



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

- U
- 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, April 16, 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; Dandillaya; Gruber; Hurley; Mosbrucker; Murphy; Qian.

Commissioners not Present: Mosser.

Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:09 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 12, 2013.
(Murphy/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Tenant John de Leon of 436 Castro #3 (AL130025) told the Board that he came to the meeting in order to “put a face” to the facts of his case.

B. Tenant Warren Burch of 3001 Pine #6 (AT130026) asked questions regarding when the Commissioners’ decision would be made.

C. Attorney Jessica Chylik, representing the Master Tenant in the case at 1186 Fulton (AL130032), asked if the Board received her objection to an untimely submission from the subtenant in the case.

V. Consideration of Appeals

A. 2503 Jones St.

AL130021

The landlord's petition for certification of capital improvement costs to 1 of 2 units was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the landlord claims to have requested postponement of the hearing because he was going to be out of the country, and attaches a Request for Postponement form that was never received by the Rent Board.

MSC: To accept the appeal and remand the case for a new hearing.
(Marshall/Murphy: 5-0)

B. 1250 Taylor #16

AT130022-24

The landlord filed 3 petitions for certification of capital improvement costs, which were approved for 13 of 15 units. One tenant appeals the decisions on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a hearing on the tenant's claims of financial hardship.
(Murphy/Mosbrucker: 5-0)

C. 230 Central #7

AT130029

The tenant's hardship appeal of an operating and maintenance expense increase was denied because the tenant declined to provide information on any attempts to find more than part-time work and his income-to-rent ratio was not significantly different than at the inception of the tenancy. The tenant appeals the remand decision, claiming that he meets the Board's guidelines for hardship and the ALJ failed to consider volunteer efforts that he hopes will result in paid employment.

MSC: To accept the appeal and remand the case for a supplemental hearing to consider the new evidence provided with the tenant's appeal regarding the tenant's income and attempts to obtain additional employment; to determine the tenant's initial and current income-to-rent ratio; and to consider granting the tenant some relief from the rent increase, even if temporary. (Marshall/Mosbrucker: 5-0)

D. 1922 Broderick #3

AT130035

The tenant's petition alleging decreased housing services was dismissed due to his 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.
(Mosbrucker/Murphy: 5-0)

E. 700-712 Polk

AL130019

The landlords' petition for extension of time to do capital improvement work was denied because the ALJ found that the landlords failed to obtain all necessary building permits before the petition was filed and had not shown that the time estimate for completion of the work is reasonable. The landlords appeal on the grounds that: it was not clear to them that the record would close as of December 31, 2012; the landlords diligently sought additional permit information; the additional permit is a revision of the original and not a new permit and therefore the landlords had all the necessary permits at the time the petition was filed; and the project will be completed within the original time estimate.

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

F. 436 Castro #3

AL130025

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the tenant, a flight attendant, permanently resides in both New York and San Francisco and therefore no Costa-Hawkins increase is warranted. On appeal, the landlord argues that the decision subverts the intent of Costa-Hawkins as rent control protections should only be afforded to one's principal place of residence.

MSC: To accept the appeal and remand the case to vacate the decision and find that there is no "Tenant in Occupancy" at the subject unit.
(Murphy/Gruber: 2-3; Beard, Marshall, Mosbrucker dissenting)

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

G. 3001 Pine #6

AT130026

The landlord's petition requesting a determination pursuant to Rules §1,21 was granted as the ALJ found that the tenant's principal place of residence is in Hawaii and there is no "Tenant in Occupancy" at the subject unit. The tenant appeals the decision, claiming that: the ALJ's decision is not supported by substantial evidence; the ALJ failed to consider the documentary evidence that the tenant submitted; and he did not submit copies of his tax returns as he did not wish to have his personal financial information publicly disclosed.

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

H. 2159-B Lombard

AL130028

The tenant's petition alleging an unlawful increase in rent was granted because the ALJ found that new Certificates of Occupancy issued in 1997 and 2002 pertained to an addition to the building and not to the tenant's unit and therefore the building is not exempt under Costa-Hawkins. On appeal, the landlord maintains that: the hearing should have been continued due to pending litigation between the landlord and the City regarding the

property; and the tenant failed to meet his burden of proving that his unit was part of the original construction of the building in 1930.

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

I. 3815-17 – 18th St.

AL130030 & -31

The tenant's petition alleging decreased housing services due to the loss of a storage space in the building was granted and the landlord was found liable to the tenant in the amount of \$5,137.08. On appeal, the landlord argues that: storage was not included as a housing service at the inception of the tenancy because it is a prohibited use due to the lack of fire sprinklers; if storage had been included, the tenant would have ensured it was specified in the lease; and the tenant should not have been found credible by the Administrative Law Judge. The landlord also appeals the decision on the grounds of financial hardship.

MSC: To deny the appeal on the merits except to remand the case for a supplemental hearing to determine the proper method of calculating the value of the housing service in light of the tenant's rent history.
(Mosbrucker/Marshall: 5-0)

MSC: To accept the appeal and remand the case for a hearing on the landlord's claim of financial hardship. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

J. 2238 Vicente, Apt. 3

AT130033

The tenant's petition alleging numerous habitability defects on the premises was denied because the ALJ found that the landlord effectuated repairs in a reasonable amount of time, was not given notice of the conditions or the problems were not substantial. The tenant appeals, maintaining that: the landlord was on notice of the problems because she told his broker, who wrote them down and said he gave the list to the landlord; and the landlord refused to make any repairs.

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

K. 1186 Fulton

AL130032

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 \$4,225.80. On appeal, the Master Tenant claims that: she was prejudiced by the subtenant's late submission; the ALJ erred in the Decision and failed to consider her credible evidence; and the ALJ did not sufficiently credit the amenities she provides.

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

L. 2436 San Bruno Ave.

AL130034

The tenant's petition alleging unlawful rent increases was granted and the landlords were found liable to the tenants in the amount of \$5,825.00. The landlord appeals on the grounds that: the tenants have never lived on the premises and use the units to house employees and relatives, so the units are exempt from rent control pursuant to the case of Tappe v. Lieberman and Chan v. Antepenko; the occupants of the units are licensees and not tenants; the subject units are part of the commercial rental agreement between the landlords and the tenant; and there is no commercial rent control pursuant to State law.

MSC: To accept the appeal and remand the case for a supplemental hearing on the issue of whether these units are exempt from the Rent Ordinance.
(Mosbrucker/Marshall: 5-0)

VI. Communications

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

A. Copies of articles from the S.F. Examiner, BeyondChron, the S.F. Public Press, the S.F. Bay Guardian and the Sacramento Bee.

B. The office workload statistics for the month of February, 2013.

C. A copy of the newly designed outreach ad by Rent Board Supervisor Jennifer Rakowski that will be going up in Muni buses.

VII. Director's Report

Executive Director Wolf told the Board that the Rent Board's outreach program on Muni buses is continuing and ads in three languages will be placed in all above-ground buses within the next few weeks. She also let them know that in conjunction with the passage of the Mandatory Soft Story Retrofit Ordinance, the Rent Board's hardship provisions are being examined and Senior Staff has been asked to provide technical expertise as to how the provisions could be streamlined.

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Tim Lee told the Board that the Department received 3 notices for evictions of less than 20 days for capital improvement work by the same landlord. The tenants in those buildings signed agreements to temporarily vacate and were provided with 3 options as to temporary housing or per diem compensation. 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.

B. Rules and Regulations Section 12.19

At the April 16th meeting, the Board requested staff to draft an amendment to Rules and Regulations Section 12.19 to state how landlords may notify tenants displaced by fire or other disaster that the unit is ready for re-occupancy. Specifically, the Board wanted to amend Section 12.19(a) to add the following language underlined below:

Section 12.19 Displacements

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms and conditions as existed prior to her/his displacement. The landlord's offer shall be sent to the address provided by the tenant. If the tenant has not provided an address, the offer shall be sent to the unit from which the tenant was displaced and to any other address of the tenant of which the landlord has actual knowledge.

The Board also wanted the above amendment to be prospective only to apply to mailings required by Section 12.19(a) after the effective date of the amendment. Since amendments to the Board's regulations are effective upon adoption unless otherwise specified by the Board, such prospective application would occur upon adoption.

The Board continued this issue in order for Senior ALJ to draft the requested language, which will be discussed at the next meeting.

IV. Remarks from the Public (cont.)

D. Susan Whetzel, the tenant in the case at 3815-17 – 18th St. (AL130030 & -31), inquired as to the landlord hardship appeal process.

IX. Calendar Items

May 14, 2013

8 appeal considerations

Old Business:

A. AB 1925 (Civil Code Section 1947.9)

B. Rules and Regs. Section 12.19

X. 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.