



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, September 12, 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 6:06 p.m.

II. Roll Call

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

Commissioners appearing on the record late: Mosser, 6:08 p.m.; Wasserman, 6:09 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 8, 2017.
(Mosbrucker/Marshall: 4-0)

IV. Remarks from the Public

A. Richard Doctrow, the tenant at 1231 – 11th Avenue #2 (AT170078), stated that he didn't receive the landlord's response to his appeal until Thursday evening, so he didn't submit his reply until yesterday, and asked that the decision be delayed.

B. Logan Howard, speaking on behalf of the landlord at 5530 Mission Street #22 (AL170080), told the Board that he did not receive an original repair request notice from the tenant; rather, he received notice from the Department of Building Inspection (DBI) and repaired and corrected within 30 days and all violations were abated. Mr. Howard said that he wasn't present at the original hearing and repairs were made timely.

C. Irene Melitas, a co-owner of 47 – 14th Avenue (AL170068), told the Board that work did not actually commence on the disputed projects until November 2015, a full 26 months after

♻️ Printed on 100% post-consumer recycled paper

the start of the initial tenancy. She said that the appeal firmly established that the 2013 costs were in preparation for the work that began in 2015, and these costs did not constitute commencement for the purposes of the six-month rule. Ms. Melitas stated that the permit obtained in 2013 could not have marked the start of the construction period since work was only allowed to begin pursuant to the second permit extension in 2015 after yielding to the tenant's demands for relocation-based compensation, and that the sworn testimony at hearing supports the position stated in the appeal.

D. Michelle Horneff-Cohen of Property Management Systems, the representative for the landlord at 47 – 14th Avenue (AL170068), stated that the hearing recording was focused on why she believed that the 2013 costs should be certified, not why the 6-month rule wouldn't apply. Ms. Horneff-Cohen said that the work did not commence until the second permit extension in 2015, and asked that the Board grant the appeal for the siding and safety ladder.

V. Consideration of Appeals

A. 5530 Mission Street #22

AL170080

The tenant's petition alleging a substantial decrease in housing services was granted. The landlord was found liable to the tenant in the amount of \$300.00. 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.
(Mosbrucker/Wasserman: 5-0)

B. 1698 – 27th Avenue, Lower Unit

AL170071

The tenant's petition alleging a substantial decrease in housing services was granted. The landlord was found liable to the tenant in the amount of \$5,390.00. On appeal, the landlord claims that she did not receive the Notice of Hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

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

MSC: To accept the appeal and remand the case pursuant to the stipulated settlement agreement of the parties.
(Wasserman/Gruber: 5-0)

C. 2450 – 20th Avenue

AL170074

The tenants' petition alleging an unlawful rent increase was granted. The ALJ found that the tenants' base rent was \$400.00, and that the landlord was liable to the tenants for rent overpayments in the amount of \$10,050.00. The landlord appeals, arguing that the

tenants' base rent should be \$450.00 and that the rent was raised due to additional occupants in the unit.

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

D. 1135 Cabrillo Street

AT170079

The tenant's petition alleging a substantial decrease in housing services was denied. The ALJ found that the tenant did not meet her burden of proving that the landlords' restrictions on shared use of the kitchen for cooking constituted a substantial decrease in housing services; that the tenant failed to prove that use of the hallway closet and garage for storage were housing services at the commencement of the tenancy, or that additional consideration was paid when use of the closet or the garage for storage was permitted; and that the tenant failed to meet her burden of proving that any interference by the landlords with the tenant's quiet enjoyment constituted a substantial decrease in housing services. The tenant appeals, arguing that the ALJ erred by not considering the landlord and tenant's initial agreement regarding kitchen and garage use.

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

E. 181 Charter Oak Avenue

AL170077

The tenant's petition alleging an unlawful rent increase and a substantial decrease in housing services was granted. The ALJ found that the landlord was liable to the tenant for rent reductions corresponding with decreased housing services in the amount of \$5,554.00 for a leaking living room ceiling, and a lack of operable stove burners, kitchen fan, and properly working heating system. The ALJ also found the landlord liable for rent overpayments in the amount of \$11.98 and that the tenant's base rent is \$1,154.75. The landlord appeals, arguing under state law that he has no duty to repair the property if the tenant is in substantial violation of his obligation to keep the property clean and sanitary, that the tenant was responsible for the damages the tenant claims were decreased housing services, and submits evidence from his contractor.

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

F. 218 Union Street #6

AL170070

The tenants' petition alleging a substantial decrease in housing services was granted. The ALJ found that the landlord was responsible for rent overpayments in the amount of \$3,680.00 for limited access to the hall closet. The landlord appeals, arguing that the initial rent was reduced partially for the limited access to the hallway closet, that the tenants consented to the condition, that the tenants are incorrectly calculating the square footage of the closet, and that amongst the three closets in the unit, there is adequate space for a couple.

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

G. 1217 Arguello Boulevard #2

AT170072

The tenants' appeal was filed 2 days late because they did not realize the appeal had to be received at the Rent Board by the 15-day deadline, not postmarked by the 15-day deadline.

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

The tenants' petition alleging a substantial decrease in housing services and requesting that the Rent Board determine the amount of compensation pursuant to Administrative Code Chapter 65A for temporary severance of numerous housing services due to the landlords' performance of mandatory seismic retrofit work was granted. The landlord was found liable to the tenants in the amount of \$2,645.00 for lack of quiet enjoyment, use of the backyard, use of storage, use of laundry, and bicycle storage. The tenants appeal the ALJ's finding on the quiet enjoyment item only, arguing that the mandatory soft story work was completed prior to July 16, 2016, and therefore the tenants should be compensated a greater amount for a longer time period without quiet enjoyment of the unit.

MSC: To deny the appeal except for a technical correction to find the seismic work was completed on July 1, 2016 rather than July 16, 2016.
(Wasserman/Gruber: 5-0)

H. 300 Buchanan Street #108

AL170069

The tenant's application requesting deferral of an operating and maintenance (O&M) expense passthrough, a capital improvement passthrough, and a water revenue bond passthrough on the basis of financial hardship was granted. The landlord appeals, arguing that the tenant has a roommate who resides at the property and that the income and amount paid by the roommate should be considered by the Rent Board when making a determination on the hardship application.

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

I. 351 Turk Street #1220

AL170076

The landlord appeals the decision denying its petition under Rules and Regulations Section 1.21. In the decision, the ALJ found that the landlord petitioner did not meet its burden of proving that the subject unit was not tenant respondent Kenza Abourraja's principal place of residence at the time the petition was filed on February 23, 2017. The ALJ determined that the landlord is not entitled to increase the rent without limitation under Regulations Section 1.21. The landlord appeals, arguing that the tenant's residence in another city in order to attend school cannot be considered a "reasonable temporary absence" from the property, and that the evidence presented at hearing strongly supports

that the tenant did not principally reside at the subject unit and therefore was not a “tenant in occupancy” when the petition was filed.

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

J. 1231 – 11th Avenue #2

AT170078

The tenant appeals the decision granting the landlord’s petition under Rules and Regulations Section 1.21. In the decision, the ALJ found that the subject unit was not the tenant’s principal place of residence at the time the petition was filed on December 7, 2016, and that there was no other tenant in occupancy. The ALJ determined that the landlord is entitled to increase the rent without limitation under the Ordinance, and that the landlord’s March 1, 2017 increase to \$2,375.00 is authorized by Regulations Section 1.21. The tenant appeals, arguing that that his principal place of residence is in San Francisco, but that he was temporarily absent from the unit due to the illness and death of his father, and that he subsequently had to take care of his mother.

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

K. 1528 Baker Street

AT170075

The landlord’s petition for certification of the costs of windows in the subject unit, building insulation, garage door replacement and dry rot abatement around garage door frame, exterior painting, porch lights and doorbells, alley light fixture, front door handles and locks and mailboxes, entry stair handrail, and electrical upgrade was granted. On appeal, the tenant argues that the exterior painting and insulation work have not improved his unit, that the rent increase for the exterior painting is excessive, and that a banked rent increase together with rent increases for the capital improvements are unreasonable.

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

L. 47 – 14th Avenue

AL170068

The landlord’s petition for certification of the costs of exterior painting of the light well stairway, installation of smoke detectors and carbon monoxide detectors, replacement of unit 47’s water heater, rear exterior siding replacement, and replacement of a fixed access ladder to one of two units on the property was granted in part and denied in part. The ALJ found that the tenancy in unit 47 began on September 2, 2013, which was within 6 months of the October 14, 2013 commencement date of the replacement of the rear exterior siding and replacement of the fixed access ladder, and that those costs may not be passed through to the subject unit. The landlord appeals, arguing that an exception should be made to the application of the six-month rule under the facts of this case due to the “groundless” objections of the tenant, and that work did not ultimately commence until November 10, 2015.

MSC: To deny the appeal.

(Mosbrucker/Marshall: 5-0)

M. 1888 Golden Gate Avenue #10, #14, #22, #32

AL170073

The landlord's petition for certification of the costs of a mandatory soft-story seismic retrofit required by law for passthrough to 11 of 15 residential units was granted in part and denied in part. The ALJ found that the tenancies in units 10, 14, 22 and 32 began on February 14, 2015, December 1, 2014, April 18, 2014, and April 15, 2014 respectively, which were all after the March 20, 2014 commencement date of the project, and that none of the costs may be passed through to units 10, 14, 22 and 32. The landlord appeals, arguing that the Rent Board's interpretation of the six-month rule is inconsistent with California case law and that the Board should make an exception to the application of the six-month rule in mandatory seismic retrofit cases since the large numbers of such required work has created unprecedented delays between the engagement of an architect and the actual physical work by the contractor.

MSC: To deny the appeal.

(Marshall/Mosbrucker: 3-2; Gruber, Wasserman dissenting)

IV. Remarks from the Public (cont.)

A. Irene Melitas, one of the landlords at 47 – 14th Avenue (AL170068), stated that at the time the property was rented, no one could have expected the two-year delay, which increased her cost over the base rate by 20%, and that change orders amounted to 40% of the original estimate. She said that the fact that they pulled a permit does not evidence that the work commenced, because they had to pull another permit two years later.

B. Bradley Low, the landlord at 1888 Golden Gate Avenue (AL170073) told the Board that because of the long delay in getting a permit, you don't know when the architect draws the plan how much the construction will be 2 years down the road, and don't know how to adjust that into the market rent.

VI. Communications

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

A. A full updated copy of the unofficial version of the Rent Ordinance.

B. A partial copy of the text of the new OMI amendments, Rules and Regulations Sections 12.14 and 12.17, and Administrative Code Chapter 100.

C. Monthly workload statistics for the month of July 2017.

D. Articles from KCET, SFGate, The Nation, S.F. Examiner, S.F. Chronicle, New York Times, BeyondChron, SocketSite, and CityLab.

VII. Director's Report

Executive Director Collins told the Board that he is providing a draft of the 2016-2021 five-year strategic plan, and that the agency is required to put a 1-page summary of this plan on the website. Executive Director Collins agreed that he would prepare and distribute a draft 1-page summary of the strategic plan to the Board. Executive Director Collins introduced the new Citizens Complaint Officers, René Juárez and Brandon Lawrence.

VIII. New Business

A. Amendments to the Ordinance regarding owner move-in evictions and possible Regulations

Senior ALJ Gartzman engaged the Commissioners in a preliminary discussion about the new Ordinance amendments regarding OMI eviction procedures and reporting requirements, specifically regarding potential changes to Rules and Regulations Sections 12.14 and 12.17. SALJ Gartzman requested direction from the Commissioners, and reminded them that it would be helpful to have any new amendments to the Regulations finalized by January 1, 2018. The tenant commissioners presented their suggestions for changes to Section 12.14: to enumerate a list of factors relevant to determining good faith under Ordinance Section 37.9(a)(8)(v); to create a list of items to be required on the Statement of Occupancy under Section 37.9(a)(8)(vii); and, to identify the types of supporting documents required to accompany the Statement of Occupancy. With regard to Section 12.17, which prohibits the Board from making any determination as to the legal sufficiency of notices to vacate filed with the Board, SALJ Gartzman notified the Board that an amendment might be needed to allow staff to follow up on owner move-in notices that do not state the tenant's rent or include the required change of address form, since the Rent Board has new duties under the OMI Ordinance amendments that require these items. SALJ Gartzman also explained to the Commissioners that landlords who do not timely file a Statement of Occupancy will now be subject to financial penalties that will be subject to appeal under Administrative Code Chapter 100. She explained that the City can collect the penalties as civil fines that go into the General Fund, or place a lien on the property, both of which offer different logistical considerations. At the conclusion of the discussion, the Commissioners agreed that Regulations Sections 12.14 and 12.17 would have to be amended, and that staff would come to the October 17 Board meeting with a draft of the procedures for implementing penalty assessment under Administrative Code Chapter 100.

IX. Calendar Items

October 17, 2017

10 appeal considerations

Old Business

A. Amendments to the Ordinance regarding owner move-in evictions and possible Regulations

X. Adjournment

President Gruber adjourned the meeting at 8:25 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.