



Edwin M. Lee
Mayor

Robert A. Collins
Acting Executive Director

DAVID GRUBER
PRESIDENT

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

CALVIN ABE
DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
KENT QIAN
DAVID WASSERMAN

Tuesday, March 8, 2016
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 6:12 p.m.

II. Roll Call

Commissioners Present: Abe; Crow; Gruber; Hung; Marshall; Mosser; Qian; Wasserman.

Commissioners not Present: Dandillaya; Mosbrucker.

Staff Present: Collins; Gartzman; Lee; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of February 16, 2016.
(Marshall/Crow: 5-0)

VI. Consideration of Appeals

A. 1724 Larkin Street

AT160014

The subtenant's petition alleging that he paid more than a proportional share of the rent was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the subtenant claims not to have received the Notice of Hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

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/Crow: 5-0)

B. 2725 Clement Street #2

AL160017

The tenant's petition alleging that the landlord unlawfully increased the rent over the allowable limits and that the tenant received a substantial decrease in housing services without a corresponding reduction in rent was granted. The landlord was found liable to the tenant in the amount of \$4,975.41. On appeal, the landlord submits notices of rent increase that were not submitted at the hearing, and requests a determination of the base rent dating back to the date of the landlord's original ownership. The landlord also appeals on the basis that the tenant voluntarily relinquished her parking space.

MSC: To remand the unlawful rent increase claim to review the new evidence submitted on appeal and hold a hearing only if necessary; and to deny the appeal of the decreased housing services claim.
(Marshall/Crow: 5-0)

C. 975 North Point Street

AL160009

The master tenant's appeal was filed seven days late because the master tenant was out of town and, additionally, his representative never received the decision.

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

The subtenant's petition alleging that he paid more than a proportional share of the rent was granted and the master tenant was found liable to the subtenant in the amount of \$1,150.80. On appeal, the master tenant argues that the Administrative Law Judge (ALJ) ignored evidence of his \$520.00 payment to the subtenant and that the payment should be applied as compensation to the subtenant, and that a value was not assigned to intangibles that the master tenant provided as the sole leaseholder.

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

D. 1507 California Street

AL160011

The landlord's petition for a second extension of time to complete capital improvement work was denied on the basis that the petition was not filed immediately after it became apparent that the work would not be completed by July 16, 2015, the time approved by the ALJ in the prior case. The landlord's time estimate of March 31, 2016 to complete the work was found to be reasonable. On appeal, the landlord argues that it was not possible to file the extension of time any sooner as there was not sufficient information to provide the residents and the Rent Board with dates of completion, and that the landlord kept the residents informed of potential delays throughout the process.

This appeal was withdrawn on March 7, 2016.

E. 138 Trumbull Street

AL160012

The tenant's petition alleging that the landlords improperly increased the tenants' rent from \$1,972.89 to \$5,000.00 under the Costa-Hawkins Rental Housing Act was granted. On appeal, the landlords claim that the tenants rented the downstairs in-law unit in addition to their upstairs unit by virtue of a notice of a change of terms of tenancy under Civil Code Section 827, and therefore they reside in a single-family home that is exempt from the rent limitations of the Ordinance as a separately alienable dwelling unit.

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

F. 2915 Franklin Street #4

AT160013

The tenants' petition alleging an unlawful rent increase from \$797.00 to \$3,400.00 was denied because the ALJ found that the last original occupant no longer permanently resided in the subject unit and there is not a lawful sublessee or assignee who resided at the unit prior to January 1, 1996. The tenant appealed and the case was remanded to the ALJ to consider additional evidence. On remand, the ALJ upheld the original decision. On appeal of the remand decision, the tenants argue that the ALJ erred in finding that the tenant petitioner did not permanently reside at the subject unit.

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

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

G. 558 Lyon Street

AL160015

The tenant's petition alleging a substantial decrease in housing services was granted on the basis that the landlord unreasonably withheld consent to a replacement roommate, and the landlord was found liable to the tenant petitioner in the amount of \$1,292.54. On appeal, the landlord requests that the Board determine if the landlord has a right to: demand 30 days notice prior to a change in occupants, require the tenant to provide a copy of the new occupant's application, and require the tenant to provide a copy of a signed statement from the new occupant that the tenant has advised the new occupant of the total monthly rent. The landlord also requests that the Board determine whether the tenant has committed fraud.

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

H. 276 Castro Street

AL160016

The landlord's petition for a determination of jurisdiction for each of the three units on their property was granted in part and denied in part. The ALJ found that units #1 and #2, which were constructed partly within and partly outside of the original single-family dwelling, were not exempt from the Rent Ordinance, and that unit #3, which was created entirely outside of the living space of the original single-family dwelling, was exempt from the Rent Ordinance.

On appeal, the landlords argue that the ALJ erred in finding that units #1 and #2 were not exempt under Rules and Regulations Section 1.17(e).

MSC: To recuse Commissioner Hung from consideration of this appeal.
(Abe/Marshall: 4-0)

MSC: To deny the appeal. (Marshall/Crow: 4-0)

V. Remarks from the Public

A. Spencer Weisbroth, attorney for the landlord at 276 Castro Street (AL160016) told the Board that there is a split in the law in the Rent Board's decisions; there is a case that goes exactly to the policy of increasing the number of rental units in San Francisco and that there have been a number of cases where older buildings have been reconfigured to allow new use. Mr. Weisbroth stated that while there is a set of Rent Board decisions where there is some touching of the interior of an older building that was a single-family unit that was increased, all of those were decided by the same ALJ, and that in none of those cases does the ALJ outline why he read the law inconsistently with prior Rent Board decisions, including one that was relied upon by the Court of Appeals.

VI. Communications

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

- A. Annual Report on Eviction Notices.
- B. Memorandum from the City Attorney's office regarding consulting outside attorneys.
- C. The office workload statistics for the month of January 2016.
- D. Articles from the S.F. Chronicle, the New York Times, Mission Local, The Bold Italic, and SFist.

VII. Director's Report

Acting Executive Director Collins reminded the Commissioners that their Form 700, Statements of Economic Interest, and Sunshine Declarations are to be completed by April 1. He also informed the Board that three staff members conducted outreach at the San Francisco Apartment Association Tradeshow. Three staff members held a training at the Rent Board office for non-profit tenant attorneys regarding Section 8 issues, Costa Hawkins, and hardship. Acting Executive Director Collins told the Board about the swearing-in ceremony held by Mayor Ed Lee for Commissioners Dave Crow and Kent Qian.

Senior ALJ Gartzman made an announcement that a change to the Ordinance is taking effect on March 19, 2016, which is amending the form that has to be attached to eviction notices. It is now a 2-page form that includes information about affordable housing programs through the Mayor's Office of Housing.

VIII. Old Business

Senior ALJ Gartzman presented several proposals to reduce the hearing backlog and increase operational efficiencies, including: deciding mandatory seismic retrofit capital improvement petitions, which are almost always fully granted, without a hearing; deciding certain capital improvement petitions (those with one item or where the petition cost total is less than \$25,000) without a hearing; standardizing all tenant financial hardship guidelines and deciding all tenant hardship claims without a hearing, in the same manner as capital improvement hardship applications. The no-hearing proposals would include an opportunity for the responding party to request a hearing and for the Administrative Law Judge to require a hearing. Senior ALJ Gartzman explained that as the agency is receiving more capital improvement petitions, particularly because of the current and anticipated increase in petitions based on mandatory seismic retrofit work, the agency is also receiving more capital improvement hardship applications, which are almost always granted. There has also been a significant increase in hardship applications based on water revenue bond passthroughs, which are almost always granted. She articulated the differences between the current hardship guidelines and procedures for hardship appeals (for operating and maintenance increase (O&M) petitions and utility passthrough (UPT) petitions) and hardship applications (for water revenue bond passthrough worksheets and utility passthrough (UPT) worksheets), as compared to the recently promulgated (Nov. 2013) capital improvement hardship application standards found in Ordinance Sections 37.7(h)-(j). Senior ALJ Gartzman reported that the vast majority of tenants who have applied for and received hardship relief through appeals of O&M or UPT petitions or water bond/UPT hardship applications would also qualify for relief under the capital improvement hardship application standards.

At the conclusion of the presentation, the Commissioners directed staff to formulate draft regulations to bring back to the Board regarding all of the proposals presented by Senior ALJ Gartzman.

IX. New Business

The Commissioners agreed to move the discussions of the Eviction Report and the City Attorney's Memo regarding consulting outside attorneys to the April 12, 2016 meeting.

X. Calendar Items

April 12, 2016
14 appeal considerations

New Business
Eviction Data Report
City Attorney's Memo regarding consulting outside attorneys

Old Business

Standardizing tenant financial hardship guidelines

No-hearing alternatives for mandatory seismic retrofit capital improvement petitions, one item capital improvement petitions, less than \$25,000 capital improvement petitions and tenant financial hardship applications

XI. Adjournment

President Gruber adjourned the meeting at 7:53 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.