

City and County of San Francisco



DAVID GRUBER
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JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Residential Rent Stabilization and Arbitration Board

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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

Tuesday, April 12, 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 6:03 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of March 22, 2011.
(Henderson/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Attorney Kevin Greenquist, representing the landlord at 87 Homestead #A (AL110026), told the Board that this case represents just the type of revolving door tenancy Costa-Hawkins was supposed to prevent. Mr. Greenquist said that the tenants were never added to the lease agreement, their repair requests needed to be heeded as they affected the structure of the building, but that no tenancy was created. Mr. Greenquist told the Board that the parties had reached an agreement that was rejected by the Administrative Law Judge (ALJ). Mr. Greenquist also maintained that acceptance of rent by the landlord should not be construed as a waiver.

B. Wannee Ratanapanguan, the tenant at 2539 – 46th Ave. (AT110027), told the Board that the landlord had always said it was ok to store her boxes in the garage, and the storage rent increase should have been found to be unlawful. She paid for the PG&E after she moved in because it was still affordable, and in 2007 the landlord also made her pay for

water. The landlord always rounded up rent increases and got mad when she challenged them. Ms. Ratanapanguan claimed that the landlords did not tell the truth at the hearing, but the ALJ believed them.

V. Consideration of Appeals

A. 395 – 31st Ave.

AT110025

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant apologizes for the fact that her alarm clock volume got turned to silent and asks for another opportunity to present her case.

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. (Henderson/Mosbrucker: 5-0)

B. 495 Silver Ave.

AL110023

The Master Tenant's appeal was filed slightly less than three months late because the Master Tenant claims to have filed a timely submission that was not received by the Rent Board.

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

The subtenant's petition alleging an unlawful rent increase was granted in the amount of \$4,750.00 because the ALJ found that the subtenant was paying more than his proportional share of the rent pursuant to Rules §6.15C(3). The Master Tenant appeals on the grounds that the ALJ used the wrong method for calculating the proportional shares since the subtenant occupied a larger amount of space in the unit.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the new evidence regarding the exclusively occupied space in the unit; a supplemental hearing will be held only if necessary.
(Henderson/Mosbrucker: 5-0)

C. 25 Madrone Ave.

AL110024

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 \$3,249.00 due to habitability defects on the premises. On appeal, the landlord claims that: he is a Master Tenant and not the property manager; many of the claimed defects have been remedied and the landlord has contracted for the other necessary repairs; the ALJ erred as to when the rent reductions should commence; and the tenant's request for an extension delayed the hearing for four months and increased the landlord's liability.

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

D. 1130 Filbert #1, 2 & 3

AT110020 thru -22

Consideration of this appeal was rescheduled to the May 17th Board meeting.

E. 2539 – 46th Ave.

AT110027

The tenant's petition alleging unlawful rent increases and requesting a determination of the lawful base rent was granted and the landlords were found liable to the tenant in the amount of \$35.64 due to rent overpayments and \$2,759.96 for utilities charges that were included in the base rent at the inception of the tenancy. Additional charges for basement storage were found to be warranted as the ALJ determined that this service was not included in the original base rent. The tenant appeals, arguing that the landlords knew she was using the basement for storage and should be required to prove that they objected to such use.

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

F. 87 Homestead St. #A

AL110026

The tenants' petition alleging an unlawful rent increase from \$2,340.00 to \$3,000.00 based on Costa-Hawkins was granted because the ALJ found that the tenants are co-tenants rather than subtenants, and that they have established a direct landlord-tenant relationship with the landlord. The landlord appeals, arguing that: there is no longer any party to the original agreement, and no other original occupant, still occupying the unit; the landlord's consent to a new tenant's occupancy does not necessarily create a tenancy and an assignment was created in this case; Costa-Hawkins provides that acceptance of rent from a tenant is not sufficient to waive the landlord's right to establish a new rent; and a landlord's responding to repair requests also does not create a tenancy.

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

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

VI. Communications

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

A. A letter from TRI realtor Pam Dubier asking the Board to exempt prior property owners from rent control protections should they continue occupancy post sale.

B. A Press Release from the Office of the City Attorney regarding a court-approved settlement in the City's lawsuit against CitiApartments.

C. A letter requesting support for SB 184 (Leno), which would restore the viability of inclusionary zoning policies in California by overturning a portion of the Palmer decision.

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

VII. Director's Report

Executive Director Wolf briefly went over the terms of the CitiApartments settlement with the Commissioners. She informed them that Supervisor Wiener's "Good Samaritan" legislation, which provides for a temporarily reduced rental rate when a tenant unexpectedly vacates a rent controlled unit due to an emergency, will go into effect on May 28, 2011. She let them know that the agency will be mailing laminated 11 x 17" copies of the current SRO Hotel Visitor Policy to all of the residential hotels in the City.

VIII. Calendar Items

May 17, 2011

11 appeal considerations

New Business:

- A. Proposed Amendments to Rent Ordinance to Reflect Existing Law
- B. Board Discussion of Rules & Regs. §§6.10(a) & 7.12(b)

IX. Adjournment

President Gruber adjourned the meeting at 6:50 p.m.