client, as he maintained at the hearing. On further appeal, the tenant furnishes a cancelled check documenting the sale of a piece of artwork and claims that: he is experiencing ongoing health issues and is not charging his subtenants more rent than he is paying the landlord.

MSC: To recuse Commissioners Wasserman and Mosser from consideration of this appeal. (Abe/Mosbrucker: 5-0)

MSC: To accept the appeal and remand the case for a supplemental hearing to look at the new evidence submitted on appeal.
(Marshall/Mosbrucker: 3-2; Abe, Gruber dissenting)

F. 1695 & 1697 – 20th Ave.

AL150089 & -90

The tenants' petitions alleging decreased housing services were granted and the landlord was found liable to the tenants in the amount of \$1,059.55 for the loss of a washer/dryer set for each unit; and \$2,100.00 for a reduction in the amount of garage storage space. On appeal, the landlord argues that: the tenants failed to prove the value of the decreased services; sharing one set of laundry appliances amounts to only a slight inconvenience; the amounts granted by the ALJ are excessive; the lease for the premises clearly prohibits storage in the garage; and the landlord is being forced to violate City housing codes or be punished with large rent reductions.

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

G. 2229 North Point

AT150095

The landlord's petition for a rent increase based on increased operating expenses was granted, resulting in a 7% base rent increase to the tenant in one unit. That tenant appeals

the decision, arguing that: the tenants pay for their own garbage bills; and a new owner's property tax reassessment and increased debt service are not legitimate expenses and do not warrant a rent increase.

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

H. 1450 Lyon #3

AL150092

The tenant's petition alleging an unlawful increase in rent due to an additional occupant in the unit and the landlords' unreasonable withholding of consent to a replacement roommate was granted and the landlords were found liable to the tenant in the amounts of \$747.00 and \$825.00, respectively. The landlords appeal the decision on the grounds that the tenant moved in to the unit one year earlier and the landlord therefore was entitled to a banked amount that renders the rent increase lawful.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the new evidence submitted on appeal; a hearing will be held only if necessary. (Gruber/Abe: 5-0)

I. 53 Miguel St. #C

AT150086

The landlord's petition for a rent increase based on comparable rents from \$700 to \$2,787.20 was granted. On appeal, the tenant argues that: he did not receive the Notice of Hearing in a timely fashion; there are factual errors in the decision and the original lease has been doctored; his relationship with the former landlord did not constitute a "special relationship;" the rent, or lack thereof, of other units in the building should have been considered; the tenant's financial circumstances at the time he rented the unit are irrelevant; and the decision presents the tenant with a financial hardship.

MSC: To accept the appeal and remand the case for a hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.

(Marshall/Mosbrucker: 3-2; Abe, Gruber dissenting)

J. 1415 Scott St. #107

AT150094

The tenants in 59 units filed consolidated petitions alleging that the subject units are not exempt from the Rent Ordinance and that the landlord, the Mayor's Office of Housing (MOHCD) in conjunction with Mercy Housing, unlawfully increased the rents. For a second time, the ALJ found that the units are exempt from Rent Board jurisdiction because MOHCD regulates the rents, and the Rent Board does not have authority to determine the validity of the master lease between the City and Mercy Housing. On appeal, one tenant argues that: the issuance of a decision by the ALJ without a hearing constitutes an abuse of discretion, as there are genuine issues of material fact; the ALJ relied on a prior decision regarding these units, but there are new facts, in that notices of rent increase have now been served; and, since the determination is based on the master lease which gives the City the authority

to regulate the rents at the property, it is crucial for the Rent Board to determine the validity of that lease.

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

K. 599 – 26th Ave.

AL150093

The tenant's petition alleging an unlawful rent increase due to the presence of an additional occupant in the unit was granted and the landlord was found liable to the tenant in the amount of \$3,050.00. On appeal, the landlord maintains that there are factual errors in the decision, including: the washer and dryer in the garage are not coin-operated but are the landlord's private property; the \$100 charge was not a rent increase but, rather, to reimburse the landlord for the use of the laundry facilities; and there is an error in the decision as to the amount of the corrected base rent.

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

L. 181 Saturn

AT150101

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the original tenant no longer resides on the premises, the petitioner is a lawful subtenant and, therefore the Costa-Hawkins increase from \$2,120.00 to \$3,800.00 is warranted. On appeal, the tenant maintains that: the landlord has accepted rent checks from the tenant since February, which is not altered by the fact that the landlord has not cashed the checks; and the petitioner is a tenant and not a subtenant, so no rent increase is permissible under Costa-Hawkins.

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

VI. Vote on Whether to Go Into Closed Session Regarding Replacement of the Executive Director (Pursuant to S.F. Administrative Code Section 67.11{a})

MSC: To go into Closed Session. (Mosbrucker/Marshall: 5-0)

VII. Closed Session re Replacement of the Executive Director (Pursuant to Administrative Code Section 67.10{b})

The Board went into Closed Session from 7:40 to 8:10 p.m. to discuss replacement of the Executive Director.

VIII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Replacement of the Executive Director (Pursuant to Administrative Code Section 67.11{a})

MSC: Not to disclose the Board's discussion regarding replacement of the Executive Director. (Mosbrucker/Marshall: 5-0)

IX. Report on Any Actions Taken in Closed Session Regarding Replacement of the Executive Director

Executive Director Wolf announced that she will be retiring, effective January 2, 2016. The Board discussed a possible successor in Closed Session.

X. Vote on Whether to Go Into Closed Session Regarding Replacement of the Executive Director (Pursuant to S.F. Administrative Code Section 67.11{a})

MSC: To go into Closed Session. (Mosbrucker/Marshall: 5-0)

XI. Closed Session re Replacement of the Executive Director (Pursuant to Administrative Code Section 67.10{b})

The Board went back into Closed Session from 8:12 to 8:15 p.m. to continue their discussion of replacement of the Executive Director.

XII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Replacement of the Executive Director (Pursuant to Administrative Code Section 67.11{a})

MSC: Not to disclose the Board's discussion regarding replacement of the Executive Director. (Mosbrucker/Marshall: 5-0)

VI. Communications

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

A. A Memorandum from City Attorney Dennis Herrera regarding political activity by City officers and employees.

B. Articles from 48hills, the S.F. Chronicle, the S.F. Examiner, The Guardian, BeyondChron, Forbes, S.F. Magazine, the Daily Journal, S.F. Weekly, and the New York Times.

C. The office workload statistics for the month of July, 2015.

VII. Director's Report

Executive Director Wolf briefly reviewed the provisions of recent legislation establishing additional eviction protections introduced by Supervisor Kim ("Eviction 2.0") that was forwarded to the full Board of Supervisors by the Land Use Committee on September 14th.

VIII. Calendar Items

October 13, 2015

7 appeal considerations

Old Business: Report on Attorney's Unauthorized Use of Civil Subpoenas in Rent
Board Proceedings

New Business: Implementation of Kim Eviction Legislation

IX. 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.