



Edwin M. Lee
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Delene Wolf
Executive Director

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JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

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

Tuesday, July 17, 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 6:01 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of May 22, 2012.
(Hurley/Qian: 5-0)

IV. Remarks from the Public

A. Attorney Michael Rossoff, representing the landlord in the case at 22 Short Street (AL120063), told the Board that Costa-Hawkins supersedes local rent control and the Rent Board has no jurisdiction over single-family homes. Mr. Rossoff said that the Board should re-write Rules §11.18 and place the burden of proof on the tenant in a Costa-Hawkins case.

B. Vanessa Polgar, the daughter of the landlord in the case at 725 Sanchez (AT120044), asked that the Board uphold the decision of the Administrative Law Judge (ALJ). Ms. Polgar told the Board that the previous tenants were not evicted from the unit, constructively or otherwise, and that there were no outstanding Notices of Violation when the tenant took occupancy in 2008.

C. Debby Pappas, the tenant in the case at 16 Laguna #103 (AT120053 & -54), told the Board that the ALJ granted a comps increase but overlooked the fact that the apartment

had been vacant for two months, so market rent was not feasible. Ms. Pappas said that the increase is punitive and presents a hardship; she will be forced to move if the decision is not overturned, because rents in San Francisco are extremely high.

D. Tenant Silk Gaudin of 48 Haight Street (AT120058) told the Board that her landlord gave her a rent increase in 2002 and then attempted to “bank” and impose the same increase in 2008. Ms. Gaudin said that another tenant in the building also filed a petition, but the other tenant won his case. Ms. Gaudin maintained that the Board shouldn’t condone an owner banking rent increases from a prior landlord.

E. Attorney Daniel Bornstein, representing the landlord in the case at 725 Sanchez, said that the ALJ was presented with a “cumbersome” Costa-Hawkins issue, and got it right. Mr. Bornstein asked that the Commissioners uphold the decision.

V. Consideration of Appeals

A. 2597 Pine

AT120056

The landlords’ petition for certification of capital improvement costs connected to remodeling of the subject unit was granted, resulting in a monthly passthrough in the amount of \$83.66. The 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. (Mosbrucker/Hurley: 5-0)

B. 1690 Broadway #407 & 414

AT120059& -61

The landlord’s petition for certification of capital improvement costs to 43 of 80 units was granted, resulting in a monthly passthrough in the amount of \$75.73. Two tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for hearings on the tenants’ claims of financial hardship (Mosbrucker/Hurley: 5-0)

C. 1050 Post #14

AT120057

The tenant’s petition alleging decreased housing services was dismissed due to the tenant’s failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received notice of the hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Hurley/Mosbrucker: 5-0)

D. 4114- 17th St.

AL120064 & AT120065

The tenant's petition alleging that he paid a disproportional share of the rent was granted and the Master Tenant was found liable to the subtenant petitioner in the amount of \$4,880.63. The Master Tenant appeals the decision on the grounds of financial hardship. The subtenant also appeals, claiming that: \$30 is an excessive valuation of the furnishings provided by the Master Tenant; and the 3-year Statute of Limitations on overpayments in the Ordinance prevents him from collecting all of the amounts he has been overcharged.

MSC: To deny both the Master Tenant's and subtenant's appeals but to make the services of a Rent Board Administrative Law Judge available if the parties wish to mediate a repayment plan. (Mosbrucker/Hurley: 5-0)

E. 3835 Scott St. #202

AT120067

The landlord filed a petition requesting a determination regarding Rent Board jurisdiction over the subject unit. The ALJ found that the unit is a Below Market Rate Condominium unit, which is exempt because the Mayor's Office of Housing regulates the rents. The tenant appeals, arguing that because the Rent Board lacks jurisdiction over this property, it could not grant or deny the landlord's petition.

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

F. 1421 Ingalls St.

AL120060

The tenants' petition alleging an unlawful rent increase and decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$690.00 due to rent overpayments and \$1,450.00 for the loss of a roof deck and driveway parking. The owner failed to attend the hearing and claims on appeal not to have received the Notice of Hearing. The owner also appeals on the grounds that he is not the landlord and has no privity of estate with the tenants, who are actually subtenants.

MSC: To accept the appeal and remand the case for a new hearing.
(Mosbrucker/Hurley: 5-0)

G. 1750 – 25th Ave.

AL120055

The tenants' petition alleging decreased housing services was granted and the landlords were found liable to the tenants in the amount of \$912.50 due to lack of heat and rodent infestation. The landlords appeal, maintaining that: the heating system is in working order and the tenants failed to mention this alleged problem to the building inspector or the landlords; no other tenants in the building have complained about mice on the premises; the tenants' food storage practices encourage the presence of vermin; the tenants agreed that the unit was habitable at the inception of the tenancy; the tenants made up the alleged problems in order to have an excuse to break their lease; and the amounts granted are not reasonable.

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

H. 16 Laguna #103

AT120053 & -54

The landlord's petition for a rent increase based on comparable rents was granted. The ALJ found that an increase from \$1,600.00 to \$1,989.00 was warranted because the original rent was set low due to the employment relationship between the prior landlord and the tenant. On appeal, the tenant claims that: the initial rent reflected a market downturn at the time and the poor condition of the unit; while the initial rent may have been lower than prevailing market, it was not set very low, which is required by the regulation; and the rent increase presents the tenant with a financial hardship.

MSC: To deny both the tenant's substantive and hardship appeals.
(Hurley/Gruber: 3-2; Mosbrucker, Qian dissenting)

I. 48 Haight St.

AT120058

The tenant's petition alleging unlawful rent increases was denied. On appeal, the tenant claims that the landlord had already imposed an annual increase in 2002 and should not have been allowed banking for that year.

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

J. 376 San Carlos #4

AL120062

The tenant's petition alleging unlawful rent increases and decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$641.45 due to rent overpayments and \$901.91 for habitability defects on the premises. The landlord appeals, claiming that: the tenant refused to provide access in order for the landlord to repair the heater, and said that the heater was working; the water pressure issue was resolved in a timely manner; the windows and sashes have been fixed; and the tenant's evidence regarding her rent history was not credible.

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

K. 725 Sanchez

AT120044
(cont. from 5/22/12)

The tenant's petition alleging an unlawful rent increase, decreased housing services and the landlord's failure to repair was denied because the ALJ found that the subject unit is an exempt single family dwelling pursuant to Costa-Hawkins. The tenant appeals on the grounds that: the legislative intent of the Costa-Hawkins Rental Housing Act was that vacancy decontrol should only apply if the previous tenant voluntarily vacated the unit; and an exception to Costa-Hawkins exists if there were long standing code violations on the premises prior to the time the vacancy was created. The Board continued consideration of this appeal from the May 22nd meeting.

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

L. 22 Short St.

AL120063

The tenants' petition alleging an unlawful rent increase from \$3,000 to \$4,000 per month was granted because the ALJ found that the subject building has two residential units and is not exempt as a separately alienable single family dwelling under Costa-Hawkins. On appeal, the landlords argue that: the ALJ should not have relied on a prior use of the premises, out of date City records and erroneous realtor's ads; the building was rented to the tenants in its entirety; and the current 3R Report has a single family designation.

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

M. 1335 Union #7

A120066

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$503.75 due to the removal of the garbage disposal in the unit and a mildew problem in the bathroom. The landlord appeals, claiming that: the tenant caused the problem with the garbage disposal by failing to use it appropriately; there are factual errors in the decision; relevant evidence from a prior Rent Board proceeding should have been allowed; the tenant failed to notify the landlord of the mildew problem, which she caused; the mildew problem was remediated within a reasonable amount of time; and the landlord should have been provided with documentation submitted by the tenant.

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

VI. Communications

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

A. The Board's Annual Report on Eviction Notices.

B. The office workload statistics for the month of May, 2012.

C. A copy of the Proposed Order Granting the Rent Board's Motion for Judgment on the Pleadings and Demurrer in the case of Foster v. S.F. Rent Board (Superior Court Case No. CGC-11-514035).

D. Articles from BeyondChron, the S.F. Chronicle, the S.F. Bay Guardian, the Mayor's Office of Communications, and berkeleyside.com.

VII. Director's Report

Executive Director Wolf reported that the departmental budget had been thoroughly vetted and approved by the Budget Committee of the Board of Supervisors. Senior ALJ Tim Lee told the Board that the court in the Foster case found that Rules §12.20 is not preempted by State law, but there is no final decision in the case because there is an outstanding issue regarding Rules §6.15C(3).

IV. Remarks from the Public (cont.)

F. The tenant at 22 Short Street said that the Tax Assessor shows the property having two units; the downstairs unit had a stove and refrigerator with separate doorbells and entrances; and someone resided there for an extended period of time.

G. Tenant Silk Gaudin alleged that Rent Board staff had not explained banking to her. She maintained that the tenant in case number T110947 was granted almost \$3,000 for the exact same situation and claimed bias against her.

VIII. Calendar Items

August 28, 2012
12 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:10 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.