



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, October 15, 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: Dandillaya; Gruber; Marshall; Mosbrucker; Mosser;  
Murphy.  
Commissioners not Present: Crow; Hurley.  
Staff Present: Lee; Wolf.

Commissioner Qian appeared on the record at 6:16 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 17, 2013.  
(Mosbrucker/Mosser: 5-0)

IV. Remarks from the Public

A. Attorney Michael Hall, representing the landlord in the case at 74 Germania (AL130084), told the Board that there is a "profound" error in the Administrative Law Judge's (ALJ's) decision in that the landlord's witness said that she saw the subtenant at the unit, rather than the original tenant or her husband. Mr. Hall said that at some point it may be necessary to litigate the issue of the tenant's abandonment of the unit and asked that the Board remand the case to correct the error, although it will not affect the outcome.

B. Tenant Stefan White of 922 Post #504 (AT130089) told the Board that he couldn't use his oven for 32 days and that the stove that was provided was of defective quality. Mr. White said that a \$50 rent reduction was inadequate because he had to eat out and that the amount is insufficient to incentivize the landlord to make repairs.

C. Tenant Greg Schneider remarked regarding Assembly Bill 1925 (Civil Code §1947.9), saying that \$275 per day sounds like a lot but one-week hotel rates are higher than that. Mr. Schneider said that parking and transportation costs also need to be incorporated.

V. Consideration of Appeals

A. 635 San Jose

AT130092

The subtenant's petition alleging that they paid a disproportional share of the rent pursuant to Rules §6.15C(3) was dismissed due to the petitioner's failure to appear at the hearing. On appeal, the petitioner claims that the notice was sent to the wrong address, and provides the requisite Declaration of Non-Receipt of Notice of Hearing.

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

MSC: To accept the appeal and remand the case for a new hearing  
(Mosbrucker/Marshall: 5-0)

B. 2400 Pacific #604

AT130093

The landlord's petition for certification of capital improvement costs to 49 of 62 units was granted, resulting in a monthly passthrough in the amount of \$7.17. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case to be consolidated with the tenant's hardship challenge to a water revenue bond passthrough on October 30, 2013 at 2:00 p.m. (Marshall/Mosbrucker: 5-0)

C. 1801 – 38<sup>th</sup> Ave.

AL130088

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$11,386.55. On appeal, the landlord argues that the landlord should not be punished because the tenant initiated and paid rent increases in excess of limitations, and the two unlawful increases given by the landlord were due to capital improvement work on the property.

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

D. 559 Shotwell

AL130087

The landlord's petition for certification of capital improvement costs to one unit was granted only as to the costs of new drain spouts. The cost of new siding was not certified as the work was completed in 2007, which was more than five years before the petition was filed. The landlord appeals, arguing that the ALJ overlooked evidence showing that the two items were actually part of one project.

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

E. 922 Post #504

AT130089

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$50.00 due to a non-operable oven for a one-month period. On appeal, the tenant argues that the amount of the rent reduction is insufficient to reimburse him for meals he had to eat out when he did not have an oven, nor does it provide the landlord with sufficient incentive to perform necessary repairs.

MSF: To accept the appeal and remand the case to the Administrative Law Judge to re-examine the amount of the rent reduction.  
(Marshall/Mosbrucker: 2-3; Dandillaya, Gruber, Murphy dissenting)

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

F. 74 Germania St.

AL130084

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$3,953.04 as the ALJ found that the tenant moved in to the unit prior to January 1, 1996 and therefore no Costa-Hawkins rent increase was warranted. On appeal, the landlord claims that: there are factual errors in the decision; the ALJ failed to rule on whether the original tenant still permanently resides in the subject unit; the tenants' deceptive behavior should discredit their testimony; and the tenant's voter registration form is not dispositive as to when he moved in to the unit.

MSC: To deny the landlord's substantive appeal but to remand the case to the Administrative Law Judge on the record for a review of whether a correction to the decision is necessary regarding the testimony of the landlord's witness. (Mosbrucker/Marshall: 4-1; Gruber dissenting)

G. 752 Pacific #36

AL130086

The landlord's petition seeking a determination as to whether a rent increase is warranted pursuant to Rules §1.21 or Costa-Hawkins was denied because the ALJ found that the current occupant of the unit had established a direct landlord-tenant relationship with the landlord and is a co-tenant, rather than a subtenant. On appeal, the landlord contends that his agent has never accepted rent from the current occupant of the unit but, rather, has always accepted rent from her grandfather or mother; nor has the landlord accepted repair requests from the tenant, which in and of itself would not create a tenancy.

MSC: To accept the appeal and remand the case for a supplemental hearing to have the tenant testify and for the Administrative Law Judge to consider any new evidence provided by either party. (Murphy/Gruber: 3-2; Mosbrucker, Marshall dissenting)

H. 3582 – 18<sup>th</sup> St.

AT130085

The tenants' petition alleging an unlawful rent increase was denied because the ALJ found that the original tenants no longer permanently reside in the subject unit and a Costa-Hawkins increase is therefore warranted. On appeal, the tenants claim that: the ALJ ignored documentary evidence that the tenant still resides in the unit; and the telephonic testimony of a witness should not have been found to be more credible than that of the tenants.

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

I. 330 Grafton Ave.

AL130090

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 \$3,412.50 due to the lack of a heat source in the unit. On appeal, the landlord claims that: they never received notice from the tenant regarding the lack of heat in the unit and heat was supplied during some of the time period in question.

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

#### VI. Communications

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

A. A copy of the Rules and Regulations amending Section 12.19, effective September 17, 2013.

B. The office workload statistics for the month of September, 2013.

C. Articles from The Small Property Owners Institute Newsletter, The Tyee, The New Yorker, BeyondChron, The Bay Guardian, The S.F. Chronicle, The New York Times, The S.F. Examiner and The S.F. Business Times.

#### VII. Director's Report

Executive Director Wolf told the Board about two pieces of legislation recently introduced at the Board of Supervisors' Land Use Committee: Supervisor Chiu's proposal would provide a preference in occupying units or receiving assistance under all affordable housing programs administered or funded by the City to tenants being evicted under the Ellis Act; and Supervisor Campos has re-introduced legislation originally promulgated by ex-Supervisor Olague which would provide for hearings at the Rent Board on tenant allegations of landlord harassment constituting a wrongful endeavor to recover possession of the tenant's unit. Senior ALJ Tim Lee let the Board know that Governor Brown has vetoed Assembly Bill 1229, which would have superseded the holding in Palmer v. City of Los Angeles and allow local governments to require inclusionary housing in new residential

development projects. Ms. Wolf also told the Board that the staff Holiday Party will be on December 10<sup>th</sup> and the Board's Holiday Dinner will be after the Board meeting on December 17<sup>th</sup>.

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Lee told the Board that there was only one notice for an eviction of less than 20 days for capital improvement work since the last Board meeting.

IX. New Business

Telephonic Testimony

The Board received a letter from Attorney Dave Wasserman raising concerns about the allowance of telephonic testimony, especially in light of Evidence Code Section 711. Executive Director Wolf explained that staff discourages phone testimony unless there is a good reason for the inability of the party to personally appear, and informs the requestor that there are evidentiary consequences of not appearing in person as credibility is harder to assess. Commissioner Murphy strenuously argued that phone testimony should be restricted to witnesses, but that petitioners should have to be present at the hearing in order to meet their burden. The Board discussed the possibility of technological solutions such as Skype and Commissioner Mosbrucker thought this should be explored if possible but not required. Ms. Wolf said that she would talk to Deputy Director Robert Collins about the possibilities and report back to the Board.

IV. Remarks from the Public (cont.)

D. Greg Schneider said that there are better technological alternatives to Skype for telephonic testimony, which is "too risky" as the individual could actually be someone else.

X. Calendar Items

November 12, 2013

8 appeal considerations

Old Business:

A. AB1925 (Civil Code §1947.9)

B. Telephonic Testimony

New Business: Capital Improvement Hardship Procedures

XI. Adjournment

President Gruber adjourned the meeting at 7:20 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.**

