



Edwin M. Lee
Mayor

DAVID GRUBER
PRESIDENT

Delene Wolf
Executive Director

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

BROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

Tuesday, May 14, 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; Murphy;
Qian.
Commissioners not Present: Dandillaya; Mosser.
Staff Present: Gartzman; Wolf.

Commissioner Marshall appeared on the record at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 16, 2013.
(Mosbrucker/Beard: 5-0)

IV. Remarks from the Public

A. Tenant Peter Doty of 46 Belvedere (AT130042) told the Board that the Administrative Law Judge’s (ALJ’s) summary of his arguments that a Costa-Hawkins rent increase is not warranted in his case was incomplete.

B. Sarah Clivan spoke on behalf of Peter Doty, saying that he is an “upstanding citizen.”

C. James Hoy Driscoll, attorney for the tenant in the case at 43 Norton Street (AT130040), told the Board that his client, who was not represented at the hearing, is a Latin American immigrant with limited English skills. Mr. Driscoll said that the ALJ did not make sure that the tenant understood what was being said, and then found him not credible

due to inconsistencies in his testimony. Mr. Driscoll also said that the ALJ gave no weight to the tenant's documents, but gave "unwarranted" credence to the landlord's.

D. Landlord Ulises Bello said that the tenant in the case at 43 Norton Street spoke fluent English at the hearing and that his bilingual son was also present. Mr. Bello asked that the Board deny the tenant's appeal.

E. Landlord Jon Kouba spoke to the dismissal of his petition in the case concerning 1175 Francisco (AL130039) and said that his attorney, Dave Wasserman, was not present at the meeting.

V. Consideration of Appeals

A. 914 Wisconsin #1

AL130041

The Master Tenant's appeal was filed approximately four and one-half months late because the tenant has moved to Europe and only periodically has his mail forwarded.

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

The subtenant's petition seeking a determination as to whether he paid more rent to the Master Tenant than the Master Tenant paid the landlord was granted and the Master Tenant was found liable to the subtenant in the amount of \$2,000.00. The Master Tenant failed to appear at the hearing and alleges on the appeal that he failed to receive notice because he now resides in Europe.

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

B. 1175 Francisco

AL130039

The landlord's petition for certification of capital improvement costs was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the landlord claims to have been ill on the day of the hearing.

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

C. 449-A Duboce

AT130043

The landlord's petition seeking certification of the costs of a new roof to two of four units was granted, resulting in a monthly passthrough in the amount of \$69.04. One tenant appeals the decision on the grounds that a portion of the work was done on a porch deck that he does not have access to.

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

D. 615 Guerrero #5

AL130037

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$2,283.70. On appeal, the landlord claims that: she was too ill to participate in the scheduled mediation and has been denied due process; the decision is confusing; the tenants failed to timely notify her of the repairs that were needed; and the tenants lied and failed to meet their burden of proof.

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

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

E. 3721 – 25th St. #6

AT130038

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted as the ALJ found that the subject unit is not the tenant's principal place of residence. On appeal, the tenant maintains that: the decision is based on hearsay; she has family and business obligations that require that she spend a substantial amount of time in Maryland; the evidence shows that none of the properties she owns in Maryland constitute a principal place of residence; the landlord knowingly failed to provide the tenant's contact information to the Rent Board so that the tenant did not receive the Notice of Hearing; and the subject unit is still her principal place of residence.

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. (Mosbrucker/Marshall: 5-0)

F. 608 Sanchez

AL130036

The landlord's appeal was filed a month late because the landlord allegedly did not receive notice of the hearing or a copy of the decision and attaches the requisite Declaration of Non-Receipt of Notice of Hearing or Decision.

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

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$1,095.00. The landlord alleges non-receipt of the Notice of Hearing and also claims that: the tenant mis-represented the facts; the tenant was originally a guest, and not a tenant; and the decision is inequitable because the tenant lived in her home rent-free for 17 months.

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

G. 43 Norton St.

AT130040

The landlord filed a petition seeking a determination of the tenants' claim of protected status from an owner move-in eviction during the school year due to the presence of a minor child in the unit. The ALJ found that the tenants had failed to prove that the child resided in the unit and that the tenants therefore do not have protected status. On appeal, the tenants explain that their testimony was not considered credible due to cultural biases and because English is not their native language and they were prejudiced because they were not represented by competent counsel. The tenants also claim that the ALJ failed to properly consider the documentary evidence they provided.

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

H. 46 Belvedere

AT130042

The tenant's petition alleging decreased housing services and an unlawful rent increase was denied because the ALJ found that the tenant is a subtenant and not a co-tenant and therefore the increase is warranted under Costa-Hawkins; and the claims pertaining to the construction of a new garage in the building are barred by the Golden Gateway decision. The tenant appeals on the grounds that: the decision contains factual inaccuracies and omits important relevant evidence; he is a co-tenant and not a subtenant; the other occupant of the unit did not actually reside on the premises; the construction work was not necessary; he had established a landlord-tenant relationship with the prior owner of the property; and the prior and current owners' inaction waived their right to a Costa-Hawkins rent increase.

MSC: To deny the appeal on the issue of the Costa-Hawkins rent increase but to accept the appeal and remand the case on the issue of whether the tenant's rent reduction claim for loss of quiet enjoyment of his unit is barred by the Golden Gateway decision; a hearing will be held only if necessary. (Mosbrucker/Murphy: 5-0)

VI. Communications

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

A. The Department's workload statistics for the month of March, 2013.

B. Articles from the S.F. Examiner, BeyondChron, the San Francisco Public Press, the Small Property Owners of San Francisco Institute News, CapitolAlert, the S.F. Chronicle, the New York Times and the Apartment Owners Association of California News and Buyers Guide.

C. Copies of the Decisions in the cases of Drolapas and Sons, L.P. v. S.F. Rent Board (CPF-12-511944) and Hal 347 Eddy SF, LLC v. S.F. Rent Board (CPF-11-511782).

VII. Director's Report

Executive Director Wolf told the Board about the many outreach activities and events staff has been involved in in recent months. Senior ALJ Tim Lee told the Board that, in the Drolopas and Hall decisions, Judge Quidachay held that minors who move into the unit with their families are considered original occupants or pre-1/1/96 subtenants and, therefore, no Costa-Hawkins increase is warranted when their parents no longer permanently reside in the unit. It is possible that these decisions will be appealed.

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Sandy Gartzman told the Board that the Department received one additional notice for an eviction of less than 20 days for capital improvement work. Ms. Gartzman reported that staff gets a lot of questions regarding the new law, and that Senior Staff will keep the Board informed as to possible implementation problems in case clarifying regulations are needed.

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 Other 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 discussed the proposed language. Commissioner Mosbrucker said that the Tenant Bar would like to also require that any e-mail addresses of which the landlord is aware be included. With that addition, the Board passed the following motion:

MSC: To put the proposed amendment to Rules and Regulations Section 12.19 out for Public Hearing at the meeting on June 11, 2013.
(Beard/Marshall: 5-0)

IX. Calendar Items

June 11, 2013

10 appeal considerations

7:00 Public Hearing: Proposed Amendments to Rules Section 12.19
Old Business: AB 1925 (Civil Code §1947.9)

X. Adjournment

President Gruber adjourned the meeting at 7:00 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.