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

Tuesday, January 21, 2014
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 6:03 p.m.

II. Roll Call

Commissioners Present: Crow; Gruber; Mosbrucker; Mosser.
Commissioners not Present: Dandillaya; Hurley.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:05 p.m.; Commissioner Marshall appeared at 6:07 p.m.; and Commissioner Qian arrived at the meeting at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 17, 2013.
(Crow/Mosbrucker: 4-0)

IV. Remarks from the Public

A. Tenant Greg Herman of 2280 Pacific (AT130115 thru -0123) told the Board that the Notice of Violation issued to the landlord went unabated for 5 years and 1 month and that the Administrative Law Judge (ALJ) incorrectly applied the law. Mr. Herman said that the landlord shouldn't be rewarded with a passthrough in contravention of applicable law.

B. Attorney Dave Wasserman, representing the landlord at 684 Corbett Ave. (AT130113), told the Board that the landlord withdrew the first Costa-Hawkins increase because the tenant said she was moving back from Canada. The landlord is a small property owner who lives in the building. The tenant's Craigslist ads said that she was "never here; I live in Canada." Mr. Wasserman also told the Board that the parties are engaged in acrimonious litigation.

C. Tenant Bryna Rifkin of 1145 Noe #2 (AT130114) said that she has lived in the building for over 30 years and the landlord “finally did some capital improvements.” Ms. Rifkin told the Board that the security camera installed in the garage faces the water heater and is “useless.” Ms. Rifkin contended that the tenants’ share of the cost of that camera should be reduced as it is of no benefit.

V. Consideration of Appeals

A. 715 – 42nd Ave.

AT140001

The subtenant’s appeal was filed 8 days late because the Decision arrived just before he left for a holiday vacation.

MSC: To find good cause for the late filing of the appeal.
(Murphy/Mosbrucker: 4-0)

The subtenant filed a petition seeking a determination of whether he has paid a disproportional share of the rent to the master tenant; the ALJ determined that the subtenant had overpaid the master tenant in the amount of \$2,836.50. On appeal, the subtenant claims that his base rent should be set at a lower amount because he does not use the amenities provided by the master tenant.

MSC: To deny the appeal. (Murphy/Gruber: 4-0)

B. 818-A Green St.

AL130124

The tenant’s petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$537.50 due to a leak in the bathroom ceiling and resulting mold, and an unpainted bathroom ceiling with a hole in it. The landlord appeals, arguing that: the tenant is a habitual petitioner and the complaint is without merit; and the amounts granted are excessive.

MSC: To deny the appeal without prejudice to the tenant filing a new petition and, if the condition is found to have recurred, to have the Administrative Law Judge consider granting a rent reduction commencing from the date the rent reduction granted in the instant case was discontinued.
(Murphy/Marshall: 4-0)

C. 1145 Noe #2

AT130114

The tenant’s appeal was filed 1 day late because the tenant was out of state at the time the decision was mailed.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Murphy: 4-0)

The landlord's petition for certification of capital improvement costs to the tenants in 3 of 4 units was granted, resulting in a monthly passthrough in the amount of \$45.03. The tenant in 1 unit appeals the decision on the grounds that the security cameras are positioned in such a manner that they do not benefit the tenants in the building.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of the positioning of the security camera in the garage and whether it benefits the tenants; a hearing will be held only if necessary. (Murphy/Gruber: 4-0)

D. 2280 Pacific Ave.

AT130115 thru -0123

The landlord's petition for certification of the costs of a new roof and exterior wall work to 10 of 25 units was granted, resulting in a monthly passthrough in the amount of \$25.30. The tenants in 9 units filed a joint appeal, claiming that: the decision is in error as to the date the code violations were abated; and the work was required to correct a code violation for which a Notice of Violation had been issued and remained unabated for more than 90 days. The tenants also allege bias on the part of the ALJ and request that the Board vacate the decision for all the affected tenants in the building.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to determine whether the Notice of Violation issued on July 9, 2003 was abated and/or whether the landlord made timely good faith efforts within 90 days to commence and complete the work but was not successful in doing so because of the nature of the work or circumstances beyond the control of the landlord; a hearing will be held only if necessary. (Marshall/Mosbrucker: 4-0)

E. 684 Corbett

AT130113

The landlord's petition seeking a determination as to whether a Costa-Hawkins rent increase was warranted was granted because the ALJ found that the tenant did not permanently reside in the subject unit at the time the notice of rent increase was served. The tenant appeals on the grounds that: the ALJ used the wrong standard as to who had the burden of proof; the Costa-Hawkins increase could only be imposed on the subtenant; as the landlord continued to accept rent from the tenant even when he thought she no longer permanently resided in the unit, he created a tenancy with her at that rent; the landlord failed to prove that the tenant no longer permanently resided at the premises, as a person's residence is primarily determined by their intent; the tenant met all the requirements enumerated in Rules Section 1.21; the tenant never established another residence; the decision is based on unauthenticated hearsay; the landlord's witnesses perjured themselves or were biased against the tenant; and there were procedural irregularities with regard to the hearings and record.

After a brief discussion, the Board continued this appeal to the next meeting due to the absence of a Neutral Commissioner.

F. 530 Larkin #508

AT130125

The subtenant's petition alleging that he was charged more than a proportional share of the rent was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the subtenant claims that he did not receive 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 subtenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Mosbrucker/Murphy: 4-0)

G. 545 – 39th Ave., Apt. #2

AT130126

The tenant's appeal was filed 19 days late because the tenant was out of town at the time the decision was issued.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 4-0)

The landlord's petition for certification of capital improvement costs to 6 of 8 units was granted, in part. The tenant in one unit appeals the decisions on the grounds that: the landlord should be required to prove that necessary permits were acquired in order for the work to be certified; the cost of the new garage door should be allocated to 10, rather than 8 units; the tenants do not benefit from the new door because it doesn't lock; and a new water heater should be considered a repair, and not a capital improvement.

MSC: To deny the appeal. (Murphy/Gruber: 4-0)

VI. Communications

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

A. A letter from Attorney James Parrinello on behalf of the S.F. Apartment Association and the Coalition for Better Housing maintaining that landlords who undertook soft story seismic retrofit work before it became mandatory in April 2013 should receive a 100% passthrough of the costs.

B. Assembly Bill No. 969 regarding retaliation, introduced by Assembly Member Ammiano.

C. The office workload statistics for the month of December, 2013.

D. An Executive Directive from Mayor Ed Lee regarding housing production and preservation of the rental stock.

E. Legislation introduced by Supervisor Chiu proposing to amend the Planning and Building Codes to provide a process for granting legal status to existing dwelling units constructed without the required permits.

F. Articles from BeyondChron, the S.F. Examiner, and the S.F. Chronicle.

VII. Director's Report

Executive Director Wolf told the Commissioners that Rent Board Counselors Alyse Ceirante and Vandnez Lam gave presentations at a landlord/tenant workshop for District 4 constituents organized by Supervisor Katy Tang; Ms. Wolf and Deputy Director Robert Collins spoke at a meeting of the Small Property Owners Association. Ms. Wolf let the Board know that the annual allowable increase as of March 1st will be 1%.

IV. Remarks from the Public (cont.)

D. Tenant Greg Herman of 2280 Pacific told the Board that the law is clear and that an unabated code violation for 5 years doesn't evidence good faith; there is no record of any attempts on the part of the landlord to ameliorate the condition. Mr. Herman believes that the benefit of the doubt is supposed to go to the tenant. Mr. Herman maintained that the leak was never fixed and the walls were peeling for 5 years.

E. Tenant Bryna Rifkin of 1145 Noe said that she is just asking that the landlord reposition the camera, since it is currently not a security camera. Ms. Rifkin told the Board that the landlord has constantly violated the tenants' rights and alleged that the ALJ was on the landlord's side.

F. Attorney Dave Wasserman told the Board that the tenant in the Corbett Street appeal is a tenured professor in Canada who came back to the unit 10 days after the second Costa-Hawkins rent increase notice was served, which Mr. Wasserman said was "not coincidental."

G. Greg Schneider thanked the Board for their lengthy discussions of the issues surrounding telephone testimony, which he believes have helped to put all parties "at ease."

VIII. Calendar Items

February 18, 2014

8 appeal considerations

New Business: Departmental Budget

IX. Adjournment

President Gruber adjourned the meeting at 7:15 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.

