City and County of San Francisco

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, May 17, 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:	Beard; Crow; Gruber; Henderson; Hurley; Mosser.
Commissioners not Present:	Murphy.
Staff Present:	Lee; Wolf.

Commissioners Marshall and Mosbrucker appeared on the record at 6:08 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 12, 2011.
(Hurley/Henderson: 5-0)

IV. Remarks from the Public

A. Tenant Sarah Warner of 1135 Taylor (AT110039) told the Board that she had a panic attack at her hearing and felt like she had to leave. Ms. Warner does not believe that she received due process; she would like another hearing and attorney representation. Ms. Warner feels that her disability is not being adequately addressed and maintained that the $500 cost of obtaining a medical diagnosis is “insurmountable.”

B. Ishael Martin, Jr., the tenant at 3580 San Bruno Ave. (AL110034), has lived in the unit since 2008. Mr. Martin alleged that the landlord has failed to make repairs and said that he trusts that the Board will “understand what he’s been going through.”

C. Richard Thomas, the landlord at 3580 San Bruno Avenue, said that he has been working with the Dept. of Building Inspection but has to call the police to obtain access to

the unit. Mr. Thomas said that he has fixed 15 of the 17 windows but the Administrative Law Judge (ALJ) granted the tenant $70 across the board, regardless. Mr. Thomas does not believe that the windows constitute a "life-safety issue;" alleged that the tenant harasses him; and told the Board that the tenant's refrigerator was working fine and the tenant wouldn't take the replacement the landlord offered. Mr. Thomas' lease requires that the tenant put repair requests in writing, which the tenant fails to do.

V. Consideration of Appeals

A. 80 Terra Vista #13 AT110031 & -38

The landlord filed two petitions seeking certification of capital improvement costs, which were approved. The tenant appeals the decisions on the grounds of financial hardship.

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

B. 1900 Vallejo #203 AT110035 & -36

The landlord's petitions for certification of capital improvement costs were granted. The tenant's hardship appeals of the decisions were denied as the tenant failed to establish that her rent comprised at least 30% of her income. The tenant again appeals the decisions as her financial circumstances have changed in that she has been laid off from her job and will be receiving unemployment insurance.

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

C. 1135 Taylor AT110039

The tenant's hardship appeal was granted and a rent increase based on increased operating expenses was temporarily deferred through December 31, 2010. The Decision on Remand provided that the tenant could reopen her hardship application if she obtained medical verification that she is unable to work or proof that she has attempted to find work but was unable to obtain employment. The tenant reopened her hardship appeal, which was denied because the Administrative Law Judge (ALJ) found that the tenant had failed to obtain a medical diagnosis, nor had she demonstrated sufficient efforts to find employment. On appeal, the tenant argues that: she is not able to work full time; the standard employed for the job search was too high; the tenant has worked selling some of her personal possessions and performing tasks for her father; she has made attempts to find a replacement roommate; she does not have the funds to obtain a current medical diagnosis; and she was denied a fair hearing.

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

D. 1121-1/2 Alabama AL110028

The tenant's petition alleging unlawful rent increases and decreased housing services was granted on remand and the landlord was found liable to the tenant in the amount of $33,950.00 due to rent overpayments and the lack of a permanent heat source in the unit. On appeal, the landlord maintains that the tenant's petition was filed regarding the unit at 1121-1/2 Alabama Street, and the decision should not include any claims regarding the other unit in the building, 1121 Alabama Street.

MSC: To recuse Commissioner Mosser from consideration of this appeal. (Hurley/Marshall: 5-0)

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

E. 761 Commercial St. #5. AL110037

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of $87.50 due to the landlord's failure to timely restore heat to the unit. The landlord appeals on the grounds that: the tenants are not truthful; the tenants failed to provide access to the unit; and the tenants are in breach of their rental agreement.

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

F. 337 Richland Ave. AL110033

The landlord's petition for certification of capital improvement costs was granted, in part. However, certain costs were disallowed as having been completed more than five years prior to the filing date of the petition. On appeal, the landlords argue that: the 5-year statute on certification of capital improvement costs is unclear; the work was done under a single permit and the petition was filed within five years of the issuance of a Certificate of Completion of the work; and the various segments of the project should not be considered separate capital improvements.

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

G. 3567 – 17th St. AL110029

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of $2,147.50 due to unsafe stairs and lead paint contamination. The landlord appeals the decision, claiming that: the decision contains factual errors; the record in the case was left open for the tenant only, which prejudiced the landlord; the ALJ exhibited bias against the landlord; the rent reduction for the condition of the stairs should commence from the date of the tenants' first written complaint to the Dept. of Building Inspection; the windows could not have generated dust because they were made of aluminum, and not wood; the lead dust was probably tracked in from the street by the tenants themselves; the tenants tried to negotiate a buyout of their

lease in bad faith; the tenants interfered with the landlord's attempts to take corrective action; and the tenants failed to meet their burden of proof.

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

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

H. 1130 Filbert #1, 2 & 3 AT110020 thru -22 (rescheduled from 4/12/11)

The appeal of the tenant in unit #2 was filed over a month late because the tenant alleges that the Rent Board did not receive the original appeal forms she submitted.

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

The landlord's petition for certification of the costs of a new roof to the tenants in four units was certified. However, the costs of disassembly and reassembly of a roof deck were conditionally certified, to be imposed only after any defects relating to the work are corrected and approved by the Department of Building Inspection. The tenants in three units appeal the decision on the grounds that: the work was the result of the landlord's deferred maintenance; the costs were excessive; the landlord should have replaced the roof earlier or, in the alternative, had the landlord performed normal routine maintenance and repair, the current tenants would not have to bear the costs of the new roof, which could have been repaired rather than replaced; the actual costs exceeded $25,000 so the landlord should have been required to obtain competitive bids; the ALJ erred and exhibited bias against the tenants and in favor of the landlord; the burden of proof placed on the tenants is unrealistic; and the presence of mold proved that the roof was leaking for many years.

MSC: To deny the tenants' appeals. (Hurley/Gruber: 4-1; Mosbrucker dissenting)

I. 3186 – 24th St. #8 AL110032

The landlord's petition for a rent increase pursuant to Rules §1.21 was denied on remand because the ALJ found that there was a "Tenant in Occupancy," a subtenant, on the premises. Additionally, no Costa-Hawkins rent increase was authorized because the original tenants still permanently reside in the subject unit. The tenant's petition alleging unlawful rent increases was granted as to the market rate increase, but denied as to an increase that was justified due to banking. The landlord appeals the remand decision, asserting that: the ALJ relied on testimony from the first hearing, which was tainted because the tenants' son acted as their translator; the tenants' testimony was not credible; there is insufficient evidence to show that the tenants currently reside at the subject unit; the subtenant was not authorized by the current or prior landlord and never claimed to be a tenant; the ALJ exhibited bias against the landlord and should not have presided over the

remand hearing; and the ALJ is overreaching in interpreting Costa-Hawkins to allow tenants to permanently reside in more than one place.

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

J. 174 Monterey #1 AT110030

The tenants' petition alleging an unlawful increase in rent from $1,400.00 to $1,600.00 was denied because the ALJ found that the original tenant no longer permanently resided on the premises and the increase was therefore authorized by Costa-Hawkins. The tenants appeal on the grounds that the landlord was not entitled to rescind the original rent increase in order to effectuate a larger, subsequent rent increase; that, since the original tenant's lease had already ended, service of the original rent increase created a tenancy between the landlord and the subtenant at the lesser amount; and the landlord was therefore not entitled to raise the rent for another twelve months.

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

MSC: To deny the appeal. (Hurley/Gruber: 4-0)

K. 3580 San Bruno Ave. #3 AL110034

The landlord's appeal was filed three days late because the landlord believed that the appeal deadline ran from the date of receipt of the decision, as opposed to the mailing of the decision, and the landlord and his secretary were experiencing ill health at the time the appeal was due.

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

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 $4,071.25 due to habitability problems on the premises. The landlord appeals, claiming that: there are factual errors in the decision; the tenant was required to make all repair requests in writing, which he failed to do; most of the windows were repaired and the housing code does not require that they be "airtight;" the second weekly garbage pickup was not discontinued in June of 2009 and the service is adequate; the refrigerator that was provided was serviceable; the tenant has additional occupants living with him in the unit, which exacerbates the garbage problem; the tenant has not been truthful and should not be considered credible; the rent reductions are excessive; the tenant failed to provide access to the unit; and a permit is not required for repairing windows.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only on the issue of the date that the garbage services were reduced; a hearing will be held only if necessary. To deny the appeal as to all other issues. (Gruber/Hurley: 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 March and April, 2011.

B. A letter from a member of the public commending the Rent Board staff and remarking on the good service she received from the agency.

C. Articles from Framing the Issues, BeyondChron, the Bay Citizen, the S.F. Chronicle, the Examiner and the Bay Guardian.

D. A Press Release from the Mayor's Office of Communications announcing that Supervisor Wiener's "Good Samaritan" legislation will take effect on May 27th.

VII. Director's Report

Executive Director Wolf told the Board that she would be appearing before the Budget and Finance Committee of the Board of Supervisors tomorrow. Senior ALJ Tim Lee let the Board know that there is no decision yet in Marino v. Hernandez, an eviction case in which the trial court ruled that Rules §12.20 is preempted by State law. From oral argument it appears that the court will uphold the judgment for the landlord but is unlikely to reach the preemption question. Mr. Lee has been told of another pending case where the landlord is evicting a long-term tenant subsequent to a unilateral change in the terms of the tenancy. The Asian Law Caucus is representing the tenant at the trial court level and the City Attorney may intervene should there be an adverse decision and appeal.

IV. Remarks from the Public (cont.)

D. Tenant John Meyer of 1130 Filbert (AT110020 thru -22) asked for clarification since the ALJ in his case said that the landlord's deferred maintenance was a defense to capital improvement certification and Mr. Meyer believes that's exactly what happened in his case, as well as the landlord's failure to repair.

E. Tenant Ishael Martin expressed his appreciation for the Board's process, which he believes "protects tenants from further deterioration." Mr. Martin said that he teaches his daughter to "do the right thing," and that is what he believes the Board did in his case.

VIII. New Business

A. Proposed Amendments to Rent Ordinance to Reflect Existing Law

The Board discussed a Memorandum from Senior Staff regarding necessary "clean-up" amendments to the Rent Ordinance to conform the official version of the Ordinance to the existing state of the law, due to changes made by court decisions or state legislation. They also received a red-lined copy of the proposed amendments, prepared by Deputy City

Attorney Marie Blits. The Commissioners asked that Senior ALJ Tim Lee provide them with the cases cited in the Memorandum, so they can review and compare the cases with the proposed amendments. They also asked for an opinion from the City Attorney as to whether the Board of Supervisors can make technical amendments to Ordinance provisions that are adopted pursuant to a voter initiative. They will discuss this issue at the next meeting.

B. Discussion of Rules and Regulations Sections 6.10(a) and 7.12(b)

The Board briefly discussed whether there is a need to clarify or amend Rules Sections 6.10(a) and 7.12(b). In a recent case, the ALJ denied the landlord's operating and maintenance petition, which was based on an $8,611.64 cost for replacing 25% of the main sewer line in Year 2. On appeal, the Board voted to "deny the landlord's appeal without prejudice to the landlord filing a petition for possible certification of the sewer line work as a capital improvement." At that time, the Board requested that staff calendar a discussion of how such non-routine repair costs should be treated. In another recent case, the landlord contended that the wording of Rules Section 7.12(b), the "6-Month Rule," is ambiguous as to what constitutes "commencement of the work," specifically as to soft costs such as engineering and architectural plans. The Board asked that this issue also be calendared for discussion.

After a brief discussion, the Board asked that staff provide examples of how these issues have been raised and decided in previous cases to inform discussion at the next meeting.

IX. Calendar Items

June 21, 2011
9 appeals
Old Business:
A. Proposed "Clean-Up" Amendments
B. Rules Sections 6.10(a) and 7.12(b)

X. Adjournment

President Gruber adjourned the meeting at 8:00 p.m.