



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
DAVID WASSERMAN

Tuesday, March 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 6:04 p.m.

II. Roll Call

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

Commissioners Appearing on the Record Late: Marshall, 6:07 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 12, 2019.
(Qian/Wasserman: 5-0)

IV. Remarks from the Public

A. Daniel Curzon-Brown appeared on behalf of John Gettys, the tenant who lives at 275 Castro Street #A (AT190006), and said the tenant couldn't be present at the meeting because he had a heart bypass a week ago and is still not recovering well. He said that the decision said that the tenant had to give up his apartment of 30 years, as he has been living with Mr. Curzon-Brown for some time due to his ill health. He said that the tenant is not physically able to move out but he needs more time to recover and deal with his belongings. Mr. Curzon-Brown said that the last letter sent from the landlord's attorney said there's no bed and no couch in the unit, but there's actually a waterbed and a convertible couch; and the tenant needs at least another month to get his belongings before the rent goes up.

B. Mr. Frias spoke on behalf of his friend Salvador Argueta, the landlord at 1441 Quesada Avenue (AL190013). He told the Board that the adjusted amount in the decision wasn't correct or appropriate. He said that the landlord was looking to readjust the amount owed to the tenant, and that the tenant has a piece of furniture in the garage that he hasn't moved into storage.

C. Evan Matteo, the landlord of 1492 - 9th Avenue (AL190009), said that a prior Rent Board Decision that the ALJ referred to was not dispositive, because in that case the tenant was 2000 miles away, and submitted a statement that he was abandoning that residence. He said that the quality of the evidence that showed the tenant stayed in the subject unit only Saturday nights over 4.5 months is high: he did a 45 day driveway survey; the tenant provided 3 months of Fastrak data which showed that he never came to S.F. without returning except on Saturday nights; Oakland is his permanent residence as the tenant claims in writing to Oakland Unified School District that he permanently resides there; he's claimed a homeowner's exemption on the Oakland property since 2012; he and his child's mother were the only owners of the Oakland property since 2012; the tenant's kid only stays in the Oakland home; he was employed full time in Oakland; he filed his taxes with his Oakland address; he had season tickets to the Raiders; his pharmacy and eye doctor are in Oakland; the tenant has over a half a million dollars in equity in the house, and no leases or reported income on that property. He said this is an opportunity for the Board to form precedent on whether someone can own property for which a homeowners exemption is claimed, admit that they lived in that home most of the time, and worked out of there, and still have rent control in S.F.

D. Valerie Lee, the landlord of the property at 1121 Leavenworth Street (AL190012) said that her attorney Karen Uchiyama was supposed to fax in an explanation as to why she needed to postpone the hearing, because she was in Asia for Chinese New Year and taking care of an ill relative. The landlord said that her attorney told her that there was something wrong with the fax and didn't realize there was a problem until after the hearing took place, which caused her to not have a proper hearing on the matter. She asked the Board to grant another hearing so she can present her side's evidence.

V. Consideration of Appeals

A. 1121 Leavenworth Street

AL190012

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 \$2,800.00 for loss of use of the garage from July 1, 2014 through February 28, 2019. On appeal, the landlord's attorney contends that that the landlord did not attend the hearing because she was out of the country, and the attorney attempted to request a postponement, but the postponement request was never received by the Rent Board.

MSC: To accept the appeal and remand the case for a new hearing. Should the landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Wasserman/Gruber: 5-0)

B. 1441 Quesada Avenue, Back Unit

AL190013

The tenant's petition alleging decreased housing services was granted in part and denied in part. The landlord was found liable to the tenant for rent reductions for a reduction in room size; broken room door lock; and a broken front door lock in the total amount of \$3,749.50. The ALJ further found that the tenant did not meet his burden of proving that his rent included free wireless internet service and free cable television service at the inception of the tenancy. The landlord appealed, claiming that the tenant's new bedroom was 96 square feet instead of the 80 square feet stipulated to at hearing, and therefore the reduction in room size was only 32.5%, not 44%. At its November 13, 2018 meeting, the board voted to accept the appeal and remand the case to the ALJ to consider the room size and all the amenities associated with the room in question. In the remand decision, the ALJ determined that the tenant's new bedroom is 96 square feet, calculating a room size reduction of 33%. The ALJ found that the loss of square footage constituted a substantial decrease in housing services; that the landlord was found liable to the tenant petitioner in the total amount of \$3,178.60; that the reduced base rent is \$436.80; and that the \$25.00 base rent reduction shall continue for the broken room door lock until the lock is repaired. The landlord appeals the remand decision, arguing that the room door lock has always worked properly, and that the front door lock has always worked properly; requests payment for the storage of the tenant's table that does not fit in the tenant's new bedroom; and requests that the ALJ order the tenant to pay rent by money order because the tenant has issued bad checks.

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

C. 800 Excelsior Avenue

AL190010, AL190011

The tenant's petition alleging an unlawful rent increase was granted. The ALJ found the landlord liable to the tenant for rent overpayments in the amount of \$3,925.00. On appeal, the landlord claims for the first time that the bedroom occupied by the tenant petitioner is exempt from the Rent Board's jurisdiction because it was part of new construction in the building that was performed in 2006, and that the property consists of one dwelling that the landlord occupies with his tenants. The landlord also appeals the decision on the basis of financial hardship.

MSC: To deny the appeal on the merits and to deny the appeal on the basis of financial hardship.
(Mosbrucker/Wasserman: 5-0)

D. 275 Castro Street #A

AT190006

The landlord's petition alleging that there was no tenant in occupancy under Rules and Regulations Section 1.21 was granted. The ALJ found that the tenant respondent uses the subject unit for storage purposes and was not a tenant in occupancy of the subject unit at the time the petition was filed on July 27, 2018; that there is no other tenant in occupancy within the meaning of Section 1.21; and that the landlord is entitled to increase the rent without limitation. The tenant appeals the decision on the basis that he is a

protected tenant due to his age and health condition; that tripling the rent would impoverish the tenant; and that he would be evicted because he would not be able to afford the increased rent.

MSC: To continue the consideration of this appeal to the April 9, 2019 board meeting.
(Marshall/Mosbrucker: 5-0)

E. 1185 Pine Street #26

AL190003

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the landlord failed to meet its burden of proving that the tenant's stepsister resided in the subject unit as a lawful subtenant or assignee on the date the notice of rent increase was served on June 28, 2018 or that there was any other subtenant residing in the unit; and therefore the September 1, 2018 rent increase to \$2,095.00 was not authorized by Civil Code Section 1954.53(d)(2) of Costa-Hawkins and is null and void. The ALJ determined that the tenant's base rent of \$1,323.79 remains in effect. The landlord appeals, arguing that the ALJ erred in ruling that the tenant's stepsister was merely a guest at the premises; and in failing to determine if the tenant petitioner no longer permanently resided at the subject unit when the rent increase notice was served.

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

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

F. 3171 – 16th Street #A

AL190008

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ determined that because the tenant was both a lawful subtenant at the time the notice of rent increase was served on July 30, 2018, and that he also resided in the unit prior to January 1, 1996, landlord was not entitled to impose an unlimited rent increase under Civil Code Section 1954.53(d)(2) of Costa-Hawkins and the October 1, 2018 rent increase from \$736.91 to \$5,000.00 is null and void. On appeal, the landlord argues that Costa-Hawkins allows for an unlimited rent increase unless the subtenant has continuously resided in the unit since prior to January 1, 1996, and in this case the tenant's occupancy of the unit was not continuous.

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

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

G. 1492 – 9th Avenue

AL190009

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the landlord failed to meet the burden of proving that the tenant petitioner did not continue to permanently reside at the subject unit at the time the Costa-Hawkins rent increase notice was served on August 24, 2018; and therefore the November 1, 2018 rent increase from \$2,001.52 to \$4,500.00 was not authorized by Civil Code Section 1954.53(d)(2) and is null and void; and found that a tenant may permanently reside or remain an occupant in lawful possession of more than one rental unit. The ALJ determined that the tenant's base rent of \$2,001.52 remains in effect. On appeal, the landlord argues that there were procedural defects, the tenant had inequitable conduct, there was an improper lack of consideration for the tenant's homeowner status and homeowner tax exemption, and the decision does not include testimony that the landlord believes is part of the evidence that should have been considered.

MSC: To deny the appeal.

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

H. 4009 – 24th Street #4

AT190007

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in three of eight units was denied. The ALJ denied the landlord's petition on the basis that the monthly cost increase for each of the subject units is less than the 1.6% allowable rent increase in effect at the time the petition was filed. Specifically, the landlord's increased insurance costs of 100% from Year 1 to Year 2 were the basis for the landlord's petition, but the landlord failed to provide any evidence or explanation as to why the insurance costs increased so significantly. The landlord appealed, arguing that that he does not need to explain the reason for the large increase in insurance costs as long as the paperwork establishes the cost. At the August 14, 2018 meeting, the board voted to accept the appeal to allow the ALJ to consider the landlord's explanation for the increase in insurance costs. In the remand decision, the ALJ granted the landlord's petition since the landlord provided a reasonable explanation for the increase in insurance costs from Year 1 to Year 2. The tenant in one unit appeals the remand decision on the basis that the insurance costs are not fixed and can be reduced by the landlord at any time; that the insurance costs were artificially manipulated in order to significantly increase the tenants' base rent and to subvert the rent control law; and that because the ALJ previously found that the landlord failed to meet his burden of proof regarding the insurance costs and disallowed them, he should not be allowed to now increase the rent.

MSF: To accept the appeal and remand the case to the ALJ to examine and make a specific finding on the issue of whether the insurance increase was subject to manipulation.

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

MSC: To deny the appeal.

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

IV. Remarks From the Public (continued)

A. Arthur Tom said that he was impressed by the way the Board conducts itself and looks forward to seeing more.

VI. Communications

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

A. Monthly workload statistics for January 2019.

B. Updated Ordinance.

C. Articles from SFGate, S.F. Examiner, The New York Times, SF Public Press, and Oregon Live.

VII. Director's Report

Executive Director Collins reminded the Board that their Form 700s are due Tuesday, April 2, and their Ethics and Sunshine Ordinance training declarations are due Monday, April 1. Executive Director Collins told the Board that staff members Josh Vining and Lehua Asher tabled at Sunday Streets in the Mission on March 10, and staff members Greg Miller and Rene Juarez will conduct outreach at the S.F. Apartment Association tradeshow on March 18, and Jennifer Rakowski together with another staff member will conduct a training for the Anti-Displacement Coalition. He informed the Board that staff are currently conducting interviews for the open ALJ position, and that the counselor recruitment was extended through the close of business on March 12, and interviews will be conducted thereafter. Executive Director Collins discussed the recently released Annual Eviction Report, noting that eviction notice filings overall were down 4%, and that owner move-in eviction filings were down 29% and Ellis filings were down 23%, but filings for breach of lease were up 16%.

Deputy Director Varner also reminded the Board about their upcoming Ethics filings, and engaged the Board in a brief discussion regarding the new recusal rules.

VIII. Old Business

A. Rules and Regulations Clean Up

This item was moved for consideration as Old Business to the April 9, 2019 meeting.

IX. New Business

(There was no New Business.)

X. Calendar Items

April 9, 2019

A. Consideration of Appeals

5 appeal considerations (including one continued appeal consideration)

XI. Adjournment

President Gruber adjourned the meeting at 7:41 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.