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AMELIA YAROS

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

Tuesday, October 19, 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; Marshall;
Mosbrucker; Mosser; Yaros.
Commissioners not Present: Beard.
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 September 21, 2010.
(Hurley/Crow: 5-0)

IV. Remarks from the Public

A. Belinda Tung, representing the landlord in the case at 425 Morse Street, Upper (AL100091), told the Board that what they wanted the Board to see is in their attorney's submission.

V. Consideration of Appeals

A. 922 Post #305

AT100090

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant claims that he was at the hospital with his girlfriend on the day of the hearing and forgot that he had a mediation scheduled on that day.

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

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/Crow: 4-1; Gruber dissenting)

B. 515 John Muir Dr. A410

AT100092

The landlord's petition for certification of capital improvement costs 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/Marshall: 3-2; Gruber, Yaros dissenting)

C. 962 Oak

AT100083

The subtenant filed a petition seeking a determination as to the proper base rent and alleging a substantial decrease in housing services. The petition was denied because the ALJ found that the tenant's share of the rent was not disproportionate pursuant to Rules §6.15C(3). The subtenant appeals, claiming that he uses less utilities than the other occupants of the unit and, since his bedroom is the smallest in the unit, he should be paying a smaller portion of the rent.

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

D. 1373 – 9th Ave.

AL100084

The subtenant filed a petition seeking a determination of the lawful base rent. The ALJ found the master tenant liable to the subtenant in the amount of \$1,080.00 because the subtenant was paying a disproportional share of the rent pursuant to Rules §6.15C(3). The master tenant appeals, alleging that the unit came furnished and the subtenant is creating a nuisance and disturbing other tenants.

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

E. 545 O'Farrell #107

AL100085

The landlord's petition for a rent increase based on comparable rents was denied because the ALJ found that the landlord failed to prove that a 1995 lease is a fraudulent document. Upon appeal by the landlord, the Board remanded the case on the legal issue of whether the doctrine of res judicata and collateral estoppel precludes the landlord from re-litigating the validity of the lease in the Rent Board proceeding. In the remand decision, the ALJ found that the landlord stipulated to the validity of the 1995 lease in a 2004 unlawful detainer action and cannot re-litigate this issue now. On appeal, the landlord maintains that: the doctrine of issue/claim preclusion has been inappropriately applied in this case;

the 1995 lease was entered into due to extraordinary circumstances and/or fraud and therefore a comparables rent increase is warranted; and the landlord stipulated as to the rent, but not the validity of the lease.

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

MSC: To deny the appeal without prejudice to the landlord filing another petition should the judgment in Superior Court Case No. 614072 be set aside.
(Mosbrucker/Marshall: 3-2; Gruber, Murphy dissenting)

F. 341 Surrey

AL100086 & -87

The landlord's appeal was filed five days late because the landlord experienced a flat tire and several other difficulties in attempting to file the appeal.

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

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$6,810.00 due to habitability problems on the premises. On appeal, the landlord claims that: the ALJ was biased in favor of the tenants; the conditions complained of do not constitute decreased housing services; the tenants did not meet their burden of proof regarding when the rear stairs were removed; the tenants gave perjured testimony at the hearing; a second means of egress from the building and a locking exterior door are not required by law; the amount of the rent reductions granted is arbitrary; there are factual errors in the decision; the tenants themselves have left the exterior door unlocked, it is sometimes necessary for the landlord to do so and the situation is impossible to correct; the landlord is not responsible for noise disputes between tenants; the Department of Public Health failed to find a pet waste problem on the premises; and the decision presents him with a financial hardship.

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

MSC: To deny both the landlord's substantive and hardship appeals but remand the case to the Administrative Law Judge for a necessary Technical Correction to the Decision. (Mosbrucker/Marshall: 5-0)

G. 845 Bosworth

AT100088

The tenant's petition alleging decreased housing services was denied because the ALJ found that the claims were known to the tenant at the time the parties executed a Settlement Agreement and Release and the parties had agreed to pursue performance issues arising from a mediated agreement through an outside mediator. The tenant appeals, asserting that: the ALJ did not consider the evidence she provided; there are

factual errors in the decision; damages dating from after the Settlement Agreement should be granted; and there was no legal basis for denial of her harassment claim.

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

H. 214 Garces Dr.

AT100089

The landlord's petition seeking approval of utility passthroughs for 28 of 66 units in this multi-unit complex was granted. One tenant appeals the decision on the grounds that: the tenants were not served with copies of the 2008 comparison laundry room calculation sheet that had been omitted from the original petition; the decision incorrectly insinuates that the complex is divided into physically separate sections; there are factual errors in the decision; there is insufficient evidence regarding whether the relevant areas are separately metered; there has been a reduction in utility costs when looking at the complex as a whole; petitions are filed by block, but blocks are not billed separately; the laundry room was not coin operated in 2008; the ALJ incorrectly used the highest utility rate for the base rather than the comparison year; and the tenant was not provided with the source document used by the Rent Board to determine the methodology for calculating laundry room utility costs.

MSC: To deny the appeal. (Murphy/Gruber: 4-1; Marshall dissenting)

I. 425 Morse St., Upper

AL100091

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$4,550.00 due to a leaking roof with resulting ceiling damage and mold. On appeal, the landlord claims that: the tenants interfered with the landlord's attempts to ameliorate the problem, including refusing to provide access to the unit; the ALJ relied only on those portions of the landlord's agent's testimony that corroborated the tenants' complaints; and the tenants acted in bad faith by withholding rent.

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 Pending Litigation Status Report prepared by Senior Administrative Law Judge Tim Lee.
- B. An updated Commissioner Roster.
- C. The office workload statistics for the month of August, 2010.
- D. Articles from S.F. Business Times, S.F. Apartment Magazine, the S.F. Examiner, the Washington Post, the New York Times, and the S.F. Chronicle.

E. The Department's Annual Statistical Report for FY 2009-'10.

VII. Director's Report

Executive Director Wolf briefly went over the Department's Annual Statistical Report and Senior Administrative Law Judge Tim Lee told the Board about some recent court decisions affecting rent control.

IV. Remarks from the Public (cont.)

B. The landlord's representatives in the case at 425 Morse Street told the Board that they have evidence showing that the tenants refused to provide access to the unit, which prevented them from making necessary repairs, and that the tenants don't want the work to begin until 11:30 a.m. The landlords said that the tenants continue to cause trouble and filed the petition in retaliation.

VIII. Calendar Items

December 14, 2010
7 appeals

IX. Adjournment

President Gruber adjourned the meeting at 7:05 p.m.