



London N. Breed
Mayor

Robert A. Collins
Executive Director

DAVID GRUBER
PRESIDENT

**AMENDED 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, March 16, 2021
at 6:00 p.m.

Remote Meeting via video and videoconferencing
<https://bit.ly/3rjfdOc>

Public Comment Dial In Number: (415) 655-0001 / Access Code: 187 887 2217

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 were issued to slow and reduce the spread of COVID-19. 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 March 16, 2021 to rentboard@sfgov.org. The meeting will be streamed live at 6:00 p.m. at <https://bit.ly/3rjfdOc>. 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 6:07 p.m.

II. Roll Call

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

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

III. Approval of the Minutes

MSC: To approve the minutes of February 16, 2021.
(Wasserman/Mosbrucker: 10-0)

IV. Remarks from the Public

A. Eric Fernandez, attorney for the owners at 1510 Newcomb Street, Lower Unit (AL210003) said that the tenant petitioner claimed in the petition that she was a tenant at the time the owners purchased the property, but at no point previously did the tenant petitioner claim to be a tenant. Mr. Fernandez said that when the owners proceeded with the foreclosure eviction against the former owner- the tenant petitioner's mother- the tenant petitioner responded as the daughter of a former owner, not a tenant, and would not have been considered so under the law, and did not claim to have paid rent. He said that only at the time of settlement did the former owner ask to leave her daughter in possession as a tenant, to which the owners agreed; the tenancy was established after the mother vacated; the tenant petitioner did not pay any rent for the first 3 years; and any order requiring the owners to pay the tenant should be offset, under a theory of unjust enrichment.

B. Laura Campbell, the landlord attorney at 1783 – 33rd Avenue (AT210006), told the Board that the property is a single-family dwelling where the landlord wanted to approve the original tenant's roommate request, and the tenant petitioner roommate now lives there alone. Ms. Campbell said that the landlord listed the entire premises and did not specify only a portion or a room of the house. She said that the petitioner did not submit any evidence on appeal that was not previously considered. The attorney said that the original lease would supersede any email evidence, and asked that the decision be upheld.

C. Peter Wang, the property manager of 1510 Newcomb Street, Lower Unit (AL210003) said that at the time they signed the lease agreement with the tenant, she never established herself as a tenant, and already provided evidence to prove that. He said that after the lease signing, the tenant petitioner continued to pay the rent for 1½ years; until the Rent Board petition was filed.

D. David Hidalgo, regarding 1510 Newcomb Street, Lower Unit (AL210003) said that other people he is associated with spoke already; he had questions on the public comment procedure.

E. Daniel Okon, one of the tenants at 900 Chestnut Street #310 (AT210008), said he was on the phone with the senator's office and district attorney; his fear is that what happened in his case will not be corrected. He said that he would like to get back on the organ donor list and try to get a kidney; the company that took over his building has prevented him from doing so. Mr. Okon said that he would like Commissioner Wasserman to recuse himself because he can't be impartial. He said that the ALJ provided cover for this bad actor, and that the fireplace was not a big thing, but the fact that they overlooked that changed the whole reality of what this company did.

V. Consideration of Appeals

A. 1535 Chestnut Street #104

AL210009

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ determined that the subtenant petitioner's proportional share of the total rent was \$1,664.70 from September 1, 2017 through May 31, 2018, \$1,685.47 from June 1, 2018 to May 31, 2020, and \$1,719.78 from June 1, 2019 to July 15, 2020, and determined that the master tenant was liable to the subtenant for rent overpayments in the amount of \$2,665.14. The master tenant appeals, contending that the ALJ did not account for the housecleaning or household supplies, so the subtenant's proportional share should be higher, and the overpayment should be reduced.

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

B. 749 – 42nd Avenue

AL210012

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ determined that the subtenant petitioner's proportional share of the total rent was \$1,465.74 from January 1, 2020 through May 31, 2020 and \$1,414.74 from June 1, 2020 through August 31, 2020, and determined that the master tenant was liable to the subtenant for rent overpayments in the amount of \$777.08. On appeal, the master tenant argues that the subtenant did not meet his burden of proving that he paid substantially more than his proportional share of the total rent paid to the landlord; and that the ALJ's calculation of the subtenant's rent was arbitrary and should have been calculated based on the square footage occupied by the subtenant.

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

C. 900 Chestnut Street #310

AT210008

The tenants' petition alleging decreased housing services was granted in part and denied in part. The ALJ found that the landlord was liable to the tenants for rent overpayments in the amount of \$1,650.00 for improperly maintained and malfunctioning living room windows from November 12, 2018 through October 15, 2019; and in the amount of \$500.00 for the landlord's closure of the fireplace from June 1, 2019 through January 31, 2021. The ALJ further found that the mold remediation work for both the July 24, 2019 and February 2020 mold incidents were performed in a timely manner following the tenants' first reporting of the mold incidents, and that the tenants failed to meet their burden of proving that the condition of the bathroom walls constituted a substantial decrease in housing services. The tenants appeal, contending that the ALJ ignored important evidence regarding the mold and mold allergies from which one tenant suffers.

Commissioner Wasserman recused himself from the consideration of this appeal because he has represented the landlords for 26 years.

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

D. 1783 – 33rd Avenue

AT210006

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was denied. The ALJ determined that the landlord met his burden of proving that the subject rental unit is separately alienable from the title to any other dwelling unit; and therefore the December 1, 2020 rent increase from \$1,500.00 to \$4,200.00 was authorized by Civil Code Section 1954.52(a)(3)(A) of Costa-Hawkins. Specifically, the ALJ found that although the landlord entered into two separate agreements with the tenants, the landlord had not divided the subject single-family home into two units by renting separate areas of the premises to the tenants for their exclusive use. On appeal, the tenant argues that the tenant's lease was an agreement for a designated room in the property, not for shared occupancy of the entire single family dwelling.

Commissioner Klein recused herself from the consideration of this appeal because her law firm represented the landlord.

MSC: To deny the appeal.
(Wasserman/Gruber: 4-1; Mosbrucker dissenting)

E. 1510 Newcomb Street, Lower Unit

AL210003

The tenant's petition alleging an unlawful rent increase was granted. The ALJ determined that the subject unit is not exempt from the rent increase limitations of the Rent Ordinance, that the tenant's lawful base rent is \$700.00, and that the landlord is liable to the tenant in the amount of \$32,246.41 for rent overpayments for the period from June 8, 2018 through December 31, 2020. On appeal, the landlord argues that the tenant is not a valid tenant because she is the daughter of the foreclosed homeowner who lived on the upper floor of the property; that the tenant did not prove she paid rent to her mother; that the former homeowner is still living in the property; and that the tenant paid no rent to the former owner from August 2015-June 2018, and so any overpayment should be reduced.

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

IV. Remarks From the Public (continued)

- A. Daniel Galindo told the Board that he represents the master tenant in 749 – 42nd Avenue (AL210012). He urged the commissioners to reconsider, as they provided measurements on appeal to illustrate the ALJ's error in abusing their discretion that simple guesses from the subtenant were substantial to show his burden of proof.
- B. Eric Fernandez, attorney for the owners at 1510 Newcomb Street, Lower Unit (AL210003) urged the Board to reconsider the decision on the grounds that there was no understanding that the tenant petitioner was a tenant, as she was the daughter of the owner who was foreclosed on and lived in the property, and never came forward as a tenant. He said that the

record should have indicated that a notice of change of ownership was sent to the property after the bank foreclosed on the property, and there were attempts to serve rent demands, which were not responded to. He said that they only received notices from the tenant petitioner's mother, who was the former owner, not a tenant; they litigated on the basis that the property was occupied by the former owner, and they decided to create a tenancy with the daughter.

VI. Communications

- A. Articles from CBS 5 and SF Chronicle.
- B. Monthly workload statistics for January 2021.
- C. Proposed legislation regarding a housing special use district, Board of Supervisors file 210182.
- D. Updated Rules and Regulations.

VIII. Director's Report

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

Executive Director Collins told the Board that the department is in the process of hiring a principal business analyst, that person will function as the Rent Board's chief information officer. He said that the department will no longer use a fax machine; members of the public can submit filings via mail and email, and in the future there will be an online filing portal. Executive Director Collins said that the department will be obtaining use of Suite 340, next door to the Rent Board's existing office space, on May 1. He explained that operations have not changed in the last few months, but the department is beginning to think about the possibilities of what reopening would look like. He stated that as we move to more available vaccinations, we will begin to move towards having that conversation, and that we want to make sure we have a plan, or several possible plans.

Deputy Director Varner reminded the Board that Form 700 filings and Ethics and Sunshine Training Declarations are required to be filed with the Ethics Commission by April 1, 2021, with no exceptions this year, and that any board member who does not file before the next meeting would not be able to participate in the meeting.

IX. Old Business

A. Board Racial Equity Work – Proposed Resolution: Ramaytush Ohlone Land Acknowledgement

Commissioner Isbell began the discussion regarding the proposed Ramaytush Ohlone Land Acknowledgement. He told the Board that the Office of Racial Equity (ORE) has encouraged all departments to prepare a Ramaytush Ohlone Land Acknowledgment. He again explained that the language he used in formulating the draft resolution utilized

the template of the SF Human Rights Commission (HRC), language which has been vetted by the City Attorney's office, and that the Rent Board Commission would be joining the SF HRC and the Board of Supervisors in their resolutions. The commissioners then made and voted upon the following motion:

MSC: To adopt the draft language of the Resolution on the Ramaytush Ohlone Land Acknowledgment.
(Mosbrucker/Wasserman: 10-0)

X. New Business

(There was no new business.)

XI. Calendar Items

April 13, 2021 – remote meeting via Webex Events

A. Consideration of Appeals

6 appeal considerations

XII. Adjournment

President Gruber adjourned the meeting at 7:51 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.