



Edwin M. Lee  
*Mayor*

Delene Wolf  
*Executive Director*

DAVID GRUBER  
*PRESIDENT*

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY  
AMELIA YAROS

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 15, 2011  
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: Beard; Crow; Gruber; Henderson; Hurley;  
Mosbrucker.  
Commissioners not Present: Mosser; Yaros.  
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:09 p.m.; Commissioner  
Murphy arrived at the meeting at 6:11 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 14, 2010.  
(Mosbrucker/Henderson: 5-0)

IV. Remarks from the Public

A. Michael Turon, the landlord in the case at 2722-24 Folsom Street (AL110003), read to the Board from his recent response to the Administrative Law Judge's (ALJ) Memorandum. Mr. Turon outlined his attempts to obtain documents in support of his operating and maintenance expense petition, provided an accounting from Farmers Insurance, and asked that his appeal be granted so that he could provide additional evidence to prove his case.

B. Jessica Lin, the daughter of the tenant at 941 Pacific Avenue (AT110001), told the Board that her mother is disabled and a monolingual Chinese speaker, and it was therefore convenient for her to move back in to the unit. Ms. Lin said that the landlord had accepted

her mother as a tenant and only denied her tenancy status after she filed the subject petition.

C. Hua Sheng Wong, the landlord at 1922 Rivera Street (AL110002), said that the Rent Board should be fair to tenants and landlords and help to make the City peaceful. Mr. Wong did not feel that the ALJ was fair to him and recommended that everything that is said be recorded, even after the hearing concludes. Mr. Wong alleged that the first ALJ told the tenants they did not have to pay rent, which was contradicted by the second ALJ.

D. Attorney Clifford Fried, representing the landlord at 92 Virgil Street (AL100006), alleged that Rent Board staff members “guide tenants through the process” and tell them what to say when they are facing a Costa-Hawkins increase. In his case, the tenant admitted on his Facebook page that he’d permanently vacated the premises, since “pulled up tent stakes” means that he moved out. Mr. Fried maintained that more credence should be placed on what is said prior to a rent increase being issued, and that the ALJ ignored the most important pieces of evidence. He asked that the Board reverse the decision and approve the Costa-Hawkins increase.

E. Kathryn Kline of #31 Hoff Street (AL100111) said that someone should address the fact that the Master Tenant is making a profit off of the unit.

F. Landlord Allan Zimmerman of 2360 Pacific (AL110005 & -04) told the Board that the building had no resident manager for a period of time because the manager’s unit was uninhabitable and being renovated. Mr. Zimmerman said that the resident manager moved into the building in February of 2009 and made many repairs. Prior to his being on the premises, the landlords and their on-site manager were at the building almost every day and responded immediately to any tenant concerns, so there was never a reduction in housing services. Mr. Zimmerman maintained that the \$50 per month figure taken from the tenant petition is excessive and arbitrary and the case should be sent back to find out why.

G. Tenant Victoria Lynn Peterson of 2 Maynard Street (AT100105) told the Board her intent was to appeal the ALJ’s decision in its entirety and expressed her disappointment at the “unprofessionalism” of the Board. Ms. Peterson said her window doesn’t seal and she has to wear a gas mask due to odors from the KFC. Ms. Peterson expressed concerns for her health, safety and welfare and asked that the Board overturn the ALJ’s decision.

H. Landlord Philip Goldstein of 2987-95 – 22<sup>nd</sup> Street (AL100110) told the Board that the building had been foreclosed on and the prior owner was in jail. Mr. Goldstein said he was never notified that there was a lead problem, which he immediately abated. Mr. Goldstein does not believe it is good public policy to punish subsequent landlords for the sins or omissions of the prior owner, because it doesn’t encourage landlords to fix up buildings.

V. Consideration of Appeals

A. 164 Henry

AT100104

The landlord's petition for certification of capital improvement costs to 1 of 3 units was granted. The tenants 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. (Marshall/Mosbrucker: 5-0)

B. #31 Hoff St.

AL100111

The subtenant's petition alleging that she paid more than a proportional share of the rent was granted and the Master Tenant, who failed to appear at the hearing, was found liable to the subtenant in the amount of \$1,120.10. On appeal, the Master Tenant submits a Declaration of Non-Receipt of Notice of Hearing and claims that the subtenant's room is larger than the others in the unit and her rent payment should be commensurately higher.

MSC: To accept the appeal and remand the case for a new hearing.  
(Murphy/Mosbrucker: 5-0)

C. 301 Judah #301

AL110008

The tenant's petition alleging unlawful rent increases, the landlord's failure to repair and decreased housing services was granted only as to the claim of unlawful rent increase and the landlord was found liable to the tenant in the amount of \$10,354.78 due to a \$250.00 rent increase based on an additional occupant in the unit. The landlord appeals the decision on the grounds of financial hardship.

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

MSC: To accept the appeal and remand the case for a hearing on the landlord's claim of financial hardship. (Hurley/Beard: 5-0)

D. 653 Shotwell

AL110007

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant, who failed to appear at the hearing, was found liable to the subtenant in the amount of \$1,125.00. The Master Tenant appeals the decision, claiming financial hardship and non-receipt of the notice of hearing.

MSC: To accept the appeal and remand the case for a hearing on the merits and the Master Tenant's claim of financial hardship. (Mosbrucker/Hurley: 5-0)

E. 1922 Rivera St.

AL110002

The tenants' petition alleging decreased housing services was granted and the landlords were found liable to the tenants in the amount of \$625.00 for each month that they no longer have a stove in their unit. On appeal, the landlords argue that: the rent reduction is excessive; there are advantages to not having a stove; and the decision is unfair.

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

F. 2 Maynard St. #4

AT100105

The tenant's petition alleging decreased housing services was denied except that the landlord was found liable to the tenant in the amount of \$82.50 due to duct tape flapping on the bathroom skylight for a 3.3-month period. The tenant appeals, claiming that: her due process rights were violated by procedural irregularities; the decision conflicts with her right to privacy; negligence and falsehoods support overturning the decision; the tenant met her burden of proof, but the ALJ refused to admit the tenant's testimony and evidence; and the ALJ exhibited bias against the tenant.

MSC: To deny the appeal without prejudice to the tenant filing a new petition based on any facts arising subsequent to the hearing in this case.  
(Murphy/Gruber: 5-0)

G. 1284 McAllister #1 & #5

AL100103

The landlord's petition for certification of the costs of a seismic upgrade to five of eight units was granted for the tenants in three units but the ALJ found that the "6-Month Rule" (Rules §7.12{b}) barred the passthrough for the remaining two units. The landlord appeals, maintaining that: the regulation bars imposition of the passthrough to those units rented during the construction period, which does not include preliminary work done by architects and engineers.

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

H. 941 Pacific Ave.

AT110001

The tenant's petition alleging decreased housing services and asking for a determination as to whether the current rent is a lawful amount was denied because the ALJ found that the tenant lacked standing to file the petition. On appeal, the tenant claims that: the landlord and his wife knew that she had moved back in to the unit, and agreed to make a repair that she requested; there are factual errors in the decision; the landlord accepted three rent checks with her signature, which created a tenancy between she and the landlord; and the translator did not adequately convey the substance of the hearing to her.

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

I. 2987-2995 – 22<sup>nd</sup> St.

AL100110

The landlord's petition for certification of the costs of exterior painting/lead abatement to 4 of 5 units was denied because the ALJ found that the work was required to correct a code violation that had remained unabated for 90 days and was the result of deferred maintenance by the former landlord. On appeal, the landlord argues that: the current landlord made timely, good faith efforts to remediate the condition and should not be punished for the prior landlord's failure to have done so; the circumstances were beyond

the control of the current landlord, who was not on notice of the problem; and a majority of the work exceeded the scope of work necessary to abate the conditions set forth in the NOV.

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

MSC: To accept the appeal and remand the case for a hearing only to determine the scope of the exterior painting work which exceeded that which was required to correct the violation and should be certified for passthrough; the appeal is denied as to all other issues. (Mosbrucker/Marshall: 5-0)

J. 2360 Pacific Ave. #301 & 201

AL110005 & -04

The tenants in two units in this 21-unit building filed petitions alleging decreased housing services; the tenants in one of the units also alleged unlawful increases in rent. The petitions were granted only as to a claim of lack of a resident manager, for which the landlords were found liable to the tenants in the amount of \$1,575.00. On appeal, the landlords claim that: there was a resident manager in the building beginning March 1, 2009 whether or not the tenants knew of his presence; the tenants failed to prove that the rent reduction should go back more than one year prior to the filing of the petition; there was a technical violation of the housing code but no reduction in services, since the landlords or their representative were in the building on a daily basis; the amount of the rent reduction is excessive; the tenants signed an agreement that any decrease in services claim must be associated with a monetary savings to the landlord; and the claim is barred by the Golden Gateway decision.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with instructions to adjust the amount of the rent reductions granted to \$25.00 per month; the appeal is denied as to all other issues. (Mosbrucker/Marshall: 4-1; Murphy dissenting)

K. 2722-2724 Folsom St.

AL110003

The landlord's appeal was filed one day late because the landlord thought that the Code of Civil Procedure applied, and that five days must be added to the deadline because the decision was mailed, and not personally served.

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

The landlord's petition for rent increases based on increased operating expenses was denied because the landlord's costs increased in the comparison year over the base year, but the costs for both years decreased from the prior two-year period, for which the landlord had received 7% base rent increases. On appeal, the landlord claims that: the ALJ exhibited bias against him and was not responsive to his inquiries; the comparison periods were not chosen to create exaggerated results; the repair category should not have been

disallowed in its entirety due to the failure to verify one expense and efforts were made to obtain additional documentation; the insurance costs were established in a prior case and have not changed; and he is still attempting to obtain documentation from the pest control company.

MSC: To deny the appeal without prejudice to the landlord filing a petition for possible certification of the sewer line work as a capital improvement.  
(Marshall/Mosbrucker: 4-1; Gruber dissenting)

L. 92 Virgil St.

AL100006

The tenant's petition alleging an unlawful increase in rent from \$1,243.49 to \$2,475.00 was granted because the ALJ found that the tenant still permanently resides in the subject unit, although he is temporarily based in London due to his employment. The landlord appeals, asserting that: the fact that the tenant has personal possessions and receives mail at a unit does not mean he resides there; and the landlord is entitled to a deadline by which the tenant must have returned, preferably nine months from the issuance of the decision, or the tenant should have to give up the rent controlled status of his unit.

MSC: To deny the appeal without prejudice to the landlord pursuing a Costa-Hawkins rent increase at such time as the landlord deems it appropriate.  
(Mosbrucker/Marshall: 4-1; Murphy dissenting)

#### VI. Communications

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

A. The Budget Outlook for Fiscal Year 2011-12 presented by Mayor Lee to Commission Presidents at a meeting on February 8, 2011.

B. A brochure announcing the Rent Board's neighborhood outreach program in partnership with the public libraries.

C. The office workload statistics for the month of December 2010.

D. Articles from the S.F. Bay Guardian, the S.F. Chronicle, BeyondChron, and the S.F. Examiner.

#### VII. Director's Report

Executive Director Wolf reported as follows:

A. The Department is conducting monthly outreach sessions at neighborhood libraries and is placing multi-lingual posters advertising the agency's services on the interiors and backs of Muni buses.

B. Staff is providing technical assistance to Mayor's Office staff on the Parkmerced Development Agreement.

C. Supervisor Scott Weiner has introduced "Good Samaritan" legislation that allows landlords to offer temporary units to displaced tenants at rents no more than 10% above what they paid for their former premises.

D. Ms. Wolf will attend the next meeting of the SRO Hotel Task Force to discuss any necessary changes to the Hotel Visitor Policy and problems with enforcement of the Policy.

IV. Remarks from the Public (cont.)

I. Landlord Representative Andy Braden addressed the Board regarding the case at 1284 McAllister. He expressed his opinion that the 6-Month Rule is a "poorly written law," the 1998 amendment is confusing and he chastised the Commissioners for having policies outside of the Rules and Regulations. Mr. Braden said that soft costs don't meet the definition of a capital improvement and, therefore, can't be petitioned for separately. He told the Board to "figure out what it means and re-write it."

J. Landlord Hua Sheng Wong had two suggestions: replace Mayor Gavin Newsom's name on Rent Board letterhead stationary with new Mayor Ed Lee's name; and, on the Commissioners' name plates, indicate which constituency they represent.

K. Landlord Michael Turon asked several questions pertaining to his appeal.

IX. New Business

A. Departmental Budget

Executive Director Wolf went over the Department's proposed budget for Fiscal Year 2011-2012. The Board then passed the following motion:

MSC: To approve the proposed departmental budget for Fiscal Year 2011-2012.  
(Marshall/Gruber: 5-0)

B. City Attorney Action to Defend Validity of Rent Board Regulation 12.20 in Marino v. Hernandez (Superior Court Case No. 632110)

The Commissioners reviewed a Memorandum from Senior Staff regarding a pending appeal in the case of Marino v. Hernandez (Superior Court Case No. 632110), which calls into question the ability of cities to enforce local rent control ordinances. In that eviction case, the trial court ruled that Rent Board Regulation 12.20, which generally prohibits a landlord from evicting a tenant for violating a landlord's unilateral change in the terms of the tenancy, conflicts with and is preempted by Civil Code Section 827, which allows a landlord to change the terms of a tenancy upon written notice.

Senior Administrative Law Judge Tim Lee explained that by providing a defense to evictions based on unilateral changes in the terms of the tenancy, Regulation 12.20 is clearly substantive and not procedural, and therefore not preempted by state law under the seminal California Supreme Court case of Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129. If the court's erroneous ruling were upheld on appeal in a published opinion, landlords could unilaterally change the terms of a tenancy to impose onerous new terms and then evict tenants for violation of the new terms, including the imposition of unlimited rent increases. The Rent Board adopted Regulation 12.20 in 1997 specifically to prevent such landlord strategies to effectuate indirect eviction, and the Board rejected the landlords' argument that the proposed regulation was preempted by CC827 at that time.

The Board agreed that the issue of whether Civil Code Section 827 preempts Regulation 12.20 is an important one that should not be left to private litigants, and the Rent Board should be heard on the legality of its own regulation, by passing the following motion:

MSC: To authorize the City Attorney to take any and all action to defend Rules and Regulations Section 12.20 against any preemption legal challenge.  
(Marshall/Beard: 3-2; Gruber, Murphy dissenting)

X. Calendar Items

March 22, 2011  
7 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 8:40 p.m.

**Addendum:** Any summary statements provided by a speaker during Remarks from the Public are appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy, by the San Francisco Rent Board.