



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, February 16, 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 6:05 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of January 12, 2016.
(Mosbrucker/Wasserman: 5-0)

IV. Remarks from the Public

A. Samuel Luk, the landlord at 1201 44th Avenue #1 (AL150153), told the Board that he filed his appeal because he never gave the tenants an unlawful rent increase, he only gave one Costa Hawkins rent increase after his original tenant moved out. Mr. Luk stated that when he raised the rent, the tenants said they couldn't pay the full portion, and would pay the rest later. He said that he was tricked by the new tenants, that there is plenty of evidence that they agreed to the new rent of \$2650, and in reliance on the tenant's promise to pay \$2650, he agreed to let them bring in two additional roommates. Mr. Luk requested that his appeal be granted.

B. Clifford Fried, the attorney for the landlord at 1201 44th Avenue #1 (AL150153), stated that the Administrative Law Judge (ALJ) only believed the tenant and ignored the documentary evidence before him. Mr. Fried stated that after the original occupant moved out, the tenant orally agreed to pay \$2650, and refused to sign the lease the landlord created because they didn't want to pay the increased security deposit. There was one check for

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\$2000, which is indicia of the existence of an agreement, but it doesn't establish what the rent is. Mr. Fried requested that the case be remanded to give the landlord the opportunity to file a comparable rents petition, to show there was fraud, and in the alternative, that the case be reversed and the appeal granted.

C. Benjamin Butler, the landlord at 145 Central Avenue (AL160005) told the Board that the ALJ granted the tenants' petition due to bias. Mr. Butler stated that the petitioner did not fulfill Rules Section 6.15B by failing to provide a completed rental application. Mr. Butler asked that the decision be set aside and the petitioners receive zero dollars.

D. Jaimie Bombard, attorney for the landlord at 631 7th Avenue #A (AL150146) told the Board that the term "rental units" does not include units located in a structure for which the certificate of occupancy was first issued after the effective date of the Ordinance. The date of issuance of the certificate of occupancy (CFCO) is the dispositive factor in the determination of Rent Board jurisdiction. Despite that the building was built in 2001, and the clear language of the Ordinance, the ALJ took the position that the new construction exemption only applies to lawful units, relying on a novel interpretation of Rules and Regulations Section 1.17(e). Ms. Bombard stated that her client is not trying to game the system, nor get the best of both worlds.

E. Kim Boyd Birmingham, representative for the landlord at 1345 Clement Street (AL150154), told the Board that the issue is whether the landlord's financing should be considered "in excess of existing financing." She stated that the landlord was required to take over the existing financing at time of purchase, and the bank would not allow a second mortgage on the property at closing, so the owner was forced to put another loan on the building after the sale, only financing up to the original purchase price. Ms. Boyd Birmingham stated that the spirit of the rule is that someone cannot go out and buy a boat, refinance the property, and pass that on to the tenants in the form of an operating and maintenance expense rent increase (O&M).

F. Edward Singer, attorney for the landlord at 890 47th Avenue #A (AT160007 and AL160008), stated that the Rent Board made a technical correction to the decision, and that satisfies all of the concerns raised in the landlord's appeal. He stated that he would like the Board to deny the tenant's appeal based on the doctrine of invited error, that is, one cannot appeal an error in a lower court that you yourself created. Mr. Singer told the Board that the tenants provided a copy of a statement of decision from the Superior Court judge to the ALJ, but now argue that the ALJ should not have relied upon the statement of decision.

V. Consideration of Appeals

A. 640 Mason Street #406, #607 and #706

AT150150, AT150151, AT150152

The landlord's petition seeking 7% rent increases based on increased operating expenses to the tenants in 33 units was granted. The tenants in three units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the case for hearings on the tenants' claims of financial hardship. (Mosbrucker/Marshall: 5-0)

B. 4100 Fulton Street #3

AT160003

The subtenant's petition alleging that she paid more than a proportional share of the rent was dismissed due to her 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 new hearing. Should the subtenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

C. 3473 – 17th Street #A

AL160002

The subtenant's petition alleging that he paid more than a proportional share of the rent was granted and the master tenant was found liable to the subtenant in the amount of \$10,199.99. On appeal, the master 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 master tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Mosbrucker/Marshall: 5-0)

D. 2226 California Street #101

AT150129

The subtenant's petition alleging that she paid more than a proportional share of the rent was granted and the master tenant was found liable to the subtenant in the amount of \$1,519.50. On appeal, the master tenant claims that she was unable to attend the hearing due to unforeseen circumstances and that she submitted a postponement request to remain on an out-of-town job hunt.

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

E. 49 Spofford Street #19

AT160001

The tenant appeals a decision granting the landlord's request for a determination of whether the tenant is a "tenant in occupancy" of the subject unit pursuant to Rules and Regulations Sections 1.21, a determination under Rules and Regulations Section 6.14 that all original occupants have vacated the subject unit and that a timely 6.14 notice was timely served on the remaining occupants of the unit, and a determination under Rent Ordinance Section 37.3(d) (the Costa-Hawkins Rental Housing Act) that the original occupant no longer permanently resides in the subject unit and a subtenant or assignee who took possession on or after January 1, 1996 resides in the subject unit. On appeal, the tenant claims that she is not a tenant of the subject unit, did not intend to move in and never did, and that she was just trying to help pay the rent until those in charge of the deceased original tenant's estate dealt with his affairs.

MSC: To deny tenant respondent Nancy Tom Chan's appeal based on her agreement that she is not claiming a tenancy at the unit.
(Wasserman/Gruber: 5-0)

F. 1201 – 44th Avenue #1

AL150153

The tenants' petition alleging an unlawful rent increase from \$2000.00 to \$2,650.00 was granted because the ALJ found that the rent of \$2000.00 was properly established pursuant to the Costa-Hawkins Rental Housing Act and a second increase to \$2,650 was not authorized by Costa-Hawkins nor the Rent Ordinance. On appeal, the landlord claims that the main issue is whether the rent was accepted, and that the tenant fabricated the facts.

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

G. 631 – 7th Avenue #A

AT150146

(continued from 1/12/16)

The tenant's petition alleging decreased housing services was denied. However, the ALJ found that the subject unit is subject to Rent Board 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 Section 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.

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

H. 1345 Clement Street

AL150154

The landlord's petition for a rent increase based on increased operating expenses to nine units was denied. The ALJ found that the landlord's funding in excess of existing financing after the close of escrow and the proceeds of the borrowing were not reinvested in the building according to Rules and Regulations Section 6.10(g). The landlord appeals the decision, arguing that exceptional circumstances exist to justify consideration of the increased debt service as an allowable expense notwithstanding the general prohibition of Regulations Section 6.10(g).

MSF: To deny the appeal.
(Mosbrucker/Marshall: 2-3; Gruber, Hung, Wasserman dissenting)

MSC: To remand the case to allow the landlord to amend the petition to claim that the purchase of the property was in part financed by a line of credit which should be considered in determining the allowable debt service costs, to be done within 30 days of the February 16, 2016 meeting.
(Wasserman/Gruber: 3-2; Mosbrucker, Marshall dissenting)

I. 145 Central Avenue

AL160005

The landlord appeals a decision granting the tenants' claim of decreased housing services where the landlord was found liable to the tenants in the amount of \$3,524.11 for the landlord's failure to allow the tenants to have replacement roommates. On appeal, the landlord contends that the ALJ was biased on behalf of the tenants, that he was not served all the evidence supporting the tenants' petition, and that his application standards were regular and reasonable.

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

J. 1401 Ocean Avenue #2

AL160004

The tenants' petition alleging an unlawful rent increase and improper utility passthrough, water revenue bond passthrough and a general obligation bond passthrough was granted and the landlords were found liable to the tenants in the amount of \$714.95, while the lawful monthly base rent was found to be \$1,716.88. The landlords appealed, claiming that the annual and banked rent increases and the utility passthrough, water revenue bond passthrough, and the general obligation bond passthrough were properly applied. The case was remanded to the ALJ to examine new evidence and hold a hearing only if necessary. The ALJ determined that a decision on remand could be issued on the record and that a further hearing was not necessary. The ALJ found that the monthly base rent was still \$1,716.88, with \$13.26 in utility passthroughs, \$7.18 in water revenue bond passthroughs, and \$17.29 in general obligation bond passthroughs, for a total rent of \$1,754.61, and that the landlords were liable to the tenants in the amount of \$413.11. On appeal of the remand decision, the landlord again contends that the ALJ's calculations of the allowable rent increase and the water revenue bond passthrough are incorrect.

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

K. 890 – 47th Avenue #A

AT160007, AL160008

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$2,000.25 due to loss of non-exclusive use of one-half of a garage for storage. Both the landlord and tenant appealed. On appeal, the landlord argues that: the ALJ erred by incorrectly calculating the amount of overpayment owed by the landlord to the tenant, and that because the factual record and stipulation of the parties established that the tenants paid no rent from May 15, 2014 through September 9, 2015, the ALJ should recalculate the overpayment. The tenant claims that the reduction was too low, that it was probably worth more than what the tenant was awarded, and that the Rent Board was influenced by the Superior Court decision.

MSC: To deny both the landlord's and tenant's appeals.
(Mosbrucker/Marshall: 5-0)

VI. Communications

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

- A. Budget Proposal for Fiscal Year 2016-2017.
- B. Memorandum Regarding Budget, Backlog, and Staffing/Space Needs.
- C. Annual Report on Buyout Agreements.
- D. Memorandum from the City Attorney's office regarding consulting outside attorneys.
- E. Articles from the S.F. Chronicle, the S.F. Examiner, ABC News, BeyondChron, and SFist.

VII. Director's Report

Acting Executive Director Collins discussed proposed legislation regarding affordable housing and new construction. He informed the Commissioners that a memo from the City Attorney's office, which clarifies when the commissioners can obtain the advice of outside counsel, was included in their packets. Acting Executive Director Collins highlighted proposed legislation from the Board of Supervisors that would add a protected class and expand just cause eviction requirements for children and educators in San Francisco subject to owner move-in and other evictions. Effective April 3, 2016, an affordable housing preference program will go into effect for people subject to owner move-in evictions, which formerly only included a preference program for those who have been subject to Ellis Act evictions.

VIII. Old Business

- A. Departmental Budget/5-Year Strategic Plan

Acting Executive Director Collins discussed the proposed departmental budget. The proposed amendment that would have required that the department submit a fixed two-year fixed budget was not passed, and the agency is only required to submit a one-year budget for the next two years. He informed the Commissioners that a draft of the 5-Year Strategic Plan has been submitted to the mayor's office, and once approved, it would be discussed by the Board. After discussion, the following motion was made and voted upon:

MSC: To approve the proposed Departmental budget for Fiscal Year 2016-2017.
(Gruber/Mosbrucker: 5-0)

IV. Remarks from the Public (cont.)

- A. A man who did not identify himself stated that the housing issue is so important to the city of San Francisco, and that the staff is great and helpful, but there are a lot of cases

going through the system. The Rent Board needs more resources, as the work it does is so important.

VIII. Calendar Items

March 8, 2016

8 appeal considerations

New Business:

Eviction Data Report

City Attorney's Memo regarding consulting outside attorneys.

Old Business:

Reduction of Hearing Backlog/Operating Efficiencies

IX. Adjournment

President Gruber adjourned the meeting at 8:26 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.