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

Tuesday, April 17, 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 6:07 p.m.

II. Roll Call

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

Commissioners appearing on the record late: Hung, 6:15 p.m.

III. Approval of the Minutes

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

IV. Remarks from the Public

A. Edward Singer, the attorney for the landlords at 165 Beacon Street #R (AT180009, AL180010), stated that this is not a close case even if the Board uses the standard set forth in the De Leon case. Mr. Singer argued that in the De Leon case, the tenant had to spend some time in New York, and rented a crash pad with a shared bathroom, and probably spent about half of his time split between S.F. & New York. He said that in this case the tenant spent 1% of his time at the subject unit, as he rented an apartment with his girlfriend and spends all of his time there, and is just trying to hold on to the subject unit in case his relationship falls apart. Mr. Singer argued that the tenant was not forced to have two places to live as a result of his work, that he is just trying to game the system, and that he only visited the subject property once during a 90-day surveillance period.

B. Lisa Padilla of Zacks, Freedman and Patterson, the attorney for the landlord at 185 Seville Street (AT180025, AT180026), reminded the board that tenant Aceituno-Hood had two attempts to present evidence in between the first and second hearing, but did not. Ms. Padilla asked that the Board deny the tenants' appeals.

C. Jesse Ralph, the attorney for the tenants at 165 Beacon Street #R (AT180009, AL180010), stated that the Administrative Law Judge's (ALJ) decision and memo have been well supported, and there has been no abuse of discretion. He stated that he cross-referenced the De Leon case to the facts in this case and they match up in 7 distinct areas. He also said that the tenants had to pay 3 times the amount of the rent for 3 months while the landlords had the opportunity to go back to try to make their surveillance reliable and valid.

V. Consideration of Appeals

A. 1819 Golden Gate Avenue #12

AT180020

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 lack of heat; for mold; and for a clogged kitchen sink drain in the amount of \$414.00. The tenant appeals, claiming that the ALJ did not consider the tenant's claims of property damage and alleged illegal entry into the unit, and that the landlord was trying to evict the tenant.

MSC: To recuse Commissioner Wasserman from the consideration of this appeal.

(Abe/Gruber: 5-0)

MSC: To deny the appeal.

(Abe/Gruber: 5-0)

B. 1409 Broderick Street

AL180021

The subtenant's petition alleging a disproportional share of rent was granted. The master tenant was found liable to the subtenant in the amount of \$6,060.84. The master tenant appealed on the basis of non-receipt of the hearing notice, and at the November 14, 2017 board meeting the Commissioners voted to remand the case to the ALJ for a new hearing. In the remand decision, the master tenant was found liable to the subtenant in the amount of \$5,460.84. The master tenant appeals the remand decision, arguing that the ALJ should consider as services the master tenant's re-painting the subtenant's room after she moved out, and the master tenant's obligations of paying bills, paying for repairs and cleaning, and handling issues with the landlord.

MSC: To deny the appeal.

(Mosbrucker/Abe: 5-0)

C. 2173-2175 Grove Street

AT180022

The landlord's petition seeking a 7% rent increase based on increased operating and maintenance (O&M) expenses to the tenants in one of two units was granted. The ALJ

found that the landlord met her burden of proving an increase in O&M expense costs from Year 1 to Year 2 and that the tenants did not raise any objections or defenses to the petition under the Ordinance or Regulations. The tenants in unit 2175 appeal, claiming that the rent increase notice imposing the O&M passthrough was invalid because it misstated their base rent and because it was not served in compliance with Civil Code Section 827 nor Code of Civil Procedure Section 1162.

MSC: To continue the consideration of this appeal to the May 8, 2018 board meeting.
(Mosbrucker/Gruber: 5-0)

D. 2300 Pacific Avenue #214

AL180023, AT180024

The landlord's petition was granted in part and the ALJ determined that the landlord was entitled to increase the rent without limitation pursuant to the Costa-Hawkins Rental Housing Act. The ALJ found that original tenant Kang no longer permanently resided in the subject unit when the Costa-Hawkins notice of rent increase was served on June 8, 2017, and that a direct landlord-tenant relationship was not created between tenant respondent Shergill and the landlord based on conduct. The ALJ determined that because tenant respondent Shergill was a lawful subtenant who did not reside in the unit prior to January 1, 1996, an unlimited rent increase was authorized pursuant to Civil Code Section 1954.53(d)(2), but that the landlord must serve a new notice of rent increase naming both the original tenant and the tenant respondent. On appeal, the landlord argues that the ALJ incorrectly determined that the notice of rent increase under Costa-Hawkins must name and be served on the original tenant. Tenant respondent Shergill also appeals, arguing that the sole issue for the ALJ to decide in this case was the validity of the June 8, 2017 rent increase notice, and that the ALJ's determination that the landlord may lawfully increase the rent pursuant to Costa-Hawkins by serving a new rent increase notice should be struck from the decision as dicta.

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

MSC: To deny the landlord's appeal and to accept the tenant's appeal and remand the case to the ALJ on the record to reconsider paragraph two of the Order and to make conforming edits as necessary to the rest of the Decision.
(Marshall/Mosbrucker: 5-0)

E. 185 Seville Street

AT180025, AT180026

The tenants' petitions alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act were denied. The ALJ found that the tenant petitioners did not rent separate areas of the subject property under separate agreements with the landlord, and therefore, since the subject property is separately alienable from the title to any other dwelling unit, it is exempt from the rent control provisions of the Ordinance pursuant to Civil Code Section 1954.52(a)(3)(A) of the Costa-Hawkins Rental Housing Act. On appeal, tenant Aceituno-Hood argues that the ALJ misconstrued the evidence and that she and tenant Coronado

had separate tenancies, as evidenced by their separate rent payments to the landlord. Tenant Coronado also appeals, arguing that he was not the master tenant of tenant Aceituno-Hood, and that both he and tenant Aceituno-Hood paid the landlord separately.

MSC: To deny both tenants' appeals.
(Abe/Gruber 3-2; Marshall, Mosbrucker dissenting)

F. 165 Beacon Street #Rear Unit

AT180009, AL180010
(continued from 3/13/18)

The tenants' petition for 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.

MSF: To deny both the landlords' and the tenants' appeals.
(Mosbrucker/Marshall: 2-3; Abe, Gruber, Dandillaya dissenting)

MSC: To deny the tenants' appeal and to grant the landlords' appeal to remand the case to the ALJ on the record to find that the landlord met the burden of proving that tenant Dow did not permanently reside in the unit as of the date the notice of rent increase was served, and that the landlord is entitled to an unlimited rent increase under Costa-Hawkins.
(Abe/Gruber: 3-2; Marshall, Mosbrucker dissenting)

IV. Remarks From the Public (continued)

A. Jesse Ralph, the attorney for the tenants at 165 Beacon Street #R (AT180009, AL180010), told the Board that this is an ex post facto decision. He stated that the cases cited in De Leon were decided in favor of enabling someone to have more than one residence and certain members of the Board just aggregated that and applied it retroactively to tenant Dow. He argued that when the tenant stays with his girlfriend, he saves seven and a half hours in commute time. Mr. Ralph said that the Board wasn't accurately looking at the surveillance time, because during that time tenant Dow was busy working selling vitamins.

VI. Communications

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

A. Workload statistics for February 2018.

B. Articles from S.F. Chronicle, S.F. Examiner, SFGate, KQED News, 48 Hills, CurbedSF, MissionLocal, Mercury News, and Reason.

VII. Director's Report

Executive Director Collins told the Commissioners that staff members Aaron Morrison, Josh Vining, and Rene Juarez conducted outreach at Sunday Streets in the Excelsior on March 25, and that supervisor Jennifer Rakowski and Josh Vining conducted outreach at Sunday Streets in the Bayview/Dogpatch on April 15. He informed the Board that Jennifer Rakowski also gave a presentation to the City College Property Management class on April 11. Executive Director Collins informed the Commissioners that he sent them the newly introduced legislation sponsored by Supervisors Fewer, Kim, Peskin, Ronen and Yee that proposes to eliminate landlords' ability to pass through property tax and debt service in operating and maintenance expense petitions filed after December 11, 2017, and that the legislation has been referred to the Rules Committee.

VIII. Calendar Items

May 8, 2018

8 appeal considerations (including one continued appeal consideration)

New Business

A. Public Meetings Rules

IX. Adjournment

President Gruber adjourned the meeting at 7:19 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.