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KENT QIAN

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

Tuesday, April 24, 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 6:06 p.m.

II. Roll Call

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

Commissioner Marshall appeared on the record at 6:09 p.m.; Commissioner Murphy arrived at the meeting at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 27, 2012.
(Crow/Gruber: 5-0)

IV. Remarks from the Public

A. Attorney Richard Grabstein, representing the landlord in the case at 1655-1/2A Mason (AL120040), told the Board that the Golden Gateway decision doesn't apply in this case because all of the work was done by a neighbor, and not the landlord. Mr. Grabstein said that the work was not done in a timely or reasonable manner, and is still going on after two years. He asked that the Board not extend Golden Gateway.

V. Consideration of Appeals

A. 789 Carolina #9

AL120036 thru -38

The tenant's hardship appeals of three decisions certifying capital improvement costs were granted. The landlord appeals, claiming that: the tenant is single and living in a large, two-bedroom apartment; the tenant is charging his subtenant a disproportional share of the rent; the subtenant's income should also be considered; a prior capital improvement passthrough has also expired; even without the approved passthroughs, the unit is too expensive for the tenant; and the landlord should not have to subsidize the tenant's lifestyle.

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

B. 789 Carolina #5

AL120033 thru -35

The tenant appealed three decisions certifying capital improvement costs. The Administrative Law Judge (ALJ) found sufficient hardship to warrant deferral of one of the passthroughs in the amount of \$30.68 per month. The landlord appeals on the grounds that: the tenant has sufficient assets to pay the passthroughs; the tenant's monthly expenses could be reduced; the tenant voluntarily retired early; and the tenant could live in a house he owns free and clear in another county.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge on the record with instructions to vacate the decision and deny the tenant's hardship appeals. (Murphy/Gruber: 5-0)

C. 1238 – 4th Ave.

AT120030

The subtenant's petition claiming that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was denied. However, a claim of decreased housing services was granted and the Master Tenant was found liable to the subtenant in the amount of \$100.00 due to temporary loss of the common area living room. The subtenant appeals, claiming that: the Master Tenant now has a balanced payment plan which could affect the liability for PG&E charges; she has contributed to the phone bill without having phone service; she now cleans the unit, which should balance out the amount the Master Tenant pays for professional cleaning services; and furniture that was previously provided has been removed.

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

D. 1849 McAllister

AT120029

The landlords' petition for rent increase based on increased operating expenses was granted, resulting in a 7% base rent increase to the tenant in one of three units. The tenant appeals on the grounds that: the ALJ erred in allowing the landlord to choose cost categories and a time period that would be most favorable for approval of the petition, creating exaggerated results; the landlords' expenses have actually decreased in the past two years; and her base rent includes an unlawful rent increase and the operating expense increase should be recalculated accordingly.

MSC: To accept the appeal and remand the case on the issue of the proper base rent for purposes of calculation of the operating and maintenance expense increase and recalculation of that increase, if necessary; to deny the appeal as to all other issues. (Marshall/Mosbrucker: 5-0)

E. 630 Jones #4

AL120031

The tenant's petition alleging an unlawful increase in rent from \$620.18 to \$1,100.00 was granted because the ALJ found that the landlord had failed to prove that a §6.14 notice was timely served on the tenant. On appeal, the landlord argues that: the notice in the tenant's file sufficiently complies with the requirements of Rules §6.14; and the existence of the document in the file demonstrates that the landlord approved of the subtenant with the proviso that the rent could be raised once the last original occupant vacated the premises.

Prior to the meeting, the Board received notification that the parties had settled and wished to withdraw the petition and appeal. Therefore, the Board passed the below motion.

MSC: To accept the appeal, vacate the decision and allow the withdrawal of the tenant's petition and landlord's appeal pursuant to the settlement agreement reached by the parties. (Murphy/Gruber: 5-0)

F. 410 Shrader #3

AL120039

The tenant's petition alleging decreased housing services due to the lack of a functional mailbox was granted and the landlord was found liable to the tenant in the amount of \$75.00 per month. On appeal, the landlord claims that: the lease between the parties provides that the landlord is not responsible for an interruption of services caused by an outside party and is held harmless unless he is negligent; the cost of a post office box is significantly less than determined in the decision; the tenants failed to assist the owner in obtaining cooperation from the postal service; there are factual errors in the decision; and the tenants were not truthful at the hearing.

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

G. 743 Grove #2

AT120022
(cont. from 3/27/12)

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. Due to the absence

or recusal of three Tenant Commissioners, the Board continued consideration of this appeal from the March 27th meeting.

MSF: To accept the appeal and remand the case to the Administrative Law Judge to grant the full \$497 rent reduction until a door is provided that blocks sound and retains heat. (Marshall/Mosbrucker: 2-3; Gruber, Murphy, Dandillaya dissenting)

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

H. 1655-1/2 A Mason

AL120040

The tenants' petition alleging decreased housing services due to the temporary loss of use of the back yard garden was granted and the landlords were found liable to the tenants in the amount of \$100.00 per month until the garden is restored. The ALJ also found that the Golden Gateway defense is inapplicable to this case because the work was performed by the neighboring landlord's contractor and not the tenant's landlord or his agents. The landlords appeal on the grounds that: Golden Gateway applies, because they meet the definition of landlord in that decision; the tenant caused the work to be performed, delayed its completion and should not be rewarded with a rent reduction; and the tenant did not meet her burden of proof.

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

I. 75 Hancock #3

AL120041

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$14,851.60 due to rent overpayments. Additionally, the landlord was found liable to the tenant in the amount of \$3,641.82 due to the landlord's revocation of the tenant's right to sublet. The landlord appeals the decision on the grounds that the ALJ's decision materially erred in points of law and fact and constitutes an abuse of discretion.

This appeal was withdrawn prior to the meeting.

J. 310 – 30th Ave.

AT120042

The tenant's appeal was filed one day late because the tenant's four children were out of school for Spring Break and the tenant works part-time and goes to school.

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

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the increase was warranted under Costa-Hawkins since the last original occupant no

longer permanently resides on the premises and the lawful subtenants moved in to the unit after January 1, 1996. The tenant appeals, claiming that: the landlord failed to meet his burden of proving that the original tenant no longer permanently resides in the unit; the unit is the original tenant's usual place of return and he intends to eventually reside there again; and unforeseen circumstances have required the original tenant's prolonged absence from the unit.

MSC: To deny the appeal. (Murphy/Gruber: 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 months of February and March, 2012.

B. The appellate decision in the case of Crisales v. Estrada, in which the court found that a Section 8 tenancy could not be terminated for "business or economic reason," but must comply with the Just Cause requirements of the Los Angeles Rent Stabilization Ordinance.

C. Articles from CBS News, the Wall Street Journal and BeyondChron.

VII. Director's Report

Executive Director Wolf told the Board that the U.S. Supreme Court declined to take up a challenge to rent control raised by a New York landlord. She also let the Commissioners know that Rent Board staff will be conducting training for Housing Authority staff on rent increase limitations and Just Cause eviction protections for Section 8 tenants. Senior ALJ Tim Lee told the Board that the landlord's writ in the case of Morris v. S.F. Rent Board was denied because the Judge found that the tenant's decrease in services claim at the Rent Board and a pending trial court action filed by the landlord did not consider the same subject matter.

IV. Remarks from the Public (cont.)

B. Marissa Marjone told the Board that her father is a Pacific Heights homeowner who lives above a rent-controlled unit. Ms. Majone has a problem with her father not being able to charge his tenant market rent and said that "tenants have too much power."

VIII. Calendar Items

May 22, 2012

9 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:15 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.