



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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DAVE CROW
SHOBA DANDILLAYA
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, October 16, 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: Crow; Dandillaya; Gruber; Hurley; Mosbrucker;
Mosser; Qian.
Commissioners not Present: Beard; Murphy.
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:05 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 28, 2012.
(Mosbrucker/Hurley: 5-0)

IV. Remarks from the Public

A. Tenant Sue MacNamee of 230 Central (AT120096 thru -0102) told the Board that a "property speculator" shouldn't be able to increase their profits off the backs of tenants. Ms. MacNamee said that the landlord had violated the housing code by not having an on-site manager, and that there are safety reasons for this requirement. Ms. MacNamee also maintained that the landlord had engaged in major construction work without permits, and was later forced to correct the violations. She said that the increase should at least be reduced by half, as the tenants put a lot of effort into their appeal.

V. Consideration of Appeals

A. 2206 – 23rd St.

AT120094 & -95

The landlord's petition for a rent increase based on comparable rents was granted and the ALJ found that an increase from \$800 to \$3,080.00 was warranted. The tenants appeal the decision on the grounds of financial hardship and assert that the decision is unfair and the landlord is just trying to evict them.

MSC: To deny the tenants' hardship and merit appeals. (Hurley/Gruber: 4-1; Marshall dissenting)

B. 230 Central

AT120096 thru -0102

The tenants' appeals were filed 4 days late because they were under the impression that another tenant in the building could file on their behalf.

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

The landlord's petition for rent increases based on increased operating expenses to 24 of 30 units was granted. One tenant appeals the decision on the grounds of financial hardship and claims of necessary repairs in the building and his unit. The tenants in 8 units jointly appeal on the following grounds: the new owner did not incur any actual cost increases, as they sold the building shortly after their purchase; the O&M petition was part of a speculative scheme to "flip" the building for a quick profit; successor in interest provisions should not apply when the costs the increase is based on were not incurred by the petitioner; the landlord's failure to repair and lack of an on-site manager should preclude the rent increases; and the former on-site manager's gross pay, rather than net pay, should have been factored into the management expense category in Year One.

MSC: To accept the hardship appeal of the tenant in unit #7 and remand the case for a hearing on the tenant's claim of financial hardship.
(Mosbrucker/Gruber: 5-0)

MSC: To deny the merit appeal of the tenant in unit #7. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

MSF: To accept the tenants' joint appeal and remand the case to the Administrative Law Judge to re-examine the issue of whether the tenants gave notice of the repair problems to the landlord and the resident manager. (Marshall/Mosbrucker: 2-3; Dandillaya, Gruber, Hurley dissenting)

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

C. 363 Mississippi

AT120085
(rescheduled from 9/18/12)

The tenants' appeal was filed five days late due to health issues regarding family members.

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

The landlord's petition for certification of the costs of exterior painting to the tenants in one unit was granted, resulting in a monthly passthrough in the amount of \$51.89. The tenants appeal, claiming that: the paint job was the result of the landlord's deferred maintenance resulting in a code violation because the landlord only painted two sides of the building in 2006.

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

D. 1053 Bush #5

AT120083
(rescheduled from 9/18/12)

The tenants' petition alleging decreased housing services was denied. On appeal, the tenants claim that: the building now has a "name only" resident manager; the building is not sufficiently cleaned or cared for; no emergency protocols have been provided by the landlord; the landlord should ensure quiet enjoyment of the unit by dealing with second-hand smoke from loiterers at the building; and the voluminous evidence they provided was ignored by the ALJ.

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

E. 376 San Carlos #4

AT120084
(rescheduled from 9/18/12)

The tenant's appeal was filed almost two months late due to financial, situational and emotional factors.

MSC: To recuse Commissioners Crow and Mosbrucker from consideration of this appeal. (Marshall/Gruber: 5-0)

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

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 tenant appeals on the grounds that: she should have been refunded rent overpayments for 41 rather than 29 months; and the leak at the alleyway constituted a substantial decrease in housing services.

MSC: To accept the tenant's appeal and remand the case to the Administrative Law Judge to adjust the amount of the overpayments and grant a rent reduction for the leaking faucet in the alleyway; a hearing will be held only if necessary.
(Marshall/Qian: 3-2; Gruber, Hurley dissenting)

F. 775 Post #305

AL120091

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the occupant is a tenant, and not a subtenant, so the increase is not authorized by Costa-Hawkins, nor were Rules §6.14 notices timely served. On appeal, the landlord argues that: the landlord's acceptance of rent from the tenant for the last five years does not waive his right to impose a Costa-Hawkins rent increase; two of the three cases cited by the ALJ are inapplicable; the Cobb case is distinguishable from the instant case because the landlord in that case knew that the original tenant had vacated and waited almost sixteen months to impose a rent increase; and the landlord in this case never created a separate relationship with the appellee while the Master Tenant was still in occupancy.

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

G. 4078 – 24th St.

AT120086

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 \$5,625.00. On appeal, the Master Tenant claims that: the ALJ exhibited bias against her; the subtenant perjured himself in denying that he has exclusive use of the living room; and she has been repeatedly harassed by the subtenant. The subtenant also appeals the decision on the grounds that the base rent without amenities should not have been split in half because the Master Tenant has exclusive use of significantly more space in the unit and a square footage analysis is more appropriate under the facts of this case.

MSC: To deny both the Master Tenant's and subtenant's appeals.
(Mosbrucker/Hurley: 5-0)

H. 4002 – 19th St.

AT120087 thru -89

The landlords' petition for certification of capital improvement costs to 6 of 8 units was granted, in part, resulting in a monthly passthrough in the amount of \$24.55. The tenants in 3 units appeal the decision on the grounds that: the cost of the painting work should not have been certified because the work was done in an unsafe manner, resulting in toxic lead exposure to the tenants.

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

I. 1109 Montgomery

AL120092

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$2,952.64. The landlord appeals, claiming that: his deceased father issued the excessive rent increase, and there could have been reasons for it; the rent increases were not the maximum amount each year and there were years

when no increase was given; there was no unlawful intent on the part of the landlord; and the tenant owes half of his last month's rent and several years of Rent Board fees.

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

J. 90 Divisadero #18

AL120093

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,975.00 due to a leaking ceiling and faulty refrigerator. The landlord appeals, asserting that: the tenant's rental agreement is fraudulent and the tenant is not credible; there are several occupants of the unit and the tenant should not receive the entire amount of the rent overpayments; the ALJ failed to address the issue of notice to the landlord; and the Housing Inspector was incompetent.

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

K. 562 Fell

AT120103 & -04

The tenants' petitions alleging an unlawful rent increase from \$584.00 to \$3,600.00 were denied because the ALJ found that the rent increase was warranted under Costa-Hawkins. On appeal, the tenants claim that: they are tenants, as opposed to subtenants, because they have an established relationship with the landlord, including being included in buy-out offers; the landlord has harassed them by failing to deposit their rent checks; there are factual errors in the decision; and the landlord colluded with the Master Tenant in an attempt to evict the other tenants.

MSC: To recuse Commissioner Crow from consideration of this appeal.
(Mosbrucker/Marshall: 5-0)

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

VI. Communications

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

A. A copy of the agency's Annual Statistical Report, which shows a 22% increase in petition filings over Fiscal Year 2010-2011.

B. Articles from BeyondChron, the S.F. Examiner, CapitolAlert, Tenants Together, and the S.F. Chronicle.

IV. Remarks from the Public (cont.)

B. Central Avenue tenant Sue MacNamee reiterated her contention that the lack of a resident manager constituted a safety hazard for 8 months, and that there were no

consequences to the landlord for not having pulled permits. Ms. MacNamee contended that the landlord did not deserve the full 7% increase.

C. Tenant Shelly Gregory of 4002 – 19th St. (AT120087 thru -89) said that the tenants in her building appealed because of the serious problem of lead hazards in residential buildings. Ms. Gregory told the Board that the lead levels in the tenants' units were three hundred times what is permissible. She urged the Board to make this a valid objection to the certification of capital improvement costs.

IX. New Business

Assembly Bill 1925

Executive Director Wolf informed the Board that AB 1925 will become effective January 1, 2013. This legislation will reduce the amount of relocation benefits that will be owing from landlords to San Francisco tenants pursuant to Ordinance Section 37.9C in the event of a temporary capital improvement eviction of less than twenty days. Since the Ordinance section was the result of a voter-approved initiative, it cannot be amended without a return to the ballot. Therefore, Senior Staff recommended that we continue our practice of annotating the copies of the Ordinance we provide to the public to indicate that the amount of such relocation payments are now governed by Civil Code Section 1947.9, and not by Ordinance Section 37.9C. The Board also received a letter from Attorney Dave Wasserman on behalf of the housing industry asking that the Board amend Rules Section 12.15(d) to comport with the new State law. Since the Rules section references Ordinance Section 37.9C, Senior Staff wondered whether amending the Rules was necessary. Commissioner Mosbrucker said that she would like additional time to consider this question. The issue was therefore continued to the November 13th meeting.

X. Calendar Items

Next Board meeting: December 11, 2012

XI. Adjournment

President Gruber adjourned the meeting at 7:45 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.