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

Tuesday, May 8, 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; Crow; Gruber; Hung; Marshall; Mosser; Qian; Wasserman.
Commissioners not Present: Dandillaya; Mosbrucker.
Staff Present: Collins; Gartzman; Koomas; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of April 17, 2018.
(Marshall/Abe: 5-0)

IV. Remarks from the Public

A. Andrew Wiegel, attorney for the landlord at 1439 Leavenworth Street #3 and #4 (AT180032), told the Board that the tenant Mr. Chang hasn't lived at the property for over 5 years; and that there is no medical evidence showing that he does not have the ability to live in the unit. Mr. Wiegel said that while the situation is heartfelt and compelling, all evidence looks the other way, including the car registration, the address on the tax returns, the utilities. He stated that the actual frequency of visiting has gone down, and there is no planned date of return, there is just a subjective hope, and after 5 years, that's enough.

B. Andrew Westley, the attorney for the tenants at 1439 Leavenworth Street #3 and #4 (AT180032), told the Board the case involves a 45-year tenancy where tenant Mr. Chang suffered a debilitating stroke, which makes it impossible for him, at this time, to reside full-time at the premises. He said that it is difficult for the tenant to climb two flights of stairs; and the property is on a hill; and the tenant's balance is off; but he improves through physical therapy

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and returns to the units at least a few days every month. Mr. Westley emphasized that the ALJ did not find that any testimony lacked credibility, and that the decision should be reversed based on the tenant's medical condition as a temporary reasonable absence.

C. Tyrone Chang, one of the tenants at 1439 Leavenworth Street #3 and #4 (AT180032) told the Board that he has lived at the subject property for more than 50 years. He said that he had a stroke in November 2012; and is getting stronger now; and his balance is a lot better as he sees a physical therapist. Mr. Chang said that he plans to come back to the subject units and he is doing his best and trying really hard to walk. He asked the Board to give him time to get better. Mr. Chang said he would like to try to come back to the subject units because his roots are there and he has a lot of commitments in S.F. right now.

D. Richard Wan, one of the tenants at 1145 Bacon Street, Upper Unit (AT180029) said that before, the property was three units; there were two units in the basement on the downstairs floor, one for the owner, and one for a tenant. Mr. Wan asked how and why the landlord's application to the Planning Department was approved as a single-family property. He told the Board that he thinks that the landlord is misleading the Planning Department into saying that it's a single-family unit.

E. Gregory Haynes, representing the landlord at 3515 Santiago Street (AL180031), stated that there were no other tenants residing at the premises. He told the Board that from time to time there were other individuals residing at the property for short periods of time because they had no where else to go, but those people were not tenants. Mr. Haines argued that no one other than the tenant would regard the property as one where others were residing. Because of that, he argued, with regard to jurisdiction, the decision should be reversed, because the tenant was the sole tenant and the single lodger rule would apply.

F. Joan Hilton, the landlord at 2175 Grove Street (AT180022), said that the tenant has appealed the rent increase notice, and claims that it was not served correctly and that the rent amount was wrong. Ms. Hilton stated that this was the fourth rejection in a row to a rent increase notice, but that she properly served both the husband and wife simultaneously right in front of their door before she submitted the paperwork to the Rent Board. She said that she is currently awaiting the Rent Board decision regarding the rent amount.

V. Consideration of Appeals

A. 139 Sweeny Street #C

AL180030

The tenants' petition alleging an unlawful rent increase was granted. The ALJ determined that the landlord did not meet the burden of proving that the subject unit is exempt from the Ordinance as new construction under Section 37.2(r)(5) and Rules and Regulations Section 1.17(c), and that the tenants' rental unit is subject to the jurisdiction of the Rent Board. The landlord appeals on the basis of non-receipt of the hearing notice, and submits the requisite Declaration of Non-Receipt of Notice of Hearing.

This appeal was withdrawn on May 2, 2018.

B. 260 Theresa Street

AT180028

The subtenant's petition alleging that the rent the master tenant charged the subtenant exceeded the amount the master tenant paid to the landlord under Ordinance Section 37.3(c) and for decreased housing services was dismissed due to the subtenant's nonappearance at the hearing. The subtenant appeals, alleging that he did not appear because the vehicle in which he lives had engine trouble.

MSF: To deny the appeal.

(Abe/Gruber: 2-3; Crow, Hung, Marshall dissenting)

MSC: To accept the appeal and remand the case for a new hearing. Should the subtenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.

(Hung/Marshall: 3-2; Abe, Gruber dissenting)

C. 1145 Bacon Street, Upper Unit

AT180029

The landlord's petition seeking a determination of whether the Rent Board has jurisdiction over the amount of rent charged for the subject unit was granted. The ALJ determined that the subject property is exempt from the rent control provisions of the Ordinance under Civil Code Section 1954.52(a)(3)(A) as a single family residence separately alienable from the title to any other dwelling unit. On appeal, the tenants state that they arrived late to the hearing and were unable to enter the hearing room, and that the Planning Department's dwelling unit removal application completed by the landlord is deceiving because it creates the appearance that the unit remaining after removal would be a rent controlled unit.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenants again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.

(Marshall/Crow: 5-0)

D. 153 Serrano Drive

AL180027

The subtenant's petition alleging that the rent the master tenant charged the subtenant exceeded the amount paid to the landlord under Ordinance Section 37.3(c) was granted. The ALJ determined that the subtenant's proportional share of the rent is \$836.10, and the master tenant was found liable to the subtenant in the amount of \$512.30. On appeal, the master tenant argues that the subtenant should pay for the wall that the master tenant constructed in the unit between the living room and the subtenant's bedroom.

MSC: To deny the appeal.

(Marshall/Crow: 5-0)

E. 3515 Santiago Street

AL180031

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 hoarding/clutter in the garage and laundry area; open wiring in the garage and laundry area; lack of heat; kitchen not up to code; and bathroom plumbing leak in the amount of \$830.00. The ALJ further found that the tenant did not meet his burden of proving that use of the backyard garden was a housing service that was included in his base rent from the inception of the tenancy; and that there were no smoke or carbon monoxide detectors in the subject premises including the tenant's room. On appeal, the landlord argues that the tenant is a single lodger and therefore his tenancy is not subject to the limitations of the Rent Ordinance, and that the toilet was never broken, the tenant never cleaned, and that she was not credited for damage caused by the tenant.

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

F. 2817 – 22nd Street

AT180033, AL180034

The landlord's appeal was filed 4 days late because he was out of town when the decision was mailed.

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

The tenants' 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 broken doorbell buzzer; broken linoleum flooring; and an inoperable bathroom window in the total amount of \$850.00. The ALJ further found that the tenants did not meet their burden of proving that the landlord or other tenants prevented their access to or use of the backyard; or that the landlord failed to reasonably respond to their complaints regarding the stovetop ventilation or that the condition of the stovetop hood itself constituted a substantial decrease in housing services; and that the tenant petitioners prevented the landlord from repairing the mailbox. The tenants appeal, arguing that the landlord's offer to repair instead of replace the mailbox was inadequate and the broken mailbox is still not fixed; that linoleum flooring in both the kitchen and bathroom have not been fixed; and that the stovetop hood ventilator does not function. The landlord also appeals, claiming that the floor was repaired after the hearing.

MSC: To accept both the tenants' and the landlord's appeals and to remand the cases to the ALJ solely to consider the repair date of the kitchen flooring, with a hearing to be held only if necessary.
(Marshall/Abe: 5-0)

G. 1439 Leavenworth Street, #3 & #4

AT180032

The landlord's petition seeking a determination of whether the tenant respondents were tenants in occupancy under Rules and Regulations Section 1.21 was granted. The ALJ

determined that the tenant respondents were not tenants in occupancy of the subject units and there was no other tenant in occupancy at the time the petition was filed on August 21, 2017, and therefore the rent limitations under Ordinance Section 37.3 are not applicable. On appeal, the tenants contend that their absence from full time occupancy at the subject units is medically related; that they intend to return full time to the subject units; that they did not mislead the landlord; and they request that they are given a 12-month deadline to return to the subject units.

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

MSC: To accept the appeal and remand the case to hold the record open for 6 months at which time a hearing will be held to determine whether the temporary absence has ended or not and whether the factors contributing to the temporary absence have changed.
(Marshall/Crow: 4-1; Gruber dissenting)

H. 2173-2175 Grove Street

AT180022
(continued from 4/17/18)

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 June 12, 2018 board meeting.
(Marshall/Abe: 5-0)

IV. Remarks From the Public (continued)

A. Tenant Richard Wan at 1145 Bacon Street, Upper Unit (AT180029), thanked the Commissioners for giving him another opportunity for a hearing. He asked when he would receive another hearing notice because he is being told that he is going to have to pay the security deposit of \$4,400, and one month's rent of \$4,500, which is \$8,900. He said that if he refuses to pay this fee of \$8,900, his rent will be increased to \$6,500. The tenant asked whether he has to act on the letter as to whether he pays the \$8,900.

B. Landlord Marilou Samson at 3515 Santiago Street (AL180031) stated that some of the tenant's claims were exaggerated. She said that the furnace was fixed and the tenant was given heat in his room and abused the space heater. Ms. Samson told the Board that she and the tenant are still in a pending unlawful detainer action. She said that others at the property didn't have a lease and most of the time the tenant was the only tenant there for 9

months and had sole use of the bathroom, the cabinets and everything in the house. Ms. Samson said that the tenant exhibited a lot of unacceptable conduct, including going into her room without permission, forging her signature in court, and harassing her while in her room, and she just wants the Commissioners to know the truth.

C. Liam Azulay, the tenant at 3515 Santiago Street (AL180031) told the Board that everything that's the truth is the statement of facts in the decision.

VI. Communications

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

A. Monthly workload statistics for March 2018.

B. Articles from the S.F. Chronicle, S.F. Examiner, SFGate, BeyondChron, East Bay Express, S.F. Weekly, Mercury News.

VII. Director's Report

Executive Director Collins told the Board that staff members Josh Vining, Ben Ng, and Lehua Asher conducted outreach at the Sunday Streets event in the Tenderloin on May 6, and that staff would conduct outreach at Sunday Streets in Golden Gate Park and the Outer Sunset on June 3. He said that staff would also conduct outreach at the Earthquake Safety Fair at the Bill Graham Civic Auditorium on June 13 from 10 a.m. to 4:00 pm. He informed the Board that a request was received from Supervisor Sheehy's office to attend a hearing at the Land Use Committee on May 21 focusing on speculative property owners including Veritas/Greentree properties. Executive Director Collins explained to the Board that staff are receiving an increasing number of questions surrounding what constitutes just cause for the removal of a garage, laundry or storage space for the addition of an accessory dwelling unit (ADU) to the building. He said that there has been pressure to deny planning permits when the work involves tenant space. Executive Director Collins informed the Board that the FY 2018-19 Budget hearing is May 17 and a second hearing may be on May 24. He explained that the Rent Board Fee may remain the same for FY 2018-19, and the final determination will be made in late July. He informed the Board that the Housing Balance Report would be presented to the Board of Supervisors on May 27, and that he would be attending an SRO Task Force meeting on June 21.

VIII. New Business

A. Public Meetings Rules

After acknowledging the relevant sections of the Good Government Guide in their folders, the Commissioners agreed to move discussion of this item to the June 12, 2018 meeting when Commissioner Mosbrucker would be present.

IX. Calendar Items

June 12, 2018

6 appeal considerations (including one continued appeal consideration)

X. Adjournment

President Gruber adjourned the meeting at 7:38 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.