



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, June 17, 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; Gruber; Hung; Hurley; Marshall; Mosbrucker; Qian.
Commissioners not Present:	Dandillaya; Mosser; Murphy.
Staff Present:	Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of April 22, 2014.
(Hurley/Marshall: 5-0)

IV. Remarks from the Public

A. Attorney Nancy Lenvin, representing the landlord at 1250 Taylor (AL140041), said that current market conditions require that landlords purchase buildings with cash, or they cannot effectuate the purchase. Therefore, the debt service in this case was incurred after the close of escrow, rather than before. Ms. Lenvin maintained that this is still debt service, just with different timing. She asked that the Board remand the case to the Administrative Law Judge (ALJ) with instructions to consider the debt service as an operating expense.

B. Attorney Nancy Conway, representing the tenant in the case at 890 – 47th Ave. #A, told the Board that the prior landlord went into an assisted living facility and the new owner refused to accept the tenants' rents and pursued evictions. In conjunction with a petition to determine the lawful rent, the new owner admitted that they knew the tenant's rent was \$1,200.00, but they are now proceeding with an Unlawful Detainer and are trying to deprive the tenant of parking.

C. Tenant Marcia Johnson of Midtown Apartments (1415 Scott St., AT140042 thru - 0118), told the Board that she has lived at the premises for 46 years and that the buildings should be rent controlled. Ms. Johnson maintained that the City is “looking at this appeal as a way to make the tenants uncertain of outcomes,” and that the proposed rent increases range from 30-300%. The only way that the tenants can be certain that they will be able to stay is if they are under rent control, according to Ms. Johnson.

D. Tenant Rufus Watkins has lived at Midtown Apartments for 44 years and feels great uncertainty regarding his housing situation. Mr. Watkins said that he finally got some information after months of asking, but is more confused than ever. Mr. Watkins does not want to “shoulder the financial burden of new development.” Since there is no way for the tenants to challenge the proposed rent increases, Mr. Watkins does not believe that the City is holding itself to the same standard it imposes on private landlords, and feels this could “undermine rent control in the long run.”

E. Tenant Sue Broxl has lived at Midtown Apartments for 27 years. Ms. Broxl said that the building has always operated as though it was under rent control, but now rents could increase as much as \$3,000 per month. Ms. Broxl asked that the Board sustain the tenants’ appeal, or she will have to move.

F. Tenant Jacqueline Butler of 1 Seymour St. (AL140120 & AT140121) told the Board that her mother and aunt lived in the property for 33 years; there were no rent increases as long as the tenants made minor repairs. The current landlord backed off on an eviction attempt but imposed rent increases when there was a roach and mouse infestation and evidence of lead and mold.

G. Tenant Patricia Smith has lived at Midtown Apartments for 44 years, where she said there are “deep roots and a sense of community.” Ms. Smith said that the City has exhibited a “failure to communicate” in that tenants are confused and in fear of losing their homes. Ms. Smith told the Board that the City is offering “deeper affordability,” but that there is no indication as to what happens after the first 5 years of the new agreement.

H. Attorney Jamie Roach of the Aids Legal Referral Panel, representing the tenants at Midtown Apartments, told the Board that there is a long and complicated history to this case. One issue is whether there was a regulatory agreement in effect at the time the petitions were filed that specifically ascribed regulatory authority over the rents to some governmental agency; an agreement has now appeared “out of nowhere.” Ms. Roach told the Board that the original agreement said that rent increases needed to be ratified by the Board of Supervisors or Mayor, which never happened. Now, there is a retroactive amendment that gets rid of the prior agreement. Ms. Roach said that there is new information and legal arguments and asked that the Board remand the case to consider the new information or grant the tenants’ petitions.

I. Steve Mann, the tenant in the case at 890 – 47th Ave., told the Board that the landlord admitted at the hearing that he had no evidence regarding the tenants’ use of the

garage, and that he had always parked there. Mr. Mann said that there are 4 units and 4 garages and that not having parking would constitute a hardship.

J. Tenant Oscar Gonzales of 5 Leo #5 (AT140127) said that in a 2006 mediated agreement his landlord had agreed to make 3 repairs, which they failed to do. When Mr. Gonzales went to Small Claims Court in 2013 to enforce the agreement, the Judge said that the Statute of Limitations barred his claim. Since Mr. Gonzales failed to deduct the \$50 rent reduction he was entitled to from 2006 – 2013, the landlord owes him in excess of \$8,000.00, which is why Mr. Gonzales filed again. The windows in his unit are still broken.

K. Tenant Sean O'Connor of 1452 – 8th Ave. (AT130127) told the Board that the ALJ's decision was based on a square footage calculation provided by the Master Tenant, which was "over-calculated" and which over-valued the furnishings that were provided.

V. Consideration of Appeals

A. 1250 Taylor #16

AT140037

(rescheduled from 5/20/14)

The landlord's petition for rent increases to 11 of 15 units based on increased operating expenses was granted, in part. 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/Hurley: 5-0)

B. 125 Cambon Dr. 8H

AT140039

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and submits 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. (Marshall/Hurley: 5-0)

C. 1562 Fulton

AL140123

The Master Tenant's appeal was filed one day late because the Master Tenant allegedly took ill and could not come in to file the appeal in a timely fashion.

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

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 \$6,577.11. The Master Tenant, who failed to appear at the hearing, appeals on the grounds that he failed to receive 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. Should the Master Tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Gruber: 5-0)

D. 1452 – 8th Ave.

AT140124

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules §6.15C(3) was denied. On appeal, the subtenant alleges that the square footage allocation was based on incorrect measurements; the common area furnishings were over-valued; the attic room he occupied was less desirable than the other bedrooms; there were habitability and privacy issues with his unit; and there are factual errors in the decision.

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

E. 1 Seymour St.

AL140120 & AT140121

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$1,894.20. The landlord appeals the decision on the grounds that the tenants failed to pay rent for the last six months of their tenancy and left the unit in terrible condition when they vacated. The tenants also appeal, claiming that the landlord failed to make agreed-upon repairs and should have to refund a rent increase the tenants paid when the unit was not in habitable condition.

MSC: To deny both the tenants' and landlord's appeals. (Hurley/Gruber: 5-0)

F. 519 Sanchez

AT140036 & AL140125 & -26
(rescheduled from 5/20/14)

The landlord's appeal was filed over a month late because the landlord is coming out of foreclosure and is in danger of losing his home; he is busy responding to complaints the tenants have filed with various City agencies; and the utilities have been shut off because one of the tenants failed to pay the PG&E bill.

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

The tenants in two units filed petitions alleging decreased housing services which were granted, in part. The tenants in the first floor unit appeal only as to the denial of their claim of inadequate heat in their unit. The landlord also appeals, arguing that: the tenants have perjured themselves; the tenants are just short-term roommates who have stopped paying rent; there has been no reduction in services, as the problems were pre-existing conditions or caused by the tenants; the tenants agreed to the condition of the premises at the inception of their tenancies and have refused alternative accommodations; the Board does

not have jurisdiction over this owner-occupied single family home; and the decision presents him with a financial hardship.

MSC: To deny the tenants' appeal and the landlord's substantive appeal but to remand the case for a hearing on the landlord's claim of financial hardship only. A hearing will be scheduled only if the landlord provides all necessary documentation of his income and expenses.
(Mosbrucker/Marshall: 5-0)

G. 7630 Geary #203

AL140035
(rescheduled from 5/20/14)

The landlord's petition for a rent increase based on comparable rents was granted. The landlord appeals, arguing that in determining the comparable rent for the unit, the ALJ relied on hearsay evidence furnished by the tenant rather than documentary evidence supplied by the landlord, which ignores the doctrine of best evidence.

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

H. 1155 Church

AL140038
(rescheduled from 5/20/14)

The landlord's petition for extension of time to do capital improvement work was denied because the ALJ found that the landlord knew before the notice to vacate was served that the work would take more than 90 days to complete and had failed to obtain all the necessary permits. On appeal, the landlord argues that: the tenants were on notice that the work would take more than 90 days; the landlord was informed by Rent Board staff that they could file the petition at any time; the landlord was in substantial compliance with an ambiguous Regulation with no resulting harm to the tenants; the Rent Board failed to comply with the timelines outlined in Rules Section 12.15; and unanticipated requirements have extended the date for completion of the work.

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

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

I. 1415 Scott St.

AT140042 thru -0118

The tenants in 77 units filed consolidated petitions seeking a determination that the Rent Board has jurisdiction over the subject property. The ALJ denied the petitions because the current master lease does not allow for any rent increases until a Rental Credit Program is established, after which time the Mayor's Office of Housing and Community Development will regulate the rents. No determination was made regarding the tenants' argument that the Master Lease is null and void because it was not ratified by the Board of Supervisors,

which is an issue for civil court. The tenants appeal on the grounds that: the Decision constitutes an abuse of discretion because the provisions of the earlier Master Lease are inapplicable as it terminated before the petitions were filed; and the ALJ was arbitrary in declining to rule on the validity of the new Master Lease, but basing his determination of exemption on a provision of such lease.

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

J. 1250 Taylor

AL140041

The landlord's petition for rent increases to 11 of 15 units based on increased operating expenses was granted but for less than the 7% maximum. The ALJ found that the landlord did not incur an increase in the debt service category because the landlord paid cash for the property and subsequently took out a loan to replenish his cash reserves; the proceeds of the borrowing were not reinvested in the building or used for capital improvements. The landlord appeals on the grounds that the financing at issue is a long-term debt for the purchase of the property, which constitutes debt service within the meaning of Rules and Regulations §6.10; and there is no distinction between funds obtained prior to the close of escrow and those obtained shortly thereafter.

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

K. 333 Randolph St.

AL140040

The tenant's petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenant in the amount of \$2,262.50. The landlords appeal, asserting that: the tenant lied at the hearing and was not credible; several of the conditions were ameliorated prior to the hearing; there are factual errors in the Decision; the amounts granted are arbitrary and not supported by substantial evidence; the landlords were not given notice of several of the conditions; and the tenant failed to provide access to the landlords to effectuate the repairs.

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

L. 890 – 47th Ave. #A

AT140122

The landlord filed a petition requesting a determination of the tenant's lawful rent and the terms of the tenancy. The ALJ found that the tenant's base rent of \$1,200.00 included partial, non-exclusive use of a garage. The tenant appeals the decision concerning the garage space, claiming that: the tenant was not on notice that the garage would be at issue in the hearing; and the ALJ erred in finding that the tenant did not have exclusive use of the garage.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing on the issue of whether the tenant was given exclusive use of the garage at the inception of the tenancy and, if

not, what portion of the garage storage space was included in the tenant's initial base rent. (Marshall/Mosbrucker: 5-0)

M. 5 Leo #5

AT140127

The tenants' petition alleging decreased housing services and the landlord's failure to repair was granted, in part, and the landlord was found liable to the tenants in the amount of \$657.00 due to habitability defects on the premises. The tenants appeal the decision, asserting that: the issues of a defective window and mold are not barred by the doctrine of res judicata because the Small Claims Court Judge erred in interpreting the Statute of Limitations on these claims; the landlord perjured himself in court; and the landlord broke his promise to replace the carpet in the unit.

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

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 March, 2014.

B. Articles from BeyondChron, the S.F. Chronicle/sfgate, the S.F. Examiner, the San Francisco Business Times, the New York Times, CBS and CityLab.

VII. Director's Report

Executive Director Wolf let the Board know that the Budget and Finance Committee approved the Department's budget on June 16th, including the requested new positions (one new ALJ and one new Counselor). Lisa Kelley is working on a 6-month temporary basis, and one of the projects she is working on is fillable forms: Ms. Wolf will keep the Board posted as to progress on this endeavor. Several staff members and President Gruber staffed a table at the Carnaval celebration in the Mission over Memorial Day weekend, reaching over 40 people per hour at this 16-hour event; staff also participated in a weekend workshop for prospective first-time homebuyers. Recruitment for a new Administrative Law Judge has commenced.

IV. Remarks from the Public (cont.)

L. Tenant Terry Major is a disabled veteran who has lived in Midtown Apartments since 1972 with his mother, who is on a fixed income. Mr. Major said that the tenants were told they were under rent control, and he doesn't want to move from where he grew up.

M. Tenant Felicious Wyatt, Jr. has lived at Midtown Apartments for 20+ years and received a new lease from Mercy Housing in October. The lease provided for a rent increase plus operating costs; Mr. Wyatt contended that the rent increase should take care

of the operating costs. Mr. Wyatt received this letter 3 days before Christmas and has been experiencing sleepless nights ever since.

N. Tenant Elvin Herbert of Midtown Apartments said that he is a disabled vet with P.T.S.D. Mr. Herbert wants to know where the tenants are going to live and at how much rent.

O. Tenant Attorney Jamie Rush of the Aids Legal Referral Panel, representing the tenants at Midtown Apartments, told the Board that, after income certification, if a tenant's income decreases, their rent will remain the same. Ms. Rush said that there is a precedent for the Rent Board retaining jurisdiction even with regulation by another governmental entity, pointing to the 1030 Post Street tax credits case.

P. Tenant Attorney Eddie Ahn of Brightline Defense told the Board that some of the Midtown tenants are already leaving because of the uncertainty and that a "political solution may be necessary." Mr. Ahn said that he would not "abandon this community."

Q. Tenant Rufus Watkins said that "the Mayor's Office can't have it both ways." They terminated the Midtown Board of Directors when they terminated the lease, when they should have gone to the Mayor or Board of Supervisors. Mr. Watkins declared, "the Mayor's Office of Housing doesn't run San Francisco."

R. Midtown tenant Marcia Johnson said if she were to be displaced, she would "no longer be a San Franciscan" and that "displacement could happen." Ms. Johnson is "disheartened," because she believed that "rent control would protect us."

S. Midtown tenant Patricia Smith alleged that the tenants paid off the mortgage and now are going to have to move so that the City can make money.

T. Tenant Attorney Josh Vara of Brightline Defense said that the issue is not premature, as they have "already lost folks." Mr. Vara told the Midtown tenants that he is "not going to stop until they have rent control, get families back and win."

U. Tenant Oscar Gonzales of 5 Leo told the Board that his landlord failed to make repairs for years and years, but won in Small Claims Court. Mr. Gonzales alleged that the landlord is a "sexual harasser" who threatened to call immigration on Mr. Gonzales' wife. Mr. Gonzales told the Board that the landlord's "own family took him to court and you rewarded him."

V. Tenant Jacqueline Butler of 1 Seymour told the Board that "just because both sides weren't pleased doesn't make it right." Ms. Butler said that the Board rewarded a landlord who refused to fix anything for over a year and got an eviction on her record. Ms. Butler alleged that the landlord's actions put her mother's and son's lives in jeopardy and asked that the Board reconsider their decision.

VIII. Calendar Items

July 22, 2014

9 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 8:10 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.