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DAVID GRUBER
PRESIDENT

DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
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, August 19, 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 6:02 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of July 22, 2014 with a correction to show that ex-Commissioner Beard was not at the meeting.
(Mosbrucker/Hurley: 5-0)

IV. Remarks from the Public

A. Tenant Maxwell Prange at 3039 Buchanan (AL140139) told the Board that he provided all of the documentary evidence in his case, and "gave it his best shot." Mr. Prange said that the unit was originally a 3-bedroom unit and that it is still a 3-bedroom unit.

B. Ms. Wong, the daughter of the landlord in the case at 1743 Judah (AT140145), told the Board that the landlord had made a conscious effort to be present at the hearing but the tenant failed to show.

C. Delores Chong, attorney for the landlord in the case at 3039 Buchanan, told the Board that the tenant's documents are late and untimely.

D. Kathy Phipps, the tenant in the case at 1895 Jackson (AL140141), told the Board that the landlord denied her access to the roof on her building after 7-1/2 years and failed to offer any new evidence on appeal nor respond to her written submissions. Ms. Phipps maintained that the fact that the resident manager of the building failed to appear at the hearing when they could have done so should be fatal to the landlord's appeal.

V. Consideration of Appeals

A. 1224 Hyde #9

AT140138

The tenant's appeal was filed almost a month late because the tenant was confused regarding the deadline, since she had also filed for a hardship exemption to a capital improvement passthrough.

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

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in 14 of 15 units. 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/Qian: 5-0)

B. 215 – 14th St. #15

AL140140

Pursuant to two tenant petitions alleging that a disproportional share of rent was paid, the Master Tenant was found liable to two subtenants in the amounts of \$2,227.50 and \$867.25. The Master Tenant's appeal on the grounds of financial hardship was remanded, but the Administrative Law Judge (ALJ) found that the Master Tenant failed to prove sufficient financial hardship to warrant deferral of his liability to the subtenants for rent overpayments. The Master Tenant appeals the remand decision, claiming that: the ALJ erred in calculating his monthly income; he has no choice but to support his family in El Salvador; he sublet his apartment out of desperation, and not greed; and his medical privacy rights were violated in the hearing.

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

C. 542 London

AL140143

The landlord's appeal was filed over two months late because the landlord did not receive the decision until the end of June.

MSC: To find good cause for the late filing of the appeal.
(Hurley/Mosbrucker: 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 \$3,331.94. The landlord, who failed to appear at the hearing, appeals on the following grounds: that she failed to receive the Notice of Hearing; she should not be liable for excessive amounts paid to the prior owner; the tenant should have to prove the amounts paid; the tenant has failed to pay the full amount of rent owed; the tenant refuses to accept service of lawful notices; and the tenant's lease does not include use of the parking space.

MSC: To accept the appeal and remand the case for a new hearing; rent overpayments owing to the tenant pursuant to the original decision are not stayed pending issuance of a new decision on remand.
(Hurley/Gruber: 5-0)

D. 1743 Judah #3

AT140145

The tenant's petition alleging decreased housing services was dismissed due to the tenant's failure to appear at the properly noticed hearing. On appeal, the tenant claims to have mistakenly thought that the case was postponed because of a postponement that was granted on a hearing that had been scheduled on a petition filed by her landlord.

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/Qian: 5-0)

E. 2629 Folsom #106

AL140144

The tenant's hardship appeal of a capital improvement passthrough was granted. The landlord appeals, maintaining that: previously approved capital improvement passthroughs were not appealed by the tenant in a timely manner; and the tenant is currently paying 1/3 of the market rent for the unit while benefitting from capital improvements made by the landlord.

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

F. 1176 Pacific Ave.

AT140148

The tenant's Hardship Application seeking relief from a capital improvement passthrough was denied. On appeal, the tenant claims that: the landlords are attempting to drive her out of her unit in order to convert the unit to a tourist rental; the tenant qualifies for a hardship deferral because her rent is more than 33% of her Social Security income; there are factual errors in the decision; the evidence did not indicate a co-mingling of funds; and the tenant's transfer of her ownership interest in a San Francisco rental property to her son should not be considered relevant.

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

G. 1020 Bush St.

AL140137

The landlord's petition for certification of the costs of seismic retrofit work was denied because the ALJ found that the work was completed more than five years prior to the petition being filed. On appeal, the landlord argues that: the work was not completed until the Certificate of Final Completion is issued by the DBI which, in this case, was in 2010; the work performed after 2006 was corroborated by the sworn testimony of the owner; and, at a minimum, the case should be remanded for certification of the additional work that was performed in 2010.

MSC: To deny the appeal as to certification of the costs of the work performed in 2006 but to accept the appeal and remand the case to the Administrative Law Judge to consider whether any of the 2010 work is eligible for certification; a hearing will be held only if necessary.
(Mosbrucker/Qian: 5-0)

H. 3039 Buchanan

AL140139

The tenant filed a petition requesting a determination of jurisdiction. In the decision, the ALJ found that the subject unit is subject to the Rent Ordinance because it is not newly constructed as the landlord's request to demolish the unit was denied and, instead, a permit was issued to remodel the unit and to add another new unit on top of the existing unit. The landlord appeals on the grounds that: the ALJ relied on an incomplete set of documents to make his determination; the photographic evidence showed that the building was completely gutted, as opposed to simply having been remodeled; the language used in the building permit process and that in the Ordinance have different meanings; and the building has undergone substantial rehabilitation such as to exempt it from the Ordinance.

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

I. 1895 Jackson #601

AL140141

The landlord's appeal was filed one day late because of a calendaring error.

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

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 \$2,350.00 due to inadequate water pressure, excessive water temperature, the condition of the bathroom ceiling and loss of roof deck access. On appeal, the landlord argues that: the water pressure and temperature problems were intermittent, promptly addressed by the landlord and constituted mere inconveniences; the blistered paint in the ceiling was a minor cosmetic issue; roof access was not provided for in the tenant's lease; and the loss of roof access should warrant no more than a 1% rent reduction, or \$20.00.

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

J. 62 Edinburgh

AT140142

The tenant's petition alleging decreased housing services was denied. On appeal, the tenant claims that: the ALJ erred in finding that the overgrown nature of the backyard did not constitute a substantial decrease in housing services; the tenant is unable to use the backyard because of threats from the landlord; and the landlord is engaging in a pattern of retaliatory harassment in an attempt to get the tenant to vacate.

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

K. 740 Parnassus #4

AL140147

The tenant's petition alleging unlawful rent increases was granted and the landlords were found liable to the tenant in the amount of \$10,505.71 due to increases on garage rent in excess of limitations. On appeal, the landlords argue that: the parking space is in a separate property and is not a housing service covered under the Rent Ordinance; the rental agreement for the apartment shows that parking was not included at the inception of the tenancy; and the ALJ erred in calculating the overcharges due the tenant.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a necessary Technical Correction to the Decision.
(Qian/Mosbrucker: 3-2; Gruber, Hurley dissenting)

L. 764 Arguello Blvd.

AL140146

The tenant's petition alleging unlawful rent increases and improper calculation of a water revenue bond passthrough was granted and the landlord was found liable to the tenant in the amount of \$3,398.65 for rent overpayments and \$433.56 for water revenue bond passthrough overpayments. On appeal, the landlord alleges that the ALJ erred regarding the rent overpayment calculations; and the water revenue bond was only billed to the tenant once per year.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a necessary Technical Correction to the Decision.
(Mosbrucker/Qian: 5-0)

VI. Communications

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

A. A copy of legislation introduced by Supervisor Campos, which would regulate buy-out agreements.

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

C. Articles from the April, 1988 S.F. Progress, BeyondChron, the S.F. Bay Guardian, the S.F. Chronicle, SFGate, the S.F. Examiner, Business Week and Mission Local.

D. A Memorandum from the Mayor regarding Commissioner attendance.

VII. Director's Report

Executive Director Wolf told the Board that Deputy City Attorney Jill Dayal Figg has been hired for the vacant ALJ position and will begin working at the Rent Board on September 15th. Ms. Wolf also let the Commissioners know that the rental unit fee for Fiscal Year 14/15 will be \$36.00. Senior ALJ Tim Lee updated the Board on the status of State and Federal Court challenges to the recently enacted increased Ellis relocation payments.

IV. Remarks from the Public (cont.)

E. Tenant Robert Wilson of 740 Parnassus (AL140147) said that he has repeatedly asked the landlord for parking in the building he resides in but that the landlord hasn't complied. Mr. Wilson believes this is done to keep the parking from coming under Rent Board jurisdiction and to avoid paying the City's parking tax.

F. Landlord Manfred Angstenberger of 740 Parnassus said that he told the tenant he could move to a parking space in the building but that the tenant refused, because he feels that his bicycle is safer where he currently parks.

G. Landlord Sheila Angstenberger told the Board that it's only been recently that Just Cause has been required for the severance of housing services. Ms. Angstenberger said that the landlords are not cashing the tenant's garage rent checks but the Tax Collector insists on collecting the parking tax regardless.

VIII. Calendar Items

September 16, 2014
8 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:17 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.