



Edwin M. Lee  
*Mayor*

Delene Wolf  
*Executive Director*

DAVID GRUBER  
*PRESIDENT*

BROOKS BEARD  
DAVE CROW  
SHOBA DANDILLAYA  
JIM HURLEY  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY  
KENT QIAN

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

Tuesday, June 11, 2013  
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 6:07 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Mosbrucker;  
Mosser; Qian.  
Commissioners not Present: Beard; Marshall.  
Staff Present: Gartzman; Wolf.

Commissioner Murphy appeared on the record at 6:32 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of. May 14, 2013  
(Hurley/Qian: 5-0)

IV. Remarks from the Public

A. Tenant Carol Toy of 450 Masonic #6 (AT130048) told the Board that she was "put off" by the Administrative Law Judge's use of the word "traditionally" at her hearing. She said that she was told to provide 2 copies of a 27-page document and that "this is the time to share."

B. Tenant Jon Ving of 112 Columbus (AL130050) told the Board that he is moving back in to the building now that it's been renovated. Mr. Ving asked whether the landlord could impose new rules, including a prohibition on smoking.

V. Consideration of Appeals

A. 925 Pierce #7

AT130052

The landlord's petition for certification of the costs of seismic retrofit work to seven of twelve units was granted, resulting in a monthly passthrough in the amount of \$21.21. One tenant appeals the decision on the grounds of financial hardship.

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

B. 449 Duboce #A

AT130054

The landlord's petition for certification of the costs of a new roof to two of four units was granted, resulting in a monthly passthrough in the amount of \$90.23. One tenant appeals the decision on the grounds of financial hardship.

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

C. 1350 – 44<sup>th</sup> Ave.

AT130053

The tenant's petition alleging that she paid a disproportional share of the rent was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received notice of the 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/Qian: 5-0)

D. 678 Oak St.

AL130044

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$13,142.50. The landlord appeals on the grounds that: the landlord is not responsible for the fact that the tenant's car scrapes when entering the garage; the amounts of the rent reductions are unreasonable; the landlord's objective evidence was ignored in favor of the tenants' self-serving testimony; the fireplace was merely decorative and provides no heat; the landlord's items in the garage did not interfere with the tenants' use of the space; maintenance of the common areas is provided; and the garage entry has been repaired and the rent reduction should cease as of April.

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

E. 922 Post #507

AL130046 & AT130047

The tenant's petition alleging unlawful rent increases was denied because the ALJ found that the landlord had not promised not to impose annual and banked rent increases during

the tenancy. The tenant's decreased housing services claim due to excessive noise from a neighboring unit was granted, however, and the landlord was found liable to the tenant in the amount of \$364.00. The landlord and tenant both appeal the decision. The landlord claims that: the ALJ omitted evidence of the landlord's numerous attempts to deal with the noise problem; and the tenant failed to cooperate in ameliorating the problem. The tenant asserts that: he was assured by the building manager that there would be no rent increases of any kind if he rehabilitated the unit; he agreed to the rent increases under threat of eviction; he incurred tremendous expenses in repairing the apartment; and, as he is not a native English speaker, he did not understand all of the testimony proffered at the hearing and did not have necessary medication with him.

MSF: To accept the tenant's appeal and remand the case to the Administrative Law Judge only to grant the tenant's claim of unlawful rent increases.  
(Mosbrucker/Qian: 2-3; Dandillaya, Gruber, Murphy dissenting)

MSC: To deny both the landlord's and tenant's appeals. (Murphy/Gruber: 3-2; Mosbrucker, Qian dissenting)

F. 112 Columbus

AL130050

The landlord's petition for a second extension of time to complete capital improvement work was denied because the landlord failed to file the petition immediately after becoming aware that the work would take longer than the amount of time granted in the landlord's original petition. The landlord appeals the decision on the grounds that: the landlord filed the second petition prior to the expiration of the original extension date; no tenant objected to the second extension request; and none of the tenants provided evidence of any resulting hardship; and the ALJ exceeded his authority in denying the petition, which could be construed as having been immediately filed. In the alternative, the landlord asks that the Board waive its Rules in the interest of justice and to prevent hardship to the landlord.

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

G. 339 Vienna St.

AT130049

The tenant's petition alleging decreased housing services and an unlawful rent increase was denied because the ALJ found that the tenant was a lodger for most of the tenancy, and therefore not under the jurisdiction of the Rent Board. On appeal, the tenant claims that: the ALJ was biased against him and made factual errors in the decision; his rent was raised while his services were reduced; and additional occupants in the unit reduced his living space and access to amenities in the unit.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of whether there were any additional subtenants in the unit besides Jared Cook during the relevant time periods; a hearing will be held only if necessary. (Mosbrucker/Qian: 5-0)

H. 450 Masonic #6

AT130048

The tenant's petition alleging unlawful rent increases was denied. On appeal, the tenant maintains that the ALJ's calculations are in error and the rent increase should be null and void.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a necessary Technical Correction. (Hurley/Gruber: 5-0)

I. 1361 Filbert

AL130045

The tenant's petition requesting a determination of her proper base rent was granted and the landlord was found liable to the tenant in the amount of \$22,568.45 due to unlawful rent increases. The landlord appeals the decision on the grounds that: the premises should be considered exempt from Rent Board jurisdiction until the passage of Proposition I in 1994, because the owner lives in the other single family dwelling on the same lot, and the intent of the exemption was to protect small property owners who lived in proximity to their tenants; the Board's policy regarding owner occupancy exemption should be consistent with the single family exemption under Costa-Hawkins; and the decision is unfair and should be barred by the equitable doctrine of laches.

Prior to the meeting, the landlord's attorney submitted a request for postponement of the appeal consideration in order to conduct legal research at the Rent Board office regarding the interpretation of exemption prior to the passage of Proposition I in 1994. It was the consensus of the Board to grant the landlord's request, with a briefing schedule to be established by staff.

J. 615 Guerrero #2

AL130051

The landlord's appeal was filed approximately two months late because a decision regarding another unit at the property was issued two days earlier and the landlord was overwhelmed and unable to respond to both in a timely fashion.

MSC: To recuse Commissioner Crow from consideration of the appeal.  
(Murphy/Mosbrucker: 5-0)

MSC: To find good cause for the late filing of the appeal. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

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 \$2,950.00 due to the removal of street access to the unit. On appeal, the landlord claims that: the tenant lied under oath and conspired against her with another tenant in the building; the service was over-valued by the ALJ; the entry door had to be sealed for safety reasons; she was too ill to attend the hearing; and the service has been restored.

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

VI. Public Hearing

## Proposed Amendments to Rules and Regulations Section 12.19

The Board had calendared a Public Hearing for this evening's meeting to consider proposed amendments to Rules and Regulations Section 12.19 to state how landlords may notify tenants displaced by fire or other disaster that the unit is ready for re-occupancy. Upon review of the language of the Section, Senior Administrative Law Judge Sandy Gartzman realized that subsection (c) still refers to the landlord's obligation to serve a "30-day notice, whereas Civil Code Section 827 now requires a 60-day notice in certain instances. The Board agreed to continue the Public Hearing to a future meeting in order to conform the entire Section to State law.

### VII. Communications

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

A. The office workload statistics for the month of April, 2013.

B. Articles from the S.F. Examiner, the S.F. Chronicle, the New York Times, the Financial Times, the Bay Guardian, KQED's newsfix, and BeyondChron.

### VIII. Director's Report

Executive Director Wolf told the Board that legislation concerning the ability of TIC owners to convert to condominiums passed at the full Board of Supervisors on an 8-3 vote this afternoon. She also let the Board know that she will be on vacation for 3 weeks commencing June 17<sup>th</sup> and that Deputy Director Robert Collins will be going before the Budget and Finance Committee for approval of the departmental budget.

### IX. Old Business

AB 1925

Senior ALJ Gartzman told the Board that there were no new notices for an eviction of less than 20 days for capital improvement work since the last Board meeting.

### IV. Remarks from the Public (cont.)

C. Carol Toy said that the ALJ didn't understand the points that she raised, that it is impossible to go back and infer someone's intent and that the prior landlord did not want to impose banked rent increases.

### X. Calendar Items

July 16, 2013

12 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:07 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.**