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DAVID GRUBER
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DEBORAH HENDERSON
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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

Tuesday, July 19, 2011
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; Henderson; Hurley;
Mosbrucker; Mosser.
Commissioners not Present: Marshall.
Staff Present: Lee; Wolf.

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

III. Approval of the Minutes

MSC: To approve the Minutes of June 21, 2011.
(Mosbrucker/Hurley: 5-0)

IV. Remarks from the Public

A. The subtenant in the case at 31 Hoff Street (AT110065) told the Commissioners "there is no way to enforce rent control except through this Board."

B. Kim Boyd Birmingham, the landlord's representative in the case at 855 Waller Street (AL110070), told the Board that the Administrative Law Judge (ALJ) ignored two important pieces of documentation that established a special relationship between the landlord and the tenant. Ms. Birmingham said that the fact that there was on-going contact between the parties, even though the tenant was the former girlfriend of the landlord's son, shows that there was a special relationship.

C. John Zanghi, the landlord's attorney in the case concerning 1369 Hyde (AT110066), told the Board that the tenants' appeal is all about evidentiary issues, which are inapplicable in the Rent Board context. Mr. Zanghi said that the tenants' objections wouldn't even be upheld in court, let alone at the Rent Board. Mr. Zanghi said what's really going on is that the tenants live in Mill Valley, where their children go to school. On the landlord's videotape, the only time the tenants were seen entering the subject unit was on New Year's Eve, and they had suitcases.

- V. Vote on Whether to Go Into Closed Session Regarding the Case of Baychester Shopping Center LLC v. S.F. Rent Board (Superior Court Case No. 510914) Pursuant to S.F. Administrative Code Section 67.11(a)

MSC: To go into Closed Session. (Murphy/Mosbrucker: 5-0)

- VI. Closed Session re Baychester, supra, Pursuant to Government Code Section 54956.9(a)

The Board went into Closed Session from 6:55 p.m. to 7:15 p.m. with Deputy City Attorney Wayne Snodgrass to discuss the case of Baychester Shopping Center LLC v. S.F. Rent Board (Superior Court Case No. 510914).

- VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Baychester, supra.

MSC: Not to disclose the Board's discussion regarding the Baychester case. (Mosbrucker/Beard: 5-0)

- VIII. Report on Any Actions Taken in Closed Session Regarding Baychester, supra, Pursuant to Government Code Section 54957.1(a)(2) and S.F. Administrative Code Section 67.14(b)(2)

President Gruber reported that the Board voted to accept the proposed settlement in the Baychester case.

- IX. Consideration of Appeals

A. 738-742 Treat Ave.

AT110067

The landlord's petition for certification of capital improvement costs to 3 units was granted, in part, resulting in a monthly passthrough in the amount of \$39.53. The tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenants' claim of financial hardship. (Mosbrucker/Henderson: 5-0)

B. 818 Green St. #A

AL110069

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,137.50 due to a bathroom leak and water damage and bad faith harassment under Proposition M. The landlord appeals the decision on the grounds of financial hardship. The landlord's appeal was filed approximately seven months late, but the landlord provided no good cause reason for the late filing.

MSC: To find no good cause for the late filing of the appeal. The Decision is therefore final. (Mosbrucker/Murphy: 5-0)

C. 805 Leavenworth

AT110060
(cont. from 6/21/11)

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because the ALJ found that the subject unit is not the tenant's principal place of residence. On appeal, the tenant claims that: she failed to attend the hearing because the Notice of Hearing was sent to an incorrect address; her Florida house was purchased as an investment and not a residence and she is rectifying the inappropriate Homestead Exemption she received; she has traveled extensively for the last few years but returned to the unit on a semi-regular basis; she is temporarily living in Switzerland as she has a teaching position there; she has not subleased the unit; she has never voted in Florida although she is registered there as well as in California; and she intends to return to full-time residency in the San Francisco unit at the earliest opportunity.

Consideration of this appeal was continued from the Board meeting on June 21st in order for staff to ascertain whether the tenant had moved out of the unit and whether she wished to pursue the appeal.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a new hearing. (Henderson/Mosbrucker: 5-0)

D. 31 Hoff St.

AT110065

The subtenant's petition was denied on remand because the ALJ found that the subtenant was not paying more than her proportional share of the rent pursuant to Rules §6.15C(3). However, the subtenant's petition alleging lack of heat was granted and the Master Tenant was found liable to the subtenant in the amount of \$125.98 per month. On appeal, the subtenant claims that: the remand decision allows the Master Tenant to collect more rent than she pays the owner of the property, in violation of Ordinance §37.3(c); there has been a change in roommates, which should result in a change in the proportional amounts owed; and the amount of her rent was determined by the Superior Court in an unlawful detainer action.

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

E. 1369 Hyde St., Apt. 73

AT110066

The landlord's petition seeking a determination pursuant to Costa-Hawkins and Rules Sections 6.14 and 1.21 was granted because the ALJ found that the original occupants no longer permanently reside on the premises. On appeal, the tenants claim that: the testimony of the landlord's witness was not credible and inadmissible; the landlord's surveillance video is unreliable and also should be inadmissible; and the ALJ failed to rule on their objections to the landlord's evidence.

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

F. 494 Guerrero

AT110064

The subtenant's appeal was filed three days late because the subtenant assumed the filing deadline was based on business days and he was waiting for letters of support for his appeal from former housemates.

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

The subtenant filed a petition alleging unlawful rent increases and seeking a determination of the lawful rent pursuant to Rules §6.15C(3) which was denied because the ALJ found that the subtenant had not paid more than his proportional share of the rent during the 3-year period following the filing date of the petition. On appeal, the subtenant claims that: the Master Tenant has exclusive use of two of the four rooms in the unit; the Master Tenant does not provide all of the cleaning services for the unit; the Master Tenant's witness did not live in the unit for the period in question; and the Master Tenant should not be allowed to live rent-free at the unit.

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

G. 3116 – 16th St. #18

AL110070

The landlord's petition for a rent increase pursuant to Rules Sections 1.21 and 6.14 and/or Costa-Hawkins was denied because the ALJ found that the prior landlord's resident manager had approved the tenancy of the current tenant, who still resides in the subject unit as his principal place of residence. The landlord appeals on the grounds that: the decision is based on verbal testimony, disputed evidence and hearsay that conflict with undisputed evidence by both sides; the landlord never consented to the tenant's occupancy; the tenant was "coached" at the hearing; the tenant committed fraud by pretending to be the prior occupant of the unit, which should impeach his credibility; and the decision was not issued in a timely manner.

MSC: To deny the appeal without prejudice to the landlord filing a petition for a rent increase based on comparable rents. (Mosbrucker/Henderson: 3-2; Gruber, Murphy dissenting)

H. 855 Waller St.

AL110070

The landlord's petition for a rent increase from \$1,035.00 to \$1,990.70 based on comparable rents was denied because the ALJ found that the initial rent was not set low due to a special relationship or employment contract between the tenant and the prior landlord. On appeal, the landlord argues that: the ALJ ignored a Declaration from the prior owner stating that a monthly work credit in the amount of \$350 was given to the tenant at the inception of the tenancy, which was terminated when maintenance services were no longer being provided by the tenant; there was a long-standing social and trusting relationship between the tenant and the prior landlord; the landlord set the rent low because her son owed the tenant \$10,000; other, less desirable units in the building were rented for significantly more at the same time; and the prior owner's erratic behavior is irrelevant.

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

X. 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 May, 2011.

B. Articles from the S.F. Apartment Association Magazine, Small Property Owners' News, BeyondChron, Bay Citizen, KTVU.com and the Oakland Tribune.

C. A letter from Theresa Sparks, Director of the Human Rights Commission, regarding that Board's support for legislation that would prohibit discrimination in San Francisco against people with prior arrests and/or convictions.

XI. Director's Report

Executive Director Wolf let the Board know that tenant activist Robert Pender of the Parkmerced Residents' Organization (PRO) passed away recently; his spirit will be missed. She also told the Commissioners that 500 laminated 11" x 17" copies of the Hotel Visitor Policy in English have been mailed out to San Francisco's single room occupancy hotels. Senior Administrative Law Judge Tim Lee gave the Board an update on some repercussions of the case of Marino v. Hernandez, where the trial court ruled that Rules §12.20 is preempted by State law. Although the Appellate Division did not address the issue of whether the regulation is preempted, some landlord groups are arguing that the preemption argument has validity. At the February 15, 2011 meeting, the Board authorized the City Attorney "to take any and all action to defend Rules and Regulations Section 12.20 against any preemption legal challenge," which the City Attorney will do, as it is clear that it will take a published Court of Appeal decision to resolve this issue.

XII. Old Business

A. Proposed Amendments to Rent Ordinance to Reflect Existing Law

The Board continued their discussion of proposed amendments to the Rent Ordinance to conform the official version of the Ordinance to the existing state of the law, due to changes made by court decisions or state legislation with Deputy City Attorney Wayne Snodgrass. The Commissioners had asked for an opinion from the City Attorney as to whether the Board of Supervisors could make technical amendments to Ordinance provisions that are adopted pursuant to a voter initiative. Mr. Snodgrass told them that the Board could not do so because ballot initiatives can only be amended by the voters. Provisions that are repealed remain part of the law even they have no force or effect. The Board will discuss their options at the next meeting, which include going forward with legislation to amend those provisions that were not voter-approved only; or continuing to annotate the Official Version of the Ordinance to note that it is unreliable, while accurately amending the unofficial version that the Rent Board provides to the public.

B. Board Discussion of Rules and Regulations Sections 6.10(a) and 7.12(b)

The Board continued their discussion of whether there is a need to clarify or amend Rules Sections 6.10(a) and 7.13(b). Staff provided examples of prior cases regarding the two issues under discussion: (1) “non-routine” repair costs under Section 6.10(a); and (2) separate treatment of “hard and soft” capital improvement costs under the six-month rule of Section 7.12(b). As to Rules Section 6.10(a), the question is how non-routine repair costs should be treated in the context of an O&M petition. In two prior remands, the sense of the Board was that certain expensive non-routine repair costs were more properly considered capital improvements. The Board discussed whether this should be codified and how; and whether it would be best to retain flexibility, even though this provides less guidance to the public. The Board decided to continue this issue until the meeting on September 20th, when Commissioners Marshall and Murphy will be in attendance. As to Section 7.12(b), the Board asked Senior ALJ Lee to draft clarifying language based on the principles outlined in his May 10, 2011 Memorandum to the Board, which will also be discussed at the September 20th meeting.

IV. Remarks from the Public (cont.)

D. Landlord Mark Levinson, the landlord in the case at 3116 -16th Street (AL110070), expressed his frustration that “real evidence was ignored in favor of assumptions.” Mr. Levinson said that the Board accepted statements as true from a tenant who committed fraud. Mr. Levinson told the Board that the decision was based upon nothing, was unfair, and that “you’d be just as mad as me.”

XIII. Calendar Items

August 23, 2011

8 appeal considerations

Old Business: Proposed “Clean-Up Amendments”

XIV. Adjournment

President Gruber adjourned the meeting at 8:15 p.m.