



Edwin M. Lee
Mayor

Robert A. Collins
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 14, 2017
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; Dandillaya; Gruber; Hung; Marshall; Mosbrucker;
Mosser; Qian; Wasserman.
Commissioners not Present: Crow.
Staff Present: Collins; Lee; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of January 10, 2017.
(Mosbrucker/Abe: 5-0)

IV. Remarks from the Public

A. Meifang Wang, the landlord at 2500 35th Avenue (AL160148), stated that there were key errors in the facts the Administrative Law Judge (ALJ) cited in her decision regarding inadequacy of heating. Ms. Wang stated that the thermostat was on the second floor, and texts and emails proved that the first floor was always 3 to 5 degrees higher than the thermostat setting on the second floor.

B. Jose Colon, the tenant at 1428 Castro Street #A (AT160150) requested that the decision be vacated, as it was based on a fallacy. Mr. Colon stated that the 3R report contradicted the ALJ, and there was no documentation in the 3R report between 1908 and 1988. He told the Board that the original assumption was that the building was constructed in 1908 as a two-story residence when in reality it was a single-story building, a store.

V. Consideration of Appeals

A. 1327 Stevenson Street

AT170004

The tenant's petition alleging decreased housing services and failure to repair and maintain was dismissed due to her failure to appear at the scheduled mediation. On appeal, the tenant claims that both she and her representative did not receive 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.
(Mosbrucker/Marshall: 5-0)

B. 4445 Irving Street

AT160151

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the scheduled mediation. The tenant appeals on the basis that he was unable to take time off work on the day of the mediation.

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: 5-0)

C. 2500 – 35th Avenue

AL160148

The tenants' petitions for decreased housing services were granted in part and denied in part. The landlord was found liable to the tenants in the amount of \$2,925.00 for lack of adequate heat. On appeal, the landlord argues that the tenants made untruthful statements, and that the landlord should not be penalized for accommodating the tenants and providing a quick response to the tenants' request.

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

D. 2135 Sacramento Street #506

AL170002

The landlord's appeal was filed 1 day late because he mailed it via certified mail, believing the assurances of the US Postal Service that the mailing would arrive within one day.

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

The tenants' petition for decreased housing services was granted in part and denied in part. The landlord was found liable to the tenants in the amount of \$2,829.25 for lack of heat, lack of hot water, and a defective elevator. On appeal, the landlord argues that he corrected the problems within a reasonable time after receiving notice of them, that the

monthly rent reduction amounts awarded to the tenants were too high, and that a rent reduction is not justified under the Golden Gateway decision.

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

E. 1261 Lombard Street

AL170001

The tenants' petition for decreased housing services was granted. The landlords were found liable to the tenants in the amount of \$10,880.87 for unreasonable withholding of consent to a replacement or additional roommate. The landlords appeal, arguing that no decrease in services occurred because the tenants never provided the landlords with a formal request to add a roommate, and that any rent overpayment awarded should be reduced since the Rent Board failed to expedite the petition pursuant to Rules and Regulations Section 6.15E.

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

F. 1428 Castro Street #A

AT160150

The landlord's petition seeking a determination of whether the Rent Board has jurisdiction over the subject unit was granted. The ALJ found that the subject unit was exempt from the Rent Ordinance under Rules and Regulations Section 1.17(e) as a newly constructed unit for which a certificate of occupancy was first issued after June 13, 1979. The tenant appeals, arguing that the first floor has always been used as a garage and storage, and that the landlord did not obtain permission from the former owner to use an email conversation between them as evidence in this case.

MSF: To grant the appeal.
(Mosbrucker/Marshall: 2-3; Abe, Dandillaya, Gruber dissenting)

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

G. 3009 Mission Street #108

AL170003

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that landlord consented to the petitioner's occupancy as a tenant and intended to create a direct landlord-tenant relationship with her, and the rent increase was therefore not authorized by Civil Code Section 1954.53(d)(2) and is null and void. The landlord appeals, arguing that the tenant petitioner never paid rent directly to the landlord, that the landlord refused payment of the rent from the tenant when her partner passed away, and that a tenancy may be created by occupancy with consent only when the tenant pays rent to the owner.

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

H. 436 Murray Street

AL160142

(continued from 1/10/17)

The subtenant's petition alleging a disproportional share of rent was granted. The master tenant was held liable to the subtenant in the amount of \$7,391.04. The master tenant appeals, arguing that the ALJ ignored the fact that the original base rent was set by the landlord, not the master tenant, and that the subtenant paid rent directly to the landlord for two or four years. At the January 10, 2017 meeting, the Commissioners continued this appeal for further consideration at the February 14, 2017 Board meeting, and asked staff to inquire if either party is claiming the subtenant petitioner was at any time a co-tenant and not a subtenant.

MSC: To remand the case to the ALJ to consider reasonable allocation based on the number of occupants in the property, excluding children.
(Mosbrucker/Gruber: 4-1; Marshall dissenting)

IV. Remarks from the Public (cont'd)

A. Meifang Wang, the landlord at 2500 35th Avenue (AL160148) told the Board that there is no evidence of inadequate heat, and did not understand why her appeal was denied.

VI. Communications

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

A. Budget Proposal for Fiscal Year 2017-2018.

B. Annual Report on Buyout Agreements.

C. Geraghty v. Shalizi, recent California Courts of Appeal case.

D. Workload statistics for the month of December 2016.

E. Articles from S.F. Chronicle, S.F. Examiner, New York Times, Guardian UK, BeyondChron, KQED News, SFGate, CBS San Francisco and KTVU.

VII. Director's Report

Executive Director Collins congratulated Commissioner Hung on his very recent reappointment to the Board. He reminded the commissioners that their Forms 700, Sunshine Ordinance Training forms, and Certificate of Ethics Training forms are due on April 3. Executive Director Collins told the commissioners about the recent Courts of Appeal opinion Geraghty v. Shalizi. Executive Director Collins informed the commissioners that the Annual Report on Buyout Agreements was submitted at the end of January and is the first report profiling a full calendar year of filings.

VIII. New Business

A. Fiscal Year 2017-2018 Departmental Budget

Executive Director Collins discussed the proposed departmental budget for Fiscal Year 2017-2018. He informed the Board that a fixed two-year budget would not be required this coming fiscal year. After discussion, the following motion was made and voted upon:

MSC: To approve the proposed Departmental budget for Fiscal Year 2017-2018.
(Marshall/Gruber: 5-0)

XI. Calendar Items

March 14, 2017
8 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:21 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.