



Edwin M. Lee
Mayor

Robert A. Collins
Acting Executive Director

DAVID GRUBER
PRESIDENT

**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, April 12, 2016
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 6:08 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of March 8, 2016.
(Marshall/Abe: 5-0)

IV. Remarks from the Public

A. Dennis Zaragoza, the tenants' attorney at 668 25th Avenue (AT160035) told the Board that the Ordinance is a remedial ordinance, was intended to protect tenants in possession from exorbitant and unregulated rent increases, and should be read to that effect. Mr. Zaragoza stated that the tenants should have been permitted to raise the defense of retaliation, and if the Board does not hear that defense, it is denying due process, and estopping the tenants from getting a fair hearing.

B. David Edelshtein, the representative for the tenant at 1437 Lincoln Way #4 (AT160020), stated that it should be easy for the tenant and landlords to achieve resolution. He told the Board that because the law is complex, there is no clarity on certain issues, and for an ordinary person with no legal background, it is complicated. Mr. Edelshtein said that a homeless man on the street had a sign with a slogan, "My wife had a bad lawyer," and hopes that does not happen here, and that the Board will allow the tenant to show any evidence he has to correct the decision.

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C. Yuet Chan, the landlord at 668 25th Avenue (AT160035), wanted to make sure the Board had an updated copy of his appeal. Mr. Chan told the Board that he gave the tenants full use of the house.

D. Landlord Dominic Maionchi of 2434 California Street #1 (AL160036) told the Board that a few nights ago he was watching the OJ Simpson mini-series on repeat and Johnnie Cochran said, "if it doesn't fit, you must acquit," and there, the jury was stuck on one fact, which neither made OJ guilty, nor made him innocent. He stated that the jury threw away all the other evidence including the DNA evidence. Mr. Maionchi argued that the Administrative Law Judge (ALJ) did the same thing, because she was an advocate for the petitioner and was stuck on a few items that had very little legal merit, while at the same time throwing out the law and using her own judgment.

E. John Zanghi, the attorney for the landlords at 2434 California Street #1 (AL160036) told the Board that the building was initially a single-floor commercial storefront with a laundry, a studio unit, and a one-bedroom in the back. He said that the studio had been vacant for years, permits were pulled in 2003, and the landlords expanded the commercial unit into the studio space, creating an ADA-compliant bathroom. At the same time, the landlords built an entirely new second-story, two-bedroom apartment and got a Certificate of Final Completion and Occupancy (CFCO) in 2004. Mr. Zanghi argued that pursuant to the Costa-Hawkins Rental Housing Act, since the new CFCO was issued after February 1995, then the unit is exempt from rent control. Mr. Zanghi stated that they were under no obligation to build anything else or replace the studio unit, and there was a net gain to the housing stock.

F. Christopher Garrison, the tenant at 2434 California Street #1 (AL160036) stated that the case is clear-cut: this has been a two residential and one commercial unit property dating back to the 1940s, the application was to move the first floor unit to the second floor, and there has not been a net gain in housing. Mr. Garrison requested that the ALJ's decision be upheld.

G. Hoa Huynh, the landlord at 2737 San Bruno Avenue #1 (AL160022) stated that he has a complaint about the tenant, that he didn't receive any letter about the inspection, and he did the job.

H. The tenant at 2737 San Bruno Avenue #1 (AL160022), Francisca Lopez Olmedo, stated that she did not know what happened with the appeal letter.

I. Arturo Figaro, the tenant at 1091 Bush Street #409 (AT160038) told the Board that he made a mistake in the second paragraph of his appeal by alleging that the windows were never washed after being painted. The windows were just brushed and never got washed before or after.

J. Tenant Brendan Gallen of 1437 Lincoln Way #4 (AT160020) stated that when he went to the first hearing he was suffering from the loss of his father, and with the landlord trying to evict him and the rent increase, and did not realize he had to have legal representation. Mr. Gallen explained that now he has representation and has a lot of evidence that he wants to submit, and that the landlord's lawyer was trying to pre-judge and accuse him of being a liar.

K. Luis Cruz, the subtenant at 2702 Mission Street #B (AT160028), stated that he wants a new hearing as he did not receive the hearing notice because the master tenant broke into his mail and doesn't give him his mail. Mr. Cruz told the Board that two weeks ago the master tenant and her friend hit him in his eye with a flashlight because he wouldn't drop this case. The subtenant states that other subtenants in the unit have bigger rooms, but pay less rent, and he used to have two rooms in the apartment, so his children could have their own room, but the master tenant took away his use of the second room.

V. Consideration of Appeals

A. 1000 Powell Street #31, #42, and #62

AT160023, AT160024, AT160027

The landlord's petition seeking 7% rent increases based on increased operating expenses to the tenants in 37 units was granted. The tenants in three units appeal the decision on the grounds of financial hardship.

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

B. 2702 Mission Street #B

AT160028, AT160029

The subtenants' petitions alleging that they paid more than a proportional share of the rent and decreased housing services were dismissed due to their failure to appear at the properly noticed hearing. On appeal, the subtenants 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 appeals and remand the cases for a new hearing. Should the subtenants again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Marshall/Crow: 5-0)

C. 571 Burnett Avenue

AL160037

The landlord's petition for a rent increase based on mandatory seismic capital improvement work was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the landlord 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 landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Marshall/Crow: 5-0)

D. 2737 San Bruno Avenue #1

AL160022

The landlord's appeal was filed 140 days late because he claims he did not receive the Notice of Hearing and did not receive the decision.

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

The tenant's petition alleging a substantial decrease in housing services was granted and the landlord was found liable to the tenant in the amount of \$892.50. On appeal, the landlord claims that he did not receive the Notice of Hearing nor the decision, 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 landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Marshall/Crow: 5-0)

E. 411 Eddy Street #17

AT160021

The tenant's petition alleging an unlawful rent increase was denied because the Administrative Law Judge (ALJ) found that the tenant and her deceased husband had moved to a larger room at a higher rent upon their own request. The tenant appealed, claiming that the rent was increased due to her presence as an additional occupant in the unit. The case was remanded to the ALJ to examine new evidence and hold a hearing only if necessary. The ALJ determined that a decision on remand could be issued on the record and that a further hearing was not necessary. The ALJ again found that the tenant and her deceased husband had moved to a larger room at a higher rent upon their own request, and that the lawful base rent effective December 1, 2014 was \$469.00. On appeal of the remand decision, the tenant contends that the unwritten policy of the landlord is that the rent depends on the number of people living at the residence, that her former neighbors can attest to the policy, that this was the arrangement the tenant and her deceased husband agreed to when they moved in, and that the landlord did not honor that arrangement.

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

F. 142 Edinburgh Street

AL160033, AL160034

The tenants' petitions claiming decreased housing services was granted in part and denied in part. The landlord was found liable to tenant petitioner Brackett in the amount of \$2,034.50 and to tenant petitioner Davis in the amount of \$1,897.70. On appeal, the landlord claims that he followed the California Building Code Section 1204.1 and California Mechanical Code Section 901.1 and therefore provided adequate heating.

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

G. 55 Mason Street #205

AT160031

The tenant's petition alleging a substantial decrease in housing services based on alleged violations of the Uniform Hotel Visitor Policy for Single Room Occupancy (SRO) hotels was denied because the ALJ found that the tenant failed to meet his burden of proving that the landlord violated the Uniform Hotel Visitor Policy. On appeal, the tenant contends that the ALJ failed to prove that the tenant violated any specific rule or policy of the Uniform Hotel Visitor Policy.

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

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

H. 1091 Bush Street #409

AL160038

The landlord's petition for certification of the costs of new exterior paint and new windows to 68 of 99 units was granted. One tenant appeals on the basis that the painting was unnecessary, that the windows were never washed after being painted, that there were no new windows installed except in 3-4 units, and that because the tenants facing the courtyard got no new paint outside their apartments, they did not benefit from the work.

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

I. 668 – 25th Avenue

AT160035

The landlord's petition requesting that the Rent Board determine that the property is a single-family dwelling exempt from the rent increase limitations of the Rent Ordinance pursuant to California Civil Code Section 1954.52(a)(3) of the Costa-Hawkins Rental Housing Act was granted. On appeal, the tenants argue that the decision fails to address that the landlord was retaliating against the tenants, that the decision is based upon the landlord's statements of his intent, rather than the facts that the tenants, by contract, rent the upper unit of a two unit building, and because the Ordinance is a remedial law, the ALJ was required to interpret it to protect the tenant in possession.

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

J. 28 Clarion Alley

AL160030

The landlord's petition requesting a determination as to whether the landlord may increase the rent on the subject unit under Rules and Regulations Sections 1.21 and 6.14 and the Costa-Hawkins Rental Housing Act was denied, and the ALJ found that the landlord did not meet his burden of proving that the tenant respondent did not permanently reside in the subject unit at the time of filing the petition. On appeal, the landlord argues that the tenant did not remain as a permanent resident at the unit and that

the landlord did preserve his right under Rules and Regulations Section 6.14 to increase the rent.

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

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

K. 183 Caselli Avenue

AT160032

The landlord's petition requesting a determination as to whether any of the tenant respondents is a "tenant in occupancy" pursuant to Rules and Regulations Section 1.21 and/or whether the landlord is entitled to an unlimited rent increase pursuant to Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act was granted. The ALJ found that at the time the petition was filed, the tenant respondent had not established a direct landlord-tenant relationship with the landlord by the conduct of the parties, was a subtenant of the original occupant who no longer permanently resided in the unit, and did not reside in the dwelling or unit prior to January 1, 1996. On appeal, the tenant respondent contends that he established a direct landlord-tenant relationship with the landlord by conduct and because the landlord knew that the original occupant was no longer residing in the subject unit, and that he was not served proper notice under the Rules and Regulations Section 6.14.

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

L. 1435 Waller Street #4

AL160018, AL160019

The tenant's petition alleging a substantial decrease in housing services and an unlawful rent increase was granted, and the landlord was found liable to the tenant in the amount of \$25,417.99 for rent overpayments, and \$2,940.52 for rent reductions corresponding to the decrease in housing services. The landlord appeals the decision on the grounds of financial hardship. The landlord also appeals on the merits as to the unlawful rent increase claim only, arguing that that the ALJ missed some years when the landlord did not increase the rent and also null and voided some allowable increases.

MSC: To deny appeal AL160019 on the merits.
(Crow/Marshall: 5-0)

MSC: To accept appeal AL160018 on the landlord's claim of financial hardship and remand the appeal for consideration of the landlord's financial hardship.
(Crow/Marshall: 5-0)

M. 1437 Lincoln Way #4

AT160020

The tenant's petition alleging the landlord had increased the rent over the allowable limits under the Costa-Hawkins Rental Housing Act was denied in part and granted in part. The ALJ found that an unlimited rent increase was authorized pursuant to Costa Hawkins, but that the landlord must serve a new notice of rent increase naming both the original tenant's estate and the tenant petitioner pursuant to California Civil Code Section 827. The tenant appealed, arguing that there was a failure to classify the tenant petitioner as an original tenant, that the ALJ abused his discretion, and that the ALJ was biased.

MSC: To accept the appeal and remand the case for a supplemental hearing and a hearing will be held.
(Marshall/Crow: 3-2; Abe, Gruber dissenting)

N. 2434 California Street #1

AL160036

The tenant's petition alleging that the landlord had increased the rent over the allowable limit under the Costa-Hawkins Rental Housing act was granted. The ALJ determined that the subject unit is not exempt from the rent control limitations of the Ordinance as a newly constructed unit for which a certificate of occupancy was issued after February 1, 1995 under Civil Code Section 1954.52(a)(1) of the Costa Hawkins Rental Housing Act, and that the landlords waived the right to impose an unlimited rent increase under Civil Code Section 1954.53(a)(4) and Rules and Regulations Section 6.14(c)(2). On appeal, the landlords argue that the ALJ's conclusion is inconsistent with prior Rent Board decisions, that construction of a new two-bedroom unit is a net gain in rental housing, that the former studio space was never moved, that the newly constructed two bedroom unit is exempt under the Rules and Regulations, the Ordinance, and the Costa Hawkins Rental Housing Act, and that if the Ordinance is found to apply, the landlord did not waive the right to increase the rent to the remaining subsequent occupant under Costa Hawkins nor Rules and Regulations Section 6.14.

MSC: To recuse President Gruber from the hearing of this appeal.
(Marshall/Crow: 5-0)

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

VI. Remarks from the Public (cont.)

A. Arturo Figaro, the tenant at 1091 Bush Street #409 (AT160038) told the Board that the petition was a plan for the landlord to get rid of old-time tenants who pay lower rents; that in the past decade, the landlord came to his door and asked him to move out for an amount of money; and that the tenants are living on a fixed income and some might find themselves forced out and living on the streets. Mr. Figaro states that the beneficiaries of the petition are the landlords, that the previous light color of the paint kept the building cooler and saved on heating costs, and that the tenants don't share in the profits of the building, so they shouldn't have to pay.

B. Landlord Dominic Maionchi of 2434 California Street #1 (AL160036) told the Board that they are forcing landlords into positions of doing things that they don't want to do. Mr. Maionchi stated that he spoke with President Gruber five minutes in fifteen years and he shouldn't have recused himself.

C. John Zanghi, the attorney for the landlords at 2434 California Street #1 (AL160036), apologized to the Board on behalf of his client. Mr. Zanghi stated that the drawings were clear about what was going on, and that's why the Planning Department didn't have a problem with the way they were doing the work.

D. Christopher Garrison, the tenant at 2434 California Street #1 (AL160036) stated that this case has been going on for well over a year with multiple briefings and evidence, and appreciates the Board's time and consideration.

VII. Communications

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

- A. Form 1007 – Notice to Tenant Required By Rent Ordinance Section 37.9(c), amended on March 19, 2016.
- B. The office workload statistics for the month of February 2016.
- C. Articles from the S.F. Chronicle, the S.F. Examiner, Hoodline, and BeyondChron.

VIII. Director's Report

Acting Executive Director Collins informed the Commissioners that Form 1007, Notice to Tenant Required By Rent Ordinance Section 37.9(c), was amended on March 19, 2016 to include information to tenants in English, Spanish, Chinese, Vietnamese, Russian, and Filipino regarding affordable housing opportunities from the Mayor's Office of Housing. He also informed the Board that Form 1000, the Prebuyout Disclosure Form, has been updated with current tenant advocate contact information. Acting Executive Director Collins told the Board about the pending legislation from Supervisor Campos regarding educators and certain no-fault evictions, which will require a change to the Ordinance. He told the Board that he attended an outreach event at the Hayes Valley Neighborhood Association with President Gruber. Two staff members conducted outreach at the Mission Action Plan 2020 Resource Fair, two staff presented at an event in Cantonese at the Chinatown public library, two staff conducted an informational session in partnership with the the S.F. Law Library, and one staff member conducted outreach at the Immigrant Consultation and Resource Fair, invited by the Office of Civic Engagement and Immigrant Affairs (OCEIA) in partnership with the S.F. Unified School District. Acting Executive Director Collins told the Board that the Rent Board office sustained a flood with significant water damage over the previous weekend when a pipe burst in the ceiling, and the office is in the process of clean up and remediation.

IX. Old Business

In regards to standardizing tenant financial hardship guidelines and no-hearing alternatives for mandatory seismic retrofit capital improvement petitions, one-item capital improvement petitions, and less than \$25,000 capital improvement petitions, Acting Executive Director Collins told the Board that the staff does not yet have draft Rules and Regulations prepared for presentation to the Board, but will have them ready for the May meeting. Senior ALJ Lee made a suggestion to the Board regarding tenant buyout agreements, that perhaps those preparing the agreements should include tenant names on the first page only, or provide an original and a redacted copy, as a significant amount of staff work time could be saved by requiring pre-redacted agreements.

X. New Business

Acting Executive Director Collins presented the Annual Eviction Report, explaining that there are about 173,000 Rent Board fee-paying units. The Annual Eviction Report statistics have been compiled based on eviction notices filed with the agency, according to Ordinance Section 37.9(c). There is very little data outside of this that tracks evictions. Acting Executive Director Collins pointed out some trends, showing broad statistics based on the most common just cause reasons for eviction.

The Commissioners agreed they no longer needed to discuss the City Attorney's Memo regarding consulting outside attorneys.

XI. Calendar Items

May 10, 2016

12 appeal considerations

New Business

A. Presentation on available housing data

Old Business

A. Standardizing tenant financial hardship guidelines

B. No-hearing alternatives for mandatory seismic retrofit capital improvement petitions, one item capital improvement petitions, less than \$25,000 capital improvement petitions and tenant financial hardship applications

XII. Adjournment

President Gruber adjourned the meeting at 8:18 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.