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

Tuesday, October 4, 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; Murphy.
Commissioners not Present:	Dandillaya; Mosser.
Staff Present:	Lam; Lee; Wolf.

Commissioner Mosbrucker appeared on the record at 6:07 p.m.; Commissioner Marshall arrived at the meeting at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 23, 2011.
(Hurley/Crow: 5-0)

IV. Remarks from the Public

A. Richard Thomas, the landlord in the case at 3580 San Bruno #2 (AL110084), told the Board that the tenants embellished their petition because they cannot afford to pay the rent. Mr. Thomas said that the $50.00 rent reduction for inadequate garbage service is arbitrary, since another garbage can would only cost $27.50; that the tenants took their last landlord to the Rent Board three times due to allegedly defective windows; and another tenant in the building was granted rent reductions in the amount of $75.00, while these tenants got $200.00.

B. Landlord Matthew Epp of 1980 Washington ((AT110082) and 1890 Broadway (AT110086) said that he supports the decisions of the Administrative Law Judges (ALJs) in both cases and hopes that the Board makes the decisions final.

C. Tenant Gerald Green of 3580 San Bruno said that he and the other tenant in the unit, who is disabled, have been dealing with habitability problems for the past two years. Mr. Green told the Board that the landlord bought an electric heater, which is good, but there is still a hole in the ceiling, the windows are still bad and "it's still raining in the house."

D. Tenant Claire Rhinelander of 1935 Clay #101 (AT110083) said that dry rot on the outside of the building led to her windows being replaced. An upstairs tenant's windows were also replaced, but the cost of those windows were allocated to all the units in the building, while she had to completely absorb the costs of her new windows. Ms. Reinlander contended that her windows were perfect before they were replaced and she's only been in the unit for two years.

E. Landlord representative Andy Braden expressed his displeasure with the language of the proposed amended "Six-Month Rule" (Rules and Regulations §7.12{b}), which he contended is still "too ambiguous." Mr. Braden asked what constituted "work," which is currently referred to as "the construction period": does this mean when the landlord solicits bids? What if the landlord can't afford the work and puts it off, does that still count as the date work began? Mr. Braden concluded by saying: "If you know what it means, find better language to say what it is."

V. Consideration of Appeals

A. 1312 Jackson #2 AT110087

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted as the ALJ found that the tenant's principal place of residence is in San Bruno, California. On appeal, the tenant maintains that: her arguments were dismissed because she was unable to be present at the hearing; she receives mail at the subject unit and has her possessions there; she spends most of her free time at the unit; and she has witnesses who will attest to it being her principal place of residence.

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

B. 356 San Carlos St. AL110081

The tenants' petition alleging unlawful rent increase and decreased housing services was granted and the landlord was found liable to the tenants in the amount of $416.65 in rent overpayments and $50 0.00 due to the landlord's rescission of the tenants' right to park on the street in front of the building's driveway at their own risk. On appeal, the landlord claims that: she failed to impose rent increases to which she was entitled, to the benefit of the tenants; the tenants did not timely file their petition; the methodology for calculating annual increases is confusing and inconsistent with how interest on security deposits is calculated; the landlord cannot grant the tenants the right to illegal street parking; and the service was free, so no compensation should be given.

It was the consensus of the Board to grant the landlord's request for a postponement so that her attorney could respond to the Administrative Law Judge's Memorandum.

C. 1980 Washington St. #505 AT110082

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted as the ALJ found that the tenant's principal place of residence is in Napa, California. The tenant appeals on the grounds that the tenancy precedes the adoption of the regulation and cannot be applied retroactively.

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

D. 1935 Clay #101 AT110083

The landlords' petition for certification of capital improvement costs was granted. One tenant appeals the decision on the grounds that she should not be solely liable for the replacement of the windows and sash in her unit, as the work was incidental to the paint job and the same work was treated as a common area improvement in the case of another unit in the building.

MSF: To accept the appeal and remand the case to the Administrative Law Judge to find that the new windows constitute a structural improvement that benefits all the units in the building and to re-calculate the passthrough accordingly. (Mosbrucker/Marshall: 2-3; Gruber, Murphy, Beard dissenting)

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

E. 3580 San Bruno Ave. #2 AL110084

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of $7,358.50 due to water leaks, broken and inoperable windows and inadequate garbage service. On appeal, the landlord argues that: another tenant in the building received a lesser rent reduction, although his windows were in more serious disrepair; the tenants failed to notify the landlord in writing when the roof began to leak; the alleged discoloration of the kitchen ceilings were not in evidence when the landlord was in the unit; the landlord was not given the opportunity to fully present his case; since the tenants in one of the units have vacated, the garbage service is sufficient; the tenants have made false claims; and testimony of the prior owner was disallowed by the ALJ.

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

F. 635 Irving #1 AT110085

The tenant's petition alleging decreased housing services due to noise from a commercial unit in the building was granted, and the landlords were found liable to the tenant in the amount of $300.00 per month for loss of quiet enjoyment of the premises. On appeal, the

tenant argues that the unit was represented as "quiet" and the level of noise warrants a 50% rent reduction.

MSF: To deny the appeal. (Gruber/Murphy: 2-3; Marshall, Mosbrucker, Beard dissenting)

MSC: To accept the appeal and remand the case to the Administrative Law Judge with instructions to grant the tenant a 50% monthly rent reduction until the housing service is restored. (Marshall/Mosbrucker: 3-2; Gruber, Murphy dissenting)

G. 1890 Broadway #107 AT110086

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted as the ALJ found that the subject unit is not the tenant's principal place of residence. The tenant appeals on the grounds that: the petition should have been dismissed because it was not personally signed by the landlord's attorney; the ALJ exhibited bias on behalf of the landlord; there are factual errors and significant omissions in the decision; the tenant is not at the unit because he frequently travels; the tenant is conservative in his use of electricity; and the tenant had expressed an interest in renting a larger unit in the building prior to the landlord's filing the petition.

MSC: To deny the appeal. (Murphy/Gruber: 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 July and August 2011.

B. The recent unpublished Appellate Department decision in the case of Murphy v. Childress (CUD-09-628675), in which the court found no "bargained for" consideration or rent paid so no landlord-tenant relationship existed.

C. Articles from the S.F. Chronicle and the Bay Citizen.

VII. Director's Report

Senior Administrative Law Judge Tim Lee told the Board that there was a class action settlement in a case regarding the Golden Gateway Center, where tenants filed suit based on conditions during a balcony repair project between April of 2006 and October of 2007. Executive Director Wolf introduced new bilingual counselor Vandnez Lam to the Commissioners.

VIII. Old Business

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

The Board continued their discussion of whether there is a need to clarify or amend Rules Sections 6.10(a) and 7.12(b). As to Section 7.12(b), the "Six-Month Rule," the Board has asked staff to draft an amendment clarifying the existing language so that members of the public would be better advised as to the scope and meaning of the section. Senior Administrative Law Judge Tim Lee drafted the following language (with strikethrough for deletions and additions underlined), which was intended only to state existing Board interpretation:

Regulation 7.12(b) Effect of Vacancy on Rent Increases Requested for Capital Improvements

~~If a unit becomes vacant and is rerented after completion of capital improvements, rehabilitation, and/or energy conservation work listed in a petition for certification, no additional rent will be allowed on the unit based on the improvements or work since the landlord has the opportunity to bring the unit up to market rent at the time the unit is rerented. This section also applies to those units rented during the construction period for the project of which the work is a part, as stated in the permit(s), contract document(s), and/or as shown by other relevant evidence, or rented within six months of the commencement of work for which a petition for certification is filed, provided that ownership has not changed in that period.~~

The costs of a capital improvement may not be passed on to a unit which was rented:

(a) after completion of the capital improvement work; or

(b) during the period between commencement and completion of the capital improvement work; or

(c) within the six-month period before the capital improvement work commenced, unless there was a change in ownership of the property within that six-month period and the tenant moved into the unit before the change in ownership, in which case the passthrough is allowed since the new landlord did not have the opportunity to take the anticipated capital improvement work into account in setting the tenant's rent.

The Board members discussed the meaning of "commencement of the work" in subsection (b) above, and wondered if a prior policy of "hammer to nail" should be re-established. The issue of recovery of soft costs was raised, and Commissioner Beard wondered if this should be allowed if the costs were incurred shortly before the work began, such as within a two-month window. Commissioner Murphy reminded the Board that the Department of Building Inspection can take quite a while to issue permits, etc. It was agreed that the Landlord and Tenant Commissioners should take this issue back to their respective communities and submit proposed language for discussion at the November 15th Board meeting.

As to Rules Section 6.10(a), the issue of how to treat "non-routine" repair costs in the context of a petition based on increased operating expenses, the Board decided not to make a change at this time. There are, however, pending petitions seeking rent increases based on expense categories other than debt service and property taxes. The Executive Director agreed to keep the Board abreast of any issues raised by these or any future petitions.

IV. Remarks from the Public (cont.)

F. Andy Braden told the Board that they should retain the first sentence of the proposed amendment to Rules §7.12(b) and get rid of the rest of the "6-Month Rule," because a landlord can't set the rent higher than "market." Mr. Braden maintained that an upgrade in the physical condition of the building should result in a rent increase and if the landlord set the rent higher than market, they would have a vacancy.

IX. New Business

New State Legislation (SB332) re Prohibition of Smoking in Rental Units and Effect on Rules and Regulations Section 12.20

Senior ALJ Tim Lee told the Board that newly enacted SB332, which goes into effect on January 1, 2012, provides that a landlord can prohibit smoking on a residential property, including in a tenant's rental unit. To protect existing smokers in rent controlled jurisdictions, the bill states that a landlord changing the terms of an existing tenancy is subject to local requirements governing changes to the terms of the tenancy. This language protects tenants in rent-controlled jurisdictions that prohibit eviction based on any unilateral change in the terms of a tenancy. However, San Francisco's Rules §12.20 has a health and safety exception to the prohibition, which means that §12.20 would not bar eviction of the tenant for violation of any newly imposed no-smoking ban. The Board discussed whether to simply amend the Rule to add protections for existing smokers, or to remove the health and safety exception entirely and prohibit evictions based on unilateral changes by a landlord to the terms of a tenancy, as in other jurisdictions. Commissioner Murphy also asked that any amendment that would require landlords to allow smoking not result in their liability for decreased services claims from other tenants. The Board asked staff to draft two amendments to §12.20: one that would prohibit a landlord from evicting a tenant for smoking in a rental unit if smoking in the unit was permitted at the inception of the tenancy; and one that would prohibit eviction for violation of any change in the terms of a tenancy if the change is not authorized by the Rent Ordinance or agreed to by the tenant in writing. Both proposals would also provide that a landlord's inability to evict a tenant under such circumstances would not constitute a decreased housing service as to any other tenant. This issue will be discussed further at the November 15th Board meeting.

X. Calendar Items

November 15, 2011
12 appeal considerations
Old Business:
A. SB332/Effect on Rules §12.20
B. Rules §7.12(b)

XI. Adjournment

President Gruber adjourned the meeting at 7:35 p.m.