



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, August 8, 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 6:05 p.m.

II. Roll Call

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

Commissioners appearing on the record late: Hung, 6:06 p.m.

III. Approval of the Minutes

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

IV. Remarks from the Public

A. *(There were no remarks from the public.)*

V. Consideration of Appeals

A. 1318 Haight Street

AT170067

The tenant's application requesting deferral of a capital improvement passthrough and a water revenue bond passthrough on the basis of financial hardship was dismissed due to the tenant's non-appearance. On appeal, the tenant claims that he did not receive the Notice of Hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

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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. 36 Annapolis Terrace

AL170066

The tenant's petition alleging an unlawful rent increase was dismissed due to the tenant's non-appearance. The tenant appealed, and the Board granted the appeal and remanded the case to the Administrative Law Judge (ALJ) to hold a new hearing. In the decision on remand, the landlord was found liable to the tenant in the amount of \$5,600.00 for rent overpayments. On appeal, the landlord 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 landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Marshall/Mosbrucker: 5-0)

C. 2512 Folsom Street

AL170054

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the landlord failed to meet its burden of proving that the original occupants did not permanently reside in the unit at the time the notice of rent increase was served on February 22, 2017, and the rent increase was therefore not authorized by Civil Code Section 1954.53(d)(2). On appeal, the landlord's property manager claims that he was out of town on the day of the hearing, and that the landlord planned to attend the hearing in his place, but required emergency medical treatment that day, and was therefore unable to appear.

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

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

D. 1917 Oakdale Avenue #E

AL170055

The tenant's petition alleging a substantial decrease in housing services was granted in part and denied in part. The landlord was found liable to the tenant in the amount of \$6,422.50 for a broken heater, a broken stovetop, a moldy bedroom floor with holes, and inoperable and missing electrical outlets. The landlord appeals, arguing that an emergency illness precluded him from attending the hearing and submitted supporting evidence.

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

E. 937 Clay Street #218

AT170059

The tenant's application requesting deferral of an operating and maintenance (O&M) expense passthrough on the basis of financial hardship was denied as untimely since it was not filed within one year of the effective date of the O&M rent increase. The tenant appeals, arguing that he filed as soon as he knew he had the right to do so, that he qualifies for hardship because he receives means-tested public benefits, and that the Board should reconsider the late filing of the application given his financial status.

MSC: To accept the appeal to find good cause for the late filing of the hardship application and to remand the case to the ALJ to consider the tenant's claim of financial hardship.
(Marshall/Mosbrucker: 5-0)

F. 1940 Ellis Street

AL170057, AL170058

The subtenant's petition alleging that the master tenant charged the subtenant a disproportional share of rent was granted. The master tenant was found liable to the subtenant in the amount of \$7,137.56. The master tenant appeals both on the basis of financial hardship and the merits, arguing that the value of the furnishings should be no less than \$400.00 per month.

MSC: To deny the appeal on the merits and to accept the appeal on the basis of the master tenant's financial hardship claim only and to remand the case to the ALJ to consider a payment plan for the master tenant's claim of financial hardship.
(Abe/Mosbrucker: 5-0)

G. 1442 Waller Street

AL170052

The master tenant's appeal was filed 9 days late because he was out of town and because his attorney miscalendared the appeal filing deadline.

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

The subtenant's petition alleging that the master tenant charged the subtenant a disproportional share of rent was granted. The master tenant was found liable to the subtenant in the amount of \$4,166.20. The master tenant appeals, arguing that the ALJ erred in finding the living room was used exclusively by the master tenant and was not common area space, that the Rent Board has no jurisdiction over a matter where the tenant or subtenant is no longer in occupancy, and that the value of the common area furnishings was set too low.

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

H. 935 Kearny Street #118

AT170056

The tenant's petition alleging an unlawful rent increase was granted. The ALJ found that the tenant's base rent was \$698.36, and that the landlord was liable to the tenant for rent overpayments in the amount of \$237.77. The tenant appeals, arguing that his base rent should be \$476.07 because that was the pro-rated amount he paid at the inception of his tenancy.

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

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

I. 1324 Fell Street

AT170065

The tenants' petition alleging an unlawful rent increase and a substantial decrease in housing services was denied. The ALJ found that the rent increase was authorized by Rules and Regulations Section 6.14 and was lawful, because the last original occupant had vacated the unit, the tenant petitioner Cavey was timely served with a 6.14 notice when she moved into the property, and the tenant petitioners Miller and Roverso moved into the unit subsequent to the service of the notice of rent increase. The ALJ denied the claim of decreased housing services on the basis that the landlord timely addressed the mold and rodent issues when requested by the tenants. On appeal, tenants Miller and Roverso argue that they moved into the unit under the original terms of the lease under tenant Cavey, that the landlord will continue the tenancy with tenant Cavey, and that no repairs have been made.

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

J. 634 Powell Street #47

AT170053

The tenant's petition alleging an unlawful rent increase was granted. The ALJ found that that landlord was liable to the tenant in the amount of \$718.00. The tenant appeals, arguing that the April 14, 2017 notice of rent increase should be found invalid since the landlord did act in bad faith, and that the increase should be null and void until the tenant's anniversary date in 2018.

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

K. 2810 Gough Street #3

AL170064

The landlord's appeal was filed 21 days late due to his pre-planned travel outside the country.

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

The tenants' petition alleging a substantial decrease in housing services was granted. The landlord was found liable to the tenants in the amount of \$2,104.00 for a water intrusion. On appeal, the landlord argues that the unit was available for the tenants' use on an earlier date and therefore the overpayment should be reduced.

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

VI. Communications

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

- A. A copy of the amended Rent Ordinance effective July 23, 2017.
- B. The Revised Legislative Digest and Ordinance amending the Administrative Code as to Owner Move-In Reporting Requirements, passed by the Board of Supervisors on July 18, 2017, and signed by the Mayor on July 27, 2017.
- C. A written statement for public comment from a non-party to the appeal for 935 Kearny Street #118 (AT170056).
- D. The office workload statistics for the month of June 2017.
- E. Articles from the S.F. Examiner, NBC Bay Area, MissionLocal, SFGate, SFist, BeyondChron, National Real Estate Investor Online, Bay Area News Group, KALW, Los Angeles Times, and the Sacramento Bee.

VII. Director's Report

In Executive Director Collins' absence, Deputy Director Varner told the Board that the new requirements on Ellis Relocation payments was signed by the Mayor and the changes to the Rent Ordinance were made effective on July 23, 2017, the primary change being the definition of "Eligible Tenant." Deputy Director Varner told the Board that the legislation to modify the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADU) passed the Board of Supervisors on July 18, 2017 and was signed by the Mayor on July 27, 2017, taking effect on August 27, 2017. Finally, Deputy Director Varner informed the Commissioners that the Mayor signed the new owner move-in (OMI) legislation on July 27, 2017, and that a portion of the legislation would be effective on August 27, 2017.

Senior ALJ Gartzman outlined the new amendments to the Ordinance regarding OMI eviction procedures and reporting requirements. She articulated the differences between the amendments taking effect on August 27, 2017 to Ordinance Sections 37.9(a)(8), 37.9(f), 37.9B, 37.10A, and 37.11A, and the amendments taking effect on January 1, 2018 to Ordinance Sections 37.6(k), 37.9(a)(8), and 37.9B. Senior ALJ Gartzman informed the Board that there are three possible areas of amended Section 37.9(a)(8) where the Board could decide to adopt clarifying regulations: (1) 37.9(a)(8)(v) – what kind of evidence is relevant toward proving whether a landlord did not perform an OMI eviction in good faith; (2) 37.9(a)(8)(vii) - what information must be included in the Statement of Occupancy; and (3) 37.9(a)(8)(vii) – what types of supporting documentation should be required to show that the unit is being occupied as the landlord’s or relative’s principal place of residence. At the conclusion of the presentation, the Commissioners agreed to calendar a discussion of possible regulations for the next Board meeting on September 12, 2017.

VIII. Calendar Items

September 12, 2017
13 appeal considerations

New Business
Amendments to the Ordinance regarding OMI and possible Regulations

IX. Adjournment

President Gruber adjourned the meeting at 7:00 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.