



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

III. Approval of the Minutes

MSC: To approve the Minutes of February 18, 2014.  
(Qian/Murphy: 5-0)

IV. Remarks from the Public

A. Attorney Saul Ferster, representing the landlord at 3560 – 21<sup>st</sup> St. #4 (AL140016), told the Board that the tenant had signed a lease in 2010 for a unit where he lives with and takes care of his mother, and he hasn't lived at the subject unit since. Whereas the Administrative Law Judge (ALJ) found the tenant's 3-year absence reasonable and temporary, Mr. Ferster maintained that it is no longer reasonable or temporary and asked that the Board grant the appeal and reverse the decision.

B. Attorney Brenda Cruz Keith, representing the landlord in the case at 1155 & 1157 York (AL140018 & -19), told the Board that the premises was a single family home when the landlord purchased, but it was demolished for the most part and a Certificate of Final Completion and Occupancy for a two-unit dwelling was issued after 1995. Ms. Cruz Keith said that the Department of Building Inspection's records are persuasive and maintained that the Da Vinci decision is inapplicable.

C. Christine Peterson, the subtenant at 1174 Pine (AT140017), told the Board that she doesn't utilize the Master Tenant's second-hand furniture and it's not worth \$51.00 per month. Ms. Peterson maintained that the \$34 per month reduction in rent that she received is insufficient because the Master Tenant made the unit "uninhabitable."

D. Christine Wilkinson spoke on behalf of tenant Catherine Forrester of 1155 York. Ms. Wilkinson said that on every permit, and in all of their responses, the landlord depicted the premises as a two-unit building.

E. Harmon Schrage, representing the landlord at 2757 Polk #3 (AT1400212), told the Board that the tenant is claiming a hardship but he sub-lets the unit for more rent than he is claiming on the Hardship Application.

V. Consideration of Appeals

A. 2070 Pacific #501

AT140020

The tenant's appeal was filed five days late because the tenant was out of state visiting a terminally ill family member.

MSC: To find good cause for the late filing of the appeal.  
(Murphy/Mosbrucker: 5-0)

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 12 of 29 units. 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)

B. 905 Ashbury, Apt. 1

AT140014

The tenant's petition alleging decreased housing services due to the loss of quiet enjoyment of his unit was granted and the landlord, who failed to appear at the hearing, was found liable to the tenant in the amount of \$700.00. The landlord's appeal of the decision was granted and the case was remanded for a new hearing, at which the tenant failed to appear because he has moved to Israel. The tenant's appeal of the dismissal of his petition was accepted and remanded for a new hearing, with the admonition that, should the tenant again fail to appear absent extraordinary circumstances, no further hearings would be scheduled. The tenant again failed to appear by telephone at the second remand hearing, and again appeals the dismissal of his petition, asking for another hearing.

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

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

C. 2757 Polk #3

AT140021

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 6 of 7 units. 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)

D. 1174 Pine St.

AT140017

The subtenant's petition alleging that she paid a disproportional share of the rent was granted and the Master Tenant was found liable to the tenant in the amount of \$390.00. The subtenant appeals on the grounds that the valuation of the furnishings provided by the Master Tenant is unwarranted and unsupported by the evidence.

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

E. 1124 Elm St.

AL140015

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$1,450.00. On appeal, the landlord maintains that the Decision is in error as to the amounts the tenant actually paid, and payments for late and returned check fees were credited towards rent.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only to determine the correct amount of overpayments; a hearing will be held only if necessary. (Murphy/Mosbrucker: 5-0)

F. 3491 – 16<sup>th</sup> St.

AL140010

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the tenant is an original occupant who took possession of the unit pursuant to the rental agreement with the owner and therefore no Costa-Hawkins increase is warranted. On appeal, the landlord argues that: the tenant commenced occupancy of the unit as a roommate but did not enter into a direct landlord-tenant relationship with the owner as he never signed the lease, never paid rent to the landlord and was not named in rent increase notices; the ALJ erred in interpreting Costa-Hawkins; the legislature intended to protect landlords and not approved subtenants or roommates; and the legislation must be construed in accordance with its statutory scheme.

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

G. 1550 Leavenworth

AL140011 & -12

The landlords' petition for a rent increase based on comparable rents was denied because the ALJ found that the landlords failed to prove that the rent for the unit was set very low at

the inception of the tenancy. The tenant's petition alleging decreased housing services was granted in part and denied in part and the landlords were found liable to the tenant in the amount of \$250 per month due to loss of on-site garage parking, which is the amount the landlord had reduced the tenant's at the time the service was taken away. Both the landlords and the tenant appeal the decision. As to the denial of their petition for a comparables rent increase, the landlords argue that the ALJ ignored the landlords' evidence showing that the unit should have rented for a much greater amount; the tenant's evidence was of the rents for apartments rather than flats, which are not comparable to the subject unit; and the burden of proof placed on landlords in comps cases is impossible to meet. The tenant appeals the finding that the removal of storage did not constitute a reduction in services, claiming that the ALJ ignored evidence she provided showing that storage was included in her base rent at the inception of the tenancy.

MSC: To deny both the landlords' and tenant's appeals. (Mosbrucker/Qian: 5-0)

H. 163 Alhambra

AL140013

The tenants' petition alleging an unlawful rent increase was granted because the ALJ found that the subject unit, a condominium, had not been sold to a bona fide purchaser for value. On appeal, the landlords argue that: the subject unit was exempt prior to a change in the language of Costa-Hawkins in 2001 that required that the unit be sold and the Rent Ordinance was conformed to the version of Costa-Hawkins that was in effect prior to the amendment; the amendment was a change to existing law, rather than a clarification, which means it must be given only prospective effect; and the Board of Supervisors has never incorporated the requirement that the unit be sold into the Rent Ordinance.

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

I. 288 – 8<sup>th</sup> Ave., Unit 1

AT140004

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted as the ALJ found that the tenant visits San Francisco infrequently and her usual place of return is Taipei, Taiwan. On appeal, the tenant claims that: there are factual errors in the Decision; the tenant does not reside in a property that she owns in Taiwan; the tenant travels to Asia to conduct crisis training for relief workers, and there have been multiple natural disasters in that part of the world in recent years; much of the documentary evidence shows the subject unit as the tenant's address; the tenant uses public transportation, rather than the car she stores in the garage at the subject building; the tenant keeps to herself and has limited interactions with her neighbors; evidence of the tenant's activities prior to the date the petition was filed is irrelevant; and the proposed rent increase would cause the tenant to vacate the unit.

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

J. 3560 – 21<sup>st</sup> St. #4

AL140016

The landlord's petition seeking a determination pursuant to Rules §1.21 was denied because the ALJ found that the subject unit is still the tenant's principal place of residence, and he is only temporarily absent because he is taking care of his elderly mother. The landlord appeals, arguing that: the tenant has not lived at the subject unit for over 3 years, which is not a reasonable, temporary absence.

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

K. 1155 & 1157 York St.

AL140018 & -19

The tenants in two units filed petitions alleging unlawful rent increases, which were granted because the ALJ found that the units were not newly constructed and had been in residential use before the Certificate of Occupancy was issued, after the landlord abated longstanding health and safety violations. On appeal, the landlord claims that: the decision that the units were in residential use prior to the issuance of the CFCO was based on a hearsay document; the weight of the evidence shows that the units were not occupied; the Da Vinci decision is distinguishable from the instant case; and the fact that there were outstanding code violations does not affect the fact that the CFCO was issued after February 1, 1995, which makes the units exempt under Costa-Hawkins.

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

#### VI. 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 January 2014.

B. The Department's Annual Report on Eviction Notices

C. Copies of Assembly Bill 2405 and Senate Bill 1439, introduced by Assembly Member Ammiano and Senator Leno, regarding the Ellis Act; legislation introduced by Supervisor Campos to increase Ellis relocation fees; legislation introduced by Supervisor Wiener to allow construction of new in-law units in the Castro neighborhood; and legislation introduced by Supervisor Chiu providing for a legalization process for existing in-law units.

D. Articles from the S.F. Examiner, the S.F. Chronicle, Newsweek, the New Yorker, the S.F. Apartment Magazine, BeyondChron, the Mayor's Press Office, sfgate, the Contra Costa Times, the New York Times, and the London New Statesman.

#### VII. Director's Report

Executive Director Wolf went over the various pieces of pending legislation the Commissioners received in their folders and let them know that she conducted a training session for Planning Department staff on issues of concern to both agencies. She went over the highlights of this year's eviction notice report, and let them know that the spike in

notices for demolition or removal from housing use was partly due to 66 notices given to tenants at 1049 Market Street. Ms. Wolf reminded the Commissioners to submit their Form 700 Statements of Economic Interest by April 1<sup>st</sup> and introduced new Counselor Christina Varner.

VIII. Old Business

Telephone Testimony: Pilot Program

Deputy Director Robert Collins let the Commissioners know that the Rent Board will be conducting a 6-Month Pilot Program where parties who have a good cause reason for being unable to appear for their hearing may avail themselves of appearance by Skype or Facetime in lieu of telephone testimony. This new technology will be available to the public commencing April 23<sup>rd</sup>. Senior Staff will report back to the Board on the progress of this new initiative.

IV. Remarks from the Public (cont.)

F. Tenant Rhonda Comte of 1124 Elm (AL140015) told the Board that she has provided additional information showing the amount of rent she paid and said that the landlord has never claimed that she under-paid rent.

G. Tenant Kim Lee of 1550 Leavenworth (AT140012) told the Board that she provided letters from the former landlord and a neighbor that were executed under penalty of perjury that backed up her claim that storage and parking were included as housing services at the inception of the tenancy.

IX. Calendar Items

April 22, 2014  
13 appeal considerations

X. 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.**