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

Tuesday, March 27, 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 6:04 p.m.

II. Roll Call

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

Commissioner Murphy appeared on the record at 6:06 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 28, 2012.
(Crow/Murphy: 5-0)

IV. Remarks from the Public

A. Landlord Douglas Earl of 1995 Chesnut (AL120023) said that the current decision ignores a 1983 decision finding that the tenant did not have a parking space at the inception of the tenancy. Mr. Earl cited a Rent Board leaflet, which explains that a housing service added after the commencement of the tenancy for no additional consideration, does not warrant a rent reduction when taken away. Mr. Earl told the Board he did not take away the parking space and that, "if I can remove it, I can move it."

B. Saul Ferster, Attorney for the landlord at 743 Grove (AT120022), said that the landlord has restored all amenities to the work/storage room that the tenants had been illegally subletting. The tenants had argued that the room was valueless without a locking

door and electricity, but the mesh door that the landlord installed provides greater security. Mr. Ferster maintained that a working area warrants lesser requirements than a living area.

V. Consideration of Appeals

A. 2731 – 37th Ave. #A

AT120021

The landlord's petition for certification of the costs of a new roof to both units at the property was granted, resulting in a monthly passthrough in the amount of \$46.07. One 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. (Marshall/Murphy: 5-0)

B. 742 Treat

AT120026

The tenants' hardship appeal of a decision certifying capital improvement costs was granted. On appeal by the landlord claiming that a third occupant lived in the unit, the case was remanded for a supplemental hearing. In the Decision on Remand, the Administrative Law Judge (ALJ) found that the tenants had failed to prove their hardship claim, since the third occupant of the unit had failed to submit a Hardship Application. On further appeal, the tenants claim that: the third occupant in the unit will now be paying \$500.00 towards the monthly rent; one of the tenants will soon be unemployed; and the retroactive amounts owed present an additional hardship.

MSC: To deny the appeal. However, should the tenant's financial circumstances change, and the third occupant of the unit is willing to file a Hardship Application, the tenant may re-file the hardship appeal.
(Murphy/Gruber: 5-0)

C. 1 Castro #1

AL120027

The tenants' petition alleging decreased housing services due to loss of quiet enjoyment of their unit was granted, in part, and the landlord was found liable to the tenants in the amount of \$1,050.00 due to noise from another unit in the building. The landlord, who failed to appear at the hearing, appeals on the grounds that he was denied due process in that his side of the story was not heard by the ALJ.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a new hearing; should the landlords again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Murphy/Gruber: 4-1; Marshall dissenting)

D. 68 Pierce St.

AL120019

The tenants' petition alleging an unlawful rent increase from \$4,001.00 to \$7,200.00 was granted because the ALJ found that the subject dwelling unit is not separately alienable

under Costa-Hawkins and one of the tenants is a tenant rather than a subtenant. On appeal, the landlord claims that: the premises have always been a single-family dwelling; the downstairs rooms are storage areas and not rental units; there are factual errors and evidence of bias in the Decision; and the tenant lied at the hearing.

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

E. 670 Capp St.

AL120020

The landlord filed a petition seeking a determination as to whether any of the occupants of the unit are "tenants in occupancy" pursuant to Rules §1,21 and whether he is entitled to a rent increase under Costa-Hawkins. The ALJ found that no increase is warranted because tenant Gonzalez resides in the unit as her principal place of residence and tenant McGill is temporarily away furthering her education. On appeal, the landlord claims that tenant McGill is not a tenant in occupancy because: she failed to produce evidence of her intent to return to the subject unit, although the record was left open for her to do so; video surveillance fails to show Ms. McGill entering the building, although she claimed to have done so; the landlord provided evidence that the tenant principally resided at another unit in San Francisco; and there is insufficient room for tenant McGill to be residing at the subject unit.

MSC: To deny the appeal as to tenant Gonzalez but remand the case to the Administrative Law Judge for a supplemental hearing to determine whether tenant McGill was a Tenant in Occupancy at the time the petition was filed. (Murphy/Gruber: 4-1; Crow dissenting)

F. 2447 Post

AL120024

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$354.00. Additionally, a claim of decreased housing services was granted and the Master Tenant was found liable to the subtenant in the amount of \$313.50 due to lack of a working bathtub. The Master Tenant appeals, arguing that: his petition against the owner of the building on the same issues should have been heard simultaneously with the instant case; when he took over the lease, another subtenant in the unit was paying less than a proportional share of the rent and so the Master Tenant spread out the remainder among the other subtenants; and the Master Tenant was denied due process because he was unable to question the subtenant regarding her need to take baths instead of showers.

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

G. 743 Grove St. #2

AT120022

The tenants' petition alleging decreased housing services was granted in part and denied in part. Pursuant to the tenants' appeal, the case was remanded to grant a rent reduction in the amount of \$497.00 until a locking door and electricity were restored to a downstairs room in the unit. On remand, the ALJ found that the services had been sufficiently

restored. The tenants appeal the remand decision, arguing that: a mesh door is not comparable to a solid wood door and constitutes a substantial decrease in services; the landlord admitted that he intends to deprive the tenants of their privacy; the mesh door makes the room unusable for any purpose other than storage; and the tenants cannot heat the room and no covering they could erect would allow them to do so.

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

Due to the absence or recusal of three Tenant Commissioners, the Board continued consideration of this appeal to the next meeting.

H. 1995 Chesnut #208

AL120023

The tenant's petition alleging decreased housing services due to the change from covered to uncovered garage parking was granted and the landlord was found liable to the tenant in the amount of \$30.00 per month. The landlord appeals, arguing that the doctrine of collateral estoppel applies, because it was determined in a prior Rent Board decision that covered garage parking was not included in the tenant's rent at the inception of the tenancy.

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

I. 3435 A 20th St.

AL120025

The tenant's petition alleging a substantial decrease in housing services due to the change from landlord provided to tenant paid gas service for hot water was granted and the landlord was found liable to the tenant in the amount of \$36.31 per month. On appeal, the landlord claims that: the Decision contains factual errors, including as to the number of occupants in the subject unit; the ALJ gave the impression that it was not necessary for the landlord to provide additional information during the open record period; other tenants, and not the landlord, previously paid for hot water to the building; the tenant's lease and estoppel certificate require him to pay for utilities; the tenant's bills were low because he disconnected his heat; and the tenant is being rewarded for having too many occupants in the unit; and the amount granted is in excess of the tenant's actual costs.

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

J. 2065 Fulton

AL120028

The tenants' petition alleging an unlawful increase in rent was granted and the landlord was found liable to the tenants in the amount of \$825.00. The ALJ found that, pursuant to the contract between the parties, the landlord could terminate services being provided by the tenants but, as long as the tenants were still willing to provide the services, they were entitled to a \$275.00 monthly rent credit. On appeal, the landlord claims that: there was no rent increase but, rather, restoration of the prior base rent amount upon termination of the tenants' employment; the tenants coerced the landlord into agreeing to the clause in the

lease, which was drafted by the tenants; the tenants were employed at will, because the duration of their employment was not specified in the contract, which must shift the rent payment from cash and services to all cash; the death of the landlord terminated the tenants' employment; and the Decision provides for an unfair result.

MSC: To accept the appeal and remand the case to have the Administrative Law Judge evaluate whether the contract provision regarding the rent credit is enforceable; a hearing will be held only if necessary. (Beard/Murphy: 5-0)

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 ALJ Tim Lee.

B. An updated Commissioner roster.

C. Articles from the S.F. Examiner, the Bay Citizen, the S.F. Daily Journal, and the N.Y. Times.

VII. Director's Report

Executive Director Wolf reminded the Commissioners that their Form 700 Statements of Economic Interest are due by April 1st. Senior ALJ Tim Lee told the Board about the Santa Monica Properties v. Santa Monica Rent Control Board case, which holds that in the case of "adult recreational housing services of a kind normally found only in luxury housing," a reduction in services warrants a rent decrease only when there is some sort of showing that the reduction has made the rent excessive or given the landlord an unfairly high return. The San Francisco Rent Ordinance does not have a fair return standard, and contains a "substantiality" requirement for decreased housing services.

VIII. Calendar Items

April 24, 2012

10 appeal considerations (1 cont. from 3/27/12)

IX. Adjournment

President Gruber adjourned the meeting at 7:17 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.