



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
DEBORAH HENDERSON
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

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

Tuesday, August 23, 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.

Commissioner Mosbrucker appeared on the record at 6:12 p.m.; Commissioner Marshall appeared at 6:15 p.m.; and Commissioner Dandillaya arrived at the meeting at 6:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 19, 2011.
(Hurley/Crow: 5-0)

IV. Remarks from the Public

A. Attorney John Zanghi, representing the landlord in the case at 702-704 Andover (AL110072), told the Board that a confluence of events made the capital improvement project take longer than anticipated. The tenants took six weeks to move out; there was inclement weather; and the project manager needed surgery. The tenants did not oppose the petition and decrease in services rent reductions would constitute a "windfall." Mr. Zanghi said that the landlords should not be punished further for "trying to make the place habitable."

B. Mark Benjamin spoke on behalf of landlord Barbara Fedun regarding the case at 4-1/2 Keyes Alley (AT110078 & -79). Mr. Benjamin told the Board that this is not the first time

that the tenants' claims have been "fictitious;" the numbers on their Hardship Application are also inaccurate; and they do not owe the hospital bill that they submitted.

C. Zhi Ren Wu, representing the landlord at 1034 Sutter #7 (AT110073), told the Board that the tenants at the property all complain about each other. Mr. Wu said that the landlord told the other tenants in the building to "knock it off," but the tenant keeps complaining and calls the police all the time. Mr. Wu maintained that the landlord made a lot of repairs and they are trying to do their best.

D. Tenant Wanxia Ma of 1034 Sutter told the Board that the landlord's representative is "lying," and that the landlord didn't fix anything. Ms. Ma said that the neighboring tenants are still bothering her and that she can't sleep or work.

V. Consideration of Appeals

A. 705 Athens St.

AT110075

The tenant's petition alleging decreased housing services and an unlawful rent increase was dismissed due to the tenant's failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of 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.
(Marshall/Mosbrucker: 5-0)

B. 4-1/2 Keyes Alley

AT110078 & -79

The tenants' hardship appeal of a decision certifying capital improvement costs was denied because the Administrative Law Judge (ALJ) found that the tenants' current income to rent ratio of 50% is less than the 73.27% they were paying at the inception of the tenancy. On appeal, the tenants claim that their medical expenses have increased, while their income has not.

MSF: To accept the appeal and remand the case for a supplemental hearing to consider the tenants' additional expenses. (Mosbrucker/Marshall: 2-3; Beard, Gruber, Hurley dissenting)

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

C. 366 Head St.

AT110074

The tenant's petition alleging decreased housing services was denied because the ALJ found that the subject premises is exempt from Rent Board jurisdiction under Costa-Hawkins because the tenant is a lodger in the landlord's single family dwelling. On appeal, the tenant argues the merits of her decrease in services claims and alleges that the landlord failed to refund her security deposit when she vacated the premises.

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

D. 1034 Sutter #7

AT110073

The tenant's petition alleging decreased housing services, including the lack of quiet enjoyment of her unit, was denied. The tenant appeals, claiming that: the landlord has not fixed the peeling paint in her bathroom; the doorbell is broken, although the landlord fixed it once; and the noise disturbances from other tenants in the building are still a problem.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing only on the issue of the broken doorbell, and the tenant's contention on appeal that it wasn't working until February of 2011. (Hurley/Gruber: 5-0)

E. 702-704 Andover St.

AL110072

The landlord's petition for extension of time to do capital improvement work was denied because the ALJ found that the landlord did not file the petition immediately after realizing that the work could not be completed by the estimated date. On appeal, the landlord maintains that the petition was not filed timely because the on-site project manager had an emergency tonsillectomy and was incapable of notifying the landlords of the status of the project; the petition was filed almost immediately after the landlords were notified; the ALJ ignored the totality of the evidence, which showed that the work was delayed through no fault of the landlords; and the decision rewards the tenants for failing to vacate the unit expeditiously.

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

F. 395 – 31st Ave.

AT110068

The tenant's petition alleging decreased housing services was denied because the ALJ found that the tenant had failed to prove that the landlord failed to comply with the terms of the lease agreement between the parties or that he had reduced her housing services. The tenant appeals, arguing that: she rented the unit in reliance on the landlord's agreement that she could install an electric stove at her own expense; she only asked the landlord to pay to rewire illegal, exposed wiring; the estimate of the cost of the re-wiring was irrelevant, since the tenant was not asking the landlord to pay for the wiring that was necessary for the installation of the stove; the landlord's delay in granting permission for the stove installation forced her to remain at her old unit; and the landlord should refund at least \$600 of the rent she paid for a unit she never occupied.

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

G. 539 Octavia #17

AL110076

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that a \$550.00 rebate from the landlord to the tenant for the first 6 months of the tenancy reduced the base rent from \$1,800.00 to \$1,250.00. On appeal, the landlord argues that:

the ALJ had no proof that the rebate was offered due to market conditions; the lease is dispositive as to the amount of the initial base rent; as no notice of rent increase was issued, the Rent Board does not have jurisdiction over this matter; the ALJ failed to cite the applicable law that allowed her to nullify a portion of the contract between the landlord and the tenant; and the ALJ exhibited bias against the landlord and in favor of the tenant.

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

H. 59 Mirabel Ave.

AL110077

The landlords' petition for extension of time to do capital improvement work was denied because the ALJ found that the landlords failed to obtain all necessary permits prior to giving the notice to vacate nor had they filed the petition immediately upon discovering that the work would take longer than 3 months. The landlords appeal on the grounds that: for purposes of the statute, all necessary permits had been issued prior to the notice having been given; and the landlords filed timely in that it was as soon as they could reasonably determine the amount of additional time that would be required.

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

I. 3064 Sacramento #1

AL110080

The landlord's appeal was filed one day late because she experienced delays in obtaining responses from the Department of Building Inspection and the Rent Board Office closed before she could file the appeal.

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

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$2,093.00 due to inadequate heat and hot water in the unit. On appeal, the landlord claims that: they were unaware that the record had been held open and therefore did not get a chance to respond to the tenants' claims; there are factual errors in the decision; the electric water heater was inefficient but did not need replacement; the tenants exacerbated the problem by turning off the power to the system; the tenants' consultants were biased and unqualified; the problems have been remedied and the violations abated; and the amount of the rent reductions exceed the total bill for gas and electricity to the apartment.

MSC: To deny the appeal except to remand the case for a supplemental hearing on the issue of the date the housing services were restored.
(Mosbrucker/Marshall: 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 month of June, 2011.
- B. An updated Index of court cases concerning rent control.
- C. An updated list of Rent Ordinance amendments.
- D. A Memorandum from City Attorney Dennis Herrera concerning political activity by City officers and employees.
- E. Text of recently enacted legislation raising the limit in Small Claims Court to \$10,000; legislation allowing a tenant who is a domestic violence victim to quit the premises within 180 days of the date a protective order is issued; and an appellate decision finding that a tenant who used another person's personal information to rent an apartment and then defaulted on rent was guilty of larceny/grand theft as well as identity theft.
- F. Articles from Tenants Together, the S.F. Weekly, the S.F. Examiner, the S.F. Chronicle, and the N.Y. Times.

VII. Director's Report

Executive Director Wolf told the Board that the rental unit fee will be \$29 per unit for the fourth year in a row. She informed the Board that she attended a Memorial for Miguel Wooding, who had been the Director of the Eviction Defense Collaborative. She also invited the Commissioners to a Swearing-In for Commissioners Crow and Dandillaya, which will be held in City Hall, on the Mayor's Balcony, at 11:00 a.m. on September 22nd.

VIII. Old Business

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. At their meeting on July 19th, the Commissioners were informed by Deputy City Attorney Wayne Snodgrass that the Board of Supervisors could not make technical amendments to Ordinance provisions that are adopted pursuant to a voter initiative, as ballot initiatives can only be amended by the voters. Since two of the four major provisions that have been invalidated are ballot measures, it was the consensus of the Board to annotate the Official Version of the Ordinance to note that it is unreliable, while continuing to accurately amend the unofficial version that the Rent Board provides to the public.

IV. Remarks from the Public (cont.)

E. Regarding the case at 702-704 Andover, Attorney John Zanghi informed the Board that the landlord will be liable for a rent differential to four different tenants, which will “ruin these folks.”

F. Tenant Wanxia Wu of 1034 Sutter Street told the Board that the upstairs tenants don’t work, make noise all the time, and jump up and down at midnight. Ms. Wu reiterated her contentions that the landlord “hasn’t fixed anything” and that she is unable to sleep.

IX. New Business

Commissioner Marshall told the Board that she attended Parkmerced activist Robert Pender’s funeral and spoke of the many post-mortem tributes he received.

X. Calendar Items

October 4, 2011

7 appeal considerations

Old Business: Rules Sections 6.10(a) and 7.12(b)

New Business: SB332

XI. Adjournment

President Gruber adjourned the meeting at 7:30 p.m.