



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, November 15, 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 6:07 p.m.

II. Roll Call

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

Commissioner Marshall appeared on the record at 6:14 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 11, 2016.
(Mosbrucker/Qian: 4-0)

IV. Remarks from the Public

A. Tony Hamer, speaking for the landlord at 1955 Broadway Street (AL160122), stated that the entire mortgage was used to purchase the additional interest in the property, and the landlord is only asking for equity and fairness.

B. Michael Corbett, attorney for the landlord at 1955 Broadway Street (AL160122), argued that the added debt service had to be taken on, or else the landlord would have had to sell the building, and that 6.10(g) does not apply to the landlord's operating and maintenance expense petition.

C. Sherris Goodwin, a tenant at 1955 Broadway Street (AL160122), stated that it was clear at hearing that a refinance by an existing owner cannot be passed through to the tenants

unless the tenants or the building benefitted from the refinance. Ms. Goodwin stated that the only person who benefitted here was the landlord, and no exception should apply.

D. Justin Goodman, the attorney for the landlord at 752 Lake Street (AL160121), told the Board that the landlord disagrees with the permanent rent reduction. He stated that there was no authority to make this rent reduction permanent, and that the Rent Board exceeded its authority in so finding.

E. Roberto Varea, a tenant at 668 – 29th Street (AL160123), told the Board that Proposition I repealed the exemption from rent control of owner-occupied properties with four units or less, and is now not a basis for exemption of a rent-controlled unit.

F. The landlord's attorney at 950 Bay Street #8 (AL160125), Dolores Chong, argued under the 1.21 test that the tenant does not permanently reside in the subject premises, and that the landlord should be able to increase the rent.

G. Robert Noelke, the attorney for landlord Rosa Frith of 668 – 29th Street (AL160123), told the Board that the space that was legalized in November 1995 was not previously residential in nature.

H. Jim Myint, the landlord at 17 Appleton Avenue (AL160126), stated that the dry rot repair work only benefitted the upstairs unit because the work was around the upstairs exterior door and upstairs exterior window.

V. Consideration of Appeals

A. 1138 Leavenworth Street

AL160124

The subtenant's petition alleging that she paid a disproportional share of her rent was granted. The master tenant was found liable to the subtenant in the amount of \$5,246.76. On appeal, the master tenant argues that she did not know how to calculate the value of furnishings, that the condition of her furnishings was not taken into consideration in the Administrative Law Judge's (ALJ) valuation, and that if the value of furnishings is subjective, then her original calculation should be deemed reasonable and the ruling of any overpayment should be dismissed.

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

B. 44 Cervantes Blvd. #104

AL160127

The tenant's petition alleging decreased housing services for rodents and mite infestation was partially granted. The landlord was found liable to the tenant in the amount of \$733.00. On appeal, the landlord argues that there were no decreased housing services, since there was no rodent problem at the building, or any rodents in the tenant's unit.

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

C. 2658 Webster Street

AL160128

The tenants' petition alleging an unlawful rent increase was granted. The ALJ found that at the time the Costa-Hawkins notice of rent increase was served, the tenant petitioners were co-tenants and not subtenants or assignees. The ALJ determined that the rent increase was not authorized by Civil Code Section 1954.53(d)(2) and was null and void. On appeal, the landlord argues that Civil Code Section 1954.53(d)(2) does not specifically exclude co-tenants from the rent increase, and even after the tenants signed the lease with the landlord, the tenants were still subleasing.

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

D. 17 Appleton Avenue

AL160126

The landlord's petition for certification of the costs of exterior painting and a new water heater to two of two units was granted in part and denied in part. The ALJ found that since the repair of exterior dry rot on the door trims and window trims was work performed in preparation for the exterior painting, those costs were also certified for passthrough to both units. The landlord appeals on the basis that the repair of the exterior dry rot on the door trims and window trims should be allocated to unit 17 only.

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

E. 752 Lake Street

AL160121

The tenants' petition alleging decreased housing services was granted. The ALJ found that the landlord was liable to the tenants in the amount of \$1,093.70 for loss of a basement storage room. During the time period considered by the ALJ in the decision, the landlord filed a Notice of Intent to Withdraw the Unit under the Ellis Act. In the decision, the ALJ stated that the issue of whether the rent reduction was permanent or temporary did not affect the validity of the landlord's Ellis filing, since the tenants' base rent was lowered as a result of the decreased housing service when the Ellis notice was filed. On appeal, the landlord argues that the ALJ improperly opined on the validity of the Notice of Intent, and that the Rent Board has no jurisdiction to determine whether the terms of a tenancy have been changed by agreement of the parties.

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

F. 668 – 29th Street

AL160123

The landlord filed a petition requesting a determination that the two units at the subject property are exempt from the rent control provisions of the Rent Ordinance. The landlord's petition was denied on the grounds that the subject property was two units and not a single-family dwelling on the January 1, 1996 effective date of the Costa-Hawkins Rental Housing Act, and neither unit was "newly constructed" after the effective date of

the Rent Ordinance since both units included portions of the existing residential unit. On appeal, the landlord argues that both units are exempt under Proposition I, which repealed the exemption for rent control for owner-occupied units of 4 units or less, and also were newly constructed exempt units when the CFCO was issued on November 15, 1995.

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

G. 1955 Broadway Street

AL160122

The landlord's petition seeking a 7% rent increase based on increased operating and maintenance expenses to the tenants in 18 units was granted in part and denied in part. The ALJ found that the additional funding to pay off an existing loan would not be considered under Rules and Regulations Section 6.10(g), since the proceeds of refinancing the property in excess of the existing mortgage were not reinvested in the building for the purposes of needed repairs and maintenance or capital improvements. On appeal, the landlord argues that the ALJ erred in characterizing the additional debt service as a settlement of the estate rather than an agreement and general release to redistribute equity shares of the limited partnership's members; that refinancing was the only legally viable method of achieving the members' equity division without selling the property; that such equalizing payments are ordinary and customary and that certain members' net equity valuations remained the same after refinancing.

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

H. 950 Bay Street #8

AL160125

The landlord appeals the decision denying the landlord's petition under Rules and Regulations Section 1.21, Rules and Regulations Section 6.14, Ordinance Section 37.3(d), and the Costa-Hawkins Rental Housing Act. In the decision, the ALJ found that the landlord failed to meet its burden of proving that there was no tenant in occupancy or that original occupant Magda Mitchell no longer resided at the subject unit, and had vacated the subject unit at the time the landlord filed the petition. The landlord appeals, arguing that the subject unit is not the tenant Magda Mitchell's principal or permanent place of residence; that the ALJ erred in stating that Diana Mitchell was a tenant in occupancy on the petition filing date; that the ALJ should have given greater weight to expert testimony and reports by an investigator; and that the landlord proved that Magda Mitchell lived at a different location.

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

I. 1701 Lane Street #B

AL160120

The landlord's petition under Rules and Regulations Section 1.21 was denied. The ALJ found that the landlord did not meet his burden of proving that the subject unit was not the

tenant respondent's principal place of residence or that the subtenant was not a tenant in occupancy at the time the petition was filed. The landlord appeals, arguing that the ALJ erred in finding that the subject unit is both the tenant's and the subtenant's principal place of residence, and that the tenant's long term relocation was just a temporary work absence.

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

IV. Remarks from the Public (cont.)

A. Meagan Price, the master tenant at 1138 Leavenworth Street (AL160124), stated that she wanted to question the lack of transparency that goes into assigning the value of furnishings. Ms. Price said that it wasn't clear how to determine the value and services, and she established the rate based on market value. She argued that the Rent Board should publish a schedule of fees for the value of furnishings and services.

B. Dolores Chong, the attorney for the landlord at 950 Bay Street #8 (AL160125), thanked the Board for their thoughtful consideration of the appeal.

VI. Communications

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

- A. Information on JAMS and the Judicial Council of California, which was originally submitted by a member of the public at the October 11, 2016 meeting.
- B. Workload statistics for the month of September 2016.
- C. Memorandum regarding proposed Board meeting dates for 2017.
- D. Articles from NBC Bay Area, the S.F. Examiner, and S.F. Chronicle.

VII. Director's Report

President Gruber made a statement regarding hiring and appointment of the Rent Board's Executive Director. He stated that at the October 11, 2016 Rent Board commission meeting, a closed session was held to discuss public employee appointment and hiring. He reported that the Board unanimously found that one candidate was uniquely qualified, and voted to submit the name of Robert A. Collins to the Mayor for the position of Executive Director. President Gruber reported that on October 21, 2016, the Mayor appointed Robert A. Collins to the position of the Rent Board Executive Director.

Executive Director Collins introduced the Mayor's new budget analyst assigned to the Rent Board, Raven Anderson, to the commissioners. Executive Director Collins also reported that Rent Board staff have hired a new ALJ, Harrison Nam, who has a great deal of experience

with the Rent Ordinance and will begin his position in January 2017. Executive Director Collins informed the Board that the office holiday party is on December 15.

VIII. Old Business

A. Report back regarding no-hearing alternative for certain capital improvement petitions

At the May 10, 2016 meeting, the commissioners voted to: “approve the no-hearing alternative for certain capital improvement cases, with a report back at the November 2016 meeting.” Senior ALJ Gartzman provided a written report to the Board regarding the current progress staff has made in adjudicating the three categories of capital improvement cases that qualify for the no-hearing process: petitions based on mandatory seismic retrofit costs; petitions with only one capital improvement item; and petitions with multiple items having total claimed costs less than \$25,000. After brief discussion, the Board requested that staff provide a follow-up report at the July 2017 Board meeting.

IX. Calendar Items

December 13, 2016
6 appeal considerations

X. Adjournment

President Gruber adjourned the meeting at 7:33 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.