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

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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

Tuesday, July 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 6:05 p.m.

II. Roll Call

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

Executive Director Wolf introduced the Board's new Deputy City Attorney, Robert Bryan, who was in attendance for a portion of the meeting.

III. Approval of the Minutes

MSC: To approve the Minutes of June 17, 2014.
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Tenant Javier Colon of 632 Haight St. (AT140135) told the Board that the Administrative Law Judge's (ALJ's) Memorandum was "short on some key facts." Mr. Colon said that the landlord was very specific that he was imposing a 6.14 increase, which the ALJ depicted as a "banked" increase, which it was not. Mr. Colon maintained that the landlord cannot now give a second 6.14 rent increase.

B. Landlord Ed Bingham owns the property at 563 Shotwell (AL140132) and said that he was "shocked" at the ALJ's Memo. Mr. Bingham maintained that the 1.21 indicia aren't of equal weight and that the "self-serving testimony of friends and neighbors" shouldn't outweigh sworn documents to the State of California. Mr. Bingham said that the tenant

lives with her boyfriend two blocks away, which is evidenced by her PG&E bills, which show virtually no usage. Mr. Bingham told the Board that the tenant uses the 350 square foot apartment as a pied a terre for guests to stay in, as it is not big enough to share.

C. Landlord Marilee Smith Bingham of the case concerning Shotwell St. said that the tenant admitted that she was home ill from October through May, but her PG&E bills still show no usage.

D. Attorney Mark Chernev, representing the landlord in the case at 1049 Market (AL140134), reminded the Board of the purpose of the Rent Ordinance, which exempts certain artist live/work units in order to encourage the development of such units; a new hearing is needed or the removal of such units will be the result. Mr. Chernev told the Board that the landlord wasn't available at the time of the hearing, nor was the Certificate of Final Completion and Occupancy (CFCO) in existence. Mr. Chernev said that "errors don't cease to be errors just because they are ratified," and the Commission exists to correct errors.

E. 1049 Market St. tenant Chandra Redack told the Board that the landlord cancelled on the day of the hearing, while the tenants appeared.

F. Tenant Ben Cady of 1049 Market said that the landlord has consistently failed to appear at Rent Board proceedings.

G. Tenant Ellis Brook, the tenant in the appeal concerning 1049 Market, told the Board that the CFCO was based on two permits, both of which expired with no work having been done and no CFCO having been issued.

H. Landlord Roger Jeanson of 4240 – 21st St. (AL140128) told the Board that the ALJ failed to point to any authority to support the Board's policy of disallowing simultaneous capital improvement passthroughs for the same work.

V. Consideration of Appeals

A. 1224 Hyde #11

AT140131

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 13 units. The tenant in 1 unit 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. 1684 Washington #1

AL140136

The subtenant's petition alleging that he paid the Master Tenant rent in an amount greater than the Master Tenant was paying the owner was granted and the Master Tenant was found liable to the subtenant in the amount of \$8,946.94. On appeal, the Master Tenant

claims that the refunded amount is unfair and over-valued and that the decision presents her with a financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the Master Tenant's claim of financial hardship only; to deny the appeal as to all other claims. (Mosbrucker/Marshall: 5-0)

C. 1819 Golden Gate Ave. #12

AT140133

The tenant's petition alleging an unlawful rent increase, decreased housing services and the landlord's failure to repair was denied. On appeal, the tenant claims that: he did not deny the landlord access to make necessary repairs; the decision contains defamatory language; the landlord did not bank a 2.7% rent increase in 2002; it is not true that the landlord was not cited for lead paint; and the landlord unlawfully entered his unit.

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

D. 133 Buchanan, Units 1 & 4

AL140129

The landlord's petition for certification of capital improvement costs to the tenants in 4 units was granted. However, since the work was duplicative of work previously certified, and the passthrough for that work is still in effect for the tenants in 2 units, the ALJ directed that the landlord discontinue the prior passthrough or impose the new passthrough after the current passthrough expires, pursuant to Board policy. On appeal, the landlord argues that the work is not duplicative except for an expenditure in the amount of \$300.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to grant any of the new work that isn't duplicative of the prior, certified capital improvements; a hearing will be held only if necessary. (Hurley/Gruber: 5-0)

E. 1331 Chesnut #1 & #3

AL140119

The tenants in two units filed petitions alleging decreased housing services due to noise from a neighboring unit, which were granted. On appeal, the landlord maintains that: they had no control over the situation, could not verify the accuracy of the complaints and made reasonable attempts to mitigate the disturbances; the offending tenants consistently acknowledged the problem and promised to improve their behavior; there were inconsistent reports as to the source of the noise; and some level of noise is to be expected in older buildings without sufficient insulation.

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

F. 4240 – 21st St.

AL140128

The landlord's petition for certification of capital improvement costs to the tenant in 1 unit was granted. However, since the work was duplicative of work previously certified, and the

passthrough for that work is still in effect, the ALJ directed that the landlord discontinue the prior passthrough or impose the new passthrough after the current passthrough expires, pursuant to Board policy. On appeal, the landlord argues that the ALJ had no authority for the order that the passthrough cannot be imposed until the prior passthrough has expired.

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

G. 563 Shotwell #A

AL140132

The landlord's petition seeking a determination pursuant to Rules §1.21 was denied because the ALJ found that the landlord had failed to prove that the subject unit is not the tenant's principal place of residence. The landlord appeals the decision on the grounds that: much of the documentary evidence shows the tenant's boyfriend's unit as her address; the tenant is rarely at the subject unit; the tenant's utility bills show an amount equivalent to that for a vacant unit; and the ALJ ignored the landlord's evidence without explanation.

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

H. 1049 Market #605

AL140134

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$1,625.00. The landlord appeals the decision on the grounds that the subject premises is exempt from the Rent Ordinance as newly created artist live/work space because: a post-'79 Certificate of Final Completion and Occupancy is now available but had not been due to administrative error on the part of the Department of Building Inspection; and there was no evidence of residential occupancy of the premises from June 13, 1979 through the date of the conversion, before which time the premises were used strictly as commercial and retail space.

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

MSC: To accept the appeal and remand the case for a supplemental hearing to consider new evidence submitted on appeal. (Hurley/Gruber: 4-1; Mosbrucker dissenting)

L. 632 Haight, Apt. B

AT140135

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the last original occupant had vacated the premises and the tenant had been properly served with a Rules §6.14 notice prior to moving in. The tenant appeals on the grounds that: a rent increase pursuant to §6.14 was issued in May 2012 and the ALJ erred in finding that that prior increase was, rather, a banked increase; at the time the prior rent increase took effect, the tenant had moved in to the premises; the landlord did not comply with Rules §4.12(b) which specifies that a banked increase must specify the allowable

banked amounts and periods of time upon which the banked amount is based; the landlord has acted in bad faith by continuing to use the original lease and failing to create a new lease with the current occupants; the landlord does not have the right to a second 6.14 increase and it is unclear whether the 6.14 notice was properly served.

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

MSF: To grant the appeal and remand the case to the Administrative Law Judge to vacate the decision and find that a 6.14 rent increase had already been imposed which set a new initial base rent and that the tenant was an original occupant at the time the first increase took effect, so the second 6.14 increase was invalid. (Mosbrucker/Marshall: 2-3; Gruber, Hurley, Dandillaya dissenting)

MSC: To grant the appeal and remand the case to the Administrative Law Judge to look at the totality of circumstances surrounding the imposition of the 2012 rent increase to determine whether it constituted a decontrolled increase. (Marshall/Gruber: 5-0)

VI. Communications

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

A. One piece of legislation introduced for hearing before the Rules Committee of the Board of Supervisors and two referred to the Land Use Committee.

B. The office workload statistics for the month of May, 2014.

C. A list of Direct Rental Assistance Programs in San Francisco.

D. Articles from the S.F. Examiner, 48hills.org, BeyondChron, the S.F. Chronicle & SFgate.com, KRON, the S.F. Bay Guardian, vice.com, the Associated Press and the New York Times.

VII. Director's Report

Executive Director Wolf answered some of the questions several of the Commissioners had as a result of the appeals concerning Midtown Apartments (1415 Scott, AT140042 thru - 0118), considered at the June 17th Board meeting. She let them know that staff is receiving inquiries regarding the passthrough of excess use charges related to water consumption but that the provisions for such passthroughs are currently inoperative as there are no penalties being assessed at the present time. She also said that interviews for the vacant ALJ position have commenced, and there are several outstanding candidates.

IV. Remarks from the Public (cont.)

I. Tenant Javier Colon thanked the Board for their “in-depth consideration” of his appeal, as he has been acting as his own lawyer for the past 7 months. Mr. Colon fixed up the unit and believes that’s the reason the landlord wants to get him out, as he could get higher rent. Mr. Colon’s roommates left because of the “massive increase” and the situation is very stressful.

VIII. Calendar Items

August 19, 2014
11 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:40 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.