



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,**

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

Tuesday, February 12, 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 6:05 p.m.

II. Roll Call

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

Commissioner Qian appeared on the record at 6:07 p.m.; Commissioner Murphy arrived at the meeting at 6:09 p.m.; and Commissioner Marshall appeared at 6:12 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 11, 2012 with the following amendment: to show that the appeal regarding 999 Fell Street (AL120118) was denied 3-2 on a motion made by Commissioner Marshall and seconded by Commissioner Mosbrucker, with Commissioners Gruber and Murphy dissenting.
(Hurley/Crow: 5-0)

IV. Remarks from the Public

A. Syd Najeeb, the landlord in the case at 850 Jamestown (AL130004), said that the premises where the tenants reside is akin to a pickup truck and the tenants have outgrown the amenities. Mr. Najeeb told the Board that the tenants added a stove without his permission and then brought in hot plates. Mr. Najeeb believes that San Francisco tenants feel that they can breach their lease agreements because there will be no consequences – they have access to free legal services in this “pro-tenant environment.”

B. Attorney Lawrence Fasano spoke on behalf of the tenant at 1002 Filbert Street (AT130005), saying that the tenant was out of the country at the time of the hearing representing the US at the Parachute Championships in Dubai. Mr. Fasano pointed out that the tenant's itinerary demonstrates that she did not receive the Notice of Hearing. He told the Board that the tenant has lived in the unit for 22 years.

C. Leonard Mastromonaco, representing the landlord in the case at Filbert Street, said that the tenant is making \$2,400.00 per month by overcharging her subtenants and couldn't be living in the unit since she is renting out all the bedrooms. Mr. Mastromonaco also maintained that the tenant sent an e-mail during the time when she was supposedly out of contact.

D. Attorney Elizabeth Rhodes asked the Board to clarify Rules §12.19 in that the regulation does not require that the tenant provide the landlord with an address where they can be reached but the landlord faces possible treble damages if they fail to timely comply with the requirements of the Section.

E. Attorney Jak Marquez, representing the landlord at 101 Broderick (AL120123), told the Board that there is no "tenant in occupancy" in the unit because the occupants are the tenant's grandchildren, who are residing there while their grandmother is in a rest home. Mr. Marquez said that the landlord's hands are tied because they have no right to object to a family member moving in to the unit.

F. Tenant Jonas Judd of 1211 Arguello (AL130001) expressed his opinion that the landlord had failed to provide sufficient evidence to prove his case and that the decision is "spot on."

V. Consideration of Appeals

A. 2085 Bush #507

AT130003

The tenant's petition alleging decreased housing services was dismissed due to her 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. 1002 Filbert

AT130005

The landlord's petition for a rent increase from \$611.10 to \$4,000.00 based on Rules §1.21 and/or Costa-Hawkins was granted because the Administrative Law Judge (ALJ) found that the original tenant no longer permanently resides in the subject unit. The tenant appeals, claiming that she did not receive the Notice of Hearing and attaching 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. (Marshall/Mosbrucker: 5-0)

C. 905 Columbus #105

AL120129

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$4,450.00. The landlord appeals on the grounds that: the tenants have been violating the House Rules; and the rent increases were imposed due to the establishment of new tenancies with additional occupants, pursuant to the oral lease.

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

D. 850 Jamestown Ave.

AL130004

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$200.00 per month due to the landlord's removal of the stove in the unit. The landlord appeals, claiming there is no decrease in services since no stove was provided at the inception of the tenancy; and, since there is a discrepancy as to the date the tenant claimed the stove was removed, the entirety of the tenant's testimony must be found not credible.

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

E. 125 Palm Ave. #101

AT130002

The tenant's petition alleging decreased housing services was denied because the ALJ found that the tenant failed to prove that other tenants in the building were making excessive noise and interfering with her quiet enjoyment of the premises. On appeal, the tenant claims that: the landlord falsely accuses her of making excessive noise; the landlord provided false testimony at the hearing; and there are factual errors in the decision.

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

F. 101 Broderick #405

AL120123 (rescheduled from 1/15/2013)

The landlord's petition for a determination pursuant to Rules §1.21 was denied because the ALJ found that the original tenant's grandchildren live in the unit as their principal place of residence, although their grandmother currently resides in a care home. On appeal, the landlord argues that the occupants of the unit are not approved subtenants but, rather, family members who the landlord was obligated to let move into the unit.

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

G. 180 – 4th Ave. #6

AL120124 (rescheduled from 1/15/2013)

The tenant's petition alleging an unlawful increase in rent from \$1,087.67 to \$2,250.00 was granted because the ALJ found that the tenant still permanently resides in the subject unit, although it may not be his principal place of residence. On appeal, the landlord argues that: the tenant uses his San Francisco apartment as an occasional residence while primarily living in Minnesota, which should not preclude a Costa-Hawkins rent increase; the only way to make sense of the phrase "permanently resides" is to give it the same meaning as "principally resides;" allowing a tenant to permanently reside in more than one place subverts the intent of the legislation; and the tenant does not meet the criteria for an owner move-in eviction under the Board's Rules and Regulations.

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

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

H. 1335 Union #7

AL120125

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$75.00 due to lack of a shower free of mold and mildew. The landlord appeals, claiming that: the NOV is unclear and does not mention mold; the tenant and the DBI were unresponsive; she was not provided with a copy of the tenant's documentation; the tenant failed to notify her of the problem until it was significant; and the abatement period should run from the date the extent of the problem was clarified.

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

I. 2444 Van Ness #5

AL120128

The tenant's petition alleging an unlawful rent increase from \$3,690.41 to \$5,250.00 was granted because the ALJ found that the petitioner is an original occupant who took possession of the unit with the consent of the landlord at the time the initial base rent was established. On appeal, the landlord argues that the rent increase was authorized by Rules §6.14 because the petitioner did not move in at the time the rent for the unit was first established but, rather, at a later date subsequent to an increase in the rental amount.

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

J. 1713 Waller St.

AT120127

The landlord's petition seeking a rent increase pursuant to Costa-Hawkins and/or Rules Sections 1.21 and 6.14 was granted as the ALJ found that the tenant was a post-1996 subtenant who had not established a direct relationship with the landlord. On appeal, the tenant claims that: the tenant's payment of back rent owed on another unit established a landlord-tenant relationship between the parties; the ALJ ignored that there was privity of contract between tenant and the landlord, which means that she cannot be a subtenant; the ALJ should have relied on the language of the lease, rather than trying to infer the parties'

intent; and any ambiguity has to be resolved in favor of the tenant, since it was the landlord who drafted the lease.

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

K. 119 Oxford

AT120126

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules §6.15C(3) was denied because the ALJ found that the subtenant and Master Tenant did not reside in the same rental unit. On appeal, the subtenant claims that the decision is biased against him and that the figures provided by the Master Tenant are erroneous.

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

L. 1211 Arguello

AL130001

The tenant's petition alleging an unlawful rent increase from \$1,954.18 to \$4,750.00 was granted because the ALJ found that the tenant still permanently resided in the subject unit at the time the notice of rent increase was served. The landlord appeals the decision on the grounds that: the tenant lied to his prior landlord regarding where he was living in order to obtain money for a buyout and this taints his testimony that he resides in the subject unit pursuant to the Evidence Code; the tenant should also not be found credible on the question of whether subtenants were living in the unit; more weight should have been given to the testimony of the property manager; and the tenant should not be rewarded for his deception.

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

M. 769A 18th Ave.

AL130006

The tenants' petition alleging decreased housing services and unlawful rent increases was granted as to a \$100.00 monthly rent reduction for the presence of mold in the unit. On appeal, the landlord argues that the mold is the responsibility of the tenants.

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

VI. Communications

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

A. A letter from Attorney Elizabeth Rhodes requesting that the Board clarify certain provisions of Rules §12.19.

B. Articles from gadling.com, sheppardlaw.com, [S.F. Apartment Magazine](#), the [S.F. Bay Guardian](#), the [S.F. Examiner](#), [Bay City News](#), [BeyondChron](#), and the Mayor's Office of Communications.

C. The office workload statistics for the months of November and December, 2012.

D. An updated copy of the Rent Ordinance incorporating newly enacted California Civil Code Section 1947.9 regarding temporary relocation payments.

E. The Order in the case of Foster v. S.F. Rent Board (Superior Court Case No. CGC-11-514035).

F. A letter from Attorney James Parrinello of Nielsen, Merksamer, Parrinello, Gross and Leoni, LLP on behalf of the S.F. Apartment Association and the Coalition for Better Housing asking that the Mayor and Board of Supervisors take action regarding the issue of illegal short-term/transient rentals for profit.

VII. Director's Report

Executive Director Wolf told the Commissioners that the Agency's workload has increased quite a bit; excluding utility passthrough petitions, the Department averaged 20 more petitions per month in 2012 than in 2011, including capital improvement (+9) and tenant petitions (+6). Senior ALJ Tim Lee let the Board know that a final judgment has been issued in the Foster case, where the Court found that Rules §12.20 was not preempted, and that Rules §6.15C(3) is not ultra vires. The landlord's attorney has indicated that she may appeal.

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

AB 1925, which added new Civil Code Section 1947.9 effective January 1, 2013, limits the amount of relocation payments a landlord is required to pay tenants for temporary displacements of less than 20 days. Since the state law supersedes the Rent Ordinance with regard to the amount of relocation benefits a landlord must pay for temporary evictions, the Rent Board's unofficial version of the Rent Ordinance was annotated to refer to the controlling state law in temporary evictions for capital improvement work under Ordinance §37.9(a)(11) and for lead abatement work under Ordinance §37.9(a)(14).

The Board has been discussing whether they should adopt regulations to implement the provisions of the bill, since there are questions that are not addressed by the legislation. The Board had asked Senior ALJ Tim Lee to request a City Attorney Opinion on the Board's authority to adopt regulations that fill in the gaps of the state law; and to identify issues raised by the new state law and possible amendments to the Rules and Regulations that might address those issues. In response to the Board's inquiry, the Office of the City Attorney provided initial oral advice, which Senior ALJ Lee provided to the Board in a confidential Memorandum. At their meeting on December 11, 2012, the Board voted to waive confidentiality and discussed the contents of the Memorandum.

At this evening's meeting, the Board decided to hold off on and see if any problems arise before adopting regulations or referring the matter to the Board of Supervisors; the issue will

continue to be placed on future agendas and the Commissioners will poll their respective communities. Commissioner Marshall opined that any problems that arise will likely result from the work taking more than 20 days, either innocently or negligently.

IV. Remarks from the Public (cont.)

G. A tenant thanked the Board for denying the landlord's appeal in the case concerning 905 Columbus (AL120129) because the landlord had done the same thing to him but he did not file a petition.

H. Attorney Dave Wasserman spoke to the issue of the landlord's responsibility to find out where the tenant is living in Rules §1.21 cases. Mr. Wasserman argued that this should not be the landlord's burden and that this requirement is not contained in the Rules and Regulations.

IX. New Business

Å. Departmental Budget

Executive Director Wolf briefly went over next year's proposed budget, which is \$178,238 more than this year's budget due to salary increases and retirement contributions. The Board then passed the following motion:

MSC: To approve the proposed budget for Fiscal Year 2013-2014.
(Marshall/Gruber: 5-0)

B. Rules §1.21 Petitions: Procedural Requirements

Executive Director Wolf informed the Board that there had been a recent situation where a 1.21 hearing had to be continued because the tenant had not received Notice of the Hearing, although it became evident that the landlord knew an address where the tenant could be reached. Therefore, Senior Staff advised the counseling staff that every effort should be made to obtain a current mailing address for the tenant prior to scheduling the landlord's petition for hearing. The 1.21 petition form also states that the petition must be completely filled out, "including mailing and/or forwarding addresses (if known) for the original tenant and any other occupants, including tenants, subtenants, and/or assignees residing in the subject rental unit." Unfortunately, there was a misunderstanding as to whether landlords need to go to extra lengths to obtain a forwarding address if the tenant has not provided one. Ms. Wolf assured the Commissioners that this is not the case, and that staff has been so advised.

X. Calendar Items

March 12, 2013

11 appeal considerations

Old Business: AB 1925 (Civil Code §1947.9)

New Business: Rules and Regs. §12.19

XI. Adjournment

President Gruber adjourned the meeting at 7:50 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.

Addendum: Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.