



Edwin M. Lee  
*Mayor*

DAVID GRUBER  
*PRESIDENT*

Delene Wolf  
*Executive Director*

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

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

Tuesday, September 17, 2013  
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; Marshall; Mosbrucker;  
Mosser; Qian.  
Commissioners not Present: Hurley; Murphy.  
Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of July 16, 2013.  
(Mosbrucker/Marshall: 5-0)

IV. Remarks from the Public

A. Pablo Carbajal, the Master Tenant at 2428 Folsom Street (AL130083), told the Board that he did not have enough money to pay the rent because the subtenant was withholding rent pursuant to the Decision of the Administrative Law Judge (ALJ).

B. Andrea Funsten, the subtenant at 2534 Washington (AL130079 & -80), said that she was paying \$2,000 in monthly rent for her room while the Master Tenant was only paying \$400 and "imposing crazy rules." Ms. Fusten told the Board that the Master Tenant has continued to overcharge four additional roommates, even though she knows that it's wrong.

C. Jennifer Ritchie, the Master Tenant at 2534 Washington, told the Board that the subsequent occupants of the unit would not be filing petitions at the Rent Board. She maintained that Andrea Funston's claims are purely a personal attack that constitute

defamation and said that she will be going after Ms. Funston criminally for damage to her personal property.

#### V. Public Hearing

No members of the public appeared to speak on the proposed amendment to Rules and Regulations Section 12.19 to state how landlords may notify tenants displaced by fire or other disaster that the unit is ready for re-occupancy. After a brief discussion, the Board passed the following motion:

MSC: To pass the proposed amendment to Rules and Regulations Section 12.19. (Marshall/Gruber: 5-0)

The new language (underlined) is as follows below:

#### **Section 12.19 Displacements**

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms Other and conditions as existed prior to her/his displacement. The landlord's offer shall be sent to the address provided by the tenant. If the tenant has not provided an address, the offer shall be sent to the unit from which the tenant was displaced and to any other address of the tenant of which the landlord has actual knowledge, including electronic mail (e-mail) addresses.

#### VI. Consideration of Appeals

A. 811 – 14<sup>th</sup> St. #12

AT130070

The landlord's petition for rent increases based on increased operating expenses for all 12 units at the property was granted. 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/Mosser: 5-0)

B. 2428 Folsom

AL130083

The Master Tenant's appeal was filed 4 months late because the Master Tenant did not know he could appeal the decision on the grounds of financial hardship.

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

The tenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted on remand and the Master Tenant was found liable to the

subtenant in the amount of \$3,402.00. The Master Tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the Master Tenant's claim of financial hardship, but only if the amounts owing have not been fully recouped. (Mosbrucker/Marshall: 5-0)

C. 1244 Castro

AL130082

The landlord's petition for certification of capital improvement costs was granted except as to one unit, where the ALJ found that the tenant had moved in within 6 months of commencement of the work. On appeal, the landlord submits a copy of the tenant's original lease showing that the unit should not be subject to Rules §7.12(b) (the "6-Month Rule").

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of the applicability of the 6-Month Rule to the tenant in unit 1244; a hearing will be held only if necessary. (Gruber/Mosser: 5-0)

D. 36 Walter St.

AL130081

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$3,180.00 due to the lack of a legal source of heat in the unit. On appeal, the landlord maintains that there are errors in the decision and requests a new hearing date in order to obtain legal counsel.

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

E. 8 Gough St.

AT130068

The Master Tenant filed a petition seeking a determination as to the lawful proportional share of rent that the subtenant should be paying. On appeal, the subtenant maintains that: the Master Tenant should not be allowed to charge more for amenities since the subtenant assumed these charges were included in the rent; the Master Tenant's claim regarding the use of the laundry facilities is not credible; the Master Tenant does not pay for all of the utilities and shared household expenses; the subtenant has also provided furnishings for which he does not charge his house-mates; and the ALJ greatly over-valued the amenities provided by the Master Tenant.

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

F. 322 Frederick #1

AT130066

(re-scheduled from 8/13/13)

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

The tenant's appeal was filed 5 days late because the tenant was advised that there was no point in his filing an appeal.

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

The landlord's petition seeking a determination as to whether there are any tenants in occupancy in the subject unit was granted as the ALJ found that the original tenant no longer permanently resides in the unit and the other occupant of the unit does not meet the definition of tenant. On appeal, the tenant argues that: he meets all the requirements to be considered a tenant under the Ordinance; it is not reasonable to believe that the landlord thought he was house-sitting for 5 years; the landlord's representative lied at the hearing and should not be considered credible; he is a tenant at sufferance; and the rent increase is in retaliation for his having called the building inspectors regarding habitability problems in the unit.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing to consider whether the appellant is a tenant at sufferance and, if so, whether an unlimited rent increase is authorized by Costa-Hawkins rather than Rules and Regulations Section 1.21. (Marshall/Mosbrucker: 3-2; Gruber, Mosser dissenting)

G. 2085 Bush #507

AT130071

The tenant's petition alleging decreased housing services was denied, for the most part. However, the landlord was found liable to the tenant in the amount of \$150.00 due to the landlord's failure to paint the balcony. The tenant appeals the decision on the grounds that: the ALJ exceeded her jurisdiction in ruling on the tenant's harassment and quiet enjoyment claims; the ALJ should have granted her request to postpone the hearing, as she had recently undergone oral surgery; she was erroneously informed that her claims could not go back prior to one year; and the ALJ abused her discretion by stating that the tenant withdrew her failure to repair claims, and then ruling on those claims.

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

H. 1361 Filbert

AL130045  
(cont. from 7/16/13)

The tenant's petition requesting a determination of her proper base rent was granted and the landlord was found liable to the tenant in the amount of \$22,568.45 due to unlawful rent increases. The landlord appeals the decision on the grounds that: the premises should be considered exempt from Rent Board jurisdiction until the passage of Proposition I in 1994, because the owner lives in the other single family dwelling on the same lot, and the intent of the exemption was to protect small property owners who lived in proximity to their tenants; the Board's policy regarding owner occupancy exemption should be consistent with the single family exemption under Costa-Hawkins; and the decision is unfair and should be barred by the equitable doctrine of laches.

Prior to the June 11, 2013 meeting, the landlord's attorney submitted a request for postponement of the appeal consideration in order to conduct legal research at the Rent Board office regarding the interpretation of exemption prior to the passage of Proposition I in 1994. It was the consensus of the Board to grant the landlord's request, provide a briefing schedule for the parties and reschedule the appeal for the July 16th meeting. After further discussion at the July 16<sup>th</sup> meeting, the Board continued this matter to this evening's meeting in order for the landlord to augment his appeal with a hardship claim, if applicable, and in hopes that the parties would enter into settlement discussions.

MSC: To deny the landlord's substantive appeal. (Mosbrucker/Marshall: 5-0)

MSC: To accept the landlord's financial hardship appeal and remand the case to allow the other owner of the property to file a Hardship Application at the Rent Board Office by the close of business on October 15, 2013; if not, then the landlord's hardship appeal is also denied.  
(Mosbrucker/Marshall: 5-0)

I. 165 Beacon

AT130072

The landlord's petition for a rent increase from \$450.00 to \$1,461.60 based on comparable rents was granted. On appeal, the tenant argues that: the initial rent for the unit was set by his father, the landlord at the time, before he moved in to the unit; the rent was set low because of habitability problems in the unit; the landlord's witness was retained by the landlord's attorney in a civil case and his evidence should not be found credible; and the rent increase will serve to evict him from San Francisco.

MSC: To accept the appeal and remand the case for a supplemental hearing to determine whether a special relationship existed, noting who rented the unit and, if a special relationship is found, to consider the unique character of the unit and its condition in determining the comparable rent.  
(Mosbrucker/Marshall: 5-0)

J. 312 – 18<sup>th</sup> Ave. #1

AT130073

The tenant's petition alleging an unlawful rent increase from \$984.00 to \$2,000.00 per month was denied because the ALJ found that the original tenant no longer permanently resides on the premises and the subtenants took up residence after January 1, 1996. On appeal, the tenant argues that: the tenant has constantly maintained her permanent residence at the subject unit and resides there part-time as well as at a condominium unit she purchased in San Francisco; the Rent Board Commissioners have consistently held that a tenant can permanently reside in more than one unit; the tenant's rental agreement does not require that she permanently reside in the unit as she is still in lawful possession; the decision is not supported by the evidence; the tenant has resided in the unit on a full-time basis since May, prior to the effective date of the Costa-Hawkins rent increase; the service of a 3-day notice on the tenant cancelled the Costa-Hawkins increase; and the

landlord failed to meet its burden of proving that the tenant no longer permanently resides in the unit.

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

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

K. 1372 Pine #108

AT130074

The tenant's appeal was filed one day late because the tenant thought that the postmark date was operative, as opposed to the date of issuance of the decision.

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

The tenant's petition alleging decreased housing services due to noise from an upstairs unit was denied. On appeal, the tenant claims that: the ALJ failed to include pertinent facts and made many factual errors in the decision; the Ordinance has been rendered null and void because of the ALJ's obvious bias against the tenant; the applicable law is the implied warranty of habitability, which has been breached; and the tenant is no longer receiving the quiet enjoyment of her kitchen and has suffered a substantial reduction in housing services.

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

L. 300 Buchanan #403

AT130075 & -76

The landlord's petition for a rent increase from \$1,300.00 to \$2,995.00 based on comparable rents was granted, in part, and an increase to \$2,500.00 was found to be warranted. The tenant appeals on the grounds that: the petition was incomplete and submitted without the authorization of the owner; the ALJ did not correctly compare the services provided to the tenant with other units in the building; the landlord failed to prove that the rent was not set as the result of an arms length transaction; there are habitability issues in the unit; evidence provided by the prior property manager should not be found credible; the landlord's witness testified under duress; and there are significant problems with the landlord's evidence of comparable rents. The tenant also appeals the decision on the grounds of financial hardship.

MSC: To deny the tenant's financial hardship and substantive appeals.  
(Mosser/Gruber: 3-2; Marshall, Mosbrucker dissenting)

M. 3531 – 17<sup>th</sup> St.

AT130078

The landlords' petition for certification of capital improvement costs to 3 of 4 units was granted, resulting in a monthly passthrough in the amount of \$30.98. One tenant appeals the decision, asserting that: several of the items constitute routine maintenance or repair

and not capital improvement work; the plumbing work was done for a vacant unit and did not benefit all of the units in the building; some of the costs are unreasonably high; and the roof work could have been done on other buildings owned by the landlords, as there is no address on the invoice.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of whether the plumbing work was done in a vacant unit in the building and to deny the appeal as to all other issues. A supplemental hearing will be held only if necessary.  
(Marshall/Mosbrucker: 5-0)

N. 2534 Washington

AL130079 & -80

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 \$3,774.00. The Master Tenant appeals the decision on the grounds of financial hardship and on the following grounds: the petition constitutes harassment; the subtenant has damaged her personal property and assaulted her; there are errors in the decision; the subtenant lied at the hearing; the subtenant failed to pay rent for the month of March; the ALJ under-valued the amenities that were provided; and the subtenant agreed to pay market rent for her room in the unit when she moved in.

MSC: To deny both the Master Tenant's substantive and hardship appeals.  
(Mosbrucker/Mosser: 5-0)

## VII. Communications

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

- A. The office workload statistics from the months of June, July and August.
- B. Legislation amending the Ordinance to provide new standards for tenant financial hardship appeals to capital improvement passthroughs.
- C. The published decision in the case of Dromy v. Lukovsky which held that, under certain conditions, a landlord could hold Open Houses on weekend days between 1:00 and 4:30 p.m.
- D. A Pending Litigation Status Report from Senior Administrative Law Judge Tim Lee.
- E. A letter from landlord Teresa Welborn raising privacy concerns associated with the information required on the landlord petition form.
- F. A Memorandum from City Attorney Dennis Herrera regarding political activity by City officers and employees.

G. Articles from the S.F. Examiner, BeyondChron, S.F. Magazine, the S.F. Chronicle, the New York Times, SpiegelOnline, the S.F. Bay Guardian and the Financial Times.

H. A letter from Lucia Kimble of Causa Justa supporting the proposed amendment to Rules §12.19 and asking that the Board develop a “Right to Return Form” for tenants displaced by fire.

#### VIII. Director’s Report

Executive Director Wolf let the Board know that the agency is currently experiencing a petition backlog, which has resulted in an increase in the time it takes for hearings to be scheduled. She outlined some of the measures that are being taken to reduce the backlog, including converting some mediation slots to arbitrations, tightening up on scheduling and increasing a formerly half-time ALJ’s hours to full-time. She told them that she appeared before the SRO Task Force for the annual discussion of issues of concern to SRO hotel tenants. She let them know that the rental unit fee for the next Fiscal Year will remain at \$29 for residential units and \$14.50 for guest units; the projected fee for Fiscal Year ‘14/’15 is \$30 and \$15. Lastly, she informed them that Neutral Commissioner Brooks Beard has moved to Marin, and therefore resigned from the Board; a new Neutral is being sought. Senior Administrative Law Judge Tim Lee said that the landlord in the Drolapas case has filed an appeal – the issue is whether a minor can qualify as an “original occupant” under Costa-Hawkins.

#### IX. Old Business

Assembly Bill 1925 (Civil Code §1947.9)

Senior ALJ Tim Lee told the Board that there were no new notices for an eviction of less than 20 days for capital improvement work since the last Board meeting.

#### IV. Remarks from the Public (cont.)

D. Jennifer Ritchie told the Board that the subtenant knew the amount of rent when she moved in, and said that she should have come to her to work out an agreement. Instead, she made the situation “unlivable.” Ms. Ritchie maintained that the market rent was over \$2,000 for a similar room, and the amenities she provided were under-valued. She opined that denying her a repayment plan was “unfair.”

E. Greg Schneider, the tenant at 300 Buchanan (AT130075 & -76), told the Board that the landlord’s petition was filed by someone who had no legal authorization and that the was “disappointed” that his appeal was denied.

#### X. New Business

Telephonic Testimony

Discussion of this issue was continued to the next Board meeting.



XI. Calendar Items

October 15, 2013

9 appeal considerations

Old Business: AB 1925 (Civil Code Section 1947.9)

New Business: Telephonic Testimony

XII. Adjournment

President Gruber adjourned the meeting at 7:15 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.**