



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, February 18, 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 6:05 p.m.

II. Roll Call

Commissioners Present: Gruber; Hung; Hurley; Mosbrucker; Mosser; Murphy;  
Qian.  
Commissioners not Present: Marshall.  
Staff Present: Lee; Wolf.

Commissioner Crow appeared on the record at 6:07 p.m.; Commissioner Dandillaya arrived at the meeting at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 21, 2014.  
(Mosbrucker/Qian: 5-0)

IV. New Business

Executive Director Wolf introduced the Department's Budget Analyst from the Mayor's Office, Marisa Pereira Tully, and went over the proposed budget of \$6,548,660. The \$194,458 increase over the current year's budget is primarily due to increases for salaries, retirement and health care and the addition of one Citizens Complaint Officer (Counselor) and one Attorney (ALJ) position; the increase is somewhat offset by a reduction in the Department's work order with the City Attorney. Depending on the amount of carryover funds available for next year, the fee needed to fund the proposed budget for FY '14-'15 should increase from \$29 (the level for the past six years) to about \$32 per unit.

MSC: To approve the proposed Departmental budget for Fiscal Year 2014-2015.  
(Mosbrucker/Qian: 5-0)

V. Remarks from the Public

A. Attorney Dave Wasserman, representing the landlord in the case at 684 Corbett Ave. (AT130113), pointed out that while it is sympathetic that the tenant was taking care of her sick mother, she had lived in Canada for many years prior to her mother taking ill. Mr. Wasserman said that the tenant is a tenured professor in Canada and that it would be “unconscionable” for the landlord’s petition to be denied.

B. Kavita Sharma, representing the tenant in the Corbett Avenue case, told the Board that the Supreme Court’s standard for permanent residence is the individual’s intent to reside and the person’s fixed home as understood by herself and her friends. Ms. Sharma contended that the Administrative Law Judge (ALJ) ignored case law because the tenant never intended to reside in Canada permanently; she moved around due to teaching jobs at several universities; and the tenant met all six of the evidentiary factors delineated in Rules §1.21.

C. Phillip Quan said that he lived with the tenant in the subject unit for three years, that all her furniture is there and she keeps a room for her exclusive use. Mr. Quan said that the tenant was away a lot during the first year to take care of her mother, but that she returned to teach at Berkeley and write a book. Mr. Quan said that the tenant has been a long-term San Francisco resident for decades and that she is “just trying to scrape by like the rest of us in the Bay Area.”

D. Lucky Stewart, the property manager for 765 Sutter #B (AL140003), told the Board that, now that the tenant’s family lives in France, he hasn’t seen the tenant except at Rent Board hearings. Mr. Stewart opined that “having an office on the peninsula doesn’t entitle you to rent control protections” and said that there are subtenants who pay all of the tenant’s bills.

E. Dr. Joseph Barry told the Board that he met the Corbett Avenue tenant in 1996, when she was a visiting scholar at U.C. Berkeley in the Canadian studies group. Mr. Barry said that academics live in a global society, and in Canada, they are encouraged to maximize their academic credentials. Mr. Barry said that the tenant is an “international scholar” and, although she was “there for her mom, San Francisco is her home.”

F. Francois Granada, the tenant at 765 Sutter, told the Board that his family wanted to move to France, but he hasn’t found a job there and works here 80% of the time. Mr. Granada admitted that he would rather live in France full-time but, out of necessity, he currently has two residences.

G. Attorney Robert de Vries, representing the tenant at 765 Sutter, told the Board that what is important is having consistency and predictability of results, and that results can’t be based on whether or not an individual should or shouldn’t benefit from rent control. Mr. de

Vries pointed out that Rules §1.21 and Costa-Hawkins have different standards and, that for Costa-Hawkins, the tenant must be in lawful possession and permanently reside on the premises, which is the case here.

H. Tenant Richard Wilson of 1333 Gough #11A (AT140005) told the Board that he used to travel for work and did not use the building's swimming pool as much as some of the other tenants. Mr. Wilson is now retired and said he would use the swimming pool more, especially as he is facing hip replacement surgery. Mr. Wilson feels that a portion of his initial base rent was designated for the swimming pool, so he is now paying for something he is no longer receiving, which is unfair.

I. Neftali Perez, the Master Tenant at 215-14<sup>th</sup> St. (AL140009), told the Board that he has no job and is living on General Assistance, which is \$419 per month. Mr. Perez doesn't understand why the subtenant filed a petition, and believes he wants to "live free."

J. The tenants in unit numbers 204 and 411 at 1005 Market St. (AL140007) told the Board that the building is not newly constructed, and the work that the landlord did was just to bring the units up to code – no new units were created; the building is over 100 years old. The tenants said that the determination as to jurisdiction should apply to all 36 units, and not just to them. They alleged that the landlord is just trying to "stall."

K. Tenant Teola Watson of 3039 Pine (AT130127) said that the ALJ ignored her serious back injury, although she submitted doctor's letters. Ms. Watson told the Board that she is disabled and cannot climb a ladder to replace the light bulbs in her 10-foot ceiling; the landlord used to provide this service, and she now has to hire a repairperson. Ms. Watson said that it took over two months to get a used rebuilt refrigerator that finally worked and her appeal should be granted because she provided substantial evidence.

L. Tenant John Shirk of 1005 Market said that there is confusion as to whether the Decision of the ALJ only applies to the two tenant petitioners, or to everyone in the building.

M. Tenant David Allen of 1005 Market said that he is an artist and a "not insubstantial person" who has had several shows. Mr. Allen told the Board that he has experienced bedbugs but has not received a response to his complaints.

N. Tenant Patty Boshier of 1005 Market told the Board that the building is a great environment for an artist, as it provides her a place to do her work at an affordable rent. Ms. Boshier believes this provides a cultural contribution to the City.

O. A "disabled combat vet" who also lives at 1005 Market told the Board that he can't afford the rent increase and that "the law is clear."

P. Tenant Gene Profio has lived at 1005 Market since 2001 and said that the building wasn't dilapidated when the new owner took over. Mr. Profio is a disabled musician who said that the "constant threats" make it impossible to sleep at night and that the building is a "community."

Q. Tenant Javier Merrill of 1005 Market told the Board that nothing has been fixed except the stuff that was not up to code and said that rent increases shouldn't be happening when maintenance needs to be done.

R. Previous 1005 Market tenant Ashley Kurskaden told the Board that she moved to Oakland because of the threatened rent increases and came to the meeting in support of the other tenants in the building.

S. Tenant Nicola de Laurier has lived at 1005 Market since 2004 and loves the great location and community. Ms. de Laurier said that the proposed rent increase doesn't coincide with the lack of services: the elevator is unreliable and there is a lack of heat and hot water.

#### VI. Consideration of Appeals

##### A. 1506-1510 Leavenworth

AL140008

The landlord's appeal was filed 3 days late because the landlord assumed that the deadline was determined by the postmark date, as opposed to the date of mailing the decision.

MSC: To find good cause for the late filing of the appeal. (Murphy/Qian: 3-2; Gruber, Mosbrucker dissenting)

The landlord's petition for certification of capital improvement costs for 2 of 3 units was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the landlord explains that he had to conduct an emergency surgery on the date of the 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. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

##### B. 215 – 14<sup>th</sup> St., Apt. 15

AL140009

Two subtenant petitions alleging that they paid a disproportional share of the rent pursuant to Rules §6.15C(3) were granted and the Master Tenant was found liable to the subtenants in the amounts of \$1,318.50 and \$867.25. The Master Tenant appeals the Decision on the grounds of financial hardship.

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

##### C. 3037-41 Pine St.

AT130127

The tenant's petition alleging decreased housing services was denied. The tenant appeals the decision, arguing that: by not providing a working refrigerator for over six weeks and refusing to replace the light bulb in her very tall kitchen ceiling the landlord failed to provide

the disabled senior tenant with a required reasonable accommodation; the building manager had previously replaced light bulbs and the tenant relied on continuation of this service; the tenant did not refuse a replacement refrigerator; and the landlord did not respond to the tenant's complaints in a timely manner.

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

D. 1333 Gough #9D

AL140002

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 \$6,199.50 due to the removal of a swimming pool on the premises. The landlord appeals the decision solely on the grounds that the tenant having appeared by telephone constitutes a significant procedural error and deprived the landlord of his due process rights.

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

E. 1333 Gough #11A & 1D

AT140005 & -06

The tenants' petitions alleging decreased housing services due to the loss of a community room and pool were denied as the ALJ found that the tenants infrequently used these facilities and/or they were replaced by additional, albeit different, facilities. The tenants only appeal as to the determination that the loss of the swimming pool was not substantial, arguing that: it is not necessary to determine if a service is substantial when it is removed in its entirety; the tenants are now seniors who would achieve a therapeutic effect from swimming; and the swimming pool was a major reason for the tenants moving into the building.

MSC: To deny the appeals. (Murphy/Gruber: Mosbrucker, Qian dissenting)

F. 684 Corbett Ave.

AT130113  
(cont. from 1/21/14)

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, and therefore 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.

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

G. 765 Sutter St. #B

AL140003

The tenant's petition alleging an unlawful rent increase from \$1,766.77 to \$3,800.00 was granted as the ALJ found that the tenant still permanently resided in the subject unit as well as in Lyons, France and therefore no increase was warranted under Costa-Hawkins. On appeal, the landlord argues that: the Findings of Fact do not support the Conclusions of Law; there are procedural questions regarding the Decision; the tenants and subtenants are not the intended beneficiaries of rent control; and the Decision undermines the intent of the Costa-Hawkins Rental Housing Act.

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

H. 1005 Market #204 & 411

AL140007

Two tenants filed petitions seeking a determination as to whether the Rent Ordinance governs their monthly rents and whether the rent amounts exceed allowable limits. The Decision in this case dealt with the issue of Rent Board jurisdiction only. In the Decision, the ALJ found that the Rent Board does have jurisdiction because the live-work units have always been used residentially with the knowledge and consent of the owner and that new Certificates of Occupancy were issued not because the units were newly constructed but, rather, to bring the units up to code. The landlord appeals on the grounds that: the ALJ misapplied the ruling in the case of Da Vinci Group v. S.F. Rent Board because the owner in this case performed new construction that permitted residential use and was not cited by the Department of Building Inspection prior to performing the work; the tenants' evidence constituted inadmissible hearsay; the units were vacant prior to the 1995 remodeling work; and, under the definition of "rental unit" in effect in 2002, these were exempt commercial units with a permissible accessory residential use.

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

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

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received copies of articles from the S.F. Bay Guardian, the Small Property Owners of San Francisco Institute News; the Mayor's Office of Communications; the S.F. Chronicle; the S.F. Examiner; the S.F. Apartment Magazine; BeyondChron; and Time magazine.

VIII. Director's Report

Executive Director Wolf told the Board about recent outreach activities conducted by staff: Senior ALJ Sandy Gartzman spoke at a S.F. Apartment Association meeting regarding the soft story retrofit program; Rent Board Supervisor Jennifer Rakowski and Counselor Greg Miller tabled at a Soft Story Retrofit informational meeting; and Ms. Wolf was a panelist at an Apartment Association monthly meeting. Ms. Wolf let them know that Counselor Joey

Koomas has been promoted and will be an Administrative Law Judge commencing February 24<sup>th</sup>. She reminded the Commissioners that they will need to e-file their Statements of Economic Interest by April 1<sup>st</sup> and submit their paper Sunshine and Ethics Declarations by that date as well.

V. Remarks from the Public (cont.)

T. Dr. Joseph Barry again spoke to the Corbett Avenue appeal, informing the Board that to be a tenured professor in Canada, one doesn't have to live there.

U. Kavita Sharma told the Board that the Corbett Avenue tenant told the landlord that she would be away taking care of her mother in May of 2010 and would be more physically present in September of 2012. Ms. Sharma said that there are several mis-statements of fact in the ALJ's decision and that the ALJ was mistaken regarding the burden of proof. Ms. Sharma maintained that Costa-Hawkins rent increases are only applicable to subtenants, which is supported by the Cobb decision, and requested that the Board reconsider their denial of her client's appeal.

V. A tenant at 1005 Market told the Board that a cancer patient who lived in unit #403 was escorted out of the building after she couldn't pay her rent. The speaker maintained that "the landlord's business model is wrong and someone should do something about it."

W. Patty Boshier told the Board that her windows have been broken for several years, the water is only lukewarm and the 1005 Market Street elevator has been out since August.

X. A 1005 Market Street tenant thanked the Commissioners for their time as well as the tenants in the building who worked hard to put the appeal together.

IX. Calendar Items

March 18, 2014

11 appeal considerations

Old Business: Telephone Testimony

X. Adjournment

President Gruber adjourned the meeting at 8:10 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.**