



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, June 14, 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 6:11 p.m.

II. Roll Call

Commissioners Present: Abe; Crow; Dandillaya; Gruber; Hung; Marshall;
Mosbrucker; Mosser; Qian; Wasserman.
Staff Present: Collins; Gartzman; Varner.

Commissioner Marshall appeared on the record at 6:15 p.m.
Commissioner Dandillaya appeared on the record at 6:18 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 10, 2016.
(Mosbrucker/Abe: 5-0)

IV. Remarks from the Public

- A. Tenant Channavy Yim of 121 Schwerin Street #A (AT160057) stated that her rent increase in 2016 was over the annual allowable limit.
- B. The landlord of 121 Schwerin Street #A (AT160057) stated that the rent increase followed the rules.

V. Consideration of Appeals

A. 72 Gough Street #1 AT160060

The landlord's petition seeking 7% rent increases based on increased operating and maintenance expenses to the tenants in 16 units was granted. The tenant in one unit

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appeals the decision on the grounds of financial hardship.

MSC: To recuse Commissioners Mosser and Wasserman from the consideration of this appeal.
(Abe/Mosbrucker: 5-0)

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship.
(Marshall/Mosbrucker: 5-0)

B. 121 Schwerin Street #A

AT160057

The tenant's petition alleging an unlawful rent increase was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims that she appeared at the hearing too late because she had been looking for parking.

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.
(Qian/Mosbrucker: 5-0)

C. 24 Bonita Street

AL160066

The subtenant's petition alleging that she paid more than her proportional share of rent under Rules and Regulations Section 6.15C(3) was granted, and the master tenant was found liable to the subtenant in the amount of \$7,835.92. The master tenant appeals, arguing that there was a lack of proof to substantiate the subtenant's claim.

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

D. 1360 Lombard Street #603

AT160056

The tenant's appeal was filed 47 days late because she erroneously filed a tenant petition challenging the passthrough instead of the required appeal form.

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

The landlord's petition for certification of the cost of interior painting, honing and sealing lobby marble, replacing locks and hinges, exterior painting, painting common areas, exterior lighting and signage, boiler replacement, replacement of fire hoses and sprinkler head work, structural strengthening in garage, replacement of steam boiler, insulation of boiler room, replacement of main shut off and drain valve, installation of new carbon monoxide/smoke detectors, new hot water storage tank, re-piping of the water heater, replacement of concrete driveway, and replacement of return line to 61 of 109 units across three buildings on the property was granted as modified by the decision. The Administrative Law Judge (ALJ) determined that the certified costs of the (a) the work on

the lobby floor, exterior painting of first floor facades, courtyards, and stairwells, exterior lighting and signage, and replacement of concrete driveway should be divided equally among the 109 residential units at the property; (b) the work for interior painting, replacement of locks/hinges, boiler replacement, replacement of fire hoses and sprinkler head work, insulation of boiler room, replacement of main shut off and drain valve, new hot water storage tank and return line replacements should be divided equally among the residential units in the respective buildings (33 units in 1320 Lombard, and 38 units in both 1340 and 1360 Lombard); (c) the work to structurally strengthen the garage should be divided equally among the 74 units that rent space in the garages; and (d) the work to install carbon monoxide and smoke detectors should be divided equally among the 101 units that received new detectors. The tenant in building 1360, unit 603, appeals on the basis that a reasonable portion of a common area capital improvement cost must also be allocated to areas exclusively occupied or controlled by the landlord, such as a management office, and that there are several spaces, including a management office and storage rooms that tenants do not have access to or use of; that the laundry room in building 1340 should be included in the count as a commercial unit; and that building 1320 has a total of 34 units, not 33.

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

E. 1240 Castro Street

AL160058

The landlord's petition for certification of the cost of exterior painting for passthrough to 4 of 4 residential units was granted in part and denied in part. The ALJ found that the tenancy in unit 1240 began on February 13, 2015, which was within 6 months of the August 13, 2015 commencement date of the exterior painting, and that none of the cost may be passed through to the subject unit. The landlord appeals, arguing that unit 1240 should not have been removed from the petition because the tenant moved in 6 months before the work commenced, and that the Regulations do not state that the tenant should have moved in 6 months and 1 day or more than 6 months before the work began.

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

F. 555 Eddy Street #40

AT160061

The landlords' petition seeking certification of the cost of new carpet, a lock, a new light, concrete walkway, masonry work, new tile, and a replacement roof to 27 of 39 units was granted. The tenant in unit 40 appeals, arguing that the capital improvement expenses were routine maintenance expenses or unnecessary, that some improvements involve loss of access to common areas and corresponding loss of value, that the carpets neither add value nor prolong useful life, and that the increased expenses are not appropriate nor legitimate.

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

G. 237 Font Boulevard

AT160039
(continued from 5/10/16)

The tenant's petition alleging that the landlord had improperly increased the rent over the allowable limits under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that a tenancy was not created between the tenant petitioner and the landlord by oral or written agreement, nor by consent and acceptance of rent, and that at the time of the service of the notice of rent increase, the tenant petitioner did not have a direct landlord-tenant relationship with the landlord. On appeal, the tenant claims that he is physically and mentally disabled per Social Security, that he had no legal representation, that his rights were violated under the Americans with Disabilities Act (ADA), and that he did not know that he had to bring that up at the hearing.

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

MSC: To continue the consideration of the appeal to the July 12, 2016 meeting for the tenant to obtain legal assistance and submit factual or legal grounds for the appeal no later than July 12, 2016 and no further continuances will be given absent extraordinary circumstances.
(Marshall/Mosbrucker: 5-0)

H. 1156 Sutter Street #309

AT160059

The landlord's petition requesting a determination of whether the landlord is entitled to impose an unlimited rent increase pursuant to Rules and Regulations Section 1.21 was granted. The ALJ found the tenant respondent was not a "tenant in occupancy" in the unit within the meaning of Section 1.21 and authorized the landlord to impose an unlimited rent increase. On appeal, the appellant argues that the subject unit is his primary residence where he lives with roommates, that the ALJ failed to consider all the evidence presented, such as utility bills and identification, that the decision was made only on the evidence provided by the landlord, and that the ALJ should not have issued a decision because the tenant declined participation in the hearing.

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

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

I. 2678 – 21st Street

AL160065

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the tenant petitioners and the landlord created a direct landlord-tenant relationship by their conduct, and that the rent increase was not authorized by Civil Code Section 1954.53(d)(2) and was null and void. On

appeal, the landlord argues that the ALJ incorrectly determined that Costa-Hawkins did not apply and that an unlimited rent increase was improper because: all the original tenants had permanently vacated the premises; and acceptance of rent from subsequent occupants does not operate as a waiver of the right to establish the initial rental rate unless the owner has received written notice from the original tenant, and the owner thereafter accepts rent; and that no such notice was ever received by the owner.

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

J. 1870 - 46th Avenue AL160063

The tenant's petition alleging a substantial decrease in housing services was granted in part and denied in part. The ALJ found that the landlord was liable to the tenant in the amount of \$390 for mice in the unit, but denied the tenant's claim for a rent reduction due to bed bugs. The landlord appeals, arguing that the tenant was not credible and has no integrity, that the tenant did not meet her burden of proof, and that the ALJ was biased and prejudiced against the landlord's family.

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

K. 1645 Folsom Street #12 AT160062

The tenant's petition seeking a rent reduction for decreased housing services was granted in part and denied in part. The ALJ found that the landlord was liable to the tenant in the amount of \$370.00 for rodents and \$180.00 for two broken window blinds. The tenant appeals on the basis that the rodent issue is still unresolved, and that the window coverings have not been fixed.

This appeal was withdrawn on June 14, 2016.

L. 2238 Hyde Street #11 AT160064

The landlord's petition requesting a determination of whether the landlord is entitled to impose an unlimited rent increase pursuant to Rules and Regulations Section 1.21 was granted. The ALJ found the tenant respondent was not a "tenant in occupancy" of the subject unit within the meaning of Section 1.21 and authorized the landlord to impose an unlimited rent increase. On appeal, the tenant argues that the ALJ failed to consider facts pertaining to the tenant's employment and travel time for employment, gave greater weight and deference to documentation and declarations obtained by the landlord, and relied heavily on facts and irrelevant documents from over 10 years ago.

This appeal was withdrawn on June 13, 2016.

VI. Communications

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

- A. Litigation Status Report prepared by Senior ALJ Tim Lee
- B. Text of legislation introduced to the Board of Supervisors' Land Use and Transportation Committee proposing to amend the Administrative Code to allow persons receiving tenant-based rental assistance under the federal Housing Opportunities for Persons with AIDS (HOPWA) program to be eligible for protections against rent increases.
- C. The office workload statistics for the months of March and April 2016.
- D. Proposed Rules and Regulations Sections 4.14, 6.16, and 10.15.
- E. An updated copy of the Rent Ordinance effective May 22, 2016.
- F. Articles from the S.F. Chronicle, the S.F. Examiner, the New York Times, SFGate, and Medium.com.

VII. Director's Report

Acting Executive Director Collins explained the Board that legislation introduced to the Board of Supervisors proposing to amend the Administrative Code to allow persons receiving tenant-based rental assistance under the federal HOPWA program to be eligible for protections against rent increases affects about 240 tenancies, has been referred to committee with a positive recommendation, and expects that it will pass. He informed the Board that they have received a full, updated copy of the Rent Ordinance effective May 22, 2016 in their folders, and it contains the new Ordinance section regarding owner move-in evictions and the new provisions regarding educators. Acting Executive Director Collins was pleased to report that the budget request to the Board of Supervisors was approved in committee, and thanked the Commissioners for their continued support throughout the process. Acting Executive Director Collins told the Board that two staff, Tania Chacon and Jennifer Rakowski, conducted training to about 200 Department of Public Health employees regarding housing insecurities.

VIII. Old Business

Senior ALJ Gartzman led the discussion regarding standardizing tenant financial hardship applications, including approving the proposed new Section 10.15 of the Rules and Regulations, and revised Sections 4.14 and 6.16. At the conclusion of the discussion, a motion was made and the Commissioners voted to hold a public hearing on the proposed Regulations at the regular Board meeting on July 12, 2016.

MSC: To hold a public hearing on the proposed new Rules and Regulations Section 10.15 and revised Sections 4.14 and 6.16.
(Dandillaya/Abe: 5-0)

IX. Calendar Items

July 12, 2016

- A. Public Hearing on proposed new Rules and Regulations Section 10.15 and amended Rules and Regulations Sections 4.14 and 6.16
- B. 12 appeal considerations

X. Adjournment

President Gruber adjourned the meeting at 7:19 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.