



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  
AMY YAROS

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

Tuesday, March 22, 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: Crow; Gruber; Henderson; Hurley; Mosser; Yaros.  
Commissioners not Present: Beard; Murphy.  
Staff Present: Lee; Wolf.

Commissioner Mosbrucker appeared on the record at 6:07 p.m.; Commissioner Marshall arrived at the meeting at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 15, 2011.  
(Hurley/Henderson: 5-0)

IV. Remarks from the Public

A. Kevin Greenquist, attorney for the landlord at 617 Oak Street (AL110019), told the Board that the landlord has no objection to a remand and reconsideration of the issues.

B. Basilio Revelas, the tenant in the case at 617 Oak, said that he had responded to the landlord's new evidence, but understood if the Commissioners felt a new hearing was necessary.

V. Consideration of Appeals

A. 103 Crescent #1 & #5

AT110014 & -15

The landlord's petition for certification of capital improvement costs to two of seven units was granted, resulting in a monthly passthrough in the amount of \$47.65. The tenants in both units appeal the decision on the grounds of financial hardship.

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

B. 149 Leese St. #A

AT110011

The landlord's petition for certification of capital improvement work to one of two units was granted, resulting in a monthly passthrough in the amount of \$66.52. The tenant appeals the decision on the grounds of financial hardship.

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

C. 4-1/2 Keyes Alley

AT110009 & -10

The landlord's petition for certification of capital improvement work to one unit was granted, resulting in a monthly passthrough in the amount of \$46.24. The tenants in the unit 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. (Mosbrucker/Henderson: 5-0)

D. 1831 Polk #115, 111

AT110013 & -17

The landlords' petition for certification of capital improvement costs to 6 of 16 units was granted. The tenants in two units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenant in unit #115 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Mosbrucker/Henderson: 5-0)

MSC: To deny the appeal of the tenant in unit #111. (Hurley/Gruber: 4-1;  
Henderson dissenting)

E. 2222 Leavenworth #503

AL110012

The landlord's petition seeking a determination pursuant to Rules §1.21 was denied because the ALJ found that the subject unit is still the tenant's principal place of residence. The landlord appeals the decision on the grounds that: the audio recording of the hearing malfunctioned; and the ALJ relied solely on written evidence provided by the tenant and the tenant's testimony, when the landlord's evidence showed that the tenant had not occupied the unit for more than four years.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a new hearing. (Hurley/Gruber: 5-0)

F. 587 O'Farrell #3

AL110012

The tenant's petition alleging decreased housing services due to habitability defects on the premises was granted and the landlord was found liable to the tenant in the amount of \$5,679.70. On appeal, the landlord claims that: the tenant's representative agreed that the unit was fully functional upon a post-hearing inspection; the decision is unfair; and the landlord allowed the tenant to stay at the unit rent-free for six weeks until his financial situation improved.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only on the issue of when the heat was restored and the rent reduction should terminate; a hearing will be held only if necessary. (Mosbrucker/Marshall: 5-0)

G. 617 Oak St.

AL110019

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$9,018.75 due to habitability defects on the premises. The landlord appeals, asserting that: the heat and lighting services have been restored and do not warrant ongoing rent reductions; the heat was found to be adequate by a housing inspector as of November 1, 2010 despite the fact that a proper permit had not been issued; and the lack of a switch to turn off the porch light does not affect the tenants' use of the premises and does not constitute a reduction in housing services.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing to consider new evidence on the restoration of the heat and porch light housing services. (Hurley/Gruber: 3-2; Henderson, Mosbrucker dissenting)

#### VI. Communications

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

- A. A Pending Litigation Status Report from Senior Administrative Law Judge Tim Lee.
- B. The office workload statistics for the months of January and February 2011.
- C. A Memorandum from the Office of the City Attorney regarding the appellate decision in the case of Larson v. City and County of San Francisco.
- D. Articles from the S.F. Chronicle, BeyondChron and the S.F. Bay Guardian.

E. The Rent Board's Annual Report on Eviction Notices.

VII. Director's Report

Executive Director Wolf reminded the Commissioners that their Statements of Economic Interest are due by April 1<sup>st</sup>. She also briefly went over the Board's Annual Report on Eviction Notices. Ms. Wolf also told the Board that the official version of the Ordinance is out of date due to adverse findings in several recent court decisions. Ms. Wolf said that it is possible for the Board to put forth their own legislative "clean-up" amendments. Staff will provide the Board with a list of necessary amendments and the accompanying court cases, which will be agendized and discussed at a future Board meeting.

Senior Administrative Law Judge Tim Lee updated the Board on the case of Marino v. Hernandez, an eviction case in which the trial court ruled that Rules §12.20 is preempted by State law. At their February 15<sup>th</sup> meeting, the Commissioners voted to authorize the City Attorney to take any and all action to defend the regulation against any preemption legal challenge. Mr. Lee told the Board that Legal Assistance to the Elderly has filed an appeal on behalf of the tenant and the City Attorney has filed a letter brief weighing in on the preemption claim. It will be up to the court whether or not to let the City argue the merits. Mr. Lee also told the Board that, in the case of Larson v. City and County of San Francisco, the Court of Appeal invalidated certain provisions of the Rent Ordinance that were added by Proposition M, but upheld others. The court found that certain conduct specified in Prop. M may result in damages that can be collected in court, but are not decreased housing services for which the Board may authorize rent reductions. The court did not see a similar problem with conduct relating to the provision of housing services and the effectuation of repairs. The court also invalidated two other provisions of Proposition M: one prohibiting a landlord from continuing to offer a tenant payments to vacate and the other providing for tenants to recover attorneys fees in an eviction action. There is also a federal court challenge to Prop. M pending in the Ninth Circuit in Carrico v. CCSF, in which the plaintiffs have appealed the district court's dismissal of constitutional challenges to Prop. M.

X. Calendar Items

April 12, 2011

6 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:00 p.m.