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*Executive Director*

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DEBORAH HENDERSON  
JIM HURLEY  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

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

Tuesday, December 13, 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 6:01 p.m.

II. Roll Call

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

Commissioner Murphy appeared on the record at 6:13 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 15, 2011.  
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Landlord Ben Rubin of 2400 Van Ness (AL110108) said that, at the hearing, the tenant spoke for the majority of the time. Mr. Rubin offered to bring in an expert to show that the leases offered into evidence were defaced. He maintained that after 10 years the tenant's rent should be 18% higher but, instead, went down \$40. Mr. Rubin claimed that the Decision is unfair, as there was obviously a special relationship between the prior landlord and the tenant.

V. Public Hearing

Proposed Amendment to Rules and Regulations Section 12.20

At 6:33 p.m., the Board convened a Public Hearing on a proposed amendment to Rules and Regulations Section 12.20. The amendment 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 also provides that a landlord's inability to evict a tenant for violation of a newly imposed term shall not constitute a decrease in housing service under the Rent Ordinance as to any other tenant. 34 individuals addressed the Board, as follows below:

1. Charley Goss, an employee of the S.F. Apartment Association, said that property managers are not looking to evict tenants in general, but that it is important when taking over the management of a building to be able to put reasonable house rules (i.e., quiet hours, garbage disposal, recycling, etc.) into effect. Mr. Goss maintained that this aids the quiet enjoyment of other tenants in the building.

2. Landlord Attorney Marina Franco told the Board that they are taking out the conduct of one abusive landlord on the entire industry and that by taking out the health and safety exception, all tenants will suffer.

3. Tyler Macmillan, the Director of the Eviction Defense Collaborative, said that the Board's failure to act would be tantamount to throwing out Just Cause. Mr. Macmillan said that landlords can change house rules when tenancies turn over but that house rules can be "totally unfair" and "leave us with nothing to defend."

4. Lucia Kimble of Causa Justa spoke on behalf of low-income Spanish-speaking and SRO tenants. Ms. Kimble agreed that SB 332 addresses a legitimate health concern, but said the legislation could result in the displacement of many of her clients. Ms. Kimble suggested that landlords maintain their units in order to reduce the spread of second-hand smoke.

5. Landlord Sam Roake said that he has 1 problem tenant in his 4-unit building who puts boxes all over the basement and makes a lot of noise. Mr. Roake feels that this is unfair to the other tenants and that he needs the option of threatening eviction if the tenant breaks the house rules.

6. David Grasser spoke on behalf of his wife. Mr. Grasser asked what the Board will give back to landlords to enforce health and safety in their buildings if they take the health and safety exception in §12.20 away. Mr. Grasser wants to maintain the capability of being reasonable while protecting other tenants in the building.

7. Landlord Art Walker spoke in opposition to the proposed change, which he believes is "counter-intuitive" because the building code requires health and safety inspections. Mr. Walker feels that the Board will be putting landlords on the defensive by saying that tenants cannot be evicted for violating house rules.

8. Brook Turner of the Coalition for Better Housing said that he supports the comments in Michelle Horneff-Cohen's letter to the Board. Mr. Turner doesn't support

going after tenants and evicting for behaviors, but asked that the Board not “throw out the baby with the bath water.” Mr. Turner suggested coming up with a compromise because landlords have to be able to evict for quiet enjoyment and manage their buildings.

9. Landlord Gary Briggs told the Board that, with oral leases, it is difficult to make even modest changes regarding such things as quiet time, recycling and subletting, but that landlords are not trying to take away basic rights. Mr. Briggs said that many leases are inefficient or don't exist and the proposed amendment is “bad policy.”

10. Landlord Andrew Long said that it is to everyone's benefit for landlords to impose reasonable house rules. Mr. Long pointed out that under the proposed amendment, landlords wouldn't be able to make tenants comply with San Francisco's mandatory recycling law. Mr. Long told the Board to “go back and work on it some more.”

11. Tenant Kent Qian urged passage of the proposed amendment. The property manager of Mr. Qian's multi-unit building is now requiring that tenants obtain renters' insurance. Mr. Qian reminded the Board that there is a court decision that says that by remaining in possession, tenants are accepting the changed terms of their tenancy.

12. Landlord Harold Hoogasian said that the inability of landlords to change house rules is “absurd,” since there are lots of problems regarding quiet hours, trash and recycling. Mr. Hoogasian believes that “rent control governs this City.”

13. Tenant and on-site manager Calla Winkler said that house rules should be made with common sense in mind so that tenants have a good place to live and other tenants can't “spoil things.” Ms. Winkler asked that the Board carve out the necessary exceptions so that tenants don't have to deal with odious conditions.

14. Michelle Horneff-Cohen of the Professional Property Management Association of S.F. said that the proposed amendment places an undue burden on all rental housing providers, “ties our hands,” and chills the ability of a landlord to do business in San Francisco. Ms. Horneff-Cohen believes that there will be lawsuits from other tenants if landlords don't enforce house rules, and asked that the Board focus on the problem created by SB 332.

15. Landlord Karen Crommie said that she couldn't believe the Board was “taking away the little discretionary power we have left.” Ms. Crommie expressed her fear that landlords will lose their properties to “obstreperous tenants over whom we have no control.”

16. Sara Shortt of the Housing Rights Committee said that the property owners in attendance were being “alarmist,” that the proposed amendment didn't take away the right to evict for nuisance; and that the real alarm would be if the Board failed to act. Ms. Shortt expressed her belief that the proposal strikes at the fundamental protections of the Rent Ordinance; otherwise, there would be another Just Cause for eviction. She maintained that tenants are “reasonable people too” and wouldn't reject reasonable changes in the terms of their tenancies.

17. Property manager and tenant's rights advocate Mindy Kershner said that a few tenants in the building can totally disturb the lives of others and that "you can't have different rules for tenants in the same building." Ms. Kershner asked that the Board reconsider because the Health Department is telling landlords to make their buildings non-smoking and tenants can go outside to smoke.

18. Mark Behrens told the Board that he is currently a tenant but was previously a resident manager. Mr. Behrens supports the amendment because he smokes a pipe and "a landlord shouldn't be able to take that pleasure away." Mr. Behrens believes that most landlords wouldn't be abusive but some would use the ability to unilaterally change terms to get rid of long-term tenants. Mr. Behrens contended that landlords are attempting to exert "lifestyle control over a legal product."

19. Kendra Froshman of Dolores Street Community Services and the Mission SRO Collaborative said that a regular part of her job is explaining the law and what constitutes a material change. She reminded the Board that SB 332 wasn't meant to change local law and said that landlords could make the change to a non-smoking building when new tenants move in.

20. Landlord Charlie Smith said that the Rent Board isn't the only agency to make law and that the proposal was setting up a battle between City agencies. Mr. Smith argued that landlords would have to resort to more extreme measures, such as the police, and said landlords have to be able to establish house rules to protect the health of tenants in the building when it comes to bedbugs, clutter, etc. Mr. Smith concluded by saying that the proposal "needs work."

21. Janan New of the S.F. Apartment Association told the Board that the proposed amendment would "hinder their members' ability to manage their property" and that landlords need to utilize Rules §12.20 to change rules in order to curb bad behavior and protect tenants. Ms. New pointed out that the City is moving towards a mandate against smoking in rental property and asked that the Commissioners maintain §12.20 in its current form.

22. Landlord David Fix said that the proposal is "another attempt to take away landlords' control over their buildings" and that it protects bad renters over good ones. Mr. Fix suggested that the Board find out if there's a demonstrated problem.

23. Property manager Irene Dietz said that renters' insurance should be mandatory and that she has spoken to the Fire Department about the many verified deaths due to smoking in residential units.

24. Property owner Joanne Frazino said that she is opposed to the amendment.

25. Landlord Noni Richen said that even Randy Shaw said that there are some tenants who are so out of control that they need to be evicted. Ms. Richen has a tenant in her building who almost started a fire. She wants to impose a quiet enjoyment rule but has an

old lease. She believes that her inability to establish new rules is affecting the other tenants in the building.

26. Landlord Attorney Karen Uchiyama told the Board that she represented the landlord in the Marino case and that it is “tragic” to try and change everything based on that one case, because the tenant snuck in another tenant and siphoned beer from the downstairs bar. Ms. Uchiyama accused the Board of trying to undermine the court’s decision and said that a landlord should be able to enforce reasonable house rules. Ms. Uchiyama claimed that the “dominant motive” defense will protect tenants and that jurors “want rules” and don’t want the Marino tenant living next to them. Ms. Uchiyama also said that with bankruptcies and foreclosures, landlords can’t find old leases.

27. Nathaniel Thayer of the Eviction Defense Collaborative said that “dominant motive” doesn’t make a difference in jury trials. Mr. Thayer said that unilateral changes in terms are a way around Just Cause eviction protection which disproportionately affects low-income tenants who don’t understand their rights: it is the “lowest people who need the most protection.”

28. Peter Reitz of the Small Property Owners of San Francisco told the Board that small property owners live in the same building as their tenants, who tend to have oral leases. Mr. Reitz said that there are no problems with reasonable people but that difficult tenants are a problem. Most landlords don’t want to evict, they just need to have enforceable rules.

29. Property Manager J. J. Panzer told the Board that modifying house rules is how landlords can “achieve consistency and rectify past mistakes.” Mr. Panzer said that landlords need to be able to adapt to changing situations and make tenants comply with City mandates.

30. Landlord Roxanne Albertolli told the Board that renting property is a “completely moral profession,” that there is “no political freedom without economic freedom” and that the Board is trying to protect the “lesser among us.” Ms. Albertolli said that she has to use her judgment in “how to run the place” and asked that the Board not impose arbitrary rules over her judgment.

31. Leasing Agency Craig Behrendt said that his clients say that 12.20 is “all we have” and the only way they can police the quiet enjoyment of all their residents.

32. Landlord Gideon Kramer said that the proposed change opens up a “huge loophole” and that there are many properties with weak or no leases or house rules.

33. Landlord Robert Link said that §12.20 is a “vital link in the Rules and Regulations” since the majority of the housing stock was built in the 1920’s and there are many noise disputes between tenants. Mr. Link said that there are many bad rental agreements out there and that a landlord needs to have rules for the use of the laundry room, floor

coverage/carpeting, etc. Mr. Link feels that the current version of 12.20 helps tenants in the long run.

34. Rob Willis of Trinity Property Management Co. asked that the Board put more time and consideration into a “very important rule.”

The Public Hearing concluded at 7:45 p.m. at which time the Commissioners discussed the proposed amendment. Commissioner Murphy said that the amendment goes too far and that the Board should just deal with the smoking issue and let disputes concerning changes in the terms of tenancies go before Rent Board ALJs. Commissioner Mosbrucker contended that the proposal did not constitute a radical change, since other Rent Board jurisdictions have had it for years and that it accomplishes what 12.20 was intended to do: prevent evictions due to unilateral changes in the terms of a tenancy. The Tenant Commissioners suggested that landlords should go ahead and impose reasonable house rules, with the understanding that they won’t be able to evict if tenants don’t follow them. However, if the breach rises to the level of a nuisance or substantial interference with the comfort of other tenants in the building, then eviction could follow. Commissioner Hurley told the Board that evictions are overwhelming to small owners, and not a viable option. Commissioner Crow pointed out that eviction is also the remedy for violation of house rules, and asked what the difference is. Commissioner Dandillaya reminded the Board that there is time pressure because of the pending effective date of SB 332. She suggested that the Board adopt the amendment now and re-visit necessary carve-outs for health and safety down the road. Commissioner Mosser expressed his skepticism that further changes would ever happen, but Commissioner Marshall said that she is open to a remedy for changes that are necessitated by legal requirements. The Board then passed the following motion:

MSC: To pass the proposed amendment to Rules and Regulations Section 12.20, effective December 14, 2011, and put this issue on the Agenda for the meeting on January 31, 2012. (Mosbrucker/Marshall: 3-2; Gruber, Murphy dissenting)

Amended Section 12.20 of the Rules and Regulations now reads as follows:

Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section 827, a tenant may not be evicted for violation of a covenant or obligation that was not included in the tenant’s rental agreement at the inception of the tenancy unless: (1) the change in the terms of the tenancy is authorized by the Rent Ordinance; or (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of written notice from the landlord that the tenant need not accept such new term as part of the rental agreement. The landlord’s inability to evict a tenant under this Section for violation of a unilaterally imposed change in the terms of a tenancy shall not constitute a decrease in housing service under the Rent Ordinance as to any other tenant.

#### VI. Consideration of Appeals

A. 2150 Balboa #203

AT110106

The landlord's petition for rent increases for 15 of 15 units was granted, resulting in 7% base rent increases. 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/Murphy: 5-0)

B. 6 – 30<sup>th</sup> St.

AT110107

The subtenant's petition alleging that he was paying a disproportional share of the rent pursuant to Rules §6.15C(3) was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the subtenant claims to have mis-read the date of the hearing and that he was unable to take calls at his new job.

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

C. 10 Henry St.

AT110111

The landlords' petition for certification of capital improvement costs to the tenants in 5 units was granted. The tenant in 1 unit 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/Murphy: 5-0)

D. 2400 Van Ness Ave. #25

AL110108

The landlord's petition for a rent increase based on comparable rents was denied because the Administrative Law Judge found that the initial rent for the unit was not set low due to a special relationship or other extraordinary circumstances unrelated to market conditions. On appeal, the landlord argues that: the tenant's co-occupant edited the lease agreement that she submitted, evidencing a special relationship; the prior owners wished to protect one of the co-tenants, who had been their resident manager; the lease submitted by the tenants was not initialed by the prior owner, which should serve to invalidate it, discredit the tenants and terminate their tenancy; and the tenants paid significantly less than the market rent for the unit when they moved in.

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

E. 351 Naples St.

AL110109

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 \$1,922.50 due to habitability defects on the premises. The landlords appeal, claiming that: there is no mold or water damage in the tenant's unit; the tenant failed to inform the landlords of the problem with the

broken front window crank; all of the repairs have been performed in a timely manner; and the tenant failed to meet her burden of proof.

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

F. 347 Eddy #107

AL110110

The tenant's petition alleging an unlawful increase in rent from \$568.65 to \$1,050.00 was granted because the ALJ found that the tenant was an original occupant who moved in to the subject unit when she was eight years old, and therefore no rent increase was warranted pursuant to Costa-Hawkins when her other family members moved out. On appeal, the landlord argues that: minors cannot be original occupants under Costa-Hawkins because they are not capable of entering into a contract; and the landlord did not waive its right to increase the rent under Costa-Hawkins because they accepted rent from the tenant without knowledge that her parents, the original occupants, had vacated the unit.

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

#### VII. Old Business

##### Eviction Notices to Tenants at Parkmerced

Commissioner Marshall informed 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 expressed her opinion that fluctuating utility charges constitute unlawful rent increases, in that they are paid to the landlord and therefore constitute "rent." Commissioner Murphy then asked that Commissioner Marshall disclose her involvement in the opposition to the recently approved Development Agreement at Parkmerced. Commissioner Marshall explained that she has had a long-term relationship with the tenants at Parkmerced. She opposed the Development Agreement and believes the eviction notices were an attempt to displace long-term tenants so as not to have to provide them with replacement units, which constitutes an unfair business practice. Commissioner Murphy opined that the tenants have "lost this battle" and are attempting to "use this Commission" and maintained that this is a Land Use issue. He also said that, to his knowledge, no more such notices are going out and the landlord is offering the tenants repayment plans. The Board then heard from members of the public on this issue, as follows below.

#### IV. Remarks from the Public (cont.)

B. Sara Shortt said that many tenants have come in to her office with 3-day notices for unpaid utility charges. She believes that the landlord's billing practices are "unusual" and that additional, unpredictable charges that fluctuate may constitute unlawful rent increases. Ms. Shortt also told the Board that tenants are struggling to comply with the terms of the repayment plans.



C. Mitchell Omerberg of the Affordable Housing Alliance said that water and sewer charges are part of the landlord's operating expenses and shouldn't be a separate charge. Mr. Omerberg expressed concern about this "huge bill that no one's ever seen," which is accompanied by a \$3.50 monthly administrative fee. He believes that these charges are "clearly illegal" under the Rent Ordinance and that this needs to be sorted out.

D. Lynn Hambolu, a resident at Parkmerced, said that she has received an eviction notice, but no court date has been set. Ms. Hambolu cited Section 17200 of the Business and Professions Code regarding unfair or fraudulent business practices in that Parkmerced management never disclosed that they intended to redevelop or demolish. Ms. Hambolu alleged that the evictions are not for failure to pay utilities charges but, rather, are retaliatory. She maintained that Section 8 tenants cannot be evicted if they pay their rent, and breach is the "technicality" that the landlord is using.

E. Parkmerced tenant Helanie Ting has received a 3-Day Notice although she pays her rent in advance. The landlord is alleging that Ms. Ting owes \$1,308.00 in retroactive water and sewer charges and "there is no way" she can come up with that amount, since she is on S.S.I. Ms. Ting believes that this action by the landlord is retaliatory since she is the President of the Parkmerced Action Coalition, which is bringing suit to stop the Development Agreement from going forward. Ms. Ting said "they want to throw us all out so they can tear down and build up."

F. Tenant Kathy Lentz of the Parkmerced Action Coalition said that she was shocked at the increased number of eviction notices and that the landlord is "trying to remove those of us who've lived there a long time." Ms. Lentz told the Board that she was stopped 3 times when she was trying to deliver informational flyers, which she wouldn't have had to do if Parkmerced had notified the tenants.

#### VII. Old Business (Parkmerced, cont.)

The Board continued their discussion. Commissioner Marshall said that she doesn't want to embarrass Parkmerced, but wants the Board to be proactive in getting the third party billings for water and sewer charges to stop. Commissioner Murphy asked to be shown evidence that Parkmerced is trying to displace long-term tenants because it is a "due process problem to assume they're doing something wrong" and, if this constitutes an unfair business practice, they'll be sued. Commissioner Mosser expressed concern that there could be enormous repercussions since many landlords throughout the City use third party vendors and do not have submeters for utilities. Senior Administrative Law Judge Tim Lee suggested that the tenants file a petition with the Rent Board to determine the legality of this practice, but Commissioner Marshall said that doesn't solve the problem building-wide. The Office of the City Attorney is currently looking into this practice.

#### IV. Remarks from the Public (cont.)

G. Sara Shortt told the Commissioners that they are not being asked to take a position, but to help find out what's going on. Ms. Shortt asked that the Board try and find

out whether this practice is fair and if the calculations are being done correctly. She said that the Rent Board has a role when Section 8 tenants are paying above the Payment Standard.

H. Lynn Hambolu told the Board that Parkmerced could contact the PUC and have the meters read but tenants don't have that right. It was not disclosed to Ms. Hambolu that she doesn't have a meter and that her water and sewer bill would be estimated. Ms. Hambolu said that the Rent Board should hold a hearing because tenants "don't have remedies if an attorney won't take your case" and there is real fear of retaliation.

I. Kathy Lentz said that "people are in a panic." She would like to see people be able to move without being evicted and asked for the Board's support.

J. Helanie Ting said that the Rent Board turned her away from filing because she is on Section 8. She did not realize she could file a petition if she was paying above the Payment Standard. She said that the elderly and disabled tenants of Parkmerced need help to prevent homelessness.

#### VIII. Communications

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

A. Letters regarding the proposed amendment to Rules and Regulations §12.20.

B. Data regarding eviction notices issued to tenants at Parkmerced for breach of rental agreements requiring payment of water and sewer charges.

C. A new Commissioner roster.

D. The office workload statistics for the month of October, 2011.

E. Articles from the Bay Citizen, BeyondChron, the S.F. Chronicle, the S.F. Apartment Magazine, and the Small Property Owners of San Francisco newsletter.

#### IX. Director's Report

Executive Director Wolf let the Board know that the annual allowable rent increase commencing March 1<sup>st</sup> will be 1.9%. She reminded them to complete their Sexual Harassment training by December 31<sup>st</sup> and invited them to the staff Holiday Party on December 15<sup>th</sup>.

#### X. Calendar Items

January 31, 2011

8 appeal considerations

Old Business:

A. Rules and Regulations Section 12.20

B. Eviction Notices and Third Party Water, Sewer and Garbage Billings to Tenants  
at Parkmerced

New Business: Departmental Budget

XI. Adjournment

President Gruber adjourned the meeting at 10:00 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.**