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POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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

Tuesday, November 12, 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 6:02 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Marshall; Mosser.
Commissioners not Present: Mosbrucker.
Staff Present: Collins; Lee; Wolf.

Commissioner Qian appeared on the record at 6:07 p.m.; Commissioner Murphy arrived at the meeting at 6:14 p.m. Commissioners Mosser and Marshall went off the record at 8:00 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 15, 2013.
(Marshall/Hurley: 5-0)

IV. Remarks from the Public

A. Attorney Andrew Catterall, representing the landlord in the case at 1948 Mason (AT130098), told the Board that the tenant prevailed on a decrease in services petition for lack of heat and a defective stove and the rent reduction was granted back to the time the current landlord purchased the property. The tenant is now asking that the rent reductions go back to the time the issue first arose, which was many years earlier. Mr. Catterall said that the tenant did not make that request in the petition and waived such relief at the hearing. Mr. Catterall informed the Board that the landlord has now remedied both conditions.

B. Evan Chan spoke on behalf of the landlord at 3419 Geary (AL130095), saying that the tenants refused to sign a written lease under the same terms and that the base rent should have been a different amount. Mr. Chan said that the landlord's banking entitlement should be calculated on the correct amount.

C. The landlord in the case at 3419 Geary said that the utilities had always been separate from the rent, but the tenant is now saying that they were included. The utilities are now much more expensive, \$178 as opposed to \$75, but the landlord does not have a witness to his agreement with the tenant.

D. John Fitch, the tenant at 909 Geary (AT130095), told the Board that his claim was denied in Small Claims Court because he had not suffered any damages, but that the merits of the claim had not been adjudicated. Mr. Fitch said that another hotel tenant's visitor had been 86'ed twice but was then reinstated, which poses a risk to the other residents. Mr. Fitch contended that once you're 86'ed you cannot come back under any circumstances.

E. Hendrika Baert, the tenant in the case at 2345 Larkin (AT130096), told the Board that she has had 3 different owners over 22 years. Ms. Baert said that the landlord took the garage away and she had to put her belongings in storage but was refused a rent reduction.

F. Greg Schneider thanked the Board for their consideration of the issue of telephone testimony.

V. Consideration of Appeals

A. 2345 Larkin, Apt. 6

AT130096

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

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/Murphy: 5-0)

B. 1661 Bush #8

AT130100

The landlord's petition for certification of capital improvement costs to 10 of 12 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case in order for the tenant to fill out the new forms required under the Board's recently amended hardship provisions pursuant to Ordinance Sections 37.7(i) & (j).

C. 905 Ashbury, Apt. 1

AT130101

The tenant's petition alleging decreased housing services was dismissed on remand due to his failure to appear at the properly noticed hearing. On appeal, the tenant says that he has moved out of the country and asks that the hearing be rescheduled.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Crow/Marshall: 4-1; Gruber dissenting)

D. 909 Geary #414

AT130099

The tenant's decrease in services petition was denied because the ALJ found that the Hotel Visitor Policy did not require that a hotel operator continue to deny visitation rights to a guest who had been "86ed" from the premises. On appeal, the tenant claims that he should have been given written notice when the visitor was 86ed; that he proved that his safety and security were violated; and that the management of the SRO hotel should have been more transparent in their dealings with him.

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

E. 559-563 Shotwell

AL130094

The landlord's petition for certification of capital improvement costs was denied because the ALJ found that the project was completed more than five years before the petition was filed. On appeal, the landlord claims that: the owner did not include the cost of his own work on the project, which led to an erroneous completion date in the petition.

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

F. 3419 Geary #2

AL130095

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$6,231.05. On appeal, the landlord maintains that: there is an error in the decision as to the lawful base rent amount; the tenants have already been compensated for some of the overcharges as part of a settlement agreement between the parties; and the tenants agreed to pay for utilities as part of that agreement.

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

G. 3721 – 25th St.

AT130097

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because the ALJ found that the tenant's extended absence from the unit for nine years was not a reasonable temporary absence and the unit was therefore no longer her principal place of residence. On appeal, the tenant argues that: her prolonged absence from the

unit was reasonable under the circumstances; she never established an alternative principal place of residence outside of San Francisco; the landlord failed to submit any new evidence since the last decision, in which the tenant prevailed; the landlord's witness statements constituted hearsay; the landlord's petition was motivated by the current rental market; and she currently resides in the subject unit, which she never used as a pied a terre.

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

H. 1948 Mason

AT130098

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$2,730.00 due to the lack of a heat source and working oven in the unit. On appeal, the tenant asks that the rent reduction go back to February 1992, when a broken heater was removed by the prior landlord.

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. Copies of legislation introduced at the Land Use Committee on November 12th: a proposal by Supervisor Campos to provide for hearings at the Rent Board on tenant allegations of landlord harassment and a proposal by Supervisor Wiener to allow for the construction of additional in-law units in the Castro.

B. A copy of the agency's Annual Report for Fiscal Year 2012-2013.

C. Articles from the Bay Area Reporter, the New York Times, the Tyee, the S.F. Examiner, the S.F. Examiner, and BeyondChron.

VII. Director's Report

Executive Director Wolf told the Board members that they must complete mandatory sexual harassment training by December 31st and provided them with their Disaster Service Worker I.D. numbers in order to access the on-line program. She outlined the new legislation introduced before the Land Use Committee. She also reminded the Commissioners that the Staff Holiday Party will be on December 10th at Don Ramon's Restaurant and the Board's Holiday Dinner will be after the meeting on December 17th.

VIII. Old Business

A. 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.

B. Telephonic Testimony

The Board continued their discussion of concerns regarding telephonic testimony, especially in light of Evidence Code Section 711. Deputy Director Robert Collins reported on various technological options, and expressed his concern that hearings would have to be re-convened if there were glitches. The Department does not have Wifi and would have to get the Department of Technology's permission for wireless. There is also the problem of members of the public not all having access to technology and the Department not having a full-time IT staff person to provide assistance. Commissioner Murphy maintained that there is a fundamental due process right to confront the party bringing the claim and insisted that the person bearing the burden of proof needs to be there.

Staff will compile statistics on the numbers and types of requests for phone testimony in the past year and report back to the Board.

IV. Remarks from the Public (cont.)

G. Evan Chan asked what the amount of the corrected base rent would be and said that the landlord should be given credit for annual increases that could have been imposed.

IX. New Business

Executive Director Wolf went over a Memo from Senior Staff explaining that, with recent amendments to the Ordinance (Sections 37.7(i) and (j)), there are now three different procedures and criteria for the processing and determination of tenant hardship claims. The question becomes whether the Board wants to: 1) apply the new standard and procedures to all hardship applications; or 2) maintain one standard and procedure for capital improvement passthroughs and a different standard and procedures for Operating and Maintenance Expense increases and utility and water revenue bond measure passthroughs. In the absence of a uniform standard, a tenant who seeks hardship relief from a capital improvement, O&M, and utility or water revenue bond passthrough would have to file a CIP Hardship Application for the CI, a hardship appeal of the O&M decision, and a different hardship application for the utility or water bond passthrough, and the Board will determine whether hardship relief is warranted for each type of increase. After a brief discussion, it was agreed that staff will provide the Board with ongoing information as to the outcomes of the new standards and the quantities and types of hardship challenges being filed, and the Commissioners will then decide whether further procedural changes are warranted.

X. Calendar Items

December 17, 2013

7 appeal considerations

Old Business:

A. AB 1925 (Civil Code Section 1947.9)

B. Hardship Procedures

C. Telephonic Testimony

New Business: Staffing Issues

XI. Adjournment

President Gruber adjourned the meeting at 8:05 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.