



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, August 16, 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 6:06 p.m.

II. Roll Call

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

Commissioner Qian appeared on the record at 6:07 p.m.
Commissioner Dandillaya appeared on the record at 6:08 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 12, 2016.
(Mosbrucker/Qian: 4-0)

IV. Remarks from the Public

A. Andrew Wiegel, the attorney for the landlord at 3435 Cesar Chavez Street, units 206, 327, 335, and Tower (AL160085) stated that the property has been the subject of two prior decisions, and that the 57 units that were built in the old Sears department store building were held to be exempt from the Ordinance as newly constructed units. Mr. Wiegel wanted to bring the Board's attention to a distinction made between newly constructed units and conversions in the two cases cited by the ALJ, the Da Vinci case and Burién LLC. He asked the Board to look at the spirit and purpose of the rent control law, and stated that the new construction exemption is to promote the creation of new units. Mr. Wiegel urged the Board to follow the two prior decisions, not turn 35 years of established law on its head.

B. Dennis Zaragoza, the attorney for the tenants at 3435 Cesar Chavez Street, units 206, 327, 335, and Tower (AL160085) told the Board that the third element of Regulation 1.17(g) specifically states that in order to receive an exemption, the landlord must prove that there has been no residential tenancy of any kind between June 13, 1979 and the date of the issuance of the Certificate of Occupancy (CFCO), and here, there had been residential tenancies before the CFCO was issued. Mr. Zaragoza stated that in 2001 the ALJ accepted the general rule in Regulation 1.17(e), which nullified the reason for the live-work exemption, and in 1984, one of the reasons the Board established the live-work exemption was to protect tenants.

C. The owner of 1627- 24th Avenue (AL160080), Reid Settlemier, stated that the property is a single-family home in a single-family neighborhood, that two units were constructed legally in the garage and there are two separate tenants who moved in at separate times in separate rooms and have complete access to the house. He stated that the original owner lost the house to foreclosure and has left, and the tenants were allowed to stay. Mr. Settlemier said that the tenants are using a Coleman stove with a butane canister with improper venting. He said that there is no fire egress, and would fail all building codes. Mr. Settlemier stated that he has to be able to remove the kitchen as the liability is too great.

D. Leonard Corpus, the tenant at 436 Colon Avenue, Lower Unit (AL160092), thanked the Board and said that he agreed with the ALJ's decision. He told the Board that he's disabled, has been a tenant since 2004, and would like to have some system of oversight for landlords who rent out their units with substandard electrical and not enough heating. Mr. Corpus said that since he complained to the Rent Board, he's received a 3-day notice for not paying the rent increase, he wasn't allowed to use parts of the house anymore, and he had his stove taken away. He says he was forced to use camping equipment to cook on, and that the landlord is a licensed realtor who lied to the Board and the ALJ.

E. Ana Gee, of the Tenderloin Housing Clinic's Code Enforcement and Outreach program, spoke on behalf of the tenants at 455 Hyde Street, #24 (AT160096). She stated that the tenants have lived at the property for over 18 years and have cared for the unit. Ms. Gee said that the operating and maintenance expense rent increase will hurt the already-struggling family who are supporting their daughter through college with minimum wage jobs.

F. The landlord's representative at 235 Oak Street (AL160086), Serena Tappe, told the Board that they did not have enough time to provide more documentation after receiving the notice, but they believe they have more to show that the \$8000 of withdrawn charges were right. She said that she has an email from the contractor that shows he didn't do any debris removal and that the landlord's own employee did the debris removal as well as bringing the space to its preexisting condition.

V. Consideration of Appeals

A. 455 Hyde Street #24

AT160096

The landlord's petition seeking 7% rent increases based on increased operating and maintenance expenses to the tenants in 30 units was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.

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

B. 478 Warren Drive #617 & 480 Warren Drive #326 AT160088, AT160089

The landlord's petition seeking 7% rent increases based on increased operating and maintenance expenses to the tenants in 59 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 case for hearings on the tenants' claims of financial hardship.
(Mosbrucker/Wasserman: 5-0)

C. 547 Campbell Avenue AL160082

The landlord's appeal was filed 37 days late because he alleges the Notice of Hearing was mailed to an incorrect address.

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

The tenant's petition for unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$2,700.00. 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.
(Mosbrucker/Wasserman: 5-0)

D. 441 – 24th Avenue #2, #3, #4, #6, #7, #9 & #11 AT160094, AT160095,
AT160097 - AT160103

The landlord's petition seeking 7% rent increases based on increased operating and maintenance expenses to the tenants in 7 units was granted. The tenants in units 2, 3, 4, 6, 7, 9, and 11 appeal on the merits, providing no statement as to the basis of the appeal. The tenants in units 9 and 11 appeal the decision on the grounds of financial hardship.

MSC: To deny the appeal on the merits and to accept the appeals based on the tenants' claims of financial hardship and remand those cases only for hearings on the tenants' claims of financial hardship.
(Mosbrucker/Wasserman: 5-0)

E. 771 Union Street

AL160090

The landlord's appeal was filed 1 day late because his attorney miscalculated the appeal deadline.

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

The landlord's petition for an extension of time to complete capital improvement work was denied on the grounds that the landlord failed to file the petition immediately after it was apparent that the work would take longer than three months; and was denied on the grounds that the landlord's estimated date to complete the work was not reasonable. On appeal, the landlord argues that the standard for filing "immediately" is vague and arbitrary and that, according to Rules and Regulations Section 12.15(e), the Administrative Law Judge (ALJ) failed to determine what would be a reasonable time to complete the work.

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

F. 3643 – 25th Street

AT160081

The landlord filed a petition seeking certification of the cost of exterior paint to 2 of 3 units, which was granted. The tenants in one unit appeal on the basis that the costs to paint the back stairs and deck, to paint underneath the back stairs, to replace window flashings, to replace a window crown, and to install kick plates on doors should be ineligible to pass through because they constitute routine maintenance and not capital improvement costs, or, in the alternative, because some of the repairs did not benefit the tenants' unit.

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

G. 1225 Taylor Street #507

AL160084

The subtenant's petition alleging a disproportional share of rent under Rules and Regulations Section 6.15C(3) was granted. The master tenant was found liable to the subtenant in the amount of \$1,704.92. On appeal, the master tenant claims that the subtenant occupied the living room and dining room every night, that the subtenant caused damage to his personal property, and that the ALJ was biased.

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

H. 2470 Washington Street #301

AL160091

The subtenant's petition alleging a disproportional share of rent under Rules and Regulations Section 6.15C(3) was granted. The master tenant was found liable to the subtenant in the amount of \$1,183.00. The master tenant appeals on the basis that the

parties have reached a settlement of the issues set forth in the subtenant's petition, as well as various other disputes between them, and request that the Board set aside and vacate the decision in this case.

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

I. 1627 – 24th Avenue, Lower Unit AL160080

The tenants filed a petition for determination of Rent Ordinance jurisdiction for the subject property. The ALJ found that the tenant petitioners' units were subject to the rent control limitations of the Ordinance and that the landlord's rent increase was not authorized by Civil Code Section 1954.52(a)(3) and was null and void. On appeal, the landlord argues that the tenants rented separate bedrooms inside of the single-family home and that the tenants did not live in a unit separate from that of the former landlords.

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

J. 455 Eddy Street #E1612 AL160083, AT160087

The subtenant's appeal was filed 8 days late because he found out after the appeal deadline that some of the master tenant's claims under oath were not true.

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

The subtenant's petition alleging a disproportional share of rent under Rules and Regulations Section 6.15C(3) was granted, and the master tenant was found liable to the subtenant in the amount of \$2,723.99. On appeal, the subtenant argues that the master tenant and additional occupant are both still residing in the unit, so the utility bills and amenities should be divided by three, that he should be credited for bills during times when those services were not provided by the master tenant, and that the division of rent should take into consideration the additional occupant residing in the unit. The master tenant appeals the decision on the basis of financial hardship.

MSC: To deny the subtenant's appeal on the merits and to remand the case for a hearing solely to consider the master tenant's claim of financial hardship.
(Mosbrucker/Qian: 5-0)

K. 235 Oak Street AL160086

The landlord filed a petition seeking certification of the cost of a mandatory soft-story seismic retrofit as required by law to 16 of 27 units. The ALJ certified \$59,452.97 of the total requested \$68,332.37 on the grounds that additional work performed by an employee of the landlord was not shown to be related to the seismic retrofit and was unsupported by time records. The landlord appeals on that basis that the additional work

performed by the landlord's employee should be certified, and submits additional time records.

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

MSC: To deny the appeal.
(Mosbrucker/Qian: 4-1; Mosser dissenting)

L. 3435 Cesar Chavez Street #206, #327, #335, Tower AL160085

Tenants units 206, 327, 335, and the Tower unit at the subject property filed petitions alleging unlawful rent increases beyond the allowable limit, and requested a determination of whether the Rent Board had jurisdiction over the subject tenancies. The request was granted, and it was determined that all four units are subject to the jurisdiction of the Rent Ordinance. The ALJ found that the landlord did not establish that there has been no residential tenancy in the building of any kind between June 13, 1979 and the date of issuance of the Certificate of Occupancy and therefore did not meet their burden of proving that the subject units were exempt from the Rent Ordinance. On appeal, the landlord argues that: the ALJ failed to consider the principle of *stare decisis*, that Rules and Regulations Section 1.17(e) has been established as controlling, that the requirements of Rules and Regulations Section 1.17(g) should be found to be met, and that the doctrine of equitable estoppel bars the denial of the validity of the prior decisions and the belated attempt to apply regulation.

MSC: To continue the case to the October 11, 2016 Board meeting with the parties to submit by October 4, 2016 any additional evidence regarding residential use prior to the September 27, 1979 issuance of the Certificate of Final Completion and Occupancy (CFCO).
(Mosbrucker/Qian: 5-0)

M. 1368 – 47th Avenue #A AT160093

The landlords' petition seeking a 7% rent increase based on increased operating and maintenance expenses to the tenants in 5 units was granted. The ALJ found that the tenant in unit 1368 had requested the landlord to perform ordinary repair, replacement, or maintenance in compliance with applicable state and local law, and the landlord failed to perform such work by the date of the last post-hearing submission on this issue. The tenant in unit 1368-A appealed, arguing that the deferral of the rent increase for unit 1368 should also apply to his unit, because the same water leaks occurred in his unit as in unit 1368, and that the tenant contacted the landlord about the leaks and damage.

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

N. 436 Colon Avenue, Lower

AL160092

The tenants' petition claiming an unlawful rent increase beyond the allowable limit was granted. The ALJ determined that the rent increase was not authorized by Civil Code Section 1954.52(a)(3) of the Costa-Hawkins Rental Housing Act. The ALJ also determined that the landlord was liable to the tenants in the amount of \$1,601.86 per month since April 1, 2016. On appeal, the landlord argues that the tenants do not have exclusive use of the downstairs space.

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

IV. Remarks from the Public (cont.)

A. Lewison Lem told the Board that he has learned a lot about the Rent Board process after being involved in a case, where there was no appeal on either side. Mr. Lem stated that the staff and the agency are working very hard.

VI. Communications

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

- A. A copy of the amended Rent Ordinance, effective July 31, 2016.
- B. New and amended Rules and Regulations Sections 4.14, 6.16, and 10.15, effective August 13, 2016.
- C. Newly released Form 524, Tenant Hardship Application, effective August 13, 2016.
- D. The office workload statistics for the month of June 2016.
- E. Articles from San Francisco Chronicle, the S.F. Examiner, S.F. Business Times, and theregistrysf.com.

VII. Director's Report

Acting Executive Director Collins told the Board that the ordinance amending the Administrative Code to allow additional Accessory Dwelling Units (ADU) extends legislation that was previously authorized for ADUs in supervisorial Districts 3 and 8, and will become effective in the beginning of September. The change will require Rent Board staff to conduct some eviction searches for the Planning Department. Acting Executive Director Collins informed the Board that staff are in the process of hiring new staff and will be hiring a new ALJ in October, while other new positions are budgeted for January 1, 2017. He also stated that the new form for tenants to file for hardship under the new and amended Rules and Regulations Sections 4.14, 6.16, and 10.15 is now available in English and Chinese, and will be available in Spanish and Filipino by the end of the week. Lastly, Acting Executive Director Collins informed the Board that the Rent Board fee for 2016-17 will be \$40 per unit.

VIII. Calendar Items

September 13, 2016
8 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:46 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.