



DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
DEBORAH HENDERSON
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
AMELIA YAROS

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

Tuesday, September 21, 2010
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; Gruber; Henderson; Hurley; Murphy; Mosser; Yaros.
Commissioners not Present:	Beard; Marshall; Mosbrucker.
Staff Present:	Gartzman; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of August 3, 2010.
(Murphy/Gruber: 5-0)

IV. Remarks from the Public

A. Leo Lungren, the landlord in the case at 3540-46 – 20th Street, said that the ruling is not supported by the evidence and that the problem was remedied within two weeks. Mr. Lungren questioned the commencement date for the rent reduction; said that he was not informed of the problem by the tenant; and asked that the Board reconsider the decision.

B. Carolyn Dowd said that she lives next door to the tenant at 151 – 26th Avenue (AT100078 & AL100079). Ms. Dowd told the Board that the tenant and his family moved to Hawaii in 2001 and only return for holidays and summer vacation, although they did not come back this past summer. The contact information Ms. Dowd has for the tenant is in Hawaii and she believes he is only in San Francisco 2-3 days per month, which she can tell because his car isn't moved.

C. Wilbur Tom, the landlord in the 26th Avenue case, said that the Administrative Law Judge (ALJ) relied on false testimony that the tenant voted in San Francisco, when he

actually voted in Hawaii. Mr. Tom said that the neighbors rarely see the tenant, who only comes to San Francisco with his family over summer vacation. The remand decision confers a huge refund to the tenant, which was caused by his numerous delays and requests for postponements. Mr. Tom asked that the remand decision be overturned in favor of the landlord.

D. Attorney Andrew Zacks spoke on behalf of landlord Wilbur Tom. Mr. Zacks said that the ALJ must have felt constrained by the Board's remand order, with which the tenant failed to comply. The tenant's children were supposed to return to attend school in San Francisco, but that did not happen. Mr. Zacks asked if the tenant lied under oath and whether that should be considered, since the "integrity of the Board relies on people testifying truthfully." He told the Board that the Bizmo decision upholds the validity of Rules §1.21 and asked that they reverse the remand decision.

E. Robert de Vries, the attorney for the tenant at 151 – 26th Ave., told the Board that the tenant produced the tax information that the Board ordered and, since no one claimed that the tenant was living at the Clay Street property, facts surrounding the transfer of that property were irrelevant. The tenant has experienced changed circumstances that have resulted in his family not returning to the property, but the tenant still spends the majority of his time in San Francisco, and the neighbor's evidence is contrary to the evidence that was before the ALJ. Mr. De Vries said that the second petition constituted a "closer case," but in the six months prior to the filing of the petition, the tenant was in San Francisco more. Mr. De Vries informed the Board that the tenant voluntarily agreed to pay the rent increase as an accommodation to the landlord.

F. Clint Woods spoke on behalf of the tenant at 1907 – 18th Avenue (AT100081 & - 82), who loaned her sisters \$100,000 that they couldn't repay, so she was allowed to collect the debt through a reduced rent on the property. Through no fault of the tenant's, her sisters defaulted on the loan, which led to foreclosure and the new owner refusing to honor the terms of the lease. If the decision of the ALJ is allowed to stand, the tenant will experience hardship, be forced to move and will never be able to recover the loan amount. Mr. Woods said that the Board was rewarding a mortgage company at the expense of an individual who is not at fault, and asked that the Board overturn the unfair and unjust ruling.

V. Consideration of Appeals

A. 510 – 26th Ave. #203

AT100068

The landlord's petition for certification of capital improvement costs to 11 of 32 units was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.

The landlord withdrew the unit from the petition immediately prior to the meeting, which rendered the tenants' appeal moot.

B. 3036 – 26th St.

AT100070

The landlord's petition seeking certification of exterior painting costs to 2 of 3 units was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.

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

C. 737 Bush #105 & 204

AT100073 thru -75

The tenant in unit # 204 filed an appeal of a decision certifying capital improvement costs over seven years late because while her husband was alive, there was sufficient income to pay the passthrough, which is no longer the case. The tenant also maintains that she did not know she could ask for a deferral of the increase based on hardship prior to this time.

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

The landlord filed petitions for certification of capital improvement costs in 2002 and 2010, which were granted. The tenant in unit numbers 105 and 204 appeal the 2010 decision on the grounds of financial hardship; the tenant in unit #204 also appeals the 2002 decision due to hardship.

MSC: To accept the appeals and remand the cases for hearings on the tenants' claims of financial hardship. (Henderson/Crow: 4-1; Gruber dissenting)

D. 937 Clay #202

AT100076 & -77

The landlord's petitions seeking certification of capital improvement costs were granted in 2005. The tenant in one unit now appeals the decisions on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for a hearing on the tenant's claims of financial hardship. (Crow/Henderson: 5-0)

E. 1337 California #6

AL100071

The landlord's petition seeking certification of capital improvement costs was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the landlord claims to have missed the hearing because she drove up from Lodi and got stuck in traffic.

MSC: To accept the appeal and remand the case for a new hearing. Should the landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Murphy/Crow: 5-0)

F. 1221 Jones #PH-A2

AT100066

The landlord's petition for rent increases based on increased operating expenses to 29 of 72 units was granted, resulting in 7% base rent increases. A tenant in one of the units appeals the decision on the grounds that: not all of the parties on the rental agreement

were provided with notice of the hearing; and the tenancy commenced after the comparison periods that the increase was based on.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to determine whether the tenants in unit #PH-A2 are eligible for the operating and maintenance expense increase; a hearing will be held only if necessary. (Murphy/Gruber: 5-0)

G. 643 Oak, No. 4

AL100067

The tenant's petition alleging an unlawful increase in rent was granted and the landlord was found liable to the tenant in the amount of \$640.77 because of his failure to give proper legal notice of the rent increase. The tenant's claim of decreased housing services due to the landlord's alleged interference with the tenant's right to quiet enjoyment was denied. On appeal, the landlord claims that the tenant improperly offset amounts owing from her rent; and that proper notice of the rent increase was given by the landlord to the tenant.

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

H. 1040 Ashbury

AL100069

The landlord's petition for certification of capital improvement costs to 5 of 9 units was granted, in part. However, the costs of replacing the back stairs and decks were not certified because the prior landlord had not made timely good faith efforts within 90 days of receipt of a Notice of Violation regarding the needed work. Additionally, the costs of a new path, stairs and patio were not allocated to the tenants in the ground floor unit because they do not have access to these improvements. The landlord appeals, asserting that: the ALJ did not consider the efforts of the current landlord to remediate the conditions; the current landlord is the successor in interest and therefore meets the definition of "landlord" in the Ordinance; the work was not necessitated by the current landlord's deferred maintenance; the prior landlord was taking steps to have the conditions abated; and the tenant in the ground floor unit has access to the path, stairs and patio, which are common area improvements.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge on the issue of whether the costs of the new path and concrete stairs should be allocated to the tenants in the ground floor unit; a hearing will be held only if necessary.
(Crow/Murphy: 4-1; Gruber dissenting)

I. 3540 – 20th St. #1

AL100072

The tenant's petition alleging decreased housing services and unlawful rent increases was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,709.88 due to rent overpayments and \$127.50 for habitability defects on the premises. The landlord appeals, claiming that: there were no rent overpayments; the tenant did not provide written notice of the problems until October of 2009, after which time the repairs

were promptly made; the dates for commencement of the rent reductions are arbitrary and capricious; the tenants were the cause of the defects; and the tenants failed to provide access to the unit, which prevented the landlord from making the repairs.

MSF: To deny the appeal. (Crow/Henderson: 2-3; Gruber, Murphy, Yaros dissenting)

MSC: To deny the appeal as to the issue of the rent overpayments but remand the case to the Administrative Law Judge with instructions to find that the repairs were effectuated in a timely manner and no decrease in services rent reduction is warranted. (Murphy/Gruber: 4-1; Crow dissenting)

J. 151 – 26th Ave.

AT100078 & -79

This Rules Sections 1.21 and 6.14 case was consolidated on second remand with a more recently filed 1.21 petition concerning the same parties and property. In the remand decision (AL090161), the ALJ found that the tenant resided in the subject unit as his principal place of residence at the time the petition was filed, and no rent increase was warranted. In the consolidated 1.21 case (L091713), the ALJ determined that the tenant was not a “Tenant in Occupancy” at the time the petition in that case was filed, and the landlord is entitled to a rent increase upon service of proper notice. The tenant appeals the decision in case number L091713 on the grounds that: two occupants of the property, the tenant’s wife and mother-in-law, were not given notice of the hearing and therefore their occupancy cannot be determined; the decision goes against the weight of the evidence; and Rules §1.21 is ultra vires. The landlord appeals remand decision number AL090161, claiming that: the tenant failed to comply with the Board’s remand order and lied under oath at the original hearings; and the ALJ’s findings are not supported by substantial evidence and constitute a prejudicial abuse of discretion.

MSC: To grant the landlord’s appeal and remand the case to the Administrative Law Judge on the record with instructions to find that the tenant was not a “Tenant in Occupancy” at the time the original petition was filed. (Murphy/Gruber: 3-2; Crow, Henderson dissenting)

MSC: To deny the tenant’s appeal. (Murphy/Henderson: 5-0)

K. 1907 – 18th Ave.

AT100081 & -82

The landlord’s petition for a rent increase from \$700 to \$2,000.00 per month based on comparable rents was granted. The tenant appeals the decision, claiming that: the rent was set low because of the debtor-creditor relationship between the parties, rather than their familial relationship, which is not contemplated by Rules §6.11(a); and the decision is unfair, as it leaves the tenant without recourse to collect the monies owed to her by her sisters and presents her with a financial hardship.

MSC: To accept the appeal and remand the case to the Administrative Law Judge with instructions to reverse the decision and find that no rent

increase based on comparable rents is warranted under the facts of this case. The tenant's hardship appeal is therefore moot. (Crow/Murphy: 4-1; Gruber dissenting)

L. 55 Chumasero Dr. 12M

AT100080

The tenant filed a petition seeking a determination as to whether the base rent is a proper amount. The ALJ found that a 30-day notice of rent increase served by the landlord was proper, although the tenant was only provided with one day to let the landlord know whether or not he would be continuing his tenancy. The tenant appeals, arguing that: the notice of rent increase was not properly served, since it was not done in accordance with long-established prior procedures; the tenant's numerous Reports of Alleged Wrongful Eviction should have been considered at the hearing in this matter; and, therefore, the tenant has been deprived of procedural and substantive due process.

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, 2010.

B. Articles from the S.F. Examiner, BeyondChron, the New York Times, Tenants Together and Cal Lawyer.

VII. Director's Report

Executive Director Wolf was pleased to inform the Board that the Rental Unit Fee for the coming year will remain at \$29.00.

IV. Remarks from the Public (cont.)

G. The tenant at 3036 – 26th Street (AT100070) told the Board that she just received the landlord's submission yesterday.

VIII. Calendar Items

September 28th, October 5th & 12th, 2010 – NO MEETINGS

October 19, 2010

9 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:35 p.m.

