



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
PRESIDENT

BROOKS BEARD
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, December 11, 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.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:07 p.m.; Commissioner Marshall arrived at the meeting at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 13, 2012.
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Attorney Dave Wasserman, representing the landlord at 999 Fell (AL120118), told the Board that he was before them last year on this same issue, that of a minor child remaining in a unit after their parents have moved. Mr. Wasserman reminded the Board that in the prior two cases, the tenants moved in to the unit prior to January 1, 1996. In the instant case, there is a post-1/1/96 tenant. Mr. Wasserman asked the Commissioners to consider whether this should warrant a different result.

B. Carlos Calas, the tenant at 288 – 9th St. #16 (AT120120), said that his case is “not as simple as it seems on paper” and that “tenants are suffering.” Mr. Calas told the Board that the building’s electricity failed again today.

C. Michelle Horneff-Cohen, representing the landlord in the case at 875 Vallejo (AT120114 thu-16), asked that the Board deny the tenant's untimely appeal because no new information had been provided.

D. Valerie Yee, representing the landlord at 2121 Pierce (AL120113), asked that the Board deny the tenant's request for lower rent and provided additional evidence of comparable rents.

V. Consideration of Appeals

A. 144 Eddy #402

AT120121

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant contends that he missed the hearing due to a calendaring error.

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

B. 2428 Folsom

AL120122

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$3,990.00. The Master Tenant appeals, claiming that he failed to appear because he did not receive notice of the hearing.

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

C. 3061 Pine

AL120112

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$10,932.00. The Master Tenant appeals on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the Master Tenant's claim of financial hardship. (Gruber/Murphy: 3-2; Marshall, Mosbrucker dissenting)

D. 2133 Stockton #D207

AT120117

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant provides evidence that

she had a medical procedure performed that morning which ran late, and she then got caught in traffic.

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

E. 875 Vallejo

AT120114 thru -16

The tenant's appeal of three decisions certifying capital improvement costs was filed approximately five weeks late because she was ill and another tenant in the building who she was representing was hospitalized.

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

The landlords' three petitions for certification of various capital improvement costs were granted. The tenant in one unit appeals on the grounds that: the landlord should have chosen the painting contractor who submitted a lower bid; the painters were incompetent and unprofessional; the building was painted six years prior to the instant paint job, so the work does not constitute a capital improvement; the windows were replaced because they leaked, which they continued to do after replacement; the building was painted because the siding was rotted; the seismic work was not necessary; and the passthroughs are not being equitably divided.

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

F. 1440 Golden Gate #101

AT120111

The tenant's petition alleging decreased housing services due to excessive noise from another unit in the building was denied. On appeal, the tenant maintains that the ALJ was biased towards the landlord and his witness, the neighboring tenant, and that the decision should have been based upon the requirements of the San Francisco Noise Ordinance.

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

G. 2121 Pierce St.

AL120113

The landlord's petition for a rent increase based on comparable rents was granted, although the ALJ determined the comparable rent to be \$2,234.00, rather than the \$4,995.00 requested by the landlord. On appeal, the landlord claims that: the ALJ erred in determining the market rent for the unit in 2003; the tenant failed to present proof of the condition of the unit at the inception of the tenancy; and the decision is not supported by the evidence.

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

H. 1263 – 41st Ave.

AL120119

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants for any amounts they paid in excess of 1/5 of the total utility costs for the building, as per their original lease agreement. The landlord appeals, claiming that the decision is unfair because the tenants have more people residing in their unit and should pay a greater share of the utility costs.

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

I. 999 Fell St. #3

AL120118

The tenant's petition alleging an unlawful rent increase from \$1,681.75 to \$3,295.00 was granted because the ALJ found that the tenant was an original occupant of the unit and therefore no rent increase was authorized by Costa-Hawkins. On appeal, the landlord argues that the tenant cannot be considered an original occupant because he was a minor child when he moved in to the unit with his parents after the effective date of Costa-Hawkins and his parents no longer permanently reside in the unit.

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

J. 288 – 9th St. #16

AT120120

The tenant's petition alleging decreased housing services and the landlord's failure to repair was denied because the tenant failed to prove that the condition of the electrical service rose to the level of a code violation and the landlord responded expeditiously to the tenant's complaints regarding bed bugs. On appeal, the tenant claims that the landlord should have provided more than three extermination treatments for the bed bugs and the electrical service problems have been ongoing for over ten years.

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. An updated Staff Roster.

B. Articles from the S.F. Examiner, the Bay Citizen, BeyondChron, S.F. Apartment and the S.F. Chronicle.

VII. Director's Report

Executive Director Wolf told the Board that the allowable annual increase commencing March 1, 2013 will be 1.9%, the same amount as this year. She also invited the Commissioners to the Staff Holiday Party.

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

AB 1925, which adds new Civil Code Section 1947.9 effective January 1, 2013, limits the amount of relocation payments a landlord is required to pay tenants for temporary displacements of less than 20 days. Since the state law supersedes the Rent Ordinance with regard to the amount of relocation benefits a landlord must pay for temporary evictions, the Rent Board's unofficial version of the Rent Ordinance will be annotated to refer to the controlling state law in temporary evictions for capital improvement work under Ordinance §37.9(a)(11) and for lead abatement work under Ordinance §37.9(a)(14).

The Board continued their discussion of whether they should adopt regulations to implement the provisions of the bill, since there are questions that are not addressed by the legislation. The Board had asked Senior ALJ Tim Lee to request a City Attorney Opinion on the Board's authority to adopt regulations that fill in the gaps of the state law; and to identify issues raised by the new state law and possible amendments to the Rules and Regulations that might address those issues. In response to the Board's inquiry, the Office of the City Attorney provided initial oral advice, which Senior ALJ Lee provided to the Board in a confidential Memorandum. After a brief discussion of whether or not to keep the Memorandum confidential, the Board voted as follows:

MSC: To waive privilege as to the confidential Memorandum from the Office of the City Attorney regarding Assembly Bill 1925 (Civil Code Section 1947.9) and make the document available to the public.
(Murphy/Mosbrucker: 5-0)

The Board then continued discussion of this item to the next meeting.

IV. Remarks from the Public (cont.)

E. Carlos Calas told the Board that he understands their decision in light of the fact that no Notice of Violation has been issued, but that doesn't mean that something isn't going on. Mr. Calas said that the electricity goes out whenever tenants in the building use appliances and that they are receiving "bad service" although the rent goes up annually.

IX. New Business

Communication Regarding Proposed Legislation

Executive Director Wolf told the Board that, in the future, she will forward any legislation that is introduced at the Board of Supervisors, without waiting to see if it is assigned to Committee, or for it to be in final form. By her doing so, the Commissioners will be aware of all pending proposals.

X. Calendar Items

February 12, 2013

13 appeal considerations

Old Business: AB 1925

New Business:

A. Departmental Budget

B. Rules §1.21 Petitions: Procedural Requirements

XI. 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.