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

Tuesday, June 21, 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; Marshall; Mosbrucker.
Commissioners not Present:	Mosser; Murphy.
Staff Present:	Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of May 17, 2011.
(Marshall/Hurley: 5-0)

IV. Remarks from the Public

A. Marina Franco of the law firm of Wasserman and Stern told the Board that the tenant at 805 Leavenworth (AT110060) has vacated the unit. As to the case concerning 1333 Gough (AL110040), it was necessary for the landlord to remove the pool in order to construct new housing on-site. Ms. Franco said that a 16% rent reduction is too high for a "non-essential service" and that there are comparable to superior pools available in the neighborhood for much less money. Ms. Franco expressed her belief that "inconvenience" is not defensible as a factor in granting a rent reduction, which constitutes an abuse of discretion by the Administrative Law Judge (ALJ).

B. Tenant Robert Waterman of 2360 Pacific Ave. (AT110043 thru -56) expressed the tenants' objections to the decision granting rent increases due to increased operating expenses and capital improvement passthroughs, which include: debt service is not a true operating expense but is a "transactional hedge" as opposed to an actual cost; the

landlord's documentation was inadequate; no improvements were made to the individual units and the common area improvements were not for health or safety but, rather, to attract new tenants; and it is City policy not to displace families and the decision presents a substantial hardship to the tenants in this building.

V. Consideration of Appeals

A. 2220 Turk, Apt. #1 AT110058

The landlord's petition for certification of capital improvement costs to 22 of 36 units was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing on the tenants' claim of financial hardship. (Mosbrucker/Marshall: 5-0)

B. 281 Granada Ave. AL110062

The tenants' petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenants in the amount of $9,925.00 due to habitability problems on the premises. On appeal, the landlords maintain that: they should not be liable for the time period prior to their purchase of the building; the tenants did not note any habitability issues on the Estoppel they filled out before the landlord's acquisition of the property; the tenants have already been compensated by the prior landlord; and the decision presents them with a financial hardship.

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

C. 6 Saint Louis Alley #13 AL110061

The Master Tenant's appeal was filed seven months late because the Master Tenant does not speak English and thought that the decision had no force and effect.

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

The subtenant's petition alleging that he paid a disproportional share of the rent was granted and the Master Tenant was found liable to the subtenant in the amount of $1,825.71. On appeal, the Master Tenant claims that the subtenant paid a greater share of the rent because his room was larger; that the tenant was contractually obligated to pay the amount of rent set at the inception of the tenancy; the subtenant acted violently towards her; and the decision presents her with a financial hardship.

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

D. 1461 Sacramento St. AT110041

The subtenants' petition alleging that they paid a disproportional share of the rent pursuant to Rules §6.15C(3) was denied because the ALJ found that equal division of the rent based on the number of occupants in the unit was reasonable and provided for by the Regulation. On appeal, the subtenants argue that: the Master Tenant promised that they would be able to use the living room for storage and as a work space at the inception of the tenancy; the ALJ was biased in favor of the Master Tenant; there are errors in the Decision regarding the size of the bedrooms; the rent should be divided based on the amount of exclusive and shared space, rather than the number of occupants in the unit; the lack of sunlight and fresh air constitutes a decrease in housing services; and they were not given an opportunity to present their case at the hearing.

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

E. 1333 Gough St. AL110040

The tenant's petition alleging a substantial decrease in housing services because of the closure of the swimming pool in the building was granted and the landlord was found liable to the tenant in the amount of $250.00 per month. The landlord appeals, arguing that: the ALJ abused his discretion by granting a rent reduction constituting 15.64% of the base rent, which deprives the landlord of a fair return; the compensation is for a superior replacement facility plus the inconvenience of travel, which is not warranted under law; and a swimming pool is not an essential element of habitability.

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

F. 2360 Pacific Ave. AT110043 thru -56

The landlords' petition for certification of capital improvement costs to 7 of 21 units was granted, in part, resulting in monthly passthroughs in the amount of $44.28. Additionally, 7% base rent increases were granted for these same 7 units pursuant to the landlords' petition based on increased operating expenses. The tenants in 6 units jointly appeal the decisions on the grounds that: the decisions fail to promote the policies and purpose of the Rent Ordinance; the O&M petition was insufficiently documented; the debt service figures should be reduced by the amount of a loan between the prior and current owners of the property; the O&M increase is not based upon increased operating costs for the building but, rather, the debt service increase resulting from the transfer of the property; the insurance costs for this building are not separated from those of other buildings the landlords own; and the capital improvements are intended to appeal to new tenants while the repair needs of long-term tenants go unattended. The tenant in one unit also appeals the decisions on the grounds of financial hardship.

MSC: To accept the appeals of the tenant in unit #401 and remand the cases for a hearing on the tenant's claims of financial hardship.

MSC: To deny the joint substantive appeals of the tenants in unit numbers 201, 202, 301, 302, 303 and 401. (Hurley/Gruber: 5-0)

G. 1295 – 45th Ave. #1 AT110042

The landlord's petition seeking a determination pursuant to Costa-Hawkins was granted and the ALJ found that a rent increase from $777.00 to $1,400.00 per month was authorized because the tenant no longer permanently resides on the premises. The tenant appeals, claiming that: there have been no additional occupants staying at the unit since 2006; and the house that she bought at that time was an investment, which went into foreclosure.

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

H. 805 Leavenworth #1003 AT110060

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because the ALJ found that the subject unit is not the tenant's principal place of residence. On appeal, the tenant claims that: she failed to attend the hearing because the Notice of Hearing was sent to an incorrect address; her Florida house was purchased as an investment and not a residence and she is rectifying the inappropriate Homestead Exemption she received; she has traveled extensively for the last few years but returned to the unit on a semi-regular basis; she is temporarily living in Switzerland as she has a teaching position there; she has not subleased the unit; she has never voted in Florida although she is registered there as well as in California; and she intends to return to full-time residency in the San Francisco unit at the earliest opportunity.

Consideration of this appeal was continued to the next meeting in order for staff to ascertain whether the tenant has moved out of the unit and whether she wishes to pursue the appeal.

I. 801 – 46th Ave. AL110059

The subtenant's petition alleging that he paid more than a proportional 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 $4,138.37. The Master Tenant appeals, arguing that he and the landlord set the rent at a level that is not greater than the amount the Master Tenant pays to the landlord for the subtenant's housing and housing services, and there is no violation of the Ordinance.

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

VI. Communications

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

A. A copy of the current Ordinance, incorporating the "Good Samaritan" legislation introduced by Supervisor Wiener, along with the accompanying forms.

B. A copy of the published appellate decision in Kaufman v. Goldman.

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

VII. Director's Report

Senior Administrative Law Judge Tim Lee updated the Board on several recent court cases:

In the eviction case of Marino v. Hernandez, the trial court ruled that Rules §12.20 is preempted by State law. The Appellate Division found for the landlord in an unpublished decision that did not address the issue of whether the regulation is preempted by Civil Code §827. Therefore, §12.20 remains in effect and prohibits a landlord from evicting a tenant for violation of a unilaterally imposed change in the terms of the tenancy except for specified exceptions. There are several other pending cases where the landlord's unilateral changes in the terms of the tenancy are at issue.

In a published decision in Kaufman v. Goldman, the First District Court of Appeal held that the anti-waiver provision of Ordinance §37.9(e) "does not apply to the settlement of a legal claim that was made for valuable consideration in return for termination of litigation." The decision is final and binding absent review by the California Supreme Court. It is clear from the decision that, at least in the context of a pending eviction action and attorney representation, the tenant may waive his or her rights under the Ordinance notwithstanding the express language of Ordinance §37.9(e). Whether the court would also uphold a waiver of tenant rights where there is no pending eviction action and/or no attorney representation remains to be seen.

In the case of Baychester Shopping Center v. S.F. Rent Board, the Judge granted the landlord's writ of mandamus and found that the Rent Board erred in denying certification of the costs of capital improvements done by the successor landlord due to the former landlord's failure to abate a Notice of Violation relating to the needed work within 90 days under Ordinance §37.7(b)(6). The Board will discuss a proposed settlement of this case in Closed Session with the City Attorney at the July 19th meeting.

VIII. Old Business

A. Proposed Amendments to Rent Ordinance to Reflect Existing Law

The Board continued their discussion of proposed 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. The Commissioners were provided with a redlined copy of the proposed amendments along with the relevant cases, so that they could 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 could make technical amendments to Ordinance provisions that are adopted pursuant to a voter initiative, which will be addressed by Deputy City Attorney Wayne Snodgrass at the July 19th meeting.

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

Discussion of this issue was continued to the next meeting.

IV. Remarks from the Public (cont.)

C. Regarding the case at 1333 Gough, Marina Franco clarified that all of the comparable gyms submitted by the landlord have on-site parking. She also thanked the Commissioners for their time.

D. The landlord in the case at 281 Granada (AL110062) told the Board that she purchased the house last March and made many repairs to address the tenants' complaints. The previous landlord wrote a letter explaining that the tenants' initial rent was reduced because there was no heat in the unit, which the tenants knew at the time they moved in. The landlord believes that the three additional occupants in the unit should justify additional rent and that the decision is unfair.

E. The Master Tenant at 6 Saint Louis Alley (AL110061) told the Board that the subtenant paid more for their room because it was bigger and the decision is unfair.

F. Tenant Robert Waterman of 2360 Pacific opined that the City should re-examine rent increases for increased operating expenses, which should only be for long-term owners who face rising costs and not new owners where increased debt service is a foreseeable part of the purchase.

IX. Calendar Items

July 19, 2011
8 appeal considerations (1 cont. from 6/21/11)
Closed Session: Baychester v. S.F. Rent Board
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 7:20 p.m.