



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, May 9, 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 6:09 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of April 11, 2017.
(Mosbrucker/Marshall: 5-0)

IV. Remarks from the Public

A. Jeff Dulgar of the AIDS Legal Referral Panel, and attorney for the tenant at 3900 21st Street (AT170031), stated that the tenant does not contest his award of an overpayment of \$74,000 nor the illegality of the rent increases; he only contests the designation that the property is single-family home. Mr. Dulgar told the Board that there are two other tenant-occupied units on the same parcel of land. Mr. Dulgar stated that the tenant is a protected tenant and the finding of the property as a single-family dwelling puts the tenant at risk for owner move-in (OMI) and retaliatory evictions.

B. Saul Ferster, the attorney for the landlord at 1593 McAllister Street #204 (AL170033) told the Board that a remand is probably appropriate. He stated that the case requires an examination of the Administrative Law Judge's (ALJ) ruling about whether or not one retains their immunity to a Costa-Hawkins rent increase when they have vacated their apartment. Mr. Ferster argued that the ALJ relied on the decision in Drolapas but completely ignored that in Drolapas and Mosser there was a continuing occupancy, and that the legislature did not

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specifically say “continuous,” but a common sense reading of the statute would clearly show that a continuous occupancy was intended.

C. Jessica Alexandra, the attorney for the tenants at 1593 McAllister Street #204 (AL170033) stated that the landlord’s attorney misstated the facts, that the tenant did not vacate for 10 years, and she doesn’t believe that Geraghty is applicable. Ms. Alexandra stated that the tenant has rescinded the agreement entered into with the landlord under Ordinance Section 37.9E.

D. Yock Yan Moo, one of the tenants at 530 Larkin Street #51 (AT170026) told the Board that the landlord increased the rent three times and it forced her into an eviction. Ms. Moo stated that the paint is falling off, the landlords do not maintain the building, and there are still violations. Ms. Moo said that inspectors have come to check the violations, but the door is still broken, people steal things, rob packages, and go up to smoke on the roof.

E. The landlord at 1237 9th Avenue (AL170025) wanted to reiterate that the parties have moved on without litigation, the case has been settled, and both parties are happy.

V. Consideration of Appeals

A. 635 Lyon Street

AL170034

The subtenant’s petition alleging a disproportional share of rent was granted. The master tenant was found liable to the subtenant in the amount of \$4,160.00. On appeal, the master tenant claims that he 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 master tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Marshall/Mosbrucker: 5-0)

B. 530 Larkin Street #510

AT170026

The tenants’ petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that the rent increase was authorized by Civil Code Section 1954.53(d)(2) since the original occupants no longer permanently resided in the unit at the time the rent increase notice was served on November 2, 2016, and that the appealing tenants were subtenants who did not reside in the unit prior to January 1, 1996. The tenants appeal, arguing that no increase was authorized under Section 1954.53(d)(2) since the tenant petitioners were co-tenants and not subtenants at the time the notice of rent increase was served, and that the landlord waived the right to impose an unlimited rent increase under Rules and Regulations Section 6.14(c) because the landlord knew in 2013 that the original tenants no longer permanently resided in the unit.

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

C. 436 Murray Street

AT170029, AL170030

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 originally appealed, arguing 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 February 14, 2017 meeting, the commissioners voted to accept the appeal and remand the case solely for the ALJ to consider reasonable allocation based on the number of occupants in the property, excluding children. In the remand decision, the ALJ found that the subtenant petitioner's proportional share of the rent was \$559.06, and that the master tenant was held liable to the subtenant in the amount of \$2,893.38. On appeal, the master tenant argues that she did not see the rent checks paid directly to the owner by the subtenant and cannot verify the amount paid. The subtenant also appeals, arguing that the proportional share should be determined by the number of exclusively occupied rooms as determined in the original decision.

MSC: To deny both the master tenant and the subtenant's appeals.
(Mosbrucker/Abe: 4-1; Marshall dissenting)

D. 1237 – 9th Avenue

AL170025

The landlord appeals the decision denying its request for rescission of Ellis Act eviction notices. In the decision, the ALJ found that vacating a unit pursuant to a buyout agreement does not constitute extraordinary circumstances for purposes of rescinding an Ellis eviction notice. On appeal, the landlord argues that rescission should be granted based on extraordinary circumstances under the facts of this case.

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

E. 1750 Mission Street #20

AL170027

The tenant's petition alleging a substantial decrease in housing services was granted in part and denied in part. The landlords were found liable to the tenant in the amount of \$2,000.00 for unreasonable withholding of consent for an additional occupant. The ALJ denied the tenant's claim that the radiator was not maintaining the required minimum temperature in her unit. The landlords appeal, arguing that no decrease in services occurred because the denial of consent to an additional occupant was reasonable.

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

F. 352 Lexington Street

AT170028

The landlord's petition for certification of the costs of exterior painting of the entire building, roof replacement, and re-siding of the west wall was granted. The ALJ rejected the tenants' deferred maintenance objection since there was no evidence of a code violation or that the cost of the work increased as a result of deferred maintenance. On

appeal, the tenants argue that even though the April 2015 Notice of Violation (NOV) was timely abated, the work was not done properly and the same problem arose again in 2016.

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

G. 185 Parker Avenue #1

AT170032

The tenant's appeal was filed 8 days late because he was traveling for a wedding.

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

The landlord's petition for certification of the costs of a mandatory seismic retrofit as required by law was granted. The ALJ certified the claimed work and found that all of the subject tenancies began at least six months prior to commencement of work claimed in the petition. On appeal, the tenant in unit 1 argues that his unit should not be subject to the capital improvement passthrough, since his tenancy commenced within six months of the April 22, 2016 commencement date of the mandatory seismic work.

MSC: To accept the appeal and remand the case for the ALJ to consider whether the capital improvement costs may not be passed through to the tenant in unit 1 under the six-month rule in Regulation 7.12(b), with a hearing to be held only if necessary.
(Mosbrucker/Marshall: 5-0)

H. 4076 - 4080 – 24th Street

AL170023

The landlord's petition for certification of the costs of exterior painting and new windows was granted in part and denied in part. The ALJ did not certify the total petitioned cost for the exterior paint because the evidence showed that the exterior paint was peeling and in disrepair for many years, and the landlord deferred maintenance that resulted in the DBI's issuing an NOV on January 12, 2012. The ALJ therefore determined that painting repair costs identified in the estimator's report as additional repairs, siding and flashing repairs, and deck repair were necessitated by the current landlord's deferred maintenance resulting in a code violation, and were disallowed pursuant to Rules and Regulations Section 7.15(a). The landlord appeals, arguing that Regulations Section 7.15(a) is not applicable since there was a change in ownership in 2010 when the property was placed in a trust created by the will of the former owner.

MSC: To deny the appeal.
(Marshall/Mosbrucker: 4-1; Abe dissenting)

I. 3900 – 21st Street

AT170031

The tenant's appeal was filed 27 days late because he had only hired legal counsel after the decision had been issued and he had learned about his legal rights.

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

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

The tenants' petition alleging an unlawful rent increase was granted, and the landlords were found liable to the tenant for rent overpayments in the amount of \$74,400.00. The ALJ found that the subject unit was not exempt from rent control limitations under Civil Code Section 1954.52 since the tenant petitioner was a lawful subtenant who resided in the unit prior to January 1, 1996, and moved into a continuing tenancy as a lawful subtenant of original occupant Rogers. Tenant Reeves appeals only the finding that the unit is a single-family dwelling, and submitted new evidence to show that the property is not a single-family dwelling.

MSC: To accept the appeal with instructions to the ALJ to delete the finding in the decision that the unit is a single-family dwelling and make no determination on that issue.
(Mosbrucker/Marshall: 5-0)

J. 1593 McAllister Street #204

AL170033

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the increase was not authorized by Civil Code Section 1954.53(d)(2) since tenant petitioner Shaquille Woods resided in the unit prior to January 1, 1996 and was a lawful subtenant at the time the notice of rent increase was served on November 30, 2016. On appeal, the landlord argues that the statute includes the additional requirement that the lawful subtenant must also have continuously resided in the unit since prior to January 1, 1996, which is not the case. The landlord also argues that the parties entered into a settlement agreement, which raises the issue of whether the tenant's claim in the petition has been fully and finally resolved.

MSC: To accept the appeal and remand the case to the ALJ for a hearing to consider evidence and argument as to whether the parties' settlement agreement bars the tenant petitioners' claim of unlawful rent increase.
(Mosbrucker/Marshall: 5-0)

IV. Remarks from the Public (continued)

A. Sara Staley, the tenant at 1750 Mission Street #20 (AL170027) thanked the commissioners for denying the appeal. She stated that she appreciated discovering the Rent Board existed and that the Board takes the time to do the work that they do.

B. Yock Yan Moo, one of the tenants at 530 Larkin Street #510 (AT170026) told the Board that she has been living in the property for almost 23 years, that the wall is leaking, and that there is mold. She said that when she got the notice of rent increase, she finally requested

that the landlord inspect the problems, and that they shouldn't be able to increase the rent with these types of problems occurring.

VI. Communications

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

A. Workload statistics for the month of March 2017.

B. Report on Twenty Years of Annual Eviction Notices.

C. Articles from S.F. Chronicle, S.F. Examiner, New York Times, CurbedSF, SFist, SFGate, NBC Bay Area, and SocketSite.

VII. Director's Report

Executive Director Collins told the Board that he will be presenting at the PPMA meeting on May 12, and that staff will be attending the Earthquake Safety Fair on June 15. Executive Director Collins told the Board that staff members Greg Miller, Ben Ng & Josh Vining participated in SFAA Trade Show on April 17, and that on May 3, Deputy Director Varner presented before the Board of Supervisors' Government Audit and Oversight Committee on Language Access Ordinance compliance. Executive Director Collins informed the Board that he also presented at a Government Audit and Oversight Committee meeting on April 28 regarding evictions, and provided background information about OMs.

Senior ALJ Lee informed the Board about Hayes v. Kardosh, an unpublished California Court of Appeal decision that interpreted Rules and Regulations Section 12.20 in a way that could negatively impact the eviction protections in the Ordinance, and that if the decision is published, Rent Board staff will propose a clarifying amendment to Regulation 12.20 for the Board's consideration.

VIII. Calendar Items

June 13, 2017

10 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:37 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.