



Gavin Newsom
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
DEBORAH HENDERSON
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
AMELIA YAROS

Tuesday, June 15, 2010 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

Commissioner Henderson called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Henderson; Hurley; Marshall; Mosser.
Commissioners not Present: Gruber; Mosbrucker; Yaros.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 18, 2010.
(Marshall/Hurley: 5-0)

IV. Remarks from the Public

A. Ray Hartz told the Board that the Sunshine Ordinance Task Force found the Department in violation for failing to produce certain personnel documents he had requested. He did, however, commend the Department for including his written statement in the May 18th Minutes when not required to do so. Mr. Hartz complained that Rent Board employees are not sufficiently informed regarding the requirements of the Sunshine Ordinance.

B. Attorney Jerome Ghigliotti, representing the landlord at 960 Oak (AL100029), told the Board that the tenant has now requested replacement roommates three times in the last twelve months and that another petition alleging decreased housing services is pending on

this issue. Mr. Ghigliotti claimed that the tenant is profiteering on the landlord's property. He also commended the Rent Board's front counter staff.

V. Consideration of Appeals

A. 120 Leroy Pl.

AT100053

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 \$930.30 due to habitability defects on the premises. The tenant appeals the decision, claiming that: the Administrative Law Judge (ALJ) exhibited bias against her at the hearing and in the decision; the landlord told many untruths at the hearing; the landlord does not effectuate effective repairs in a timely manner; the rent reduction for lack of heat should commence at an earlier date; she met her burden of proof regarding the defective mailbox; and the decision was unfair regarding her allegations of rodent infestation, mold and dust.

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

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

B. 3951 Mission #1

AL100054

The tenant's petition alleging decreased housing services and the landlord's failure to repair was granted, in part and the landlord was found liable to the tenant in the amount of \$475.00. On appeal, the landlord maintains that: it is PG&E's policy to re-light pilot lights themselves for safety reasons, which is the reason her contractor was unable to do so; it was the tenant's choice not to have the pilot light re-lit in order to save on energy costs; the tenant failed to provide access to the unit in order for repairs to be made; the weather was mild during the period in question and heat was not a necessity; and the landlord made efforts to ameliorate the standing water in the light well, which rectified the problem.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the new evidence regarding the relighting of the pilot light and the appropriate termination date for the rent reduction; to deny the appeal as to all other issues. (Mosser/Murphy: 5-0)

C. 855 Castro St.

AL100051

The tenant's petition alleging unlawful rent increases was granted and the landlords were found liable to the tenant in the amount of \$648.80. On appeal, the landlords ask that unpaid rent owing by the tenant be offset against the amount owed to the tenant by the landlord.

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

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

D. 960 Oak St.

AT100028 & AL100029

The tenant's petition alleging decreased housing services was granted because the Administrative Law Judge found that the landlord has unreasonably refused to consent to a replacement roommate. On appeal, the landlord claims that there was no good cause for a replacement roommate within a twelve-month period because: it was predictable that the subtenant would vacate the unit prior to one year because of the limited job market for her profession; the tenant failed to require a one-year lease, which would have mitigated his damages; in his role as Master Tenant, the tenant violates the provisions of the Rent Ordinance; the tenant's testimony at the hearing was not credible; there are errors in the decision; and moving for employment is a common occurrence whereas a finding of good cause should require exceptional circumstances. The tenant also appeals on the grounds that the amount of the rent reduction should reflect an annual increase that has recently been issued and the fact that there are now 3 rather than 4 roommates, so the value of the subtenant's room has gone up.

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

MSC: To deny the tenant's appeal except to remand the case to the Administrative Law Judge to adjust the rent reduction granted by adding the 2% annual increase that was issued after the hearing in this case. (Murphy/Mosser: 5-0)

E. 545 O'Farrell #107

AL100050

The landlord's petition for a rent increase based on comparable rents was denied because the ALJ found that the landlord had failed to prove that a lease establishing the initial rent was a fraudulent document. On appeal, the landlord maintains that: the tenant's departure from the hearing constitutes a willful suppression of evidence; fraud was established by circumstantial evidence; the ALJ erred in finding that the Superior Court had determined that the tenant had a valid lease at a rent of \$485; the fact that the landlord did not pursue the petition earlier is of no legal consequence and should not be held against him.

MSC: To recuse Commissioner Mosser from consideration of this appeal. (Murphy/Hurley: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge in order for the parties to brief the legal issue of whether the doctrine of res judicata and collateral estoppel precludes the landlord from re-litigating the validity of the 1995 lease in the Rent Board proceeding and to receive additional evidence; a hearing will be held only if necessary. (Hurley/Murphy: 5-0)

F. 214 Garces Dr.

AT100052

The tenant's petition for rent reduction due to a change in the landlord's method of refuse collection at this multi-unit complex was denied because the ALJ found that the change did not constitute a substantial decrease in the tenant's housing services. The tenant appeals on the grounds that: adequate refuse collection is a non-waiverable right; collecting trash and recyclables inside the kitchen has reduced the living space of the unit, making it uninhabitable; the tenant has an implied contract for trash pickup at his front door; the new refuse collection system does not comply with the recently enacted City ordinance requiring garbage receptacles to be out of public view; the tenant is inconvenienced by the location of the new, inadequate garbage containers; the landlord has benefited from a decrease in costs since instituting the new system; the ALJ violated the code of judicial ethics and the petitioner's privacy rights; and the ALJ's decision was not based on all of the evidence.

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

VI. Communications

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

A. A copy of a proposed Charter amendment for the November ballot, which would change the composition of the Rent Board Commission.

B. The text of Proposition F regarding tenant financial hardship, which was defeated on the June ballot.

C. Articles from the S.F. Chronicle, San Francisco Tomorrow, BeyondChron, the New York Times and the Los Angeles Times.

VII. Director's Report

Executive Director Wolf told the Board that the Administrative Law Judges have been instructed to refer to the Board's rulings in prior cases, rather than Board "policies," in order to more accurately reflect how the Board deals with precedent. She suggested that the Commissioners might wish to follow suit.

IV. Remarks from the Public (cont.)

C. Attorney Jerome Ghigliotti made additional remarks regarding the case at 960 Oak: 1) all four tenants who have moved out of the unit since last August stayed for less than twelve months; 2) the Master Tenant is renting an unheated porch and couldn't find anyone else to take the room; 3) the subtenant left because the Master Tenant told her he didn't like her; 4) a Master Tenant shouldn't be allowed to raise rent in excess of Rent Ordinance limitations; and 5) there is no definition of what constitutes "good cause" for replacement roommates -- "any cause is good cause unless the Master Tenant kills the subtenant."

D. Ray Hartz told the Board that Executive Director Wolf claimed not to know why the Department's response to his complaint before the Sunshine Task Force was insufficient, but failed to get in touch with him to find out what he wanted. Mr. Hartz said that he wanted the Administrative Law Judge's exact salary and resume, and that his purpose is open government. He maintained that the Department can afford to record its meetings and said that not being required to "doesn't cut it." Mr. Hartz said that he would be going to the Ethics Commission next.

VIII. Calendar Items

Next Board Meeting:

August 3, 2010

6 appeal considerations

IX. Adjournment

Commissioner Henderson 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.