



Edwin M. Lee
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Delene Wolf
Executive Director

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POLLY MARSHALL
CATHY MOSBRUCKER
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BARTHOLOMEW MURPHY
KENT QIAN

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 22, 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 6:07 p.m.

II. Roll Call

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

Commissioner Mosser appeared on the record at 6:15 p.m.; Commissioner Qian arrived at the meeting at 6:25 p.m.

Executive Director Wolf introduced new Rent Board Counselors Aaron Morrison and Victor Ramirez, who were in attendance at the meeting.

III. Approval of the Minutes

MSC: To approve the Minutes of March 18, 2014.
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Tenant Homa Davary of 757 Gonzalez Dr. (AT140031) told the Board that, in filing her petition, she was not seeking a rent reduction as much as she was filing for the principle. Ms. Davary said that she dealt with extremely noisy student neighbors for a one-year period, and her situation was not an isolated instance. Ms. Davary maintained that her elderly neighbors at Parkmerced are afraid to assert their rights, and the situation constitutes "elder abuse."

B. Tenant Maxwell Prange of 3030 Buchanan (AT140027) said that the work on his building was done without permits, did not constitute new construction and that it had taken him a long time to dig up the evidence.

V. Consideration of Appeals

A. 3039 Buchanan

AT140027

The tenant's petition seeking a determination regarding jurisdiction and alleging an unlawful rent increase was dismissed due to the tenant's failure to appear at the properly noticed hearing. The tenant appeals the dismissal on the grounds that he did not receive the Notice of Hearing until after the hearing date and new information has been made available to him from the Department of Building Inspection.

MSC: To accept the appeal and remand the case for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no additional hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

B. 1400 Jones, Apt. 203

AT140033

The landlord's petition seeking a determination pursuant to Rules §1.21 and Costa-Hawkins was granted as the Administrative Law Judge (ALJ) found that the original occupant had vacated and the petitioner is a subtenant who moved in to the unit after January 1, 1996. The tenant, who failed to appear at the hearing, appeals on the grounds that he failed to receive the Notice of Hearing in a timely manner.

MSC: To accept the appeal and remand the case for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no additional hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

C. 2905 San Bruno Ave.

AL140034

The subtenant's petition claiming that he 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 \$2,250.00. On appeal, the Master Tenant claims that the decision presents her with a financial hardship and asks for another hearing with the services of an interpreter and attorney.

MSC: To accept the appeal and remand the case for a hearing on the issue of financial hardship to the Master Tenant only. (Mosbrucker/Gruber: 5-0)

D. 1300 Irving St.

AT140026

The tenant's appeal was filed 7-1/2 months late because the tenant had a back injury.

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

The tenant's petition alleging decreased housing services based on alleged noise from a neighboring unit was denied. The tenant appeals, claiming that: she has additional evidence regarding the noise problem; and the ALJ said he would not use defamatory information in the decision, which he did.

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

E. 2251 – 25th Ave.

AL140022

The tenants' petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenants in the amount of \$720.00. On appeal, the landlord maintains that: the decision is in error as to the amounts owing; the tenants intentionally misled the ALJ and should be considered separate tenancies; the initial base rent was a reduced amount because the tenants were students at the time; the unit was totally renovated prior to the tenants moving in; and the current rent is substantially below market.

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

F. 505 – 26th Ave. #2A

AL140032

The landlord's appeal was filed three days late because the landlord was ill and there is no mail service on the weekend.

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

The tenant's petition alleging unlawful rent increases was granted because the ALJ found that the tenant's initial base rent included utilities, which the landlord had started billing for separately two years after the tenancy commenced. On appeal, the landlord maintains that the tenant did not have standing to bring the petition because his mother co-signed the lease; the lease requires mediation of disputes; and utilities should not be considered part of the base rent.

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

G. 757 Gonzalez Dr.

AT140031

The tenant's petition alleging decreased housing services was denied. On appeal, the tenant claims that: she was pressured by the ALJ into withdrawing her claim regarding unauthorized entries into her unit; the decision contains factual inaccuracies and omits crucial evidence provided by the petitioner; the landlord did not take reasonable steps to address the problem of noise emanating from a neighboring unit; and there are on-going problems with off-leash dogs and refuse removal at the property.

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

H. 2238 Vicente #3

AT140025

The landlords' petition for certification of capital improvement costs to 2 of 4 units was granted, in part. The tenant in 1 unit appeals the decision on the grounds that: the landlord provided false information in the petition; the landlord is attempting to recover costs for the construction of a new rental unit on the property; the landlord reaps a double benefit by writing off his construction costs; and the majority of the work was in the nature of repair or replacement or was necessitated by the construction of the new rental unit.

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

I. 238 Divisadero, Units A & B

AL140023

The landlord's request to rescind a Notice of Intent to Withdraw residential units pursuant to the Ellis Act was denied because the Senior ALJ found that some tenants in the building vacated after having been served with the notices of termination of tenancy and no extraordinary circumstances exist. The landlord appeals on the grounds that: they never received a copy of the Notice of Denial of the Request for Rescission; the denial is incorrect as a matter of law and biased in favor of the tenants; and the landlord will suffer prejudice as a result by potentially being subject to fines and penalties.

MSC: To accept the appeal and remand the case for a hearing.
(Hurley/Gruber: 4-1; Mosbrucker dissenting)

J. 1710 – 19th Ave. #3

AT140024

The landlord's petition for a determination as to whether a rent increase is warranted under Costa-Hawkins was granted as the ALJ found that the original tenant no longer permanently resided in the unit at the time the notice of rent increase was served. The tenant appeals the decision on the grounds that: the decision is unsupported by the facts since the fact that the tenant sleeps at her boyfriend's apartment is insufficient to find that she no longer resides in the unit; the evidence shows that the tenant does not have another residence; the tenant spends weekends in the Easy Bay with her grand-children; the tenant meets the indices of residency enumerated in Rules §1.21; and the only evidence against the tenant consists of hearsay.

This appeal was withdrawn prior to the meeting.

K. 2951 Bush, Unit A

AL140028

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$360.00 because the ALJ found that the landlord parked in the driveway in such a way as to prevent the tenant from also parking his car in the driveway. On appeal, the landlord maintains that the tenant had access and parked in the driveway during the relevant time periods.

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

MSC: To accept the appeal and remand the case for a supplemental hearing.
(Gruber/Hurley: 5-0)

L. 254 Divisadero #5

AT140029

The tenants' petition alleging decreased housing services was denied. The tenants appeal the decision, arguing that: the landlord's new House Rules unilaterally changed the terms of their tenancy to disallow smoking anywhere in the building, including in the tenants' unit; the ALJ exceeded her authority in addressing the landlord's contention that the tenants smoked marijuana in their unit, which was not before her; and the ALJ found that the landlord orally recanted the rule disallowing smoking, but the House Rules specifically state that they cannot be changed except in writing.

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

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

M. 435 Powell #6

AT140030

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the original tenant no longer lives on the premises. On appeal, the tenant claims that: there was no competent evidence to back up the landlord's contention that a 6.14 notice had been served; and the tenant did not relinquish his tenancy at the subject unit when he temporarily moved to Davis for three years as he always intended to return.

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

VI. Communications

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

A. An updated Commissioner roster.

B. Legislation introduced by Supervisor Kim to establish a special use district in the South of Market area to balance market rate and affordable housing.

C. A pending litigation status report from Senior ALJ Tim Lee.

D. Articles from BeyondChron, the S.F. Chronicle, the N.Y. Times, the Guardian, the S.F. Examiner, SFGate, KALW and 48 Hills.

E. The office workload statistics for the month of February, 2014.

VII. Director's Report

Executive Director Wolf informed the Board that Deputy Director Robert Collins conducted videoconferencing training for the Administrative Law Judges and that this option was made available to the public commencing April 23rd. Ms. Wolf told the Board about recent outreach activities conducted by Rent Board staff, and brought them up to date on recently enacted and pending legislation.

IV. Remarks from the Public (cont.)

C. President Gruber publicly commended the quality of Rent Board staff members, with whom he has conducted several recent outreach events.

VIII. Calendar Items

June 17, 2014

13 appeal considerations (4 rescheduled from 5/20/14)

IX. 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.