



Edwin M. Lee
Mayor

Robert A. Collins
Acting Executive Director

DAVID GRUBER
PRESIDENT

**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, January 12, 2016
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 6:08 p.m.

II. Roll Call

Commissioners Present: Abe; Crow; Dandillaya; Gruber; Mosbrucker; Mosser;
Qian; Wasserman.
Commissioners not Present: Hung; Marshall.
Staff Present: Collins; Lee; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of November 10, 2015 and December 15, 2015.
(Mosbrucker/Abe: 5-0)

IV. Remarks from the Public

A. Jaimie Bombard, attorney for the landlord at 631 7th Avenue #A (AL150146), told the Board that the Ordinance is clear and does not cover units located in a structure for which the certificate of occupancy (CFCO) was first issued after the effective date of the Ordinance, including unwarranted units. Ms. Bombard stated that the Administrative Law Judge's (ALJ) decision appears to be based on a novel interpretation of Rules and Regulations Section 1.17(e) and that the Board does not have the authority to amend or narrow the scope of the Rules.

B. Landlord Alec Rosekrans of 1060 Pine Street (AL150145) told the Board that the previous landlord had the tenant sign a new lease for a greater amount than the original lease when his girlfriend moved in, and perhaps that's an unlawful rent increase, but the important issue is jurisdiction. He understood that the Rent Board has no jurisdiction over a tenancy that has been forfeited and the ALJ is trying to make public policy as opposed to considering the scope of the Board's jurisdiction.

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V. Consideration of Appeals

A. 1485 Clay Street, #9

AT150143

The landlord's petition for rent increases based on increased operating expenses was granted. The tenant in one unit was granted a deferral of the increase for one year based on financial hardship. The tenant now asks for additional deferral of the increase, as she has experienced a period of prolonged unemployment, coupled with medical difficulties.

MSC: To accept the appeal and remand the case for a hearing based on the tenant's claim of financial hardship. (Qian/Mosbrucker: 5-0)

B. 237 Rolph Street

AT150147, AT150148

The tenants' petition alleging decreased housing services was dismissed due to their failure to appear at the properly noticed hearing. On appeal, one of the tenants says she arrived late due to her work, and the other says he was delayed due to traffic.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenants again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Qian/Mosbrucker: 5-0)

C. 525 – 26th Avenue, #2D

AL150142

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,318.30 due to habitability defects on the premises. The landlord had appeared for the hearing, but left after feeling ill. On appeal, the landlord provides evidence of a medical condition and asks for a new hearing so that he can present his evidence.

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

D. 753 Spruce Street

AL150141

The tenant's petition alleging an unlawful rent increase from \$3,300 to \$4,500 was granted and the landlord was found liable to the tenant in the amount of \$4,800 because the ALJ found that the subject unit, a condominium, had not been sold to a bona fide purchaser for value, and was therefore not exempt from Rent Ordinance limitations. Additionally, although the building was renovated and a new Certificate of Final Completion and Occupancy was issued, the subject unit existed and was occupied prior to the renovation and was, therefore, not a newly constructed rental unit. The landlord appeals on the grounds that: the tenant's original lease expired, and a new tenancy at a new rent was created pursuant to a new lease; the tenant was informed at the inception of the tenancy that the subject unit is a condominium and therefore exempt from the Ordinance; and the new rent is less than market, and a good deal for a greatly improved unit; and it is unfair to treat owners of condominiums who have not sold their units differently from those who have.

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

E. 279 Crescent Avenue

AT150131

(rescheduled from 12/15/15)

The landlords filed a petition requesting a determination as to whether the tenant has protected status for purposes of an owner move-in (OMI) eviction. The ALJ found that the petitioner was not an approved tenant or subtenant at the time of service of the eviction notice, nor had she lived in the subject unit for 10 years. The tenants appeal the decision, claiming that: the ALJ accepted the landlords' testimony at face value, while discounting that of the tenants; the fact that the tenant used other addresses does not negate her claim of residency at the subject unit; and evidence apparently relied on by the ALJ does not appear in the file. Consideration of this appeal was rescheduled from the December 15th meeting.

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

F. 1060 Pine Street, #12

AL150145

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$10,751.93. On appeal, the landlord maintains that: the Rent Board has no jurisdiction over prior claims that have been cut off by a terminated tenancy, as the Board only has jurisdiction over tenancies, and not individuals who are not in a landlord-tenant relationship; and this issue is properly decided in court.

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

G. 1618 Mason Street, #18

AL150140

The subtenant's petition alleging that she paid a disproportional share of the rent was granted and the master tenant was found liable to the subtenant in the amount of \$5,953.50. On appeal, the master tenant claims that: the subtenant agreed to the division of the rent at the inception of the tenancy, and the Administrative Law Judge (ALJ) erred as to what constitutes a proportional share of the rent.

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

H. 1606 – 23rd Avenue

AL150144

The tenant's petition alleging unlawful rent increases was granted, and the landlord was found liable to the tenant in the amount of \$4,743.66. On appeal, the landlord claims that it is unfair that the tenant will receive the entire amount of the refund, and asks that the sum owed be dispersed to the tenant and her roommates in accordance with the amount of time each individual resided on the premises.

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

I. 631 – 7th Avenue, #A

AL150146

The tenant's petition alleging decreased housing services was denied. However, the ALJ found that the subject unit is subject to the Rent Board's jurisdiction because it is an unpermitted unit, with no Certificate of Final Completion and Occupancy issued after June 13, 1979. The landlord appeals the determination of jurisdiction, maintaining that: the 2001 Certificate of Occupancy for the building is governing; Rules §1.17(e), which talks about "units" rather than "structures" is ultra vires; illegal units are not included on Certificates of Occupancy; and the decision conflicts with Costa-Hawkins.

MSF: To deny the appeal. (Mosbrucker/Qian: 2-3: Abe, Dandillaya, Gruber dissenting)

MSC: For the matter to be continued to the next Board meeting to allow the parties to file briefs at least one week before the next meeting on the issues of whether the facts of the case show that the unit is exempt under Rules and Regulations Section 1.17(e). (Abe/Qian 4-1; Mosbrucker dissenting)

J. 376 Ellis Street, #402

AL150149

The tenants' petitions alleging decreased housing services and requesting a determination of the proper base rent were granted, in part, and the landlord was found liable to the tenant in the amount of \$750.00 due to lack of heat in the unit. On appeal, the landlord claims that the building's heater is in working order and provides a copy of the permit showing that the boiler recently passed inspection.

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

VI. Communications

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

- A. Litigation report prepared by Senior ALJ Tim Lee.
- B. The office workload statistics for the month of November 2015.
- C. Memorandum to the Commissioners regarding the schedule of Board meetings for 2016.
- D. Articles from the S.F. Chronicle, the S.F. Examiner, the Wall Street Journal, 48hills, BeyondChron, and SFist.

VII. Director's Report

Acting Executive Director Collins told the Commissioners about the two-year fixed departmental budget for 2016-2017 and 2017-2018, which will require the Rent Board to request the Board of Supervisors to reopen the budget if changes must be made within those two years. He also informed them that the Department now has an increased workload, which is leading to a need to increase staffing and space. Acting Executive Director Collins also explained to the Board that there may be a proposal coming from the Mayor's Office for the Rent Board to start registration of rental units.

Senior ALJ Tim Lee also informed the Board of recent court filings involving the Rent Board, including *Franck v. CCSF* and the *Breaux* case (1049 Market Street).

VII. Old Business

Discussion regarding replacement of the Executive Director was continued to a future meeting.

VIII. Calendar Items

February 16, 2016

11 appeal considerations (1 continued from 1/12/16)

Old Business: Departmental Budget/5-Year Strategic Plan

IX. Adjournment

President Gruber adjourned the meeting at 7:46 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.