



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
ARTHUR TOM
DAVID WASSERMAN

Tuesday, April 9, 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 6:02 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hung; Isbell; Klein; Mosbrucker;
Qian; Tom; Wasserman.
Commissioners not Present: *(None.)*
Staff Present: Collins; Koomas; Varner.

Commissioners Appearing on the Record Late: Klein, 6:03 p.m.; Qian, 6:08 p.m.; Crow,
6:11 p.m.

III. Approval of the Minutes

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

IV. Remarks from the Public

A. Polly Marshall, former Rent Board commissioner, told the Board that she had been a tenant commissioner since 1984, and that she was replaced on April 5, 2019 without notice, and that she was devastated. Ms. Marshall told the Board that she worked to create the Rent Ordinance, and that she was in former Mayor Feinstein's office when she vetoed a proposed vacancy control law. She told the Commissioners that she was on the Board for 35 years, and that she is diligent and conscientious, has attended 400 meetings, has drafted Regulations, and is a strong, reasonable tenant voice. She said that she is concerned about the politicization of the Board, and that for years, there has been a tradition wherein the tenant community was permitted to pick their representatives on the Board. Ms. Marshall said that the work of the Rent Board needs to be taken seriously, and she hopes that everyone

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will continue to work together to protect the Board and the law, so that the public will understand how important this work is, and why there is a need to maintain a high level of nonpoliticization and integrity. She said that that she came to say goodbye, and that she is still hopeful that one day she may be back as a tenant commissioner.

After former Commissioner Marshall spoke, President Gruber thanked former Commissioner Marshall for her work, and said that she and he worked together for 25 years, and that he learned a great deal from her. Each commissioner then individually spoke and thanked former Commissioner Marshall for her years of work.

B. Rosa Maria Cavalho, a tenant advocate with the Tenderloin Housing Clinic Code Enforcement Outreach Program, told the Board that she was speaking as a tenant who lives at 250 Parnassus Street. She expressed disappointment with the removal of Polly Marshall as a commissioner. Ms. Cavalho stated that Ms. Marshall is a robust, well-qualified, amazing advocate, and that to lose her was an incredible shock, and that she doesn't want to simply go quietly in thanking her for her service. She said that the way in which Ms. Marshall was quickly and swiftly removed did not sit well with a lot of folks, and asked for Ms. Marshall's reappointment.

C. Rosa Alvarado, who lives in the Tenderloin, said that she thinks that it is very important to keep Polly Marshall on the Board.

D. Soledad, who lives at 1440 Sutter Street, in District 1 said that the Board needs to keep people who fight for tenants.

E. Ron Michaelson, who lives at 424 Ellis Street, said he is relatively new as a tenant advocate, was concerned about the way the commissioner transition happened, and urged the Board to reinstate Polly Marshall.

F. Rosa Maria Cavalho, as tenant advocate with the Tenderloin Housing Clinic Code Enforcement Outreach Program, spoke as the tenant representative on the 430 Baker Street appeals (AT190015-18). She said that she was glad that Commissioner Crow reminded those in attendance why the Rent Board legislation was created. She said that she was worried about some of the passthrough and operating and maintenance (O&M) legislation and was concerned about how it was interpreted by a past ALJ and how it is currently being interpreted by the ALJ. Ms. Cavalho asked the Board to reconsider.

G. Lisa Kelley, representing landlord Veritas Investments on the 430 Baker Street appeals (AT190015-18), said that the ALJ granted the petition, which included debt service and property tax expenses, based on the owner's documentation of intent to file the petition at the time of purchase. She said that as discussed in the landlord's written response, the Board should deny the appeals because tenants did not object to the petition nor appear at the hearing. Ms. Kelley told the Board that if they remanded the case, the ALJ should still reject the appeals not only because the owner proved that they reasonably relied on the landlord's ability to pass through the increased property taxes and debt service at the time of purchase, but also because the amended law was only intended to affect owners who bought the property after April 3, 2018. She said that when considering the question of whether the owner reasonably relied on their ability to pass through the debt service and property tax at

the time of purchase, the Board should consider the words of sponsor Supervisor Fewer at the Rules Committee held May 18, 2018 where she stated: “we had heard from small property owners so we did make an amendment that this would be effective April 3 when it was introduced. This does not affect anyone, unless you’ve bought property after April 3.” Ms. Kelley said that the intent could not be more clear, as the amendment was inserted as a means of negating the effect on owners who had purchased their properties before April 3, as long as the seller is able to demonstrate that at the time of purchase, they had relied on the ability to pass through debt service and property tax by way of showing an intent to file an O&M post-purchase, then the owner has met their burden of proof and is allowed to include debt service and property tax in the O&M calculation. She said that Supervisor Fewer stated “it is only two things that we are trying to eliminate today: when you buy a new building, this concerns people after April 3. This is not a debate about rent control, this is an ordinance that will eliminate the ability of new property owners to pass through their debt service and new property tax.”

V. Consideration of Appeals

A. 775 – 11th Avenue

AL190014

The master tenant’s appeal was filed 7 days late because the decision arrived to her house while she was away taking care of an ill family member.

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

The subtenant’s petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$800.68 for the time period of July 1, 2018 through December 31, 2018, and determined that the subtenant’s lawful rent was \$972.22 per month for the same time period. The master tenant appeals, contending that she never received the notice of hearing because the subtenant did not provide the master tenant’s new address to the Rent Board, and submits a Declaration of Non-Receipt of Notice of Hearing or Decision.

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/Wasserman: 5-0)

B. 1225 – 44th Avenue

AL190020

The landlord’s appeal was filed 14 days late because he was traveling overseas when the decision arrived.

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

The tenant’s application for deferral of a 7% base rent increase based on increased operating and maintenance (O&M) expenses due to financial hardship was granted. The

ALJ found that the tenant qualified for hardship relief under Rules and Regulations Section 10.15(b)(1)(B) based on the tenant's financial hardship. On appeal, the landlord argues that the tenant's original lease agreement stated that the rent will increase by the maximum allowed by city regulation after term of lease; and that the tenant received a rent concession from the prior owners due to the lack of maintenance and repair at the property, and had the prior owners properly maintained the property and the rent concession never agreed to, the tenant's base rent would be in excess of the current base rent plus the O&M increase that the landlord attempted to impose, and that the tenant should be able to pay the O&M increase.

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

C. 140 Landers Street #1

AT190019

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was denied. The ALJ determined that the November 5, 2018 rent increase from \$2,670.20 to \$3,500.00 was authorized under Civil Code Section 1954.53(d)(2) of Costa-Hawkins because the last original occupant no longer permanently resided in the subject unit and the tenant petitioner was a lawful subtenant who moved into the unit after January 1, 1996, and was not a tenant or co-tenant when the notice of rent increase was served. The tenant appeals, arguing that he formed a direct landlord-tenant relationship with the landlord by conduct because he had conversations with the landlord about painting lines on a parking spot and about repairing the toilet.

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

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

D. 275 Castro Street #A

AT190006
(cont. from 3/12/19)

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.

This appeal was withdrawn on April 4, 2019.

E. 430 Baker Street #2, 4, 5 & 11

AT190015, AT190016,
AT190017, AT190018

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in nine of sixteen units was granted. The ALJ determined that the evidence showed that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 2, 4, 5, and 11 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property.

MSF: To accept the appeal and remand to case to the ALJ for a supplemental hearing on whether the landlord reasonably relied on the ability to pass through the O&M increase at the time of purchase.
(Mosbrucker/Isbell: 2-3; Gruber, Wasserman, Dandillaya dissenting)

MSC: To deny the appeal.
(Wasserman/Gruber: 3-2; Mosbrucker/Isbell dissenting)

IV. Remarks From the Public (continued)

A. Katie Becker, the subtenant petitioner at 775 – 11th Avenue (AL190014) said that the master tenant only decided to contest the petition by filing an untimely appeal, it was only after she received the decision which lowered the subtenant's rent. Ms. Becker said that the master tenant wrote in her appeal that she could not get her mail because she was helping a sick family member, but that the master tenant has been in Bali and Mexico using the excess money that she's made off her rent. The subtenant told the Board that the utilities haven't been paid and the landlords are trying to evict her for unpaid rent. The subtenant said that even after talking with the Rent Board and submitting her correct address, the master tenant still claims she didn't receive her mail, as the hearing was on January 3, the decision was issued February 8, and the master tenant submitted nothing the entire month until the decision was finalized.

B. Yuriy Dybskiy, the tenant at 140 Landers Street (AT190019), said that he was sad to see that the appeal wasn't even read, and that none of the details discussed in the petition were what the ALJ asked about. Mr. Dybskiy told the Board that he was very specific that this was a non-emergency toilet repair where the toilet was filling very slowly, and that he contacted the landlord directly and he fixed it pretty soon. He said that during the hearing he mentioned the parking lot situation where for a year and a half, the landlord started to become very annoyed about it, and would draw the lines; they had conversations about whether it was included or not, and this was part of the audio recording from the hearing. The tenant said that the landlord denied having any conversations, and when presented with the photos of those lines, he said he painted one line, and that it seems ok that the witness lied.

VI. Communications

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

- A. Letter from Mayor Breed discussing changes to laws regarding conflicts of interest and Ethics.
- B. Rent Board Statement of Incompatible Activities.
- C. Board of Supervisors file 18212-3.
- D. Workload Statistics for February 2019.
- E. Articles from the New York Times, S.F. Examiner, S.F. Chronicle, 48Hills, MissionLocal, CurbedSF, Bay Area Reporter, and San Jose Inside.

VII. Director's Report

Executive Director Collins told the Board about outreach events that staff had participated in recently, including staff members Lehua Asher and Josh Vining at Sunday Streets in the Mission on March 10; Rene Juarez and Greg Miller at the SF Apartment Association Tradeshow on March 18; and Aaron Morrison, Lehua Asher and Josh Vining at Sunday Streets in the Excelsior on March 27. He also told the Board that staff members Marissa Jimenez and Jennifer Rakowski gave a presentation to the Anti-Displacement Coalition on April 3, and that Jennifer Rakowski would be at Sunday Streets in the Tenderloin on April 14. Executive Director Collins informed the Board that the published security deposit interest rate was revised to reflect the correct amount, which is 2.2%.

Commissioner Isbell indicated that he would be interested in performing targeted outreach to specific nonprofits, which Executive Director Collins suggested they could work on additional outreach with Rent Board Supervisor Rakowski, who leads the agency's outreach efforts.

VIII. Old Business

Rules and Regulations Clean Up

This item was moved for discussion at the August 13, 2019 meeting.

IX. New Business

(There was no New Business.)

X. Calendar Items

May 14, 2019

A. Consideration of Appeals

11 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:01 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.