



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
REESE AARON ISBELL
ASHLEY KLEIN
CATHY MOSBRUCKER
KENT QIAN
ARTHUR TOM
DAVID WASSERMAN

Tuesday, July 14, 2020
at 6:00 p.m.

Remote Meeting via video and teleconferencing
<https://bit.ly/31TYJIT>

Public Comment Dial In Number: (408) 418-9388 / Access Code: 146 034 6768

On February 25, 2020, Mayor London Breed declared a state of emergency in regards to COVID-19. Thereafter, Governor Newsom issued a statewide order for all residents to shelter-in-place, and numerous orders of the county health officer and supplemental orders and directives to slow and reduce the spread of the COVID-19 virus. Due to these declarations, orders, and proclamations, the Rent Board Commission's March 17, 2020 and April 14, 2020 meetings were cancelled.

In three memorandums, the Mayor and City Attorney detailed emergency orders suspending select laws applicable to boards, commissions, and other policy bodies. On May 6, 2020, the Rent Board Commission was authorized to hold its May 12, 2020 regular meeting during the shelter-in-place remotely. Subsequently, per Mayoral and City Attorney guidance, boards and commissions are allowed to meet without first obtaining Mayoral permission, so long as the meetings are held remotely. Therefore, the Rent Board Commission meetings will be held via videoconferencing and will allow for remote public comment until further notice.

The Commission strongly encourages interested parties to submit their comments in writing, by 12:00 noon on July 14, 2020 to rentboard@sfgov.org. The meeting will be streamed live at 6:00 p.m. at <https://bit.ly/31TYJIT>. The public comment call in instructions are being made available on the Rent Board's website at <https://sfrb.org>.

Please visit the Rent Board's website for ongoing updates during the COVID-19 emergency.

I. Call to Order

President Gruber called the meeting to order at 6:06 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hung; Isbell; Mosbrucker; Tom; Wasserman.

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Commissioners Not Present: Klein; Qian.

Staff Present: Brandon; Collins; Koomas; Pagoulatos; Varner.

III. Approval of the Minutes

MSC: To approve the minutes of June 16, 2020.
(Wasserman/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Kim Boyd Birmingham, representative for the landlords at 1311 La Playa Street #5, 1331 La Playa Street #17, and 1361 La Playa Street #28 (AT200036-AT200038) told the Board that the landlords met the requirements for reasonable reliance. She said they are not a large corporate landlord, and that while the landlord was aware of an operating and maintenance expense increase (O&M) and relied on their ability to obtain it, they did not hire professional help earlier in the process and did not follow the pattern that larger corporate landlords often do, and that should not be the standard of what is required to show reasonable reliance. Ms. Boyd Birmingham said that the way this landlord prepared the petition was similar to other mom-and-pop landlords; and at the time the landlords purchased the building there was no requirement for documentary evidence to show reasonable reliance. She said that the landlords obtained the previous years' profit and loss statements, which showed that the change in debt service and property taxes would justify the O&M increase. Ms. Boyd Birmingham said that the landlords submitted more detailed documentation on appeal that specifically related to property tax and debt service; and the reasonable reliance was also evidenced by emails with Structure Properties and the due diligence proposal. She asked the Board to deny the tenants' appeals.

B. Sherry Jackson, one of the landlords at 1483 Newcomb Avenue #A (AL200033) said that it appeared that based on the new evidence the case should be remanded; however, the information regarding the lower unit was readily available to the ALJ at the hearing, and the landlord provided the ALJ with all the permits the same day of the hearing; and she also had the final sign off of the permits from the City. She said that it was puzzling that the ALJ would state in the decision that the landlords did not demolish the rooms and tear out the bathroom and wet bar when that factual information was presented. She requested that the Board render a decision instead of remanding the case to the ALJ because the ALJ ruled that the landlords did not demolish the property when they did and they showed the ALJ all the permits that they had done so.

C. Lauren Jones, regarding 1311 La Playa Street #5, 1331 La Playa Street #17, and 1361 La Playa Street #28 (AT200036-AT200038) said that the ALJ previously found that reasonable reliance already occurred when purchasing the property. She said that the property was purchased in 2016, and the standard for reasonable reliance changed as of December 2019, and even in 2016, the owners reasonably relied on doing an O&M rent increase, and this was already found through the documents obtained prior to the close of escrow. She asked that the Commissioners deny the appeals.

D. Brad Hirn of the Housing Rights Committee and representative for the tenants at 1311 La Playa Street #5, 1331 La Playa Street #17, and 1361 La Playa Street #28 (AT200036-

AT200038) told the Board that the landlord hasn't shown any documentary evidence of reasonable reliance at the time of purchase. He said that there was only one mention in one email of an O&M, where the landlord was only copied; he said that nowhere in the profit and loss statements is an O&M mentioned, that declarations from the owner are not documentary evidence, and that there are no other mentions from the time of purchase to the closing. He said that in regards to the notion that the landlord is a small mom-and-pop, the owner not only purchased a 28-unit apartment building, but a 59-unit hotel across the street, and also owns hotels in other parts of the Bay Area.

E. Jeremiah Birnbaum, the tenant at 4085 Cesar Chavez Street (AL200031) said that the landlords' appeal should be denied as untimely and the landlords' written reasons for the appeal were inaccurate, as one of the landlords is a lawyer and has extensive knowledge of the law. He said that even if there was a misunderstanding on the landlords' part, they should have filed the appeal in a timely manner. He said that the decision and hearing were fair and that the parties had the time to present their case and the facts. He said that the landlords offer no new evidence nor facts, and just restate the case already made, and don't offer proof of a procedural error, nor evidence of an abuse of discretion. He urged the Board to deny the appeal and to uphold the decision.

F. Jennifer Wang, one of the landlords at 4085 Cesar Chavez Street (AL200031) told the Board that this case is about the neighbor's parking lot curb falling into their yard, and over the last year they have taken every possible action to work with their neighbors to rectify their situation, and that every engineer who has visited the property has determined that the backyard is safe to use. She said that the safety fence, erected to protect the tenants, blocks less than 10% of the yard, is about 3 feet wide, and runs along the retaining wall. She said that this case falls squarely under the Golden Gateway case which held that a landlord who performed reasonably necessary repairs that had the effect of temporarily interfering with a tenant's full use of housing doesn't effectuate a decrease in housing services. Ms. Wang said that the safety fence is a temporary measure to ensure the tenants' safety until a long-term repair can be made to the curb. In addition, she said, she doesn't feel 9% of the backyard can be a substantial decrease, and she says that she attached photos that the usable size of the yard remains the same, that the safety fence only obscures a portion of the western garden bed, that the entire garden bed plants have been preserved, and that areas for socializing and barbecue are still fully accessible, and that they were acting in the best interests of the tenants in erecting a safety fence.

G. Jay Davidson, one of the landlords at 3424 16th Street (AT200040), said that the tenant says that he was required to have just cause to sever housing, parking or storage. The landlord said that he contends that the storage did not constitute a housing service because it was not granted to the tenant at the inception of the tenancy and he did not pay for that additional service, and this is according to Rent Board law. Mr. Davidson contended that there was no reduction, and it was a license and they withdrew the license.

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V. Consideration of Appeals

A. 1461 Sacramento Street

AT200039

The tenant's appeal was filed 38 days late because she was unable to prepare her appeal because of the Rent Board's physical office closure due to the COVID-19 health emergency.

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

The tenant's petition alleging decreased housing services, failure to repair and maintain, and an unlawful rent increase was denied. The ALJ found that the rent increases imposed by the landlord were lawful; that the tenant did not meet her burden of proving that: the replacement of a light fixture with one set on a timer resulted in any loss of housing services; that her current mailbox was neither substandard nor unsafe; and that the rust on the metal security gate constituted a substantial decreased in housing services; and found that the landlord replaced the tenant's furnace filter within a reasonable amount of time and thus no rent reduction was warranted. The ALJ also found that the tenant did not meet her burden of proving that the landlord failed to perform requested repairs that were required by law. On appeal, the tenant argues that the ALJ was biased and that the ALJ's decision was based on mistaken or unsubstantiated facts.

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

B. 851 O'Farrell Street #402

AL200032

The tenant's petition claiming decreased housing services was granted. The landlords were found liable to the tenant for rent reductions corresponding with decreased housing services in the total amount of \$1,668.67 for: a non-functioning bath and shower for the period of September 19, 2018 through September 29, 2018; a lack of a stove for the period of September 19, 2018 through October 11, 2018; lack of a properly working oven for the period of October 12, 2018 through December 31, 2019; lack of a refrigerator for the period of September 19, 2018 through September 22, 2018; and lack of mailbox access for the period of September 19, 2018 through December 31, 2019. On appeal, the landlord contends that the tenant violated her lease terms by not using the online workorder system to submit all of her maintenance requests.

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

C. 3424 – 16th Street

AT200040

The tenant's petition alleging decreased housing services was denied. The ALJ found that use of the basement storage room was not a housing service provided to the tenant at the inception of the tenancy and was not one reasonably expected under the circumstances

and included in the tenant's base rent. On appeal, the tenant contends that the ALJ should rule as to whether the landlord had just cause to remove the storage.

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

D. 1305 Lyon Street #6

AL200034

The tenant's petition alleging a substantial decrease in housing services and failure to repair and maintain was granted in part and denied in part. The landlord was found liable to the tenant in the amount of \$2,960.00 for lack of quiet enjoyment for the time period of June 10, 2017 through November 30, 2019; and found that the tenant did not meet his burden of proving that the landlord failed to perform requested repairs that were required by law. On appeal, the landlord contends that the tenant created the noise disturbances in the property, not the tenants in unit 4.

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

E. 1819 Golden Gate Avenue #12

AT200027
(cont. from 6/16/20)

The tenant's petition alleging a substantial decrease in housing services was denied. The ALJ found that the tenant did not meet his burden of proving that the landlord had substantially reduced the tenant's housing services arising out of the remodel of unit #7 by the alleged removal of soundproofing or fireproofing from the ceiling of unit #7; and that the tenant failed to meet his burden of proving that his electrical meter was providing electricity to unit #7. The tenant appeals, arguing in part that the ALJ was biased and fabricated evidence to benefit the landlord; that the landlord still owes him the overpayment indicated in a prior Rent Board case from 1994, that the 1994 case was incorrectly described in the Findings of Fact of the instant Decision; and that the ALJ's error in describing the 1994 case was a deliberate attempt to change the outcome of that case.

Commissioner Wasserman recused himself from the consideration of this appeal because his law partner participated in this matter.

MSC: To deny the appeal, but to remand the case to the ALJ for a technical correction regarding the tenant's 1994 case.
(Tom/Gruber: 5-0)

F. 4085 Cesar Chavez Street

AL200031

The landlords' appeal was filed 1 day late because they believed the appeal would be timely filed if it was postmarked, instead of received, by the appeal deadline.

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

The tenant's petition alleging a substantial decrease in housing services and failure to repair and maintain was granted. The ALJ found the landlords liable to the tenant in the amount of \$4,070.00 for a reduction in the usable size of a back yard due to safety fencing erected near the retaining wall for the period of October 14, 2018 to April 30, 2020, and found that the landlord failed to perform requested repairs required by law. On appeal, the landlords argue that a temporary interference by a landlord while undertaking to perform reasonably necessary repairs and that restricting access to 9% of the backyard does not constitute a substantial decrease in house services; that the tenants delayed repair of the retaining wall in order to benefit from the use of the backyard; that ordering a rent reduction is a violation of the landlords' constitutional rights; and that the rent reduction calculation and the ALJ's finding that the requested repairs were required by law were an abuse of discretion by the ALJ.

MSC: To accept the appeal and remand the case to the ALJ to recalculate the rent reduction excluding the 3-month delay caused by the tenants.
(Mosbrucker/Isbell: 5-0)

G. 1483 Newcomb Avenue #A

AL200033

The tenants' petition alleging an unlawful rent increase was granted. The ALJ found that the landlords did not meet their burden of proving that the lower unit is no longer a separate dwelling unit intended or available for residential use and that the subject upstairs unit is exempt as a single-family dwelling separately alienable from the title to any other dwelling unit under Civil Code Section 1954.52(a)(3)(A) and therefore the November 5, 2019 rent increase to \$3,570.00 was not authorized. The landlords were found liable to the tenants for rent overpayments in the amount of \$11,700.00, for the period from March 17, 2017 to May 31, 2020. The landlords appeal, arguing that the initial base rent was \$1,850.00, not \$1,800.00, and that the November 5, 2019 rent increase was lawful because the subject unit was no longer subject to the Rent Ordinance after the tenant vacated the lower unit in April 2018 and the lower unit was completely removed in 2019.

MSC: To accept the appeal and remand the case to the ALJ for a new hearing regarding removal of the second unit only.
(Mosbrucker/Isbell: 5-0)

H. 1018 Shotwell Street #A

AL200035

The tenants' summary petition and petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act were granted. The ALJ found that the October 1, 2018 rent increase from \$829.00 to \$5,500.00 was not authorized under Civil Code Section 1954.53(d)(2) of Costa-Hawkins because tenant petitioner Roque Hernandez was a tenant with a direct landlord-tenant relationship with the landlord, and not a subtenant or assignee when the notice of rent increase was served. The landlord appealed, contending that he had insufficient opportunity to respond to tenant petitioner Hernandez' claim that he was a co-tenant because the argument was not presented until the second hearing; and that the ALJ ignored evidence that tenant petitioner Hernandez moved out of the unit for a period of time, and therefore, should have found that when his occupancy recommenced, it was as a subtenant and not a co-tenant. At the May 14, 2019 meeting, the

Commissioners voted to accept the appeal and remand the case to the ALJ for a hearing to allow both parties to submit further evidence regarding tenant Hernandez' occupancy and relationship with the landlord. The petition on remand pursuant to appeal was granted. In the decision on remand pursuant to appeal no. AL190029, the ALJ again found that the October 1, 2018 rent increase from \$829.00 to \$5,500.00 was not authorized under Civil Code Section 1954.53(d)(2) of Costa-Hawkins because tenant petitioner Roque Hernandez was a tenant with a direct landlord-tenant relationship with the landlord, and not a subtenant or assignee when the notice of rent increase was served. The landlord appeals the decision on remand pursuant to appeal, arguing that tenant Hernandez' attorney suppressed witness testimony of tenant Hernandez' ex-wife that, had it not been suppressed, would have proven that tenant Hernandez did not continuously reside in the subject unit.

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

I. 1311 La Playa Street #5, 1331 La Playa Street #17, AT200036-AT200038
1361 La Playa Street #28

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 9 of 28 units was granted. The ALJ found that the landlord had met its burden of proving that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 1311- #5, 1331 - #17, and 1336 - #28 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property.

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

IV. Remarks From the Public (continued)

- A. Jennifer Wang, one of the landlords at 4085 Cesar Chavez Street (AL200031) said that she understands that the Commission has voted to remand the case, and wanted to note that the ALJ's reduction of \$220.00 a month for 9% of shared backyard space results in an illogical rental value of \$2,400.00 a month for a backyard shared between 3 units, and respectfully requests reconsideration, and would note that in the record there was an email from a structural engineer that said the backyard was safe to use, and there was no reason for the rent reduction to go beyond the 9% of the backyard.
- B. Jain Martin, a tenant at 1361 La Playa Street #28 (AT200038) since 2011, told the Board that she reached out to a few other tenants in the property to see if they were interested in being a part of the appeals, and one response she received from a tenant was that they were "over it" because that tenant didn't want "another excuse for [the landlord] not to fix stuff." Ms. Martin said that there has been personal reprisal, bullying and tenant harassment on the part of the landlords. She said that landlords are highly motivated to get long-term tenants to move out in order to raise the rent to market rate. She said that a

few of the tenants at her property have already taken the landlord to the Rent Board for decreased housing services, and that they would have a larger group of participants in these appeals if they didn't feel threatened by Structure Properties. She said that if they stand up to them, they will suffer the consequences, which is the loss of cooperation when something has to be replaced, fixed or upgraded in their units. She said that they are a handful of senior citizens and have worked hard, relying solely on themselves. She said that the landlord is a tycoon who also owns the hotel and restaurant next door, and multiple hotels down the Peninsula and in the Silicon Valley as El Rancho Development Company S2, and is hardly a mom-and-pop owner. Ms. Martin said that the reasonable reliance clause was written around the concept of mom and pop landlords reasonably relying on this income to make ends meet, but since then it's been all these companies saying they need this money when they really don't. She said that the tenants are the fabric of SF and they don't have anyone else to depend on to pay their rent. The money they are asking for will be a drop in the bucket for El Rancho company, but for the tenants, it will be a considerable dent in their sides, particularly during this pandemic. She thanked the Board for its consideration.

- C. Jeremiah Birnbaum, the tenant at 4085 Cesar Chavez Street (AL200031) stated that the backyard retaining wall was found by the surveyor to be on his landlord's property and was deemed by the building inspector to be a dangerous situation, which they lived with for two years with the good faith idea that the landlord would do something about the repairs. He said that there were occasions where large pieces of concrete weighing hundreds of pounds fell down while they were in the backyard and they have felt uncomfortable using the backyard since. He said that the ALJ ruled on a 5% reduction in rent, based on the fact that they would not have rented the apartment but for the backyard, and there was a substantial reduction in services based on the condition in which the landlord left the wall for more than two years.

VI. Communications

- A. Articles from CNBC, S.F. Chronicle, S.F. Public Press, and S.F. Business Times.
- B. Workload statistics for April 2020.
- C. List of Rent Ordinance amendments.
- D. Updated sections of the Rent Ordinance.
- E. Updated Rules and Regulations.

VII. Director's Report

- A. Rent Board Operations Update During COVID-19 Health Emergency

Executive Director Collins provided the Board an update regarding the new call center, and explained that staff were working on the call center scripts in four languages and the system will hopefully be live by mid-August. Executive Director Collins explained that the website is

regularly updated regarding operations during COVID-19, and contains useful information about filings, hearings and mediations.

Executive Director Collins provided the Board with a legislative update, and informed the Board that an ordinance to amend the Administrative Code to enact rent control at Midtown Park Apartments (file number 200518), was introduced on May 19, 2020 at the Board of Supervisors and will go through the Government Audit and Oversight Committee. Executive Director Collins informed the Board that the reenactment of the emergency ordinance to temporarily prohibit rent increases that would otherwise be permitted under the Administrative Code was passed by the Board of Supervisors (file number 200578), and means that the temporary rent freeze is in effect through August 22, 2020. Executive Director Collins announced that the Mayor's eviction moratorium, which included new eviction rules for tenants who were unable to pay rent due to COVID-19, and a general eviction moratorium to ban all residential evictions except for evictions related to violence, health and safety issues, and evictions under the Ellis Act, was extended on June 26, 2020; and that a landlord cannot evict a residential tenant for missed payments that became due during the eviction moratorium until January 31, 2021 or later if extended. Further, he explained, the Mayor's general eviction moratorium is set to expire on July 31, 2020, and is currently effective through September 30, 2020. The new Intermediate-Length Occupancy (ILO) law introduces a new category of intermediate length occupancy and prohibits non-tenant uses in many rental units in SF, and requires landlords to add some language in many advertisements.

Finally, Executive Director Collins provided the Board with a budget update, explaining that the department had originally asked for an additional administrative analyst position, and then later requested to exchange that position for an IT position, which is now being exchanged for a vacant attorney position. He said that next year the department will ask for new positions, and this exchange should allow for the Rent Board Fee to remain unchanged this year. Executive Director Collins told the Board that he would be at an SF Apartment Association membership meeting the following week, and at a Board of Supervisors' Land Use Committee meeting for the Planning Department's Housing Balance Report.

VIII. Old Business

A. Proposed Amendment to Rules and Regulations Regarding General Bond Passthroughs

SALJ Koomas told the Board that legislation amending the Rent Ordinance was passed in December 2019 regarding general obligation bond passthroughs, and that the amendments allow tenants to apply for financial hardship deferral of a certain portion of general obligation bond passthroughs that may be imposed beginning in November of 2020. He said that at previous board meetings it was discussed that the Rules and Regulations Section 10.15 regarding tenant hardship applications should be amended to conform to the changes. He explained that staff drafted the proposed amendments to Rule 10.15, which needs to be put out for a public hearing. At the conclusion of the discussion, the commissioners made and voted upon the following motion:

MSC: To move out to public hearing the current draft version of the proposed amendments to Rules and Regulations Section 10.15.
(Wasserman/Mosbrucker: 5-0)

IX. New Business

There was no New Business.

X. Calendar Items

August 11, 2020 – remote meeting via Webex Events

A. Consideration of Appeals

7 appeal considerations

B. Public Hearing: Proposed Amendments to Rules and Regulations Section 10.15 – Extending Tenant Hardship Relief to the Payment of General Obligation Bond Passthroughs Attributable to General Obligation Bonds Approved by the Voters on or After November 5, 2019

XI. Adjournment

President Gruber adjourned the meeting at 7:55 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.