



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, December 17, 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: Crow; Dandillaya; Gruber; Hurley; Marshall;  
Mosbrucker; Mosser; Murphy; Qian.  
Staff Present: Gartzman; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of November 12, 2013.  
(Murphy/Marshall: 5-0)

IV. Remarks from the Public

A. Tenant Peter Doty of 46 Belvedere (AL130111) told the Board that there were 3 hearings in his case. Mr. Doty said that the landlord attorney’s new evidence was not submitted at any of the hearings, and could have been, nor was it under penalty of perjury.

B. Karen Uchiyama, attorney for the landlord in the Belvedere case, told the Board that there was a math error in the decision because the tenant stopped paying rent. Ms. Uchiyama said that the Golden Gateway decision is silent on what constitutes “necessary work” but that the Board interprets the decision too narrowly, since the intent was not to punish landlords for doing renovations and improvements that benefit tenants and the public. Ms. Uchiyama said that in the instant case, an aging foundation was replaced by a code-compliant underground garage and that the tenant experienced “mere inconvenience” due to construction noise.

C. Tenant Rosa Escobar of 4740 Balboa (AT130106) told the Board that she lost her job and is seeking a temporary deferral of the rent increase until she finds a new job.

D. Tenant Natasia Miller of 1485 Clay (AT130108) also said that she temporarily doesn't have a job.

V. Consideration of Appeals

A. 4740 Balboa #502, 106 & 104

AT130104-06

The landlord's petition for rent increases to 27 of 33 units based on increased operating expenses was granted. The tenants in 3 units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a hearing on the tenants' claims of financial hardship.  
(Marshall/Mosbrucker: 5-0)

B. 1485 Clay #9 & 11

AT130108 & -09

The landlord's petition for rent increases to 7 of 11 units based on increased operating expenses was granted. The tenants in 2 units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a hearing on the tenants' claims of financial hardship.  
(Marshall/Mosbrucker: 5-0)

C. 3489 – 17<sup>th</sup> St.

AT130102

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules Section 6.15C(3) was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the subtenant 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 subtenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

D. 17 Romolo Pl.

AT130110

The tenant's appeal was filed one day late because although she paid extra to have it overnighted, it did not arrive at the Rent Board in time, probably because of the holidays.

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

The tenant's petition alleging decreased housing services was granted, in part. Upon appeal from the landlord, the case was remanded for a supplemental hearing to consider new evidence submitted by the parties. In the Decision on Remand, the ALJ denied the tenant's petition in its entirety. The tenant appeals, arguing that: there are factual errors in the Decision; she did not notify hotel management of the conditions because she was afraid of reprisals; and the property manager's testimony at the hearing was not credible.

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

E. 272 – 24<sup>th</sup> Ave.

AT130103

The tenant's petition alleging decreased housing services due to the presence of fleas and other bugs in the unit was denied because the ALJ found that the landlord responded in a timely manner after receiving notice of the problem. On appeal, the tenant maintains that: she gave the landlord oral notice of the problem in mid-June, rather than July 3<sup>rd</sup>; the landlord failed to respond until the tenant went to the Department of Public Health; the tenant was forced to engage in self-help measures that sickened herself and her family; and the landlord should be required to place screens on the windows in the unit.

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

F. 643 Oak #8

AL130107

The tenant's petition alleging unlawful rent increases and decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$779.80 due to rent overpayments and \$337.50 due to the replacement of a bathtub with a shower. A claim of lack of use of a common area bathroom was denied pursuant to the Golden Gateway decision. On appeal, the landlord argues that: the tenant made a modification to the bathtub that was not approved by the landlord and caused the problem; the tenant did not object to the shower as a replacement at the time it was installed; and the landlord asks that the Board let him know the amount of rent increase that he is entitled to.

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

G. 46 Belvedere

AL130111

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

The tenant's petition alleging decreased housing services and an unlawful rent increase was granted, in part and denied in part. On remand, the ALJ found that the rent increase to \$2,900.00 was warranted under Costa-Hawkins as the tenant is a post-'96 subtenant who had not established a direct relationship with the landlords at the time the notice of rent increase was served. However, the ALJ determined that the tenant's claim of loss of quiet enjoyment of his unit due to construction noise was not barred by the Golden Gateway decision because construction of a garage did not constitute reasonably necessary work and the landlords were found liable to the tenant for 50% of the rent during the time that the

work was ongoing. The tenant's claim of decreased housing services due to the landlords' alleged failure to allow a replacement roommate was also denied. The landlords appeal the portion of the decision ordering a rent reduction due to construction noise on the grounds that: the remand decision punishes the landlords for replacing an old, unsafe foundation with a new underground parking garage, which contravenes the Golden Gateway decision and is not good public policy; the tenant's loss of services was temporary, the work was performed in a timely manner and did not justify a 50% rent reduction since the tenant still had full use of the premises; granting a rent reduction for capital improvement work takes away landlords' incentive to repair and upgrade their properties; the amounts granted to the tenant are incorrect due to factual errors in the decision; and the work was required to make the building code compliant.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge on the record for a necessary Technical Correction.  
(Marshall/Crow: 5-0)

#### VI. Communications

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

- A. A Resolution passed by the Board of Supervisors supporting amendments to State Law to return local control over the Ellis Act.
- B. A schedule of proposed Board meeting dates for 2014.
- C. Office workload statistics for the months of October and November, 2013.
- D. A current copy of the amended Rent Ordinance.
- E. Articles from the Examiner, the Sacramento Bee, the Mayor's Office of Communications, BeyondChron, the S.F. Chronicle, the Bay Area Reporter, Business Day, the S.F. Weekly, the Bay Guardian, the Los Angeles Times and the New York Times.

#### VII. Director's Report

Executive Director Wolf told the Commissioners that she went before the Planning Commission to answer rent control questions ancillary to legislation giving tenants evicted under the Ellis Act preference for BMR units. She also informed them that legislation providing for hearings at the Rent Board on tenant allegations of landlord harassment passed unanimously at the Board of Supervisors and will take effect around February 16<sup>th</sup>. Ms. Wolf reminded the Commissioners that they must complete Sexual Harassment training by December 31, 2013.

#### VIII. Old Business

- A. AB 1925 (Civil Code Section 1947.9)

Senior ALJ Gartzman told the Board there were no notices of eviction for less than 20 days for capital improvement work since the last meeting. The Commissioners agreed that this item no longer needs to be reported at every meeting. Rather, Senior Staff will let the Board know if issues come up that warrant amending the Rules and Regulations.

B. Telephone Testimony

Senior ALJ Gartzman provided the Board with a chart showing the instances of telephone testimony from October 1<sup>st</sup> through December 15<sup>th</sup>. The Commissioners discussed the possibility of making technological solutions such as Skype available, but not mandatory. Deputy Director Robert Collins is researching those possibilities and will report back to the Board at a future meeting.

C. New Rent Ordinance Amendments re Capital Improvement Hardship Applications and Effect on Existing Rent Board Procedures

Senior Staff will keep the Board informed as to outcomes under the new hardship standards recently adopted for capital improvement passthroughs.

IV. Remarks from the Public (cont.)

F. Tenant Peter Doty of 46 Belvedere asked if there was going to be another hearing in order to correct the mathematical error in the decision in his case.

G. Attorney Karen Uchiyama reiterated her contention that the Board is taking the Golden Gateway decision too seriously and said that improvements should be treated the same way as repairs and maintenance.

IX. New Business

Staffing Issues

Executive Director Wolf informed the Board that, since there is currently a lengthy backlog for scheduling cases and the departmental workload has gone up significantly, she will be requesting an additional Counselor and Administrative Law Judge position.

X. Calendar Items

January 21, 2014  
7 appeal considerations

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.**

**Addendum:** Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.