



Edwin M. Lee  
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*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, August 28, 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 6:05 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of July 17, 2012.  
(Qian/Hurley: 5-0)

IV. Remarks from the Public

A. Attorney Ryan Vilasik told the Board that he was just retained by the tenants at 1665 Green (AT120081) this morning, and asked for another 30-60 days to supplement their appeal. Attorney Vilasik said that there was an incident at the property concerning carbon monoxide exposure, along with other habitability issues.

B. Attorney Daniel Stern, representing the landlord in the Green Street case, told the Board that in a case concerning comparable rents, habitability is irrelevant; market rent at the inception of the tenancy is the only issue.

C. John McKeon, the tenant in the case at 1574 Jackson #4 (AT120073), asked the Board to give him another chance to prove that he is a tenant. Mr. McKeon said that he did not receive the Notice of Hearing and requested that the case be re-opened.

D. A young woman spoke on behalf of her mother, a monolingual Chinese speaker, and the appellant in the case at 24 Wentworth Street (AT120076). She explained that the tenants did not understand the law at the time of the hearing; said that the owner said things at the hearing that are not true; and maintained that her mother has lived in the unit for 28 years.

E. The manager at 24 Wentworth said that the tenants have purchased a house and never use the unit; maintained that the husband and wife live separately and are “cheating the government;” and claimed that the tenants are “taking advantage of the Rent Board.”

V. Consideration of Appeals

A. 1755 Van Ness #202 & 606

AT120075 & -78

The landlord’s petition for certification of capital improvement costs to 36 of 48 units was granted. 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. (Qian/Mosbrucker: 5-0)

B. 1574 Jackson #4

AT120073

The landlord’s petition requesting a Costa-Hawkins determination was granted and a rent increase from \$530.00 to \$2,400.00 per month was found to be warranted. The tenant failed to appear at the hearing and submits on appeal a Declaration of Non-Receipt of Notice of Hearing.

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

C. 30 Grand View Terr., Unit 1

AL120080

The tenant’s petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$8,874.50. The landlord appeals, arguing that: the tenant was just questioning his most recent rent increase, and the ALJ should not have gone back to the inception of the tenancy to check the rent history; the increases were made in good faith; there are discrepancies in the information disseminated by the Rent Board; and the Statute of Limitations in the Ordinance precludes going back more than three years for rent refunds.

This appeal was withdrawn prior to the meeting.

D. 560 Douglass

AL120077

The tenants’ petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$20,707.72. The landlord appeals on the grounds that he did not receive credit for annual increase amounts that he was entitled to and he should be able to bank an additional year’s increase going forward.

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

E. 2511-47<sup>th</sup> Ave.

AT120070

The tenants' petition alleging decreased housing services was denied because the ALJ found that the alleged problems were not substantial and that the landlord responded reasonably. On appeal, the tenants object to the landlord's evidence as unverifiable; claim that the ALJ relied on the landlord's false testimony at the hearing; and maintain that their due process rights were violated in that they were not given the opportunity to respond to the landlord's post-hearing submission.

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

F. 1849 McAllister

AT120074

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that a \$10.00 charge for permission to install laundry appliances in the unit constituted an additional housing service and subsequent rent increases were properly calculated on the new base rent, including the additional \$10.00. On appeal, the tenant claims that: the additional \$10.00 charge was assessed by the prior owner for increased water usage; and banked rent increases should be calculated on the base rent that was in effect at the time the rent increases could have been issued.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a necessary Technical Correction to the Decision.  
(Murphy/Gruber: 4-1; Qian dissenting)

G. 3116-23<sup>rd</sup> St. #A

AL120069

The landlord filed a petition seeking a determination as to whether two of the four occupants of the unit are "Tenants in Occupancy" as defined under §1.21 of the Rules and Regulations. The ALJ found that, since it is undisputed that there are two tenants who reside in the unit as their principal place of residence, there is no basis for deciding the status of the other occupants of the unit. The landlord appeals on the grounds that: it is a denial of equal protection for a landlord to be required to have only one principal place of residence for purposes of an owner-occupancy eviction, whereas a tenant can permanently reside in more than one unit; since the tenant who pays the garage rent should not be considered a Tenant in Occupancy, then the garage rental is commercial; and the requirement that housing services can only be removed with Just Cause should not be applied retroactively to this situation.

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

H. 2731 Folsom

AL120068

The landlord's appeal was filed one day late, although the landlord mailed the documents in good faith with the expectation that they would arrive at the Board in a timely manner.

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

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$13,640.00 due to serious habitability defects on the premises. The landlord appeals the decision on the grounds that damages were assessed for a period of time prior to their ownership of the property.

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

I. 24 Wentworth St. #17

AT120076

The tenants' appeal was filed approximately three weeks late because the tenants are not native English speakers and spent time trying to obtain legal counsel.

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

The landlord's petition for a determination pursuant to Rules §1.21 was granted because the ALJ found that none of the tenants use the unit as their principal place of residence. On appeal, the tenants claim that: the landlord's witnesses are biased on his behalf; the tenants did not request relocation compensation and there are other factual errors in the decision; and the landlord wants the tenants to vacate the unit.

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

J. 1290 Grove #302

AT120079

The tenant's petition alleging unlawful rent increases in excess of the Section 8 Program's Payment Standard was granted and the landlord was found liable to the tenant in the amount of \$1,950.00. The landlord appeals on the grounds that: the Rent Board lacks jurisdiction over this case, which involves a contract between an agency of the U.S. government and the landlord; the tenant lacks standing to challenge the contract; indispensable parties to the dispute, including the San Francisco Housing Authority, were not represented; the Payment Standard is not dispositive because of the Bay Area's high housing costs; HUD has the discretion to approve higher exception rents; and the decision denies the landlord a fair return and violates his due process rights.

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

K. 1665 Green St.

AT120081

The landlord's petition for a rent increase from \$1,720.48 to \$3,200.00 based on comparable rents was granted. The tenant appeals the decision, claiming that the ALJ relied primarily on the rent of another unit on the property, which was not established; the condition of the two units differs; and square footage does not accurately reflect a comparable rental rate.

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

L. 25 Glendale #2

AL120082

The landlords' petition for certification of capital improvement costs to one unit was mostly denied as the ALJ found that the work was in the nature of repair, was the result of the landlords' deferred maintenance, was not necessary for reasons of health or safety, or the exact costs could not be ascertained. On appeal, the landlords provide a more detailed invoice from their contractor and claim that: they were not on notice of the problems with the flooring, nor would the costs have been less if the work had been done earlier; the bathroom work was necessitated in order to abate the NOV; several of the items were replaced due to safety concerns; the tenant requested that the window be replaced; the decision does not meet the substantial evidence test; and a decrease in services rent reduction would constitute double recovery by the tenant.

MSC: To accept the appeal and remand the case to the ALJ on the record with instructions to certify the costs of the carpet, the smoke detectors and outlets, and the ceiling fan. (Mosbrucker/Qian: 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 June and July, 2012.

B. A Memorandum from the Office of the City Attorney regarding political activity by City officers and employees.

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

#### VII. Calendar Items

October 16, 2012

11 appeal considerations (including 3 rescheduled from 9/18/12)

New Business: Assembly Bill 1925

#### VIII. Adjournment

President Gruber adjourned the meeting at 7:00 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.**

**Addendum:** Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.