



Edwin M. Lee  
*Mayor*

Delene Wolf  
*Executive Director*

DAVID GRUBER  
*PRESIDENT*

DAVE CROW  
SHOBA DANDILLAYA  
RICHARD HUNG  
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, September 16, 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; Dandillaya; Gruber; Hurley; Marshall; Mosbrucker; Murphy; Qian.
Commissioners not Present:	Hung; Mosser.
Staff Present:	Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of. August 19, 2014.  
(Mosbrucker/Qian: 5-0)

IV. Remarks from the Public

A. Tenant Sally Frye of 3219 – 23<sup>rd</sup> St. (AT140164) told the Board that she submitted extensive calculations in support of her claim of improper calculation of banked rent increases but that the landlord and Administrative Law Judge (ALJ) did not. Ms. Frye contended that the onus is on the tenant to “do the math.”

B. Attorney Curtis Dowling, representing the landlord in the case at 252 Scott St. (AL140168), said that the tenant admitted that he lived in Nevada from 2000 to 2013 and only changed his behavior because his wife fell ill and needed competent medical care. Mr. Dowling told the Board that all of the documentary evidence shows that the tenant’s principal place of residence is still in Nevada.

C. Attorney Dave Wasserman, representing the landlord in the case at 940 Post (AL140167), told the Board that debt service is usually comprised of interest and principal

payments, but that principal isn't a deductible expense. Mr. Wasserman contended that considering only the interest portion would benefit tenants in most cases and that the Board would not consider a principal-only payment.

D. Aubrey Wilson, representing the tenant at 252 Scott, said that there are many indices of the tenant's residence in San Francisco and the ALJ evaluated both sides' testimony. Initially, the tenant and his wife were just in San Francisco for medical care, but both have been living here since February or March of 2013 through the date of filing of the petition and into the present.

E. Andy Braden, representing the landlord in the case at 2280 Pacific Ave. (AT140151 thru -0163), told the Board that the paperwork in this case got lost at DBI for five years, but that doesn't mean the work was unabated for all that time. Mr. Braden contended that the regulation is poorly written because it is not in the landlord's power to abate a violation: that is up to DBI. Even if the paperwork hadn't gotten lost, it still would have taken more than 90 days to clear the condition because the landlord had to wait for it to rain to see if the roof still leaked.

F. Tenant Greg Hermann of 2280 Pacific told the Board that it took 1,976 days for the violation to be abated and contended that the landlord did not act in good faith by not calling in a water intrusion specialist. Mr. Hermann said that the building inspectors take landlords at their word and the Board is "rewarding the landlord for lying." Mr. Hermann also claimed that the landlord is retaliating against tenants who objected to the passthrough.

G. Attorney Andrew Catterall, representing the landlord at 2280 Pacific, told the Board that the tenants' appeal brings up the same facts addressed in the decision and ALJ's memo, which have been looked at twice. Mr. Catterall said that if the landlord hadn't taken any steps to address the problem in five years, the tenants would have complained.

H. Christina Kahn, representing the tenants at 2280 Pacific, claimed that the ALJ based her decision on invoices that don't show that work was done on the subject building and said that there are multiple ways to test a leak without waiting for the rainy season.

I. Tenant Paul Pelosi of 2280 Pacific told the Board that nothing was done in the building to resolve this problem for a very long time, and the building inspectors did absolutely nothing. Mr. Pelosi said that the ALJ has a grudge against the tenants' representative, whose personality has "been a detriment to the other tenants." Mr. Pelosi also contended that the ALJ failed to respond to the Board's instructions on remand and asked that the case be remanded to another ALJ.

#### V. Consideration of Appeals

##### A. 30 Corwin St.

AT140166

The tenant's petition alleging decreased housing services due to the presence of asbestos in the unit was granted and the landlord was found liable to the tenant in the amount of

\$500 per month, which was less than the amount that the tenant had already been compensated by the landlord. The tenant's other decreased services claims were denied. The tenant appeals on the grounds that: the replacement fixtures provided by the landlord are inferior to those that existed at the inception of the tenancy; trees growing in a neighboring yard are blocking his light and views and pose a fire hazard; he is experiencing excessive noise from an upstairs unit; the landlord's management company fails to make necessary repairs; and his health has been compromised by the asbestos in the building.

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

B. 3219 – 23<sup>rd</sup> St., Apt. 1

AT140164

The tenant's petition alleging unlawful rent increases was denied. On appeal, the tenant claims that: the ALJ erred in computing the allowable banked increases available to the landlord; banking should not be allowed for the period of time when she was the resident manager of the building; and several habitability issues that were settled pursuant to a mediated agreement entered into by the parties have not been resolved.

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

C. 703 Italy Ave.

AT140149 & -50

The subtenant's petition alleging that she paid a disproportional share of the rent was granted and the Master Tenant was found liable to the subtenant in the amount of \$320.00. A claim of decreased housing services was denied. On appeal, the subtenant claims that: the bottom shelf of the refrigerator was inadequate to store food; the ALJ overlooked crucial evidence that she provided; and she was forced to pay an inequitable portion of the utility bill.

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

D. 2280 Pacific Ave.

AT140151 thru -0163

The landlord's petitions for certification of the costs of a new roof and exterior wall work were granted. The appeals of the tenants in 7 units were accepted and remanded on the issue of whether a Notice of Violation was abated and/or whether the landlord made timely good faith efforts within 90 days to commence and complete the work but was prevented in doing so for reasons beyond his control. In the Decision on Remand, the ALJ found that the landlord had made such efforts and the landlord's petitions were granted. On further appeals, the tenants argue that: the code violations remained unabated for 1,976 days, which disqualifies certification of the work; the ALJ erred in giving the landlord the presumption of good faith; the landlord breached the terms of a settlement agreement from 2005; the passthrough should not be imposed on any tenants in the building; and the ALJ is biased against the tenants.

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

E. 252 Scott St.

AL140168

The landlord's petition seeking a determination pursuant to Rules §1.21 was denied because the ALJ found that the landlord failed to prove that the subject unit was not the tenant's principal place of residence at the time the petition was filed. On appeal, the landlord maintains that: any changes in the tenant's behavior after the petition was filed should be disregarded; the tenant's current occupancy of the unit is due to the need for medical treatment by his wife which is not available in Nevada, where they principally reside; the landlord has been deprived substantive and procedural due process and has the burden of proving facts beyond his control; evidentiary documents can be manipulated to prevent an inaccurate picture of where a tenant actually lives; time spent in the unit for work or leisure is irrelevant; and the tenant selectively provided only evidence that bolstered his claims.

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

F. 940 Post St.

AL140167

The landlord's petition for rent increases to 16 of 35 units based on increased operating expenses was granted, but for less than the 7% maximum. On appeal, the landlord argues that: principal payments should not be included in debt service costs as the pay down of principal constitutes the satisfaction of a debt rather than an operating expense and is the only operating cost not deductible against income for tax purposes.

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

G. 2600 Van Ness #401

AL140165

The tenant's petition alleging an unlawful rent increase from \$934.76 to \$2,295.00 was granted because the ALJ found that a Costa-Hawkins increase was not warranted because no subtenant resides at the subject unit. The landlord appeals, arguing that: a Costa-Hawkins increase is warranted when the original tenant no longer permanently resides in the unit and a subtenant came into possession after January 1, 1996, whether the subtenancy is lawful or not; and the ALJ erred in not finding that the tenant no longer permanently resides at the premises.

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

H. 810 Eddy St. #700

AT140169

The tenant's petition alleging decreased housing services and the landlord's failure to repair was denied. The tenant appeals the decision, claiming that: he never denied the landlord access to repair the heating system; the testimony of the property manager should not have been found to be more credible than his own; there are factual errors in the decision; and the door frame still hasn't been repaired.

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

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 July, 2014.

B. A copy of legislation introduced by Supervisor Chiu regarding the regulation of short-term rentals.

C. An updated list of Rent Ordinance amendments along with copies of recently amended sections.

D. Copies of articles from the S.F. Chronicle, Apartment Owners' Association, Bay City News, BeyondChron, 48 hills, the S.F. Examiner, the S.F. Bay Guardian, the New York Times and the Guardian.

VII. Director's Report

Executive Director Wolf told the Board that she will be going before the Finance Committee regarding legislation introduced by Supervisor Campos that would regulate tenant buyout agreements. She also let them know that Deputy Director Robert Collins has been working on legislation that the Department is introducing to change the index used to calculate the interest owed on security deposits, as the previous index is no longer published. Senior ALJ Tim Lee updated the Board on the status of two lawsuits challenging recently increased Ellis relocation payments.

VIII. Calendar Items

October 14, 2014  
12 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:07 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.**