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*Mayor*

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*Executive Director*

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DEBORAH HENDERSON  
JIM HURLEY  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

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

Tuesday, February 28, 2012  
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 6:10 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Hurley; Mosbrucker; Mosser;  
Qian.  
Commissioners not Present: Dandillaya.  
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:30 p.m.; Commissioner Murphy arrived at the meeting at 6:14 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 31, 2012.  
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Attorney Tom Drohan of Legal Assistance to the Elderly told the Board he represented the tenant at 1290 Noe (AL120011) in an Unlawful Detainer action. Mr. Drohan said that the Administrative Law Judge (ALJ) found the tenant's testimony that he moved into the unit in 1975 credible. Mr. Drohan told the Board that many of his senior clients' tenancies pre-date Rules §6.14 and the Costa-Hawkins Rental Housing Act, but they would have been tenants under the Rules in effect at the time.

B. Tenant Lisa Giampolli of 1059 Leavenworth (AT110114) told the Board that the landlord "has done lots of things," tenants in the building are afraid and some have moved out. Ms. Giampolli felt that she was "dismissed" by the ALJ and the Decision is the reverse

of what she said at the hearing. Ms. Giampolli is frustrated by what she perceives as tenants getting little help at the Rent Board.

C. Tenant Charles Roberts of 1290 Noe said that he was good friends with the prior landlord, but the new owner is saying he didn't live there. Mr. Roberts told the Board he has proof he has lived in the unit since 1975.

D. Charles Robert's sister, Karen Roberts, said that she moved in to the unit in 1972 and that her brother moved in after her husband moved out. Ms. Roberts told the Board that her brother was gone for seven months due to a fire, but moved back in with the landlord's permission.

E. Christine Broussard, friend and neighbor of Charles Roberts, told the Board that Mr. Roberts had always lived in the unit with his sister and that the landlord knew it.

F. Herman Latercorn told the Board that he moved in to 1292 Noe in 1980 and moved out in 1985. Mr. Latercorn said that the Roberts family was living at 1290 Noe since before he moved in and he could vouch for their tenancy.

G. Charles Robert's brother, Carl Roberts, told the Board that he lived in the unit with his other relatives until the landlord evicted him.

#### V. Consideration of Appeals

A. 75 Buena Vista East #703, 601, 705, 704  
& 305

AT120008 thru -10, -12 & -15

The tenant in unit #704 filed his appeal 6 days late because he was out of town at the time the decision was mailed, assisting his elderly mother. The tenant in unit #305 filed 10 days late because of a severe inner ear problem.

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

The landlord's petition for rent increases to 27 of 37 units based on increased operating expenses was granted. The tenants in 4 units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for hearings on the tenants' claims of financial hardship.  
(Mosbrucker/Marshall: 5-0)

B. 575 Columbus #16

AT120016

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant maintains that he was sick on the day of the hearing, and unable to attend.

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. (Marshall/Mosbrucker: 5-0)

C. 60 Diamond St.

AT120018

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules §6.15C(3) was dismissed due to his failure to appear at the hearing. On appeal, the tenant maintains that the Notice of Rescheduled Hearing was sent to his old address, and he did not receive it. The subtenant attaches a Declaration of Non-Receipt of Notice of Hearing in support of his claim.

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

D. 405 Serrano, Apt. 10F

AT120013

The tenant's petition alleging decreased housing services was denied because the ALJ found that the construction claims were barred by the Golden Gateway decision; the pest infestation problem was properly remedied by the landlord; and the tenant failed to meet her burden of proving an alleged lack of heat, nor did she provide notice to the landlord. The tenant appeals, claiming that the following evidence was not considered by the ALJ: medical records showing that the tenant's breathing problems commenced with the onset of the construction work; pictures demonstrating how mice entered the unit; medical records showing that the tenant's access to the building was barred during the time the front entrance was inaccessible; and a calendar entry regarding a call to the landlord regarding the lack of heat. The tenant also claims that she was not provided an opportunity to refute the landlord's evidence.

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

E. 1290 Noe

AL120011

The tenant's petition alleging an unlawful rent increase from \$1,033.61 to \$2,500.00 was granted because the ALJ found no Costa-Hawkins increase is warranted because the petitioner is a subtenant who resided in the unit prior to January 1, 1996 and a 6.14 notice was not timely served. On appeal, the landlord maintains that: the ALJ should have granted a motion to exclude witnesses from the hearing, as their testimony was self-serving; the ALJ erred in holding the deceased landlord responsible for actions taken prior to the enactment of Rules §6.14; the current landlord had no knowledge of the petitioner's presence in the unit prior to issuance of the 6.14 notice; and the petitioners lacked credibility.

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

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

F. 3303-3315 Sacramento St.

AL120006

The subtenant's petition alleging that he paid a disproportional share of the rent was denied. However, 2 of 7 decreased housing claims were granted and the Master Tenant was found liable to the subtenant in the amount of \$260.00 for the loss of a common room area and Internet service. Both the Master Tenant and subtenant appeal the decision. The Master Tenant maintains that: the unit is Proposition I Affected and therefore exempt; the subtenant failed to meet his burden of proof and did not provide copies of his submissions for the Master Tenant; internet access is not a necessity, the subtenant failed to prove the cost of replacement internet service and \$30 constitutes a windfall; and the subtenant did not use the common room, nor should his witness be considered credible. The subtenant claims that: the ALJ erred regarding the square footage calculations of the rooms in the unit; the Master Tenant paid no or extremely low rent by profiteering off of his subtenants; he lost the use of the common room in the apartment at an earlier date; and he gave up the second room because of threats and intimidation by the Master Tenant.

MSC: To deny both the Master Tenant's and subtenant's appeals.  
(Marshall/Mosbrucker: 5-0)

G. 1059 Leavenworth #20

AT110114

The tenant filed a petition seeking a determination of the proper base rent. The ALJ found that the landlord's agent had mistakenly reduced the tenant's rent from \$913.00 to \$670.00 and the landlord's restoration of the prior base rent amount did not constitute an unlawful rent increase. On appeal, the tenant argues that: there is no evidence that the lowered rent amount was the result of a mistake; she reasonably believed that the prior landlord intentionally lowered her rent; the prior and current landlords are sophisticated business people who are likely to be familiar with their rent rolls; there are factual errors in the ALJ's decision which cannot be used to support a finding of unclean hands; the tenant did not engage in fraud or misrepresentation; and the attorney who accompanied the tenant at the hearing was a friend, and not her representative.

MSC: To recuse Commissioners Crow and Mosbrucker from consideration of this appeal. (Murphy/Gruber: 5-0)

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

H. 4719 Geary #207

AL120014

The tenant's petition alleging unlawful rent increase was granted because the ALJ found that the tenant's rent was above the Payment Standard established for Section 8 units. On appeal, the landlord argues that: Federal law authorizes the Housing Authority to establish a Payment Standard at any level between 90 and 110% of the published Fair Market Rent (FM) for that unit size; the Housing Authority is not precluded from using alternative valuations for units that have different, or superior, characteristics; federal regulations allow approval of rent increases well above the FMR on a case-by-case basis; and it is bad public policy to discourage private landlords from participating in the Section 8 program.

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

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. The office workload statistics for the month of January, 2012.

B. Articles from the New York Times, the S.F. Examiner, Fog City Journal, the Bay Citizen, the Washington Post, and S.F. Gate.

C. A new copy of the Rules and Regulations containing the amendment to Rules §12.20, effective February 1, 2012.

#### VII. Director's Report

Senior Administrative Law Judge Tim Lee told the Board that the City prevailed on the Carland writ, where the landlord depicted rent "rebates" to the tenant as not affecting the amount of the lawful base rent. Executive Director Wolf told the Board about the agency's ongoing outreach program on Muni buses throughout the City and reminded them to turn in their Statements of Economic Interest by April 1<sup>st</sup>.

#### IV. Remarks from the Public (cont.)

H. The Master Tenant in the case at 60 Diamond told the Board that the mail did go to the subtenant who brought the appeal but he "tends to flake out and be irresponsible."

#### VIII. Calendar Items

March 27, 2012  
10 appeal considerations

#### XI. 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.**

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