



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, February 12, 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 6:05 p.m.

II. Roll Call

Commissioners Present: Crow; Gruber; Hung; Klein; Marshall; Qian; Wasserman.  
Commissioners not Present: Dandillaya; Mosbrucker.  
Staff Present: Collins; Koomas; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of January 22, 2019.  
(Marshall/Wasserman: 5-0)

IV. Remarks from the Public

A. Ken Lai and Shirla Lai, the landlords at 1594 – 33<sup>rd</sup> Avenue (AL190004), thanked the Board for their time and considering their appeal and Mr. Lai said he wrote the appeal as thoroughly as he could.

B. Vanessa Mobley, the master tenant at 1800 Franklin Street #402 (AT180102), said that she filed for hardship and the Administrative Law Judge (ALJ) decided the hardship claim in her favor, and that the subtenant chose from November to the present date not to pay the money for the hardship, and that she had a financial advisor present the hardship to the ALJ to make sure it was appropriate and true.

C. Benedict Oleforo, the subtenant at 1800 Franklin #402 (AT180102), said that the master tenant’s hardship application defeats logic for him because the master tenant said in a previous hearing that she had a job, but at the last hearing claimed that she had not worked in 10 years. He said that the master tenant submitted a Social Security statement at hearing

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with another name of Joyce Quigley and did not provide a name change; and that this decision extends his stay. Mr. Oleforo said that the master tenant filed a false claim that he physically assaulted her, and he doesn't want to live with someone who has a restraining order against him and who constantly makes up lies. The subtenant asked that decision be reversed, and that there be some finality to this case. He said that the master tenant has made numerous appeals and they're constantly being heard and granted, and he doesn't think it's productive.

D. Tenant Paul Oei at 1370 Pine Street #F (AT190005), said that he applied for hardship and that Ray Choy, the former owner of the building, has submitted the actual rents and the actual rents are way out of the comparable rents. Mr. Oei said that the landlord wants to increase the rent from \$500.00 to \$4400.00, and he only makes \$3000.00-\$3500.00 per month; he doesn't know where the money would come from and he'd be homeless for sure. The tenant told the Board that he has improved the building himself and the unit was illegal in the first place, and he made it legal; and then he complained about the heat, and then they put the heat in his place. He said that there is no heat in 11 other units, but the landlord wants to increase his rent. Mr. Oei said that the windows were boarded, and that was illegal, and they evened out the floors, and they put in shower heads and made it legal, and the self-improvement has been completely ignored by the ALJ. Mr. Oei said that they took the comparable rent and said it would be that amount. He said that there is no carbon monoxide detector because they disabled it, and maybe they are trying to hurt him, and there is asbestos in the pipes according to PG&E, and they cash his checks, which makes him a tenant.

E. Raymond Choy, the former landlord of 1370 Pine Street #F (AT190005) told the Board that this is an extreme hardship for the tenant because he is a driver for Uber, and last year he only grossed \$4000.00 per month. Mr. Choy said that the tenant has to pay for the \$1,155.00 rent on the car per week, the insurance that is \$316.00 a month, and gas, and oil and so forth. Mr. Choy said that the tenant wrote a rent check for 10 months at \$500.00 a month and the owner and his attorney cashed the checks; and that the appraiser said that the comparable rent is supposed to be \$2400.00 a month, and the tenant spent a lot of money improving the place. Mr. Choy said that unit 5 spent \$3500.00 on improvements, and the tenant had a broken boarded up window for 6 months, and his partner fixed it, and Mr. Choy paid for the window. He said that there are so many code violations, that there's no heat, the pipes have asbestos, PG&E found a carbon monoxide leak in the boiler room.

#### V. Consideration of Appeals

A. 1800 Franklin Street #402

AT180102

The subtenant's appeal was filed 43 days late because he alleges that the master tenant stole his mail, so he did not receive the decision until he inquired about the case with the Rent Board.

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

The subtenant's petition alleging a disproportional share of rent and a substantial decrease in housing services was granted in part and denied in part, and the ALJ found the master tenant liable to the subtenant in the amount of \$10,854.00 for rent overpayments and \$19.20 for the removal of gas stove burner grates. The subtenant appealed, claiming that a ground-floor storage space and two of the three bedrooms in the unit were used exclusively by the master tenant; that the value of furniture was already covered in the rental unit cost; and that the removal of the stove burner grates was an ongoing issue, not a one-time occurrence. On October 17, 2017, the Board voted to accept the subtenant's appeal and remand the case to the ALJ to determine the subtenant's proportional share based on a division by the number of bedrooms exclusively occupied. In the remand decision, the ALJ found that there were three bedrooms in the subject unit, with the master tenant exclusively occupying two bedrooms, and the subtenant exclusively occupying one bedroom. The ALJ determined that the master tenant is liable to the subtenant in the amount of \$22,856.18 for rent overpayments, and \$19.20 for the loss of gas stove burner grates. The master tenant appealed, arguing that the 3<sup>rd</sup> bedroom was only exclusively used by her for two nights while she had a guest staying in her own room, and that proportionality should be determined by equal division between the two occupants; and the master tenant also appealed on the basis of financial hardship. On February 13, 2018, the Board voted to deny the master tenant's appeal on the merits, and to remand the case to the ALJ for consideration of the master tenant's financial hardship only. In the second remand decision, the ALJ denied the master tenant's claim of financial hardship because she failed to appear at the hearing. The master tenant appealed, alleging that she did not appear because she is 75 years old and dyslexic and had come to the Rent Board the day of the hearing at the wrong time. At its June 12, 2018 meeting, the Board voted to accept the appeal and remand the case to the ALJ to consider the master tenant's financial hardship claim. In the decision on remand pursuant to the master tenant's hardship appeal, the ALJ found sufficient financial hardship on the part of the master tenant to warrant the creation of a payment plan for the remaining amount of the total rent overpayments of \$22,875.38 ordered in the Decision in Case No. T170395 on Remand Pursuant to Appeal No. AT170084 issued on December 27, 2017. The subtenant appeals, contending that he would have to remain a subtenant of the master tenant and continue to pay the master tenant when the ALJ previously determined that the master tenant was liable to the subtenant for the overpayment; and that the master tenant told the ALJ she had a job but now states that she does not work.

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

B. 1594 – 33<sup>rd</sup> Avenue, Upper Unit

AL190004

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the landlord did not meet its burden of proving that the lower unit is no longer intended or available for residential use such 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) of the Costa-Hawkins Rental Housing Act; and therefore the September 3, 2018 rent increase to \$6,750.00 was not authorized by Civil Code Section 1954.52(a) of Costa-Hawkins and is

null and void. The ALJ determined that the tenants' base rent remain \$2,743.08, the amount of the prior base rent. The landlord appeals, arguing that its contractor determined it would be "difficult and almost impossible" to obtain a permit to legalize the lower unit, but submits no evidence to establish that the landlord had sought or obtained conditional use authorization to remove the lower unit or that the landlord had received an exemption from the conditional use application requirement for the removal of the lower unit.

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

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

C. 1415 Franklin Street #302

AL180101  
(cont. from 1/22/19)

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/Marshall: 5-0)

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

D. 1370 Pine Street #F

AT190005

The landlord's petition for a rent increase to \$3,200.00 based on comparable rents was granted in part and denied in part. The ALJ found that a special relationship existed between former owner Choy and tenant Oei at the time the tenancy commenced on or about May 1, 2017 based on the fact that they had been good friends since 2010, and the tenant had lived in the building and worked as the former landlord's handyman since 2013. The ALJ additionally determined that, as a result of the special relationship, the initial base rent of \$500.00 was set lower than market rent due to non-market conditions; and while the tenant made some repairs to the unit after the tenancy commenced, the evidence did not establish that the condition of the unit was so poor as to justify an initial rent of \$500.00; and that the current landlord is entitled to impose a comparables rent increase. The ALJ further found that the comparable market rent for the unit at the inception of the tenancy on or about May 1, 2017 was \$2,400.00, less than the \$3,200.00 set by the landlord in the petition, and the landlord was entitled to increase the rent to \$2,438.40 per month. The tenant appeals, arguing that the landlord's witness appraiser's testimony should not have been allowed because he is not a licensed appraiser by the

State of California, and that the landlord should not be allowed to raise the rent based on comparables because there are numerous outstanding code violations at the property.

MSC: To accept the appeal and remand the case to the ALJ for the sole purpose of considering the new evidence submitted on appeal and to determine whether the comparable rent increase should be deferred until the Notice of Violation (NOV) is abated.  
(Crow/Wasserman: 5-0)

#### IV. Remarks From the Public (continued)

A. Paul Oei, the tenant at 1370 Pine Street #F (AT190005) said that every unit paid the same rent- \$500.00 for one bedroom, \$600.00 for two bedrooms, and that some tenants have been there for 30 years, and his rent is not out of the norm. He asked why were they talking about comparable units and values, as these are actual payments by other tenants. Mr. Oei said that only one unit, #2, paid \$3600.00, and that was because there were 6 people, and here, there's no such case of a special relationship at all.

B. Benedict Oleforo, the subtenant at 1800 Franklin #402 (AT180102), said that he wanted to employ the facts presented during the last hearing. He said that the master tenant presented a document that didn't have her name. Mr. Oleforo said he tried to negotiate with the master tenant, and he sent her an email 2 days ago that she has not answered; and that the Decision forces him to vacate. He said that he has tried to resolve the issues in Superior Court and the master tenant has not agreed; she presented fake documents and is allowed to win, and he has done nothing but be polite to her; she is not deaf; she is wealthy; she is not disabled; and has falsely claimed that he physically assaulted her. The subtenant said that a person from Oregon that he doesn't even know has provided false information on her behalf, but he cannot prove that she is lying. He said that he has tried to be reasonable, and he is not an angry person, but this blows his mind.

#### VI. Communications

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

- A. Rent Board Annual Report on Buyout Agreements.
- B. 1-Year Owner Move-In (OMI) Report from Senior ALJ Gartzman and Deputy Director Varner.
- C. Workload statistics for the month of December 2018.
- D. Articles from MissionLocal, The Seattle Times, and The New York Times.

#### VII. Director's Report

Executive Director Collins told the Board that Marissa Jimenez and Greg Miller presented a workshop for the S.F. Apartment Association on January 24, 2019 entitled Understanding

Tenant Petitions. He said that in the hiring update, the recruitment for the new counselor position has begun and the application has been posted, and that the ALJ position would be posted that week. Executive Director Collins provided the Board with an update on legislation, explaining that effective February 25, 2019, Rent Ordinance Sections 37.10A and 37.10B were amended to state that it shall be unlawful for a landlord to endeavor to recover possession of a rental unit as defined in Ordinance Section 37.2(r)(7) by means of a rent increase that is imposed in bad faith in an attempt to defraud, intimidate, or coerce the tenant into vacating the rental unit in circumvention of specified eviction controls. He said that since the Ordinance includes a provision that the Rent Board may add any factors that it deems appropriate, the Board can calendar that any time it wants to add or discuss any provisions. Commissioner Wasserman told the Board that in light of a lawsuit being filed on this issue, it might be better to not agendize the item for discussion now, as the law may change. Senior ALJ Koomas explained that evidence of bad faith may include, but is not limited to: the rent increase was substantially in excess of market rate rent for comparable units; the rent increase was within 6 months of an attempt to recover the unit; and such other factors as a court or the Rent Board may deem relevant. Commissioner Marshall requested that the item be agendized as new business for the April board meeting.

Deputy Director Varner made an announcement that Form 700s are due to be filed with the Ethics Commission no later than April 2, 2019, and that Ethics and Sunshine Ordinance Training Declarations are due by April 1, 2019. Deputy Director Varner also made an announcement about an update to the Campaign and Governmental Conduct Code Section 3.209 regarding recusals. She agreed to bring more information back to the Board about these new changes.

VIII. Old Business

*(There was no Old Business.)*

IX. New Business

A. Fiscal Year 2019-2020 Departmental Budget

Executive Director Collins discussed the proposed departmental budget for Fiscal Year 2019-2020. He informed the Board that the department is seeking support to add two additional positions, those of a Rent Board Supervisor and a Principal Clerk to oversee the clerical unit. He also informed the Board that the department is seeking additional office space, and will continue an ongoing digitization process and is requesting a blanket sum to cover postage costs. Executive Director Collins told the Board that due to these changes, the budget would increase about 7.2 percent. With the changes, the fee should be about \$49 per unit. Last year carryover funds reduced the Rent Board Fee from \$48 per unit to \$45 per unit. After discussion, the following motion was made and voted upon:

MSC: To approve the proposed Departmental budget for Fiscal Year 2019-2020.  
(Gruber/Wasserman: 5-0)

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

Deputy Director Varner presented highlights from the 1-Year Report on the January 1, 2018 Owner Move-In (OMI) Ordinance Amendments. She provided a statistical overview, explaining how the number of OMI notices filed at the Rent Board has steadily declined over the past three years; how the filing procedures have changed; and described the complicated nature of the Statement of Occupancy processing. She also provided some information about the OMI rescission procedures and trends, and the process surrounding the issuance of administrative citations for non-filing or incomplete filing of the Statement of Occupancy. Staff supplied proposed language in order to clarify instructions on the Statement of Occupancy, and requested that the Board approve the proposed language. After a short discussion, the Board made and voted on the following motion:

MSC: To approve the clarifying language proposed in the OMI Report presented this evening.

(Wasserman/Gruber: 4-0)

C. Rules and Regulations Clean Up

The Commissioners agreed to continue this item as Old Business for the March 12, 2019 meeting.

X. Calendar Items

March 12, 2019

A. Consideration of Appeals

8 appeal considerations

B. Old Business

1. Rules and Regulations Clean Up

XI. Adjournment

President Gruber adjourned the meeting at 7:59 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.**