



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, July 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 6:02 p.m.

II. Roll Call

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

Commissioner Hung appeared on the record at 6:12 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of June 14, 2016.
(Mosbrucker/Abe: 4-0)

IV. Remarks from the Public

A. Tenant Colleen Turner of 1743 Golden Gate Avenue #7 (AT160078) wanted to bring attention to the documents she submitted the day of the meeting proving that her husband is unemployed as of June 30.

B. Christine Krieg, the master tenant at 748 Page Street #9 (AL160079) stated that when the hearing was scheduled, she was traveling long term for work and didn't know about it in advance. She said that she believes the subtenant has submitted false testimony, and that the value of the furniture for rent was much higher, and the unit was actually fully furnished.

C. Nushin Mavaddat, the tenant at 2525 Judah Street #202 (AT160068) stated that the landlord's petition is frivolous and he has failed to prove his claim. He said that in an October 5, 2007 letter from the landlord's attorney, it was stated that he was the tenant using all three units and was considered the sole authorized tenant. Mr. Mavaddat argued that he can have

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more than 1 proximate unit to have one single home, that all 3 units constitute one indivisible home, and that while the use of a home may change over time, he never vacated and was a tenant in occupancy. He stated that he, his mother & his wife lived in all three units, that he requested two people to live in unit 202 because he was going to get married, and that the landlord's recent photos of unit 202 didn't include photos of his bedroom and personal effects, maybe to confuse the Board.

D. Joy Goldblatt said that she came to the Board meeting to testify on behalf of Nushin Mavaddat, the tenant at 2525 Judah Street #202 (AT160068). Ms. Goldblatt stated that she has known the tenant for 40 years, and has known him to live in and rent all 3 apartments and uses them as his home.

E. Howard Kiwata told the Board that he is a friend of tenant Nushin Mavaddat, of 2525 Judah Street #202 (AT160068) and has known him since 1980. Mr. Kiwata said that the tenant entertains guests and has meetings in unit 202, and that his active TV is in that room. They are avid sports fans and watch games and have dinner there.

F. Rita Loo, the landlord at 1432 Visitacion Avenue (AL160071) stated that she lives downstairs. She said that the upstairs tenant accuses her of using the dryer and washer, but that the tenants stole it and replaced it with coin-operated machines, and told her they would pay her \$80 a month for 19 months but so far she hasn't seen a penny. Ms. Loo told the Board that the case was denied in small claims court and she wants to be given back the washer and dryer. She explained that she has the records that the tenants have not paid the full rent each month.

G. Yan Du, a witness for the landlord at 1432 Visitacion Avenue (AL160071), said that a no parking sign was on the garage door, and he witnessed how the tenants took the sign off the door.

H. Francis Ha stated that he is the interpreter for the landlord at 1432 Visitacion Avenue (AL160071), and that during the hearing, the tenant provoked the landlord and used foul language. Mr. Ha said that there is no evidence of the proof of certain rent payments and the decision has to be reconsidered. Mr. Ha told the Board that with the washer and dryer income, there was a big contradiction, that there were strange people going into the apartment and the tenant was running a business. He said that he wants another chance to re-hear the case and be open and fair.

I. Tenant Marcelino Fontino at 1432 Visitacion Avenue (AL160071) told the Board that he went to small claims and won, and the only reason why the tenants came to the hearing was that the landlord kept increasing the rent and refused to give rent receipts. Mr. Fontino said that they went to the landlord and expressed that the washer and dryer were old or broken and used their own money to buy the coin-operated washer-dryer. He said that the landlord said she wouldn't replace the washer and dryer because she is an old lady and can't do it. He said that the only people who do the wash are people in his house, and he uses the coins to pay for other things like the rent, water and electricity. Mr. Fontino said he doesn't see that they're doing anything wrong because they have been paying the rent and the landlord doesn't stay at the downstairs unit.

V. Consideration of Appeals

A. 1743 Golden Gate Avenue #7

AT160078

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

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

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

B. 1008 Larkin Street #312 and #405A

AT160076, AT160077

The tenant in unit 405A filed her appeal 24 days late because she did not realize she had to complete the hardship application within 15 days of the date of mailing of the decision.

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

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

The landlord's petition seeking 7% rent increases based on increased operating and maintenance expenses to the tenants in 24 units was granted. The tenants in two 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/Qian: 5-0)

C. 825 Post Street #123

AT160073

The tenants' appeal was filed 61 days late because they moved out of state in September 2015, did not receive the decision until April 29, 2016, and shortly thereafter had a baby.

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

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

The landlord's petition seeking 7% rent increases based on increased operating and maintenance expenses to the tenants in 57 units was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.

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

D. 970 Chestnut Street #13

AL160069

The subtenant's petition alleging that he paid more than a proportional share of rent was granted and the master tenant was found liable to the subtenant in the amount of \$2,600. On appeal, the master tenant claims that the Administrative Law Judge (ALJ) erred in determining the value of amenities and services provided and that certain value determinations are inconsistent with prior Rent Board decisions.

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

E. 748 Page Street #9

AL160079

The subtenant's petition alleging that she paid more than a proportional share of rent was granted and the master tenant was found liable to the subtenant in the amount of \$5,864.22. 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. The master tenant also appeals on the basis that she provided a fully furnished apartment to the tenant, that she did not threaten the subtenant, and that the value of the provided furnishings was much higher than what the ALJ found.

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

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/Qian: 5-0)

F. 1432 Visitacion Avenue

AL160071

The tenants' petition alleging a substantial decrease in housing services and that the landlord unlawfully increased the rent over the allowable limits was granted as to the unlawful rent increase claim and partially granted as to the claim of decreased housing services. The landlord was found liable to the tenants in the amount of \$3,230.00 for rent overpayments and \$900.00 for rent reductions corresponding with decreased housing services. On appeal, the landlord argues that a small claims court case is pending, that money owed to the landlord was not considered by the ALJ, that unjust enrichment, unfair practices and senior abuse was neglect, that due process is at issue and there was no standing, and there was hearsay evidence from the tenants' anticipatory breach of contract.

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

G. 237 Font Boulevard

AT160039
(continued from 6/14/16)

The tenant's petition alleging that the landlord had improperly increased the rent over the allowable limits under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that a tenancy was not created between the tenant petitioner and the landlord by oral or written agreement, nor by consent and acceptance of rent, and that at the time of the service of the notice of rent increase, the tenant petitioner did not have a direct landlord-tenant relationship with the landlord. On appeal, the tenant claims that he is physically and mentally disabled per Social Security, that he had no legal representation, that his rights were violated under the Americans with Disabilities Act (ADA), and that he did not know that he had to bring that up at the hearing.

This appeal was withdrawn on July 7, 2016.

H. 146 Gough Street #46

AT160070

The tenant's petition alleging the landlord had increased the rent over the allowable limits under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that the tenant did not meet his burden of proving that he moved into the subject unit prior to January 1, 1996. The ALJ also determined that the tenant did not establish a direct landlord-tenant relationship, so the tenant was a subtenant and not a co-tenant at the time the notice of rent increase was served. The ALJ found that the rent increase was authorized by Section 1954.53(d) of the Costa-Hawkins Rental Housing Act. On appeal, the tenant argues that the ALJ erred in finding: that the tenant had insufficient evidence to prove that he moved into the unit prior to January 1, 1996, and that the landlord was credible regarding that issue; and, that there was insufficient evidence to show that the tenant has a direct landlord-tenant relationship with the landlord.

This appeal was withdrawn on July 7, 2016.

I. 163 Clipper Street

AT160074

The tenants' petition seeking a rent reduction for decreased housing services was granted. The ALJ found that the landlord was liable to the tenants in the amount of \$2,400.00 for the condition of the back room. The tenants appeal the low amount of the monthly rent reduction on the basis that the back room was used as a bedroom, not a porch, and cite evidence that the landlord knew that the back room was inhabited and would continue to be inhabited after renovation work was completed.

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

J. 914 Wisconsin Street #1

AT160067

The landlords' petition seeking a 7% rent increase based on increased operating and maintenance expenses to the tenants in two units was granted. The tenants in unit 1 appealed, requesting a hearing *de novo*, or that the landlord's petition be dismissed, and

that the landlord compensate the tenants for 6 months of rent when the apartment was uninhabitable due to lead dust and construction debris caused by illegal demolition.

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

K. 35 Russia Avenue

AT160072

The landlord filed a petition for determination of Rent Ordinance jurisdiction for all of the units in the subject property. The ALJ found that all the units at the subject property are exempt from the Rent Ordinance and not subject to the jurisdiction of the Rent Board pursuant to Rules and Regulations Section 1.17(e) because they are newly constructed rental units for which a certificate of occupancy was first issued after June 13, 1979. On appeal, the tenant questions the validity of the Certificate of Final Completion and Occupancy (CFCO) issued on December 10, 1980 since the subsequent approval of other City departments and a separate Permit of Occupancy may be required.

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

L. 2525 Judah Street #202

AT160068

The landlord filed a petition requesting a determination of whether the landlord is entitled to impose an unlimited rent increase pursuant to Rules and Regulations Section 1.21 as to the three units the tenant rents: 201, 202 and 203. The petition was denied as to units 201 and 203, and granted as to unit 202. The ALJ found the tenant respondent was not a "tenant in occupancy" of unit 202 within the meaning of Section 1.21 and authorized the landlord to impose an unlimited rent increase. On appeal, the tenant argues that the decision is in error because the tenant's absence from unit 202 is not dispositive of the issue of whether or not, at times relevant to the petition, the tenant was a "tenant in occupancy" of unit 202, and that the landlord failed to meet its burden of proof regarding the occupancy status of unit 202.

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

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

M. 714 Natoma Street #A

AL160075

The landlord's appeal was filed 388 days late because she only recently discovered the alleged error in the petition, which was during the same time that the landlord's father became ill and her daughter, who is the property manager, had a baby.

MSC: To find good cause for the late filing of the appeal.
(Gruber/Abe 4-1; Mosbrucker dissenting)

The landlord filed a petition seeking certification of the cost of exterior paint and a new roof system to 5 of 6 units. The landlord failed to appear for the initial hearing and the case was dismissed. The landlord appealed the dismissal to the Board and the case was remanded to the ALJ for a new hearing. On remand, the ALJ certified the requested cost for the new roof, but denied the requested cost for the exterior paint. The landlord appeals on the basis that a clerical error was made in entering the base rent for unit 714-A, submits documentation to show that the base rent amount should have been higher on the date of filing of the petition, and requests that the decision be corrected to reflect the true base rent amount at the time of filing of the petition.

MSC: Accept the appeal to remand for a hearing on the issue of the lawful rent amount for unit 714-A and both the landlord and tenant can present evidence regarding the rent, and if necessary, make a technical correction as to that finding.
(Mosbrucker/Qian: 5-0)

VI. Public Hearing

Three members of the public spoke to the proposed new Rules and Regulations Section 10.15 and proposed amendments to Rules and Regulations Sections 4.14 and 6.16 that would establish a uniform procedure for tenants to request financial hardship relief from capital improvement passthroughs, water revenue bond passthroughs, utility passthroughs, and operating and maintenance expense rent increases.

A. Rosa Maria Cavalho of the Tenderloin Housing Clinic (THC) Code Enforcement Outreach Program said that she conducts advocacy in the Tenderloin around habitable living conditions and is familiar with assisting tenants. Ms. Cavalho told the Board that it is difficult to explain tenant hardship appeals for operating and maintenance expense petitions, and highlighted two tenants who had a lot of difficulty with itemizing their income, assets, and expenses. She said that it is easier with capital improvement hardship applications, is in support of streamlining for one document, and hopes the Board approves the change.

B. Ana Gee, who works at THC, told the Board that it will be a lot easier to have just one application, as this is what they deal with every day, and it will be helpful for the tenants.

C. Pratibha Tekkey, who runs the organizing department at THC and oversees the Central City SRO Collaborative and La Voz Latina told the Board that she supports the proposed amendments.

After the public comment and some short discussion, the Board voted on and passed the following three motions to implement the proposed Rules and Regulations:

MSC: To adopt proposed Rules and Regulations Section 10.15 to be effective 8/13/16.
(Qian/Abe: 5-0)

MSC: To adopt amended Rules and Regulations Section 4.14(l) to be effective 8/13/16.
(Qian/Abe: 5-0)

MSC: To adopt amended Rules and Regulations Section 6.16(g)(iii) to be effective 8/13/16.
(Qian/Abe: 5-0)

VII. Communications

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

- A. Copy of the lawsuit filed in S.F. Superior Court on June 10, 2016 by the San Francisco Apartment Association and San Francisco Small Property Owners Institute challenging the validity of recent amendments to the Ordinance regarding owner move-in and certain other no-fault evictions for educators or minor children.
- B. The office workload statistics for the month of May 2016.
- C. Articles from San Francisco Magazine, the S.F. Examiner, SFGate, Peninsula Press, and The Guardian.

VIII. Director's Report

Acting Executive Director Collins told the Board that the legislation amending the Administrative Code to allow persons receiving tenant-based rental assistance under the federal Housing Opportunities for People With AIDS (HOPWA) program was signed by the Mayor. It will become effective July 31, 2016. He informed the Board that a lawsuit challenging the validity of recent amendments to the Ordinance regarding owner move-in and certain other no-fault evictions during the school year for educators or minor children has been filed, and that the City's response is due at the end of July and a hearing will be on August 18. Acting Executive Director Collins thanked the Board for passing today's amendments. He also informed the Board that staff have begun to process capital improvement petitions without a hearing. In a preliminary report, SALJ Gartzman told the Board that 73 cases have been identified that are immediately ready for a decision, 42 have already been put in the process and the ALJ is already starting writing decisions. She explained that this has taken about half the cases out of our hearing backlog already, and is about the same percentage as the pilot project of 2015.

IX. Calendar Items

August 16, 2016
14 appeal considerations

X. Adjournment

President Gruber adjourned the meeting at 8:00 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.