



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, March 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;
Qian.
Commissioners not Present: Dandillaya; Marshall.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 12, 2013.
(Qian/Hurley: 5-0)

IV. Remarks from the Public

A. Landlord Carl Leach of 4935 – 17th St. (AT130010) told the Board that the tenant told him she had received an inheritance in 2012 but she failed to list it on her Hardship Application.

B. The landlord in the case at 55-1/2 Lucy St. (AL130017) said that she made a few attempts to install a heater in the unit, but the tenant wouldn't provide access. She asked the Board what she should do.

C. Attorney Dave Wasserman, representing the landlord in the case at 1901 Turk #3 (AL130014), said that the tenant filed the petition alleging an unlawful rent increase and the burden therefore should be on the tenant, and not the landlord.

D. The landlord in the case concerning 722 Jackson #3 (AL130014) asked whether the Commissioners had received her late submission and was assured that they had.

V. Consideration of Appeals

A. 685 Geary #302

AT130009

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the 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. (Murphy/Mosbrucker: 4-1; Gruber dissenting)

B. 4935 – 17th St.

AT130010

The landlord's petition for certification of capital improvement costs to three of five units was granted, resulting in a monthly passthrough in the amount of \$26.72. 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. (Mosbrucker/Qian: 5-0)

C. 2812 – 2816 – 21st St.

AL130015 & -16

The tenant's petition alleging decreased housing services due to lack of heat in the unit was granted and the landlord was found liable to the tenant in the amount of \$9,000.00. The landlord appeals the decision on the grounds of financial hardship and claims that: the decision represents a windfall to the tenant, who has always shared the unit with roommates; the tenant added a roommate in breach of the lease, which reduced his rent; the tenant was supplied with a pair of heaters; the tenant made it difficult for repairs to be effectuated; and there is no basis for the amount of the rent reduction.

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

D. 3221 Buchanan #12

AL130007

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$1,398.30. On appeal, the Master Tenant claims that: there are factual errors in the decision; she does not have exclusive use of the garage but, rather, shares it with two other tenants; the subtenant was offered garage parking for her bicycle as well as storage; the additional amenities she provided accounted for the higher rent; and the subtenant lied at the hearing and should not have been found to be more credible by the ALJ.

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

E. 826 Arkansas

AL130008

The tenant's petition alleging decreased housing services and an unlawful rent increase was granted, in part, and the landlord was found liable to the tenant in the amount of \$3,950.00 for rent overpayments and due to a lack of heat in the unit. On appeal, the landlord claims that: she was under the impression that she could submit documents after the date that the record closed; the petitioner was a friend, as opposed to a tenant, and the rent was offered at less than market as a favor for a short-term stay; and the amount granted for lack of heat is disproportional to the amount of the utility bills for the unit.

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

F. 2193 Divisadero

AT130011

The subtenant's petition alleging decreased housing services was denied. The subtenant appeals the decision, claiming that the ALJ failed to rule on evidence regarding: the Master Tenant's repeated unlawful entries into the subtenant's room; the removal of her personal property by the Master Tenant; the Master Tenant's failure to protect the subtenant from mail fraud; and the Master Tenant's usurpation and blockage of the subtenant's parking space.

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

G. 922 Post #504

AT130012

The tenant's petition alleging decreased housing services due to the presence of secondhand tobacco and marijuana smoke in his unit was denied because the ALJ found that the landlord took reasonable steps to rectify the problem. On appeal, the tenant claims that: there have been new developments in the case subsequent to the hearing; the Hepa filter provided by the landlord does not prevent carcinogenic particles from entering the unit but, rather, removes them after he has already been exposed; and the Supreme Court has affirmed the right of the police to conduct warrantless searches and seize properties where drug abuse is going on.

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

H. 722 Jackson #3

AL130013

The tenant's petition alleging an unlawful rent increase from \$432.95 to \$1,300.00 was granted because the ALJ found that the tenant was an original occupant of the subject unit or a lawful subtenant who resided in the unit prior to January 1, 1996 and therefore no Costa-Hawkins increase was warranted. On appeal, the landlord argues that: the estoppel certificate does not list the tenant as an occupant of the unit; and the tenant failed to provide documentation proving that he lived in the unit.

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

I. 1901 Turk #3

AL130014

The tenant's petition alleging an unlawful rent increase from \$921.25 to \$1,850.00 was granted because the ALJ found that the tenant is only temporarily away from the unit for purposes of education and therefore no Costa-Hawkins increase is warranted. The landlord appeals on the grounds that: the decision improperly places the burden of proof on the landlord; the tenant's nursing residency is almost over and she has not yet returned to the unit; the tenant allowed friends to stay in the unit, who should be considered subtenants; and the tenant is not required to have completed a residency in order to obtain nursing jobs in California.

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

J. 55-1/2 Lucy St.

AL130017

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 \$6,045.00 due to the lack of heat and stove ventilation in the unit. On appeal, the landlord claims that: the tenant has made unwarranted charges against her; the tenant never asked for a heater or stove vent; the tenant failed to allow access for a heater and vent to be installed; and the rent reduction for lack of heat should be granted for the winter months only.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing on the issue of whether a stove vent is necessary and to determine whether the tenant denied the landlord access to the unit to make the repairs subsequent to the issuance of the decision. (Gruber/Mosbrucker: 5-0)

K. 285 Buckingham Way #602

AT130018

The tenant's petition alleging an unlawful rent increase for payment of a "security fee" was granted and the landlord was found liable to the tenant in the amount of \$861.46. On appeal, the tenant maintains that the 3-year Statute of Limitations should not apply because the tenant failed to pay the noticed increase until the landlord served him with a 3-Day Notice, which means that there were no overpayments prior to that time.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with instructions not to apply the 3-year Statute of Limitations on rent overpayments (Ordinance §37.8(e)(7)) until the landlord demanded payment of the security fees. (Mosbrucker/Qian: 5-0)

VI. Communications

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

A. The Board's Annual Report on Eviction Notices.

B. Articles from the S.F. Chronicle, the Sacramento Bee and BeyondChron.

VII. Director's Report

Executive Director Wolf briefly went over the Board's Annual Report of Eviction Notices and told the Commissioners that their Form 700 Statements of Economic Interest are due to the Ethics Commission by April 2, 2013; Sunshine Declarations and Ethics Declarations, if applicable, are due by April 1st.

VIII. Old Business

AB 1925

Senior ALJ Tim Lee told the Board that, as of last Friday, the Department hadn't received an eviction notice of less than 20 days for capital improvement work this year; Senior Staff will continue to keep the Board apprised as to any issues arising from the change in the law regarding the amount of relocation payments.

IV. Remarks from the Public (cont.)

E. The landlord in the case at 55-1/2 Lucy inquired as to the disposition of her appeal.

F. Attorney Elizabeth Rhodes told the Board she was seeking clarification of Rules §12.19 regarding the tenant's duty to provide the landlord a forwarding address when they had been displaced due to fire or other disaster. Ms. Rhodes told the Board that a tenant is currently suing the landlord for failing to provide notification of their reoccupancy rights when they had provided no forwarding address. Ms. Rhodes said that the tenant's obligation to provide an address should be explicitly stated in the Rules and Regulations.

IX. New Business

Rules and Regulations §12.19

The Board briefly discussed the issue raised by Attorney Elizabeth Rhodes, as outlined above in "Remarks from the Public." The Tenant Commissioners were concerned that in situations like this, tenants vacate the unit in haste and landlords should not "get off the hook," but should just mail to the old address. The Commissioners asked Senior ALJ Lee to draft proposed language along the lines of Civil Code §1950.5 for discussion at the next meeting which would require landlords to send notification of the tenant's right to reoccupy the unit to the last known address; any such amendment to the Rules would be prospective only.

MSC: To ask Senior Staff to draft possible amendments to Rules §12.19 for discussion purposes at the next Board meeting. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

X. Calendar Items

April 16, 2013

12 appeal considerations

Old Business:

A. Assembly Bill 1925 (Civil Code §1947.9(

B. Rules and Regulations §12.19

XI. Adjournment

President Gruber adjourned the meeting at 7:30 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.