



I

DAVID GRUBER
PRESIDENT

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

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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

Tuesday, November 15, 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; Dandillaya; Gruber; Henderson; Hurley;
Marshall; Mosbrucker; Mosser.
Commissioners not Present: Crow.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 4, 2011.
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Tenant Jackie Greaux of 342 Spruce (AL110100) asked the Commissioners to uphold the decision and not let the landlord circumvent the law. Ms. Greaux said she just wanted the appliances she was promised and for her bathroom to be re-installed, which is in worse shape than when she moved in. Ms. Greaux believes the conditions in her unit constitute health and safety violations and that the Rent Board has jurisdiction over this dispute, despite the 9-month lawsuit the parties are engaged in.

B. Tenant Thayer Walker of 743 Grove #2 (AT110093) told the Board that when a downstairs room that was part of the tenancy was restored, it was without electricity or a door. The landlord has restored some services that were removed, but Mr. Walker believes the decision allows the landlord to choose. Mr. Walker said that the landlord is acting in

bad faith, and that 30-day notice of restoration of the prior base rent amount was not provided.

C. Lucia Kimble of Causa Justa told the Board that Senate Bill 332 will be “disastrous to tenants” and that it would be a direct blow to affordable housing; she also said that SROs are being turned into luxury hotels. Ms. Kimble suggested that smoking should be dealt with as a health issue, and not by taking away housing from long-term tenants.

V. Consideration of Appeals

A. 2944/2948 – 21st St.

AT110105

The tenants’ petition alleging decreased housing services was dismissed due to their failure to appear at the hearing. On appeal, the tenants claim that they did not receive notice of the hearing and their attorney at the time did not notify them of the hearing date.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenants again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Murphy/Marshall: 5-0)

B. 230 Castro #6

AT110094

The landlord’s petition for certification of capital improvement costs to 4 of 6 units was granted, resulting in a monthly passthrough in the amount of \$25.80. One 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. (Marshall/Mosbrucker: 5-0)

C. 1455 – 29th Ave.

AL110095

The landlord’s petition for certification of capital improvement costs was granted, resulting in a monthly passthrough in the amount of \$80.93. Additionally, the landlord was found liable to the tenants in the amount of \$8,074.16 due to unlawful rent increases imposed by the prior owner. The landlord appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the landlord’s claim of financial hardship. (Murphy/Gruber: 5-0)

D. 19 Jasper Pl.

AL110092

The landlord’s appeal was filed 11 days late because the landlord is not a native English speaker and did not realize the significance of the situation.

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

The tenant filed a petition requesting a determination of his lawful rent and the Administrative Law Judge (ALJ) found the landlord liable to the tenant in the amount of \$12,627.00 due to unlawful rent increases. The landlord appeals, claiming that he failed to attend the hearing due to misunderstandings created by his limited English skills and alleging that the tenant lied at the hearing.

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

E. 789 Carolina #9 & #5

AT110097 -99; AT110102-04

The landlord's petitions for certification of capital improvement costs to 8 of 9 units were granted, resulting in monthly passthroughs in the amounts of \$7.71, 30.68 and \$12.84. The tenants in two units appeal the decisions on the grounds of financial hardship.

MSC: To accept the appeals of the tenants in unit numbers 9 and 5 and remand the cases for a hearing on the tenants' claims of financial hardship.
(Marshall/Murphy: 5-0)

F. 742 Treat

AL110101

The tenants' hardship appeal of a capital improvement passthrough in the amount of \$39.53 was granted as the ALJ found sufficient hardship to warrant temporary deferral of the passthrough in order for the tenants to find additional employment. The landlord appeals the remand decision, asserting that: the tenant lied on her Hardship Application in that she did not divulge the presence of another rent-paying tenant in the unit; the tenants spent \$5,000 on veterinary bills; and he will be unable to continue to improve the property if the tenants are not made to share in the costs.

MSC: To accept the landlord's appeal and remand the case for a supplemental hearing on the tenants' claims of financial hardship. (Murphy/Beard: 5-0)

G. 818 Green #A

AL110090 & -91
(rescheduled from 10/4/11)

The tenant's petition alleging unlawful rent increases and incorrect calculation of a bond measure passthrough was granted and the landlord was found liable to the tenant in the amount of \$661.71; rent reductions granted in prior Rent Board decisions were determined to have been unabated and still in effect. The landlord appeals, claiming that the decision presents him with a financial hardship; that he was given incorrect advice by Rent Board staff; and that the repairs that were done did not require a permit.

MSC: To deny both the landlord's substantive and hardship appeals.
(Mosbrucker/Marshall: 5-0)

H. 356 San Carlos

AL110081
(rescheduled from 10/4/11)

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 \$500.00 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. This case was postponed from the October 4th Board meeting so that the landlord's attorney could respond to the Memorandum from the Administrative Law Judge.

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

I. 286 – 29th St.

AL110089

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the increase was not warranted under Costa-Hawkins or Rules §6.14. On appeal, the landlord argues that: the subtenant never informed the landlord that she had moved into the unit and attempted to hide her occupancy; upon learning that the subtenant resided on the premises, the landlord acted diligently to preserve its right to raise the rent when the original tenant no longer resided in the unit; the original tenant was directed to provide a copy of the 6.14 notice to any other person residing in the unit; and the Rent Board should not reward the type of devious behavior exhibited here.

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

MSC: To accept the appeal and remand the case to the Administrative Law Judge with instructions to reverse the decision and find that the rent increase is warranted pursuant to Rules and Regulations Section 6.14. (Murphy/Gruber: 3-2; Marshall, Mosbrucker dissenting)

J. 743 Grove #2

AT110093

The tenants' petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenants in the amount of \$4,335.90 due to the loss of a downstairs room, under-deck storage and laundry facilities on the premises. On appeal, the tenants claim that: the rent reduction for the reconfigured downstairs room should be greater, because the room is not usable in its present condition; the elements of the downstairs room that are now lacking are not "amenities," but essential elements that give the room its value; the landlords are acting in bad faith; and the decision should state that the landlords are responsible for furnishing utilities to the downstairs room.

MSC: To accept the appeal and remand the case to grant a rent reduction in the amount of \$497.00 until a locking door and electricity are provided to the downstairs room; a supplemental hearing will be held to correct the

amount of overpayments owing from the landlord to the tenants.
(Marshall/Mosbrucker: 3-2; Gruber, Murphy dissenting)

K. 2846 – 22nd St.

AT110096

The tenant's petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenant in the amount of \$2,595.75 due to habitability defects on the premises. The tenant appeals, arguing that: the conditions constituted substantial decreases in housing services and the evidence from 1997 and 2007 should be re-examined; she did not renew her request for repairs during the period 1997 to 2009 for fear of reprisals; the Notice of Violation regarding the laundry area was never abated; there were continual leaks and water damage from 2003 until November, 2010; the back deck wall and deck have been unsafe since January of 2003; the washing machine was a housing service provided at the inception of the tenancy and was not replaced until April of 2010; and a disposal that was broken in 2002 was removed rather than repaired.

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

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

L. 342 Spruce St.

AL110100

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$11,655.00 due to serious habitability defects on the premises. The landlord appeals on the grounds that the Superior Court has exclusive jurisdiction over this dispute and the tenant's claims constitute compulsory cross-claims that were required to be filed in the court case the parties are currently litigating.

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

VI. Communications

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

- A. The Department's Annual Statistical Report for Fiscal Year 2010-11.
- B. A Schedule of Outreach events conducted by Rent Board staff in 2011.
- C. The office workload statistics for the month of September 2011.

D. Articles from the Bay Citizen, BeyondChron, S.F. Business Times, the S.F. Bay Guardian, the S.F. Examiner, SFAppeal, and the S.F. Apartment Magazine.

VII. Director's Report

Executive Director Wolf informed the Commissioners that they must complete mandatory harassment prevention training by December 31, 2011; she will investigate whether MCLE credit is available for the attorneys on the Board. She told them that Senior Administrative Law Judge Sandy Gartzman and Rent Board Supervisor Jennifer Rakowski conducted a well-attended tenant service provider training on the new multi-unit and tenant/subtenant petition forms. She also invited them to the annual Staff Holiday party on December 15th.

VIII. Old Business

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

The Board continued their discussion of newly enacted Senate Bill 332 and its effect on Rules and Regulations Section 12.20. The legislation, 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. At the October 4th meeting, 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 Senior Administrative Law Judge Tim Lee to draft two amendments to §12.20: Version One, which 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 Version Two, which 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 were to 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.

The Board discussed the two proposals. It was felt by some Commissioners that Version Two would help clarify that a tenant's continued occupancy of the premises after the landlord's unilateral change in the terms of the tenancy does not, in and of itself, connote the tenant's acceptance of the changed terms. The Landlord Commissioners noted that the question of whether Rules Section 12.20 is preempted by State law remains alive. The Board then voted as follows:

MSC: To put out for Public Hearing Version Two of the proposed amendments to Rules and Regulations Section 12.20, which provides that a tenant may not be evicted for violation of a unilaterally imposed change in the terms of a tenancy unless the tenant accepted the newly imposed term in writing or the newly imposed term is authorized by the Rent Ordinance, and that a

landlord's inability to evict a tenant for violation of a newly imposed term shall not constitute a decrease in housing services under the Rent Ordinance as to any other tenant. (Mosbrucker/Marshall: 5-0)

B. Board Discussion of Rules and Regulations Section 7.12(b)

The Board continued their discussion of whether there is a need to clarify or amend Rules Section 7.12(b). The Board asked Senior Administrative Law Judge Tim Lee 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, which was discussed at the meeting on October 4th. However, the Commissioners did not reach consensus as to the exact meaning of the phrase "commencement of the work" for purposes of application of the 6-Month Rule, and decided to re-calendar this issue should the question come up in a future case, or upon request.

IV. Remarks from the Public (cont.)

D. Tenant Kimball Goy of 19 Jasper Pl. inquired as to whether the Commissioners received the tenants' response to the landlord's appeal.

IX. New Business

Commissioner Marshall told the Board that there have been several hundred eviction notices issued to tenants at Parkmerced based on breach of lease due to unpaid charges for water and sewer service. Commissioner Marshall requested that this issue be put on the Agenda for discussion at the next meeting.

X. Calendar Items

December 13, 2011

6 appeal considerations

6:30 Public Hearing: Proposed Amendments to Rules and Regulations Section 12.20
New Business: Eviction Notices/Water & Sewer Charges at Parkmerced

XI. Adjournment

President Gruber adjourned the meeting at 7:50 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.