



London N. Breed
Mayor

Robert A. Collins
Executive Director

DAVID GRUBER
PRESIDENT

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

DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
ASHLEY KLEIN
POLLY MARSHALL
CATHY MOSBRUCKER
KENT QIAN
DAVID WASSERMAN

Tuesday, January 22, 2019
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: Gruber; Hung; Klein; Mosbrucker; Wasserman.
Commissioners not Present: Crow; Dandillaya; Marshall; Qian.
Staff Present: Collins; Koomas; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of December 11, 2018.
(Wasserman/Mosbrucker: 4-0)

IV. Remarks from the Public

A. Alex Lemieux, an attorney who represents both landlords and tenants, told the Board that he previously submitted a letter to the Commissioners regarding the owner move-in (OMI) provisions in the Regulations. Mr. Lemieux requested a clarification or addition to a Rule, and described a situation where a landlord who owns an undivided single family home and rented out four different rooms to four different tenants wished to move into one of the rooms. He said that the OMI listed the legal street address, and Rent Board staff specifically told him to identify the room, e.g. "basement." He said that the landlord completed the OMI, took possession of the room and then attempted to complete the required Statement of Occupancy, but that Rent Board staff required that the proof of residence documents accompanying the Statement of Occupancy identify the fictitious address that was listed in the original OMI notice. He said that the problem is that one cannot go to the Department of Motor Vehicles (DMV) and obtain a driver's license with a fictitious address, as street addresses are regulated by state law, and the process of obtaining a new address is very

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complex. Likewise, he said, one can't easily obtain insurance documents that show a fake address, and one certainly should not be attempting to get voter registration that shows a fictitious address. He said that the landlord in this case has been put in an impossible position where she cannot comply with the Statement of Occupancy requirements because it is impossible for her to obtain these documents with a fictitious street address, rather than the legal address. He said he doesn't think there's anything in the Rules that requires staff to require a landlord who does an OMI to list any address other than the legal street address, and respectfully requested that the Board clarify the Rules for the staff so that the Statement of Occupancy only requires the actual legal street address to prove that the owner has really moved in.

B. Pablo Villegas, the master tenant at 1152 Treat Avenue (AL190002), said that at the last Board meeting he appealed, and that appeal was denied, so he had no other option than to pay what was specified in the decision, and is asking to pay in installments. He said that he is seeking a payment plan because he works at the Marriot Hotel and he was on strike for 2 months, and lost one job and 50% of his income, and now only has one job. Mr. Villegas said that he always feels that the payment he has to make is not right, but he submits to the decision.

V. Consideration of Appeals

A. 1159 Alabama Street

AT190001

The subtenant's appeal was filed 1 day late because she had moved out of the subject unit, was out of the country, and did not pick up her mail until after she returned from her trip.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Wasserman: 4-0)

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$1,598.48 and determined that the subtenant's proportional share of the rent was \$385.19. The master tenant appealed, contending that she never received the notice of hearing due to unreliable mail service, and submitted a Declaration of Non-Receipt of Notice of Hearing or Decision. At its October 16, 2018 meeting, the Commissioners considered and voted to accept the master tenant's appeal and remand the case for a new hearing. On December 6, 2018, the Rent Board held a remand hearing at which the subtenant did not appear, and the case was dismissed. The subtenant now appeals, submitting the requisite Declaration of Non-Receipt of Notice of Hearing or Decision; and stating that she has moved out of the subject unit; that mail service at the subject unit was unreliable because the master tenant does not have a key and always leaves the mailbox open; and that she was out of the country and did not receive the notice of hearing until she was back from her trip and picked up the mail.

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.
(Mosbrucker/Wasserman: 4-0)

B. 1036 Polk Street #505

AT180097

The tenant's financial hardship application requesting deferral of a capital improvement passthrough and water revenue bond passthroughs was dismissed due to the tenant's non-appearance at hearing. The tenant appeals and files a Declaration of Non-Receipt of Notice of Hearing or Decision stating that he did not know his presence was mandatory at the hearing and that he first received notice of the hearing date when the Rent Board called him while he was out of town in Stockton, California for three weeks.

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/Wasserman: 4-0)

C. 457 Burnett Avenue #10

AT180100

The tenant's petition alleging decreased housing services was dismissed due to the tenant's non-appearance at hearing. On appeal, the tenant states that he did not receive the notice of hearing, and files the requisite Declaration of Non-Receipt of Notice of Hearing or Decision.

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/Wasserman: 4-0)

D. 1750 Waller Street, Lower Flat

AT180094

The landlord's petition seeking a rent increase pursuant to Rules and Regulations Section 1.21 was granted. The ALJ found that the subject unit was not the tenants' principal place of residence at the time the petition was filed. On appeal, the tenants file the requisite Declaration of Non-Receipt of Notice of Hearing or Decision, and contend that they did not receive the notice of hearing because the landlord's attorney provided the Rent Board with an incorrect mailing address.

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.
(Mosbrucker/Wasserman: 4-0)

E. 1152 Treat Avenue

AL190002

The master tenant's appeal was filed 56 days late because his English is very poor and he was unaware that he could file a financial hardship appeal.

MSC: To find good cause for the late filing of the appeal.
(Wasserman/Mosbrucker: 4-0)

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$4,326.31 and determined that the subtenant's proportional share of the rent is \$516.20, plus \$25.00 for cable and \$45.00 for PG&E. On November 6, 2018, the master tenant appealed on the merits, stating that he did not receive the notice of hearing until after the hearing, and submitted a Declaration of Non-Receipt of Notice of Hearing or Decision. At its December 11, 2018 meeting, the commissioners voted to deny the appeal on the merits. On January 2, 2019, the master tenant filed the instant appeal on the basis of financial hardship.

MSC: To accept the appeal and remand the case to the ALJ solely to consider the master tenant's claim of financial hardship.
(Mosbrucker/Wasserman: 4-0)

F. 35 Paloma Avenue

AT180098

The tenant's petition alleging decreased housing services was denied. The ALJ found that the tenant's exposure to secondhand smoke did not constitute a substantial decrease in housing services and that the landlord substantially complied with Health Code Article 19F smoking prohibitions; that the tenant did not meet his burden of proving that public urination by a renter rose to the level of a substantial decrease in housing services; and the tenant did not meet his burden of proving that the landlord failed to investigate or reasonably respond to the tenant petitioner's noise complaints about loud music. On appeal, the tenant argues that he was not given an opportunity to present photographic and video evidence of smoking violations and urination in common areas; that one of the other tenants causing the problem was still at the property during one of the months in question; that the landlord did not remove a bench outside his window where other tenants would sit and smoke; and that the public urination continued through October 2018.

MSC: To deny the appeal and to remand the case to the ALJ solely to issue a Technical Correction to the Decision as described in the ALJ's memorandum.
(Mosbrucker/Wasserman: 4-0)

G. 1415 Franklin Street #302

AL180101

The tenant's petition alleging decreased housing services was granted. The landlord was found liable to the tenant for rent reductions in the amount of \$2,532.00 for lack of quiet enjoyment due to the landlord's failure to take timely and reasonable steps to remove a

disturbing occupant from the building. On appeal, the landlord argues that they did take timely and reasonable steps to remove the disturbing occupant from the building.

MSC: To recuse Commissioner Wasserman from the consideration of this appeal.
(Hung/Mosbrucker: 4-0)

MSC: To continue the consideration of this appeal to the February 12, 2019 meeting.
(Wasserman/Klein: 4-0)

H. 239 Duboce Avenue #A

AL180095

The landlord's appeal was filed 4 days late because she was away on vacation when the decision was delivered in the mail, and did not receive the decision until her return.

MSC: To find good cause for the late filing of the appeal.
(Wasserman/Mosbrucker: 4-0)

The tenant's petition alleging an unlawful rent increase was granted. The ALJ found the landlords liable to the tenant in the amount of \$13,043.43 for rent overpayments, and determined that the tenant's base rent is \$1,085.90. The landlord appeals, arguing that the ALJ did not take into consideration that the tenant and the landlord had agreed that the rent and garage rent were separate and that the garage rent was not subject to the Rent Ordinance.

MSC: To deny the appeal.
(Mosbrucker/Wasserman: 4-0)

I. 3324 – 26th Street

AT180099

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act, decreased housing services, and failure to repair and maintain was denied. The ALJ found that both tenant petitioners were lawful subtenants and not original occupants or co-tenants at the time the rent increase notice was served on June 19, 2018; and that the rent increase to \$4,000.00 was authorized by Civil Code Section 1954.53(d) of the Costa-Hawkins Rental Housing Act, and therefore any claim for decreased housing service or failure to repair and maintain is denied due to lack of privity of contract with the landlord. Tenant McCready appeals the determination that he is not an original occupant, and presents a copy of a rent check made out to one of the original occupants at the commencement of the tenancy.

MSC: To deny the appeal.
(Wasserman/Gruber: 4-0)

J. 316 Valencia Street #301

AL180103

The tenant's petition alleging an unlawful rent increase was granted. The ALJ found the landlord liable to the tenant in the amount of \$11,510.15 for rent overpayments, and determined the tenant's base rent is \$1,343.76. The landlord appeals, arguing that the rent increases imposed on August 1, 2013 and August 1, 2014 should be adjusted to the lawful dates instead of being made null and void, and that late fees should also be allowed.

MSC: To deny the appeal.
(Wasserman/Mosbrucker: 4-0)

K. 1863 Alabama Street #2

AL180096

The tenant's petition alleging an unlawful rent increase, decreased housing services, and a failure to repair and maintain was granted in part and denied in part. The landlords were found liable to the tenant in the amount of \$18,056.00 for rent overpayments, and in the amount of \$875.00 for a broken refrigerator, a broken dishwasher, and a broken garbage disposal, for a total of \$18,931.00. The ALJ further found that the tenant failed to establish that the condition of the deck floor and the water damage in the shower constituted substantial decreases in housing services warranting a reduction in base rent; that no rent reduction was due for the shower door because the tenant replaced it himself shortly after he notified the landlords that it was broken; and that the landlords timely repaired the ceiling leak after notice from the tenant. The amount requested in the petition for the deck baluster and supports and window frames claims was \$0.00, and therefore the ALJ did not award a rent reduction for those items since any award is limited to the amount sought in the petition. The landlords appeal, contending that they were told by the tenant that the only reason the tenant filed the petition was to make an agreement for his records, so they were not ready to answer the ALJ's questions at hearing; that the tenant lied about his rent history; and that the tenant is very difficult and leaves garbage in the garage.

MSC: To deny the appeal.
(Mosbrucker/Wasserman: 4-0)

IV. Remarks From the Public (continued)

A. *(There were no additional remarks from the public.)*

VI. Communications

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

A. Workload statistics for November 2018.

B. Updated Litigation Status Report.

C. Articles from the S.F. Examiner, S.F. Chronicle, KQED, MissionLocal, and CurbedSF.

D. Updated staff phone list.

E. Updated version of the Rent Ordinance.

VII. Director's Report

Executive Director Collins told the Board that a new senior clerk named Tan Lieu started on December 31, 2018. He said that three staff members departed- one clerk, one counselor, and one ALJ. He thanked Lela Harris for her service of over 25 years, and also thanked Brandon Lawrence and Candy Cheung for their service. He told the Board that staff are now in the process of hiring for counselor and ALJ positions. Executive Director Collins discussed the Fiscal Year 2019-2020 budget, explaining that workload challenges continue to put a lot of pressure on staff. He emphasized that while the actual number of filings has not changed dramatically, the workload involved with OMI filing requirements in addition to the mandatory seismic cases is significantly greater now. He explained that the number of capital improvement filings attributable to mandatory soft-story seismic retrofitting was largely responsible for the increased number of capital improvement petitions filed, which totaled 490 last fiscal year, compared with a previous trend of approximately 200 per year; and anticipates that many landlords are waiting until the end of their 5-year deadline to file, which may cause further increases in future years. He also highlighted the previous year's filing number of 1,292 prebuyout declarations and buyout agreements, and the 793 data requests received from other City departments, which take an extensive amount of time to both prepare and explain to requestors and involved parties. Executive Director Collins told the Board that the department is looking for a suitable space to move into, but has not yet found a space. He also told the Board that he is seeking to add two more positions, which are a principal clerk to supervise the clerical unit, and a second Rent Board supervisor; an increase of which would be about \$251,000 including benefits. He explained that there has been a directive from the Mayor's Office to not add any additional full time employees, however, that should not apply to the Rent Board because the Rent Board is an Enterprise department which does not rely on the General Fund for support, and the increase is aligned with the administration's priorities. He said that without any additional changes, the Rent Board fee for the next year would increase by \$1.50 per unit. He told the Commissioners that they would receive a draft budget ahead of the next meeting. Finally, Executive Director Collins addressed some pending legislation with the Board of Supervisors, which include file number 180756-2, to amend the Building, Housing, Fire, and Administrative Codes for new fire safety systems; file number 180735 to amend the Administrative Code to prohibit landlords from increasing the rent pursuant to the Costa-Hawkins Rental Housing Act in an attempt to defraud, intimidate, coerce, or harass the tenants; and file number 181212, which would amend the Administrative Code to give the right of first refusal to nonprofits to create and preserve rent-restricted affordable housing (three units or more).

Senior Administrative Law Judge Koomas discussed the updated litigation status report with the Commissioners.

VIII. Old Business

(There was no Old Business.)

IX. New Business

(There was no New Business.)

X. Calendar Items

February 12, 2019

A. Consideration of Appeals

4 appeal considerations

B. New Business

Fiscal Year 2019-2020 Departmental Budget

Owner Move-In (OMI) Ordinance Amendments: 1-Year Report

Rules and Regulations Clean-Up

XI. Adjournment

President Gruber adjourned the meeting at 7:24 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.