



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, December 14, 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: Gruber; Henderson; Marshall; Mosbrucker; Mosser.
Commissioners not Present: Beard; Crow; Hurley; Murphy.
Staff Present: Lee; Wolf.

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

III. Approval of the Minutes

MSC: To approve the Minutes of October 19, 2010.
(Mosbrucker/Marshall: 4-0)

IV. Remarks from the Public

A. Tenant Matt Shewey of 3227 Broderick (AL100094) told the Board that the landlord has done nothing since the tenants have lived in the unit and that they continue to find inappropriate things hooked up to their electric meter. Mr. Shewey alleged that the landlord sent friends of his family out to survey the apartment, which constitutes an "abuse of the system." He also said that PG&E told them that the landlord could easily hook the illegal unit back up to their meter. Mr. Shewey and his wife moved in one year ago and are now moving out due to these problems.

B. Philip O'Brien, attorney for the tenants at 3186 – 24th Street (AL100101), said that the landlords should not have been surprised that the tenants' brother/brother-in-law was asserting tenancy rights, since his name was on the estoppel. Mr. O'Brien thought it was a

fair hearing and that nothing unusual happened, since the record is often left open after a hearing.

V. Consideration of Appeals

A. 1560 Sacramento #107, 205, 307 & 311 AT100097 thru -100

The tenants in unit #311 filed their hardship appeal eight days late because English is not their native language and, when they came to the Rent Board, no one advised them of the 15-day appeal deadline.

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

The landlord's petition for rent increases for 24 of 42 units based on increased operating expenses was granted. The tenants in four units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals of the tenants in unit numbers 107, 205, 307 & 311 and remand the cases for hearings on the tenants' claims of financial hardship.
(Marshall/Mosser: 5-0)

B. 819 Capp #A AT100102

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because it was found that the tenant respondent no longer lives in the subject unit. On appeal, the tenant claims to have missed the hearing because of traffic and car difficulties and that he is only living temporarily in Los Angeles to attend medical school.

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. (Marshall/Mosbrucker: 5-0)

C. 141 Blake St. #A AL100095

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$650.00 due to habitability problems on the subject premises. The landlord failed to appear at the hearing and alleges on appeal that he failed to receive notice of the hearing. The landlord also claims that the conditions complained of have been remedied.

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.

D. 125 Palm Ave. #101 AL100093

The tenant's petition alleging decreased services due to alleged noise from an upstairs unit was denied. On appeal, the tenant claims that: the landlord's attempts to mediate the situation constituted "provocations" and not "investigation"; she is subjected to an unreasonable level of noise beyond that which is normally associated with apartment living; the landlord's key witness caused her to contact the police regarding his behavior; and the other unit offered to her by the landlord was not comparable to her unit.

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

E. 3227 Broderick St.

AL100094

The tenants' petition alleging decreased housing services due to commingled electrical service on the property was granted and the landlord was found liable to the tenants in the amount of \$1,708.65. On appeal, the landlord maintains that: the decision fails to show a reasonable connection between the rent reduction granted and the additional costs incurred by the tenants for electrical services outside of their unit; the amount of the rent reduction is excessive and constitutes a windfall to the tenants; there are factual errors in the decision; and the landlord has rectified the problem.

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

F. 818 Green #A

AL100096

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$337.50 for habitability problems on the premises and \$800.00 for bad faith harassment under Proposition M. On appeal, the landlord claims that: the ALJ exhibited bias against him; the allegations of failure to obtain building permits is unproven, irrelevant and prejudicial; and there is no justification for the rent reductions that were granted.

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

G. 3186 – 24th St.

AL100101

The landlord's petition for a rent increase pursuant to Rules Section 1.21 and/or Costa-Hawkins was denied because the ALJ found that the tenants still permanently reside in the subject unit, although it is not their principal place of residence. The tenant's petition alleging an unlawful market rent increase was granted in part, because the market rent increase was determined to be null and void but a banked increase was found to be lawful. The landlord appeals, arguing that: they were denied a fair hearing because they were not on notice that a subtenant in the unit was claiming to be a tenant, the tenants' son was allowed to translate for them at the hearing and the ALJ raised claims on the tenants' behalf; there was insufficient evidence that the subtenant is a tenant in occupancy at the subject premises; Costa-Hawkins does not explicitly allow tenants to permanently reside in more than one place; and the tenants use the subject premises for business purposes, and permanently reside at their home in Fairfield.

MSF: To deny the appeal. (Marshall/Mosbrucker: 2-3; Gruber, Mosser, Yaros dissenting)

MSC: To accept the appeal and remand the case for a supplemental hearing. (Mosser/Gruber: 3-2; Marshall, Mosbrucker dissenting)

VI. Communications

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

A. Articles from BeyondChron, the S.F. Chronicle, and the New York Times.

B. A Memorandum from City Attorney Dennis Herrera regarding the impact of Proposition 26, which passed on the November ballot.

C. The office workload statistics for the months of September and October 2010.

VII. Director's Report

Executive Director Wolf told the Board that the annual allowable rent increase for 3/1/11 – 2/29/12 is 0.5%. She also outlined the Board's numerous outreach activities in 2010 and an enhanced outreach plan for 2011, including advertising the department's services on Muni buses.

X. Calendar Items

February 15, 2011

12 appeal considerations

New Business:

A. Departmental Budget

B. Marino v. Hernandez (Rules §12.20)

XI. Adjournment

President Gruber adjourned the meeting at 7:00 p.m.