

# **City and County of San Francisco**



DAVID GRUBER  
*PRESIDENT*

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

# **Residential Rent Stabilization and Arbitration Board**

Mark Farrell  
*Mayor*

Robert A. Collins  
*Executive Director*

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

Tuesday, February 13, 2018  
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 6:04 p.m.

### II. Roll Call

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

Commissioners not Present: Mosser.

Staff Present: Collins; Gartzman; Koomas; Varner.

Commissioners appearing on the record late: Abe, 6:12 p.m.

### III. Approval of the Minutes

MSC: To approve the Minutes of January 16, 2018.  
(Mosbrucker/Marshall: 5-0)

### IV. Remarks from the Public

A. Michel Fraser, the tenant at 4078 – 24<sup>th</sup> Street (AT180008), told the Board that she referred to several petitions in her appeal, including an application for hardship. She said that on January 12, 2012, the Department of Building Inspection (DBI) issued a Notice of Violation (NOV) for deferred maintenance, and work was not completed until June 8, 2012. Ms. Fraser stated that a violation cannot be passed through as capital improvement work if work is not done within 90 days, and a petition cannot be filed until work is entirely completed. Ms. Fraser told the Board that there is an ongoing issue with this property as far as deferral of maintenance, and a DBI director's hearing will be held this month.

B. Benedict Oleforo, the subtenant at 1800 Franklin Street #402 (AL180002 and AL180003), told the Board that the ALJ initially decided that the 3-bedroom unit was 2

Printed on 100% post-consumer recycled paper

bedrooms. Mr. Oleforo said that one of the supporting documents filed by the master tenant is not under her name but a different name; that a document from her financial advisor contradicts itself; and that the subtenant has never met the person who wrote in a letter in support of the master tenant claiming to have knowledge of the situation. The subtenant stated that the master tenant is trying to deceive the Board and rip off the subtenant.

**V. Consideration of Appeals**

A. 575 Pierce Street #501

AT180006

The tenant's application for financial hardship was dismissed due to the tenant's non-appearance. On appeal, the tenant claims that he was overwhelmed with care of a family member and forgot about the hearing, and asks the Board to grant a new hearing.

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.  
(Marshall/Mosbrucker: 5-0)

B. 1800 Franklin Street #402

AL180002, AL180003

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 are used exclusively by the master tenant; that the furniture charge presents an additional charge 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. On appeal of the remand decision, the master tenant argues 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. The master tenant also appeals on the basis of financial hardship.

MSC: To deny the appeal on the merits and to remand the case to the ALJ for consideration of the master tenant's financial hardship only.  
(Mosbrucker/Marshall: 5-0)

C. 4005 California Street #5

AT180001

The tenant's appeal was filed 5 days late due to the tenant's representative being out of town and not having received the Decision until after the 15-day deadline to appeal had elapsed.

MSC: To find good cause for the late filing of the appeal.

(Marshall/Mosbrucker: 5-0)

The tenant's application requesting deferral of a capital improvement passthrough on the basis of financial hardship was granted. The ALJ granted the deferral of the rent increase beginning on July 1, 2017, the month after the hardship application was filed on June 22, 2017. The tenant appeals, arguing that he was so physically incapacitated that he was unable to file the application for hardship when the capital improvement passthrough was imposed on December 1, 2015, that his representative assisted him with filing for hardship immediately after learning of the tenant's right to do so, and that the Board should grant the deferral of the rent increase back to December 1, 2015.

MSC: To accept the appeal and remand the case to the ALJ to consider the tenant's request to retroactively grant the hardship deferral back to the date of December 1, 2015 when the capital improvement rent increase was imposed, base on the particular facts of this case.

(Marshall/Mosbrucker: 3-2; Abe, Gruber dissenting)

D. 4078 – 24<sup>th</sup> Street

AT180008

The tenant's application requesting deferral of capital improvement passthroughs on the basis of financial hardship was granted in part and denied in part. The ALJ determined that the tenant did not meet her burden of proving that her gross household income was less than 80% of the current adjusted area median income (AMI) for a 1-person household and that her rent was greater than 33% of her gross household income because the tenant did not submit an accounting of the amounts paid to her by a friend who agreed to be responsible for any of the tenant's financial shortfalls. The ALJ also determined that from September 1, 2017 to the present, the tenant established that she was a recipient of means-tested public assistance, and found that the tenant only qualified for deferral of the passthroughs commencing September 1, 2017. On appeal, the tenant argues that she qualified for hardship because during the time period for which she was not granted a deferral of the rent increase, her gross income was below \$5,025.00, and she submits a document showing the amounts allegedly given to the tenant as financial support.

MSC: To accept the appeal and remand the case to the ALJ to consider the new evidence submitted regarding the tenant's financial hardship, with a hearing to be held only if necessary.

(Marshall/Mosbrucker: 5-0)

E. 2909 Jennings Street

AL170119

The tenant's petition alleging a substantial decrease in housing services was granted in part and denied in part. The landlord was found liable to the tenant in the amount of \$2,580.00 for a broken dryer, inadequate heat, and mold, and the tenant's rent was reduced until the decreased housing services were restored. The ALJ determined that while the tenant's base rent was reduced for rodents in the unit, no overpayment was awarded during the time period in question since the tenant did not pay rent during that time. The ALJ also found that the tenant failed to meet her burden of proving that the unit lacked adequate hot water or that the condition constituted a substantial decrease in housing services, and that no rent reduction was warranted for ineffective waterproofing and weather protection because the landlord responded in a reasonable time to correct flooding after receiving notice of the problem from the tenant. On appeal, the landlord argues that the ALJ should have offset any unpaid rent owed by the tenant for the period between November 1, 2016 and July 31, 2017 against the rent reductions owed by the landlord to the tenant.

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

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

F. 970 Ingerson Avenue

AL180004, AL180005

The tenant's petition alleging an unlawful rent increase and decreased housing services was granted in part and denied in part. The landlord was found liable to the tenant for rent reductions for a broken heater and carbon monoxide and smoke detectors in the amount of \$630.00; and for rent overpayments in the amount of \$27,100.00. The ALJ further found that no rent reduction was warranted for a loose toilet, bedroom closet door, windows that were difficult to open, broken refrigerator, and broken bathroom vanity countertop because the landlord replaced or repaired these items within a reasonable amount of time; that the tenant failed to prove that the replacement of a shower door with a curtain rod constituted a substantial decrease in housing services; and that the tenant failed to prove that use of the downstairs closet was promised or reasonably expected under the circumstances at the inception of the tenancy. The landlords appeal, arguing that the ALJ erred in believing the tenant's claim that the base rent was \$1,200.00 at the inception of the tenancy, and request that the base rent be established at \$1,500.00, per the lease furnished at hearing. The landlords also appeal on the basis of financial hardship.

MSC: To deny the appeal on the merits and to remand the case to the ALJ for consideration of the landlords' financial hardship only.  
(Mosbrucker/Marshall: 5-0)

G. 142 Alpine Terrace

AL180007

The tenant's petition alleging an unlawful rent increase and decreased housing services was granted in part and denied in part. The landlord was found liable to the tenant for rent reductions for a lack of storage space and denial of the request to add an additional occupant in the amount of \$20,277.33, and for rent overpayments in the amount of \$2,021.08, with an ongoing base rent reduction of \$300.00 for lack of storage space. The ALJ further found that the tenant failed to meet his burden of proving that the master bedroom closet was a housing service provided by the landlord at the inception of the tenancy and included in the tenant's base rent, nor was the master bedroom closet a housing service reasonably expected under the circumstances. The landlord appeals, arguing that the lease signed by the parties did not provide the tenant a right to a storage unit; that the wrong rent calculation was made for the rent overpayment; and that the calculation for the denial of the request to add an additional roommate was incorrect.

MSC: To accept the appeal and remand the case to the ALJ to consider the new evidence on appeal regarding the rent overpayments and to clarify or correct how the storage space rent reduction is calculated, with a supplemental hearing to be held only if necessary.  
(Mosbrucker/Marshall: 5-0)

#### IV. Remarks from the Public (cont.)

A. Benedict Oleforo, the subtenant at 1800 Franklin Street #402 (AL180002 and AL180003), asked the Board what would happen at the hearing to consider the master tenant's claim of financial hardship.

#### VI. Communications

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

- A. Proposed departmental budget for Fiscal Year 2018-19.
- B. Annual Report on Buyout Agreements for 2017.
- C. Workload statistics for the month of December 2017.
- D. Articles from the S.F. Examiner, S.F. Chronicle, KTVU, Mission Local, and 48 Hills.

#### VII. Director's Report

Executive Director Collins told the Board about two outreach events at the North Beach Library: one on January 20 about understanding the Rent Ordinance, geared towards tenants and staffed by Ben Ng, Brandon Lawrence, Lehua Asher, and Jennifer Rakowski; and a similar, well-attended event on January 27 focusing more on issues of interest for landlords and staffed by Jennifer Rakowski and Josh Vining. Executive Director Collins reported to the

Board that on February 8, the Ninth Circuit Court of Appeals issued a decision upholding challenged provisions of the tenant buyout section of the Rent Ordinance. Executive Director Collins also informed the Board that the Annual Report on Buyout Agreements was submitted at the end of January.

## VIII. Old Business

### A. Amendments to the Ordinance and Regulations regarding owner move-in evictions

Senior ALJ Gartzman and the Board the language in Ordinance Section 37.9(a)(8)(vii) that requires the filing of a Statement of Occupancy when a landlord has “recovered possession of a unit” following an owner/relative move-in eviction (OMI/RMI) on or after January 1, 2018, and whether a landlord who serves an OMI/RMI eviction notice prior to January 1, 2018 and recovers possession on or after January 1, 2018 may therefore be subject to the new reporting requirements. SALJ Gartzman reminded the Board that since the Ordinance requires a Statement of Occupancy to be filed within 90 days of the date the notice is served, regardless of whether the landlord has recovered possession of the unit, the newly adopted Rule Section 12.14(f) clarifies that a Statement of Occupancy is only required where the OMI/RMI eviction notice is served on or after January 1, 2018. SALJ Gartzman did confirm that administrative penalties won’t be imposed for failure to file a Statement of Occupancy based on a notice having been filed before January 1, 2018.

## IX. New Business

### A. Fiscal Year 2018-2019 Departmental Budget

Executive Director Collins discussed the proposed departmental budget for Fiscal Year 2018-2019. He informed the Board that the budget will increase primarily due to the following: a position added last fiscal year which is now reflected for a full year; mandated salary and benefit increases; increased requests for interpreters and translations; digitization of records; and ongoing technical support. After discussion, the following motion was made and voted upon:

MSC: To approve the proposed Departmental budget for Fiscal Year 2018-2019.  
(Gruber/Marshall: 5-0)

### B. Departmental Strategic Plan

Executive Director Collins engaged the Board in a discussion about the strategic plan. He explained that the one-page summary that was submitted to the Mayor’s office last year is being used to develop some new performance measures. The Commissioners briefly discussed what they might like to see in the strategic plan and how the Rent Board’s mission could be tied to the strategic plan.

## X. Calendar Items

March 13, 2018  
11 appeal considerations

**XI. Adjournment**

President Gruber adjourned the meeting at 7:30 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.**