



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, December 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; Gruber; Hung; Marshall; Mosbrucker;
Wasserman.
Commissioners not Present: Dandillaya; Mosser; Qian.
Staff Present: Collins; Lee; Varner; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of December 3, 2015
(Mosbrucker/Abe: 5-0)

IV. Remarks from the Public

A. Landlord Patty Villeggiante of 615 Prague Street (AL150125) told the Board that she did not give the tenants a parking space at the inception of the tenancy, and any services she did provide were written into the lease. Ms. Villeggiante wondered why the tenants waited until 2014 to pursue their claim, when the problem began in 2010. She said that she provided the Administrative Law Judge (ALJ) with pictures to show that it is not possible to legally park in the driveway, and she couldn't give the tenants a parking space she never had.

B. Landlord Ken Koster of 151A Duncan (AL150128) told the Board that he bought out his parents' share of the property, which resulted in an increase in debt service. Mr. Koster explained that this was a true co-ownership, in name and in fact, and not just a family loan, for which he would have had a note. Mr. Koster said that his parents were on

title, paid property taxes, were subject to liability and paid a transfer tax when he bought them out in 2013.

C. Tenant Ali Moini of 2915 Franklin #4 (AT150126) said that the landlord increased his rent after they purchased the property 11 months ago. Mr. Moini doesn't understand why the landlord says he doesn't live there, when he sees him on the property all the time, as he resides there with his mother. Mr. Moini acknowledged that he "mis-spoke" at the hearing when he said his mother paid the rent, when it was actually his father. Mr. Moini didn't realize he should change his address after he separated from his wife, but maintained that he has been paying rent the whole time he has lived in the unit.

D. Samer Danfoura, Attorney for the landlords at 279 Crescent (AT150131), objected to the "last-minute" request for continuance of this case, as the 60-day notice of OMI eviction was served almost 7 months ago, and the petition for determination of protected status was filed 4 months ago. As the tenant was represented at the hearing, and no evidence has been provided to show that the ALJ erred or abused his discretion, Mr. Danfoura maintained that there is substantial evidence to support the decision at this time.

V. Consideration of Appeals

A. 139 Caine #A

AT150136

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

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

B. 945 Larkin #14 & 44

AT150134 & -35

The landlord's petition seeking 7% rent increases based on increased operating expenses to the tenants in 10 units was granted. The tenants in two units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for hearings on the tenants' claims of financial hardship. (Marshall/Mosbrucker: 5-0)

C. 1114 Dolores

AL150139

The landlord's petition seeking certification of capital improvement costs was dismissed due to the landlord's failure to appear at the properly noticed hearing. On appeal, the landlord provides proof that she was out of the country around the time of the hearing.

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

D. 1338 Baker #8

AT150129

The subtenant's petition alleging that she paid more than a proportional share of the rent was granted and the master tenant was found liable to the subtenant in the amount of \$994.39. On appeal, the subtenant claims that: the Administrative Law Judge (ALJ) over-valued the amenities provided by the master tenant and under-valued the parking space used exclusively by the master tenant; the furniture and housewares were included in the base rent and had no separate value; there were habitability problems in the unit for which she should be compensated; and there are technical errors in the decision, including fees paid by the master tenant to Airbnb.

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

E. 615 Prague

AL150125

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$2,925.00 for loss of driveway parking. On appeal, the landlord claims that: driveway parking was not a housing service provided to the tenants at the inception of the tenancy, as evidenced by the lease; it is impossible to safely park in the driveway area; and the tenants failed to provide access so that she could repair the leak in their unit.

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

F. 2915 Franklin #4

AT150126

The tenants' petition alleging an unlawful rent increase from \$797.00 to \$3,400.00 was denied because the ALJ found that the last original occupant no longer permanently resides in the subject unit and there is not a lawful sublessee or assignee who resided at the unit prior to January 1, 1996. On appeal, the tenants claim that: the ALJ was biased against the tenants on the basis of race and ethnicity; and there was no evidence to contradict the tenant's testimony that the subject unit is his primary residence.

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

MSC: To accept the appeal and remand the case only to consider the tenant's Declaration submitted on December 7, 2015; a hearing will be held only if necessary. The tenant attorney's allegations of bias and discrimination on the part of the Administrative Law Judge are rejected. (Marshall/Mosbrucker: 3-2; Gruber, Abe dissenting)

G. 411 Eddy #17

AT150130

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the tenant and her deceased husband had moved to a larger room at a higher rent upon their own request. On appeal, the tenant claims that the rent was increased due to her presence as an additional occupant in the unit.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the new evidence; a hearing will be held only if necessary. (Marshall/Mosbrucker: 3-2; Gruber, Abe dissenting)

H. 151-A Duncan

AL150128

The landlord's petition for a rent increase based on increased operating expenses to one unit was denied. The ALJ found that the landlord's payment on a Home Equity Line of Credit to buy his parents out of their share of the property did not constitute debt service for purposes of an operating expense increase. The landlord appeals the decision, arguing that a co-ownership agreement that has now been provided shows that his parents were co-owners of the building and his payment to them constitutes debt service within the meaning of the Ordinance.

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

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with instructions to consider the landlord's payment on a Home Equity line of credit as debt service for purposes of an operating and maintenance expense increase. (Abe/Gruber: 3-2; Marshall, Mosbrucker dissenting)

I. 3118 – 23rd St. "A"

AL150121

The landlord's appeal was filed one day late because of a medical disability on the part of the landlord's petition preparer.

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

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$2,388.60. On appeal, the landlord argues that the landlord should not lose banked rent increases for a period of time when there were no rent increases because he agreed to lower the tenant's base rent.

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

J. 438A Vallejo

AL150124; AT150122 & -23

The tenants filed a petition alleging decreased housing services and requesting a determination as to the proper base rent. The ALJ found that the subject unit, rented

through Airbnb to the owner of another TIC unit in the building, came under the jurisdiction of the Ordinance and the base rent was the amount listed on the Airbnb ad and paid by the tenants, despite the amount filled in by the tenants on a lease agreement signed by the landlord. The landlord was also found liable to the tenants in the amount of \$1,160.00 due to substandard conditions in the unit. Both the landlord and tenants appeal the decision. The tenants argue that: the post-hearing submissions by the landlord should be disregarded as they were not properly served on the tenants; Airbnb was merely a payment vehicle and the Airbnb rental rate would have included additional services that were not provided; the Airbnb fees should not be included in the base rent calculation; and the landlord should be bound by the signed lease agreement. The landlord appeals on the grounds that: the tenants obtained possession of the unit through fraud, and whether or not they are tenants is an issue being litigated in Superior Court, which has sole jurisdiction over this determination under the separation of powers doctrine; the Board exceeded its statutory and constitutional authority; the lease between the parties fails as a binding agreement because it was induced by a combination of fraud and mistake; and the ALJ's finding of a tenancy was not supported by the evidence.

MSC: To deny both the tenants' and the landlord's appeals.
(Mosbrucker/Abe: 5-0)

K. 279 Crescent Ave.

AT150131

The landlords filed a petition requesting a determination as to whether the tenant has protected status for purposes of an owner move-in (OMI) eviction. The ALJ found that the petitioner was not an approved tenant or subtenant at the time of service of the eviction notice, nor had she lived in the subject unit for 10 years. The tenants appeal the decision, claiming that: the ALJ accepted the landlords' testimony at face value, while discounting that of the tenants; the fact that the tenant used other addresses does not negate her claim of residency at the subject unit; and evidence apparently relied on by the ALJ does not appear in the file.

Prior to the meeting, a request for postponement was received from the tenant's new attorney. The Board agreed to reschedule consideration of this appeal to the January 12th meeting; the Executive Director will establish a briefing schedule for the parties.

L. 1600 Filbert #35

AL150119
(cont. from 11/10/15)

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 \$1,225.00 due to loss of use of a tandem parking space. On appeal, the landlord argues that: the ALJ erred in finding that the tenant reasonably expected that the parking space would be shared by another tenant in the building; the landlord did not take away the parking space but, rather, the tenant elected to no longer park in the space; and the decision should be remanded for a finding that the tenant has now been fully compensated for loss of the service and the landlord is now at liberty to re-rent the space. After a brief discussion, the Board continued consideration of this case to this evening's meeting.

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

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

M. 2130 Mason

AL150132

The tenant's petition alleging unlawful rent increases and requesting a determination of the proper base rent was granted and the landlord was found liable to the tenant in the amount of \$20,757.08. On appeal, the landlord argues that: the tenant was only contesting the amount of currently available banked rent increases, and not contesting rent increases imposed in prior years; the tenant signed an Estoppel Certificate stipulating as to the amount of her monthly rent; an Affidavit from the prior owner indicates that the rent was not raised for 11 years; and amounts owed to the tenant have already been paid.

MSC: To deny the appeal; the parties shall adjust the amount of the rent overpayments by any sums already reimbursed to the tenant.
(Mosbrucker/Marshall: 5-0)

N. 1008 Tennessee #B

AL150138

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 subtenant in the amount of \$3,845.00. On appeal, the master tenant claims that: the cost of utilities was not split equally but, rather, the master tenant paid for gas, electricity and trash collection; inadequate credit was given for maintenance and furniture costs; the subtenant used a third bedroom as an office; the subtenant used a larger share of the utilities; and the master tenant did all the cleaning of the unit.

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

O. 396 – 5th Ave.

AT150133

The tenant's appeal was filed four days late because the tenant did not realize that he needed to include calendar days, rather than just business days, when calculating the filing deadline.

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

The tenant's petition alleging decreased housing services was denied because the ALJ found that the landlord's conduct with respect to the tenant's claim regarding noise from a neighboring unit did not constitute a decrease in services. On appeal, the tenant argues that the upstairs neighbor is mentally disturbed, and he is still being bothered by noise from the upstairs apartment.

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

P. 1221 Jones

AL150137

The landlord's petition seeking certification of capital improvement costs to 21 of 72 units was granted, in part, resulting in passthroughs in the amount of \$ 26.50 for all but one of the units. Costs associated with corridor, lobby and other renovations were found to be cosmetic in nature and of no benefit to the tenants over existing conditions. On appeal, the landlord maintains that: the cost of the wall covering by the elevator should be certified as it was part of the entire contract; an estimator's report should have been requested by the ALJ where there were additional questions; the Board regularly certifies certain cosmetic improvements; architectural drawings are integral to major construction projects; building code and permit services are certified when in conjunction with seismic projects; proof of all costs and payments were provided; and the lobby refurbishment constitutes an improvement over existing conditions.

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

VI. Communications

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

A. A copy of the recently passed amendments to the Rules and Regulations, specifically, Sections 6.15A, B, D and new Section 6.15E.

B. The office workload statistics for the months of September and October, 2015.

C. Articles from Mission Local, the S.F. Chronicle, BeyondChron, 48 Hills and the S.F. Examiner.

VII. Director's Report

Executive Director Wolf reminded the Commissioners to complete their mandatory harassment training before the end of the year. She also let them know that the increased workload is exacerbating the backlog of petitions, and that the Department will need additional staff in next year's budget, which also means a need for more space. As the Department will now be on a 2-Year Budget, and the Mayor has asked all Departments to develop 5-Year Strategic Plans, Acting Executive Director Robert Collins will be bringing these issues to the Board at the January 12th meeting.

IV. Remarks from the Public (cont.)

E. Tenant Homer Wallen of 1221 Jones (AL150137) pointed out that the Board's discussion focused on the lobby renovation, which was enlarged 200%. But, for Mr. Wallen, the more major issue is the renovation of 72 apartments for short-term rental, while

the long-term tenants got no improvements to their units. Mr. Wallen said that those issues are still in contention.

F. Mrs. Wallen of 1221 Jones requested clarification as to the status of the decision.

VIII. Calendar Items

January 12, 2016

10 appeal considerations (1 postponed from 12/15/15)

Old Business: Replacement of the Executive Director

New Business: Departmental Budget/5-Year Strategic Plan

IX. Adjournment

President Gruber adjourned the meeting at 8:05 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.