



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,**

CALVIN ABE
DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
KENT QIAN
DAVID WASSERMAN

Tuesday, October 13, 2015
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; Hung; Mosbrucker; Mosser;
Qian; Wasserman.
Commissioners not Present: Abe.
Staff Present: Gartzman; Lee; Wolf.

Commissioner Marshall appeared on the record at 6:15 p.m.; Commissioner Hung left the meeting at 8:00 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 15, 2015.
(Mosbrucker/Wasserman: 5-0)

IV. Remarks from the Public

A. Charlie Goss spoke on behalf of the S.F. Apartment Association, saying that the recently passed Kim "Eviction 2.0" legislation over-rides every no subletting contract for rent controlled buildings. Mr. Goss said that the Mayor acknowledged that the legislation is "problematic," but his Memorandum explaining his lack of a veto doesn't soften the blow for small property owners. Mr. Goss told the Board that any recoupment of costs would require an operating and maintenance expense petition. Additionally, as to tenants who go through the approval process, landlords will lose their rights under Costa-Hawkins, which is "unacceptable."

B. Tenant Oscar Gonzalez of 5 Leo (AT150108) told the Board that, despite the landlord's many violations, the remand decision is almost the same as the original decision.

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Mr. Gonzalez asked why his appeal was denied, and said that the Board should explain their decisions and not just say yes or no.

C. Tenant Barbara Haught of 420 Noe (AT150111) told the Board that her apartment building burned down and she oversaw the re-build. Ms. Haught said that she was to take the middle unit and her daughter was to take the lower, and that there were no numbers on the units. Ms. Haught claimed that she was never offered the lower unit, for which she has additional evidence.

D. Travis Lee, the landlord's son-in-law in the case at 420 Noe, told the Board that the tenant testified at the hearing that she chose the unit in which she currently resides. Since the Decision is based on her testimony, any new information is irrelevant.

V. Consideration of Appeals

A. 145 Fell #206

AT150113

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the 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/Mosbrucker: 4-1; Gruber dissenting)

B. 400 Duboce #106

AT150109

The tenant's application for relief from payment of a capital improvement passthrough was denied because the Administrative Law Judge (ALJ) found that the tenant is paying only 27.18% of his gross monthly income towards rent. On appeal, the tenant argues that extraordinary medical expenses and the present state of his health warrant relief.

MSC: To deny the appeal without prejudice to the tenant's re-filing should his financial circumstances change. (Marshall/Mosbrucker: 5-0)

C. 5 Leo #5

AT150108

The tenants' petition alleging an unlawful rent increase and seeking a determination as to their lawful base rent was denied. On appeal, the tenants claim that: they were not given proper notice of the rent increase; there are outstanding code violations on the property; the landlord did not properly explain banked rent increases; and the rent increases were in retaliation for the tenants' exercise of their rights under the law.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for the issuance of a necessary Technical Correction to the Decision. (Wasserman/Gruber: 5-0)

D. 2502 – 25th St.

AL150110

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$12,043.22 due to the landlord's unreasonable withholding of consent to a replacement roommate. Upon appeal by the landlord, the case was remanded in order to adjust the termination date for the rent reduction, as the tenants had vacated the unit. The landlord appeals the remand decision, which reduced the amount of the overpayment to \$8,854.37 on the grounds that the landlord was not able to produce necessary evidence because the attorney who originally represented her is now deceased.

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

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

E. 420 Noe #2B

AT150111

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the tenant returned to a different unit in the building after a fire, at her own request, which established a new tenancy. On appeal, the tenant claims that the landlord is not credible, and she was not offered the opportunity to move back to her prior unit.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider any new evidence; a hearing will be held only if necessary. (Marshall/Mosbrucker: 3-2; Gruber, Wasserman dissenting)

F. 1801 California

AL150114

The subtenant's petition alleging that he paid a disproportional share of the rent was granted and the master tenant was found liable to the subtenant in the amount of \$3,338.03. On appeal, the master tenant maintains that: his due process and privacy rights were violated as the ALJ was not impartial; the subtenant failed to meet his burden of proof; and the furnishings he provided were under-valued by the ALJ.

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

G. 1082 Post #301

AT150112

The tenant's petition alleging an unlawful rent increase was dismissed without a hearing because the ALJ found that there was no genuine issue as to any material fact. The petitioner moved in to the unit with her husband, the original occupant, who no longer permanently resides in the unit. The petitioner argued that she automatically became a tenant upon her marriage. The ALJ therefore found that the landlord's Costa-Hawkins rent increase was warranted because the petitioner was a subtenant, and not a co-tenant. On appeal, the tenant argues that: material issues of fact and law are in dispute; she occupied the unit as a tenant, and not a subtenant; the leasehold on the unit is community property and the petitioner is a community co-tenant in privity of estate with the landlord; and the

original occupant still permanently resided on the premises at the time the noticed increase was to take effect.

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

MSC: To accept the appeal and remand the case for a hearing.
(Mosbrucker/Marshall: 4-1; Mosser dissenting)

VI. Communications

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

A. A copy of the Judgment in the case of Coyne v. City of S.F., regarding the Campos enhanced relocation payments.

B. A Pending Litigation Status Report from Senior ALJ Tim Lee.

C. The office workload statistics for the month of August, 2015.

D. Articles from 48 hills, the S.F. Chronicle, the S.F. Examiner, the Mayor's Office of Communications, sfgate and beyondchron.

VII. Director's Report

Executive Director Wolf and Senior ALJ Tim Lee told the Board that on October 2, 2015, Judge Quidachay issued an Order enjoining the City from enforcing the enhanced Ellis relocation legislation. According to the Judge, the law is preempted by the Ellis Act and is unenforceable. The City plans to appeal. In the meantime, the regular Ellis relocation payments are in effect.

VIII. Old Business

Report on Attorney's Unauthorized Use of Civil Subpoenas in Rent Board Proceedings

At the July 14th meeting, Executive Director Wolf told the Board that Attorney Karen Uchiyama had been issuing civil court subpoenas to compel persons' attendance at Rent Board hearings under threat of civil penalties and contempt of court. Ms. Wolf had sent a letter to Ms. Uchiyama letting her know that the Rent Ordinance does not authorize the use of subpoenas to compel attendance and that civil subpoenas are limited to acts that are filed in court. On August 6th, Ms. Wolf received a letter from Ms. Uchiyama confirming that she would no longer issue civil subpoenas for Rent Board hearings and stating that she had been misinformed about their use. The Board asked staff to continue to monitor Ms. Uchiyama's compliance, talk to the City Attorney as to the Board's options, and report back.

Senior Staff subsequently provided the Board with a transcript of portions of a hearing showing that, as of July 2nd, Ms. Uchiyama knew that the use of civil subpoenas was inappropriate, although she was issuing them at the time. After reviewing their options, the Board made, but failed to pass, the following motion:

MSF: To file a complaint with the State Bar regarding Attorney Karen Uchiyama's unauthorized use of civil subpoenas in Rent Board proceedings. (Marshall/Mosbrucker: 2-3; Dandillaya, Gruber, Wasserman dissenting)

It was agreed that Senior Staff would bring any future improper conduct by this attorney to the Board's attention.

IV. Remarks from the Public (cont.)

E. Landlord Travis Lee of 420 Noe told the Board that while he believes that tenant protections are really important, this tenant is "gaming the system." Mr. Lee said that the tenant wanted to move back in to the building at 1/3 of the market rent, while her daughter paid even less. Mr. Lee suggested that the market rent should be taken into account when doing favors for tenants, or the landlord will be "trapped."

F. Noni Richen, President of the Small Property Owners of San Francisco, spoke to the notice provisions in the Kim legislation. Ms. Richen said that 10-day notice for nuisance violations is too long because, if the situation is serious and ongoing, the landlord needs to move faster or it's unfair to the other tenants in the building. As to the 14-day notice for permission to add an additional roommate, Ms. Richen does not believe that constitutes an emergency. She said that 30 days would be more appropriate, as the landlord could be out of town and small landlords don't tend to have property managers.

IX. New Business

Implementation of Eviction Protection Legislation (Kim: Eviction 2.0):
Issues and Possible Regulations Changes

The Board began a discussion of possible amendments to the Rules and Regulations that will be necessary to implement recent legislation establishing additional eviction protections introduced by Supervisor Kim and passed by the full Board of Supervisors, effective November 9th. Senior ALJ Sandy Gartzman went over the new legislation and a Memorandum from Senior Staff, making the following suggestions:

- that the Board consider amending Rules Sections 6.15A, B and D to reflect changes to Ordinance Sections 37.9(a)(2)(A)&(B). Previously, the landlord was required to *respond* to a tenant's written request for a replacement roommate or family member within 14 days. Under the Kim legislation, if the landlord has reasonable grounds to refuse, the landlord must *deny* the request within 14 days and specify the reasons for the denial. The regulations should be updated to conform to the recent amendments to the Ordinance.

- that the Board consider adopting a new, proposed Section 6.15E to implement new Ordinance Section 37.9(a)(2)(C), which prohibits a landlord from evicting a tenant who has added no more than a specified number of additional occupants to the unit, even where a lease or rental agreement limits the number of occupants or limits or prohibits subletting or assignment, subject to the landlord's reasonable denial following a written request by the tenant.

Many of the Commissioners expressed an interest in making the application and denial standards for replacement roommates, family members and additional occupants uniform. Ms. Gartzman advised that the standards could not be exactly the same, as there are differences in the Ordinance that need to be respected in the Regulations. Staff was instructed to draft amendments to §6.15A, §6.15B and §6.15D to be as consistent with proposed new §6.15E as possible. Commissioner Wasserman said that many landlords will just leave the process to the master tenant and their subtenants, as the landlord will not want to run the proposed new occupant's application and grant approval, due to Costa-Hawkins concerns. There was some concern that the landlord give the tenant a reasonable amount of time to submit an application or they should not be able to deny the request on that basis. The Commissioners felt that it could be too difficult to define what constitutes a "bedroom" for these purposes, even though the number of bedrooms in the unit determines the maximum number of additional occupants that must be allowed, absent other grounds for denial. The Commissioners felt that the maximum occupancy standards under state law and/or other local codes should be specified in the Regulations. The Commissioners generally concurred with staff's 8 possible reasons for denial of an additional occupant that could be considered reasonable, with the possible exception of #8, which provides a hardship exception for a landlord who would be required to make adaptations to the building due to additional occupancy.

Additional questions raised by the Commissioners included:

- can the provisions regarding creditworthiness be made standard for all replacement or additional occupants?
- do the 5-year vacancy control provisions after the termination of a tenancy or non-renewal of a governmental contract include allowable annual increases?
- do the vacancy control provisions apply to all tenancies that go into effect during the 5-year period, or just the first tenancy following the termination of the previous tenancy?

The Commissioners agreed that, in order to have regulations in place as soon as possible after the legislation takes effect, it will be necessary to calendar a Special Meeting, as well as a Public Hearing.

X. Calendar Items

October 26, 2015

Special Meeting: Implementation of Kim Eviction Legislation

November 10, 2015

6 appeal considerations

Executive Session: Personnel
Old Business: Implementation of Kim Legislation

XI. Adjournment

President Gruber adjourned the meeting at 8:45 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.