



Mark Farrell
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Robert A. Collins
Executive Director

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CATHY MOSBRUCKER
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KENT QIAN
DAVID WASSERMAN

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

Tuesday, March 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 6:05 p.m.

II. Roll Call

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

Commissioners appearing on the record late: Mosser: 6:07 p.m.; Qian: 6:24 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 13, 2018.
(Marshall/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Ed Singer, the attorney for the landlords at 165 Beacon Street #Rear Unit (AT180009, AL180010), stated that the Administrative Law Judge’s (ALJ) decision to disallow the Costa-Hawkins rent increase was an abuse of discretion. He said that there was substantial evidence that the original tenant no longer uses the property as his primary residence: that the tenant admitted that he rented another apartment with his girlfriend, which is in walking distance to his work; that he uses his mother’s house as his mailing address; and that, based on surveillance, he appeared at the premises once in a 3 month period. Mr. Singer argued that the tenant’s subtenant lives at the subject property and that the tenant’s primary residence is elsewhere.

B. Laura Jeleniewski the subtenant 2725 Van Ness Ave #2 (AL180019) argued that her proportional share of the rent should have been calculated by dividing the total rent by four

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people instead of three, since the master tenant's boyfriend was also living in the unit. The subtenant stated that the master tenant's boyfriend came for a visit in August 2017 and never left, and is living and working in the unit all the time.

V. Consideration of Appeals

A. 2030 Fell Street #5

AT180017

The tenant's application for deferral of a capital improvement passthrough due to financial hardship was dismissed due to the tenant's non-appearance. On appeal, the tenant claims that she did not receive the Notice of Hearing, and submits the requisite Declaration of Non-Receipt of Notice of 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. 320 – 2nd Avenue #A

AL180015

The subtenant's petition alleging that the master tenant charged the subtenant more rent than the master tenant paid to the owner was granted. The master tenant was found liable to the subtenant in the amount of \$13,258.00 for rent overpayments. On appeal, the master tenant claims that he did not receive the Notice of Hearing and the Decision, and submits the requisite Declaration of Non-Receipt of Notice of Hearing.

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

C. 610 Spruce Street

AL180011, AL180012

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant in the amount of \$5,807.00 for rent overpayments. The master tenant appeals, claiming in part that she was never a master tenant, and therefore the petitioner was a co-tenant and not a subtenant. 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.
(Abe/Gruber: 5-0)

MSC: To withdraw the motion that originally stated: 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.
(Gruber/Abe: 5-0)

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

D. 1111 Pine Street #412

AL180016

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant in the amount of \$1,394.88 for rent overpayments. On appeal, the master tenant argues that the ALJ miscalculated value of amenities and services provided by the master tenant, that the subtenant vacated the unit without giving proper notice and owes the master tenant money for cleaning costs and repairs, and that the subtenant's girlfriend stayed in the unit during the course of the tenancy.

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

E. 2725 Van Ness Avenue #2

AL180019

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant in the amount of \$744.99 for rent overpayments. On appeal, the master tenant argues that proportionality should have been determined by square footage, rather than equal division between the three occupants.

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

F. 1499 Sutter Street #108

AL180018

The tenant's petition alleging an unlawful rent increase was granted. The landlord was found liable to the tenant for rent overpayments in the amount of \$2,320.00. The ALJ found that the rent reduction from \$2,900.00 to \$2,000.00 effective September 1, 2014 constituted a new agreement setting a new base rent since the landlord failed to meet its burden of proving that the reduction in the tenant's rent was intended to be a temporary discount due to the tenant's financial hardship. The landlord appeals, arguing that the Decision was not reasonably based on testimony and evidence presented at the hearing, and that the Decision contradicts the standard that a reduction of the base rent is temporary and may be restored if the reduction is based on the tenant's financial difficulties.

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

G. 906 Steiner Street #B

AT180014

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 kitchen ceiling and wall damage; water damage to the bedroom ceiling; and loss of storage in the

basement/garage in the amount of \$1,431.50. The ALJ further found that the tenant did not meet her burden of proving that the landlord's presence during day time hours in the shared common areas of the subject property constituted a violation of her right to quiet enjoyment. The tenant appeals, claiming that the rent reductions she received for each item are too low; that the decreased housing services have continued; that the landlord's ongoing behavior constitutes a lack of quiet enjoyment; and that the landlord should be held accountable for his harassing behavior and attempting to constructively evict the tenant.

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

H. 2238 Vicente Street #3

AT180013

The tenant's appeal was filed 3 years and 3 months late because she alleged she discovered new evidence in support of her appeal.

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

The tenant's petition for decreased housing services was denied. The ALJ found that the tenant failed to meet her burden of proving that the use of the following housing services were housing services provided at the inception of her tenancy or ones reasonably expected under the circumstances: use of the lightwell outside of her kitchen as a patio; use of the decorative metal on the front of the building as a balcony; the right to store personal possessions in the interior common area hallway outside her front door; and the right to store personal possession anywhere in the interior common area hallway. The ALJ also found that the tenant failed to meet her burden of proving that the installation of the storage shed in the backyard walkway and that the rubber bathtub stopper on a chain in the place of the mechanical bathtub stopper constituted substantial decreases in housing services. The ALJ additionally found that the landlords repaired the rear staircase and broken back fence within reasonable amounts of time after receiving notice of the conditions. The tenant appeals, arguing that because she used the backyard, balcony, patio, front door, and storage room and the landlord accepted the use from 2011-2014, the landlord and the tenant had an implied-in-fact contract that the tenant could use those common areas to store her belongings, and that the landlord has breached that implied-in-fact contract.

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

I. 165 Beacon Street #Rear Unit

AT180009, AL180010

The tenants' petition alleging an unlawful rent increase was granted in part and denied in part. The ALJ found that the landlord properly increased the tenants' rent from \$450.00 to \$1,004.15 based on comparable rents as permitted by the Decision in Case No. L130021 pursuant to a written rent increase notice served on July 15, 2013, but that the May 5,

2017 rent increase from \$1,004.15 to \$2,995.00 was not authorized by Civil Code Section 1954.53(d)(2) and is null and void. The landlords appeal, arguing that the increase to \$2,995.00 is lawful since tenant Dow permanently resides at a different address. The tenants also appeal, arguing that the landlords failed to submit evidence of the July 15, 2013 rent increase notice, and that the ALJ prejudicially re-opened the record to accept additional document submissions and to engage in ex parte communications with the landlords.

MSC: To continue consideration of the tenants' and landlords' appeals to the April 17, 2018 board meeting.
(Dandillaya/Abe: 5-0)

VI. Communications

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

- A. Annual Report on Eviction Notices.
- B. Workload statistics for the month of January 2018.
- C. Articles from the S.F. Chronicle, S.F. Examiner, SFGate, MissionLocal, BeyondChron, Santa Monica Daily Press, and the East Bay Express.
- D. Copy of an unpublished decision from the California Court of Appeal regarding a Costa-Hawkins Rental Housing Act rent control exemption determination.

VII. Director's Report

Executive Director Collins welcomed new ALJ Dorothy Chou Proudfoot. He told the Board that supervisor Jennifer Rakowski has done an outstanding job in coordinating outreach events. He said that Deputy Director Varner and staff member Marissa Jimenez conducted outreach at Sunday Streets on March 13, and that staff will conduct outreach at several future Sunday Streets events. He also told the Board that Rene Juarez & Lehua Asher were conducting outreach at a Housing Rights Committee event that same evening, March 13. Executive Director Collins announced that the Court of Appeal upheld an Ordinance amendment prohibiting no-fault evictions of students and educators during the school year. Executive Director Collins discussed the Annual Report on Eviction Notices and explained the 12% overall reduction in eviction notice filings. Executive Director Collins also reminded the commissioners of the April 2 filing deadline for their Form 700s and Ethics and Sunshine Ordinance Training Declarations.

VIII. Old Business

- A. Departmental Strategic Plan

Executive Director Collins informed the Board that staff are reworking the performance measures to make sure they are in alignment with the strategic plan summary.

IX. Calendar Items

April 17, 2018

9 appeal considerations (including two continued appeal considerations)

X. Adjournment

President Gruber adjourned the meeting at 7:37 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.