



Edwin M. Lee
Mayor

Robert A. Collins
Acting Executive Director

DAVID GRUBER
PRESIDENT

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

CALVIN ABE
DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
KENT QIAN
DAVID WASSERMAN

Tuesday, May 10, 2016
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 6:12 p.m.

II. Roll Call

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

Senior ALJ Gartzman appeared at 7:09 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 12, 2016.
(Wasserman/Marshall: 5-0)

IV. Remarks from the Public

A. Edward Singer, the attorney for the landlord at 1401 Jones Street #403 (AT160049), spoke in support of the Administrative Law Judge's (ALJ) decision. He stated that the record has substantial evidence to support the landlord's position that the tenant no longer primarily resides in the residence, including voting records, utility bills at alternative addresses, and admissions that leases were signed at other locations. Mr. Singer said that we are not here to re-weigh the evidence, and requested that the Board affirm the decision.

B. Byron Gillo, the tenant at 237 Font Boulevard (AT160039), stated that the hearing was completely one-sided when there was attorney and an investigator digging up 20-25 year old information and his side didn't have an attorney, and that the only information the Board got from the hearing was from the other side. Mr. Gillo told the Board that he is mentally and

physically disabled and cannot handle these things, and that the other side took the truth and turned it into whatever they wanted it to be.

C. Kevin Kumana, representing the landlord at 138 Hyde Street #14 (AT160051), told the Board that testimony in this case overwhelmingly established that the tenant did not reside in the unit when the notice of rent increase was served, and that the ALJ's memo cites to facts supporting this. He stated that the Board should determine, based on factual findings, whether the ALJ erred or abused her discretion, and that the decision must be affirmed.

V. Consideration of Appeals

A. 825 Post Street #223, #324, and #508

AT160052, AT160053, AT160054

The landlord's petition seeking 7% rent increases based on increased operating expenses to the tenants in 57 units was granted. The tenants in three units appeal the decision on the grounds of financial hardship.

MSC: To recuse Commissioner Wasserman from the consideration of this appeal.
(Mosbrucker/Marshall: 4-0)

MSC: To accept the appeals and remand the case for hearings on the tenants' claims of financial hardship.
(Mosbrucker/Marshall: 4-0)

B. 395 Moultrie Street #1

AT160055

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and attach 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/Wasserman: 5-0)

C. 1780 McAllister Street

AL160043

The landlords' appeal was filed 31 days late because they claim they did not receive the Notice of Hearing and did not receive the decision.

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

The landlords' petition seeking a 7% rent increase based on increased operating expenses to the tenants in 7 units was dismissed due to their failure to appear at the

properly noticed hearing. On appeal, the landlord claims not to have received the Notice of Hearing and attaches 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 landlords again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Marshall/Wasserman: 5-0)

D. 115 Lilac Street

AL160041, AL160042

The subtenants' petitions alleging that they paid more than a proportional share of rent were granted and the master tenant was found liable to subtenant Kolb in the amount of \$3,986.19 and to subtenant Primrose in the amount of \$2,057.09. On appeal, the master tenant claims that the monthly rate paid by both tenants was all-inclusive and the services and utilities justify the rate charged because they go above and beyond the scope of services generally provided to subtenants by a master tenant.

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

E. 555 Eddy Street #21 and #40

AT160048, AT160047

The landlords' petition seeking a 7% rent increase based on increased operating expenses to the tenants in 29 units was granted. The tenant in unit 40 appealed, arguing that the landlords' petition was flawed and questionable, that it had wildly changing figures, deceptive or exaggerated expenses, questionable services, and that the property managers had inappropriate business practices. The tenant in unit 21 appealed the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenant in unit #21 and remand the case for a hearing on the tenant's claim of financial hardship and to accept the appeal of the tenant in unit #40 and remand the case to consider the tenant's claims on appeal regarding the discrepancies between the expense amounts claimed in the petition and those found in the decision.
(Marshall/Mosbrucker: 5-0)

F. 237 Font Boulevard

AT160039

The tenant's petition alleging that the landlord had improperly increased the rent over the allowable limits under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that a tenancy was not created between the tenant petitioner and the landlord by oral or written agreement, nor by consent and acceptance of rent, and that at the time of the service of the notice of rent increase, the tenant petitioner did not have a direct landlord-tenant relationship with the landlord. On appeal, the tenant claims that he is physically and mentally disabled per Social Security, that he had no legal representation, that his rights were violated under the Americans with Disabilities Act (ADA), and that he did not know that he had to bring that up at the hearing.

MSC: To recuse Commissioner Wasserman from the consideration of this appeal.
(Mosbrucker/Marshall: 4-0)

MSC: To continue the consideration of the appeal to the June 14, 2016 meeting for the tenant to obtain legal assistance and submit factual or legal grounds for the appeal no later than June 7, 2016.
(Marshall/Gruber: 4-0)

G. 1401 Jones Street #403

AT160049

The landlord's petition requesting a determination of whether the landlord is entitled to impose an unlimited rent increase pursuant to Rules and Regulations Section 1.21 was granted. The ALJ found that neither of the tenant respondents was a "tenant in occupancy" in the unit within the meaning of Section 1.21 and that the landlord's rent increase was authorized. On appeal, the appellant argues that the ALJ failed to consider all the presented evidence and her testimony objectively and that the statement by her resident manager is a lie.

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

H. 2722 Folsom Street

AL160040

The landlord's petition for certification of the cost of electrical work to 1 of 5 units was denied. The ALJ found that the \$5000.00 cost for electrical work was not incurred for the benefit of the subject unit, and that none of the cost may be allocated to the subject unit. The landlord appeals on the basis that the work does benefit the subject unit, that the electric meter was installed at the tenant's request, and that a former tenant agreed that the cost could be passed on as a capital improvement.

MSC: To recuse Commissioner Wasserman from the consideration of this appeal.
(Mosbrucker/Marshall: 4-0)

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

I. 509 Randolph Street

AT160046

The tenant's petition alleging the landlord had increased the rent over the allowable limits under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that the subject unit was exempt from the rent control limitations of the Ordinance as a single-family dwelling pursuant to Civil Code Section 1954.52(a)(3)(A) of the Costa-Hawkins Rental Housing Act, and that the landlords' rent increase did not violate the Ordinance. On appeal, the tenant argues that the property has two separate units, and that when the tenant moved in, the tenant in the downstairs unit paid the landlord separately.

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

J. 285 Grand View Avenue

AL160044, AL160045

The landlord filed two concurrent petitions, one seeking certification of the cost of mandatory seismic retrofit work required by law to 7 of 8 units, and one seeking certification of the cost of exterior paint, motion sensor lights, re-keying the front and side doors, stucco and sheetrock, and a solar hot water system to 8 of 8 units. The ALJ certified the requested cost for the mandatory seismic retrofit work, and certified the cost of the items on the standard petition, except for the cost of the drywall/stucco. The landlord appeals, arguing: that the drywall/stucco work that was included on the petition for standard capital improvements should have been included on the mandatory seismic retrofit work petition; and that the ALJ should have allowed the landlord the opportunity to amend the mandatory seismic petition at the time of hearing to include the drywall/stucco work with the mandatory seismic petition and to clarify what portion were repairs incidental to the seismic work rather than deny that portion of the petition completely.

MSC: To deny the appeal in Case No. L151571/AL160045 and grant the appeal in Case No. L151666/AL160044 and remand that case to allow the landlord thirty (30) days to amend the seismic petition to include the \$8,950.00 cost for stucco work. If an amended petition is filed, the ALJ will issue a Post-Appeal Order providing the tenants an opportunity to object to the amended petition, and determine if a supplemental hearing is necessary.
(Marshall/Wasserman: 5-0)

K. 138 Hyde Street #14

AT160051

The tenant's petition alleging the landlord had increased the rent over the allowable limits under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that the tenant and her husband were the original occupants who took possession of the unit pursuant to the rental agreement, and that neither of them permanently resided in the subject unit at the time of service of the notice of rent increase. The ALJ further found that the appellant's cousin, tenant petitioner Jonathan Alvarado, was a lawful subtenant who did not reside in the subject unit prior to January 1, 1996, and was not a co-tenant at the time of the service of the notice of rent increase. The ALJ determined that the rent increase was authorized by Civil Code Section 1954.53(d)(2) of Costa-Hawkins. On appeal, the tenant claims that the subject unit is the only place that has been her home since 2008, that all the times she was out of the unit were for personal reasons, that the absences were not meant with any intention to move out of her apartment, and that she purchased her ticket to San Francisco before receiving the 60-day notice of rent increase because she was ready to come back home.

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

L. 3675 - 19th Street #A

AT160050

The landlord's petition for certification of the cost of door hardware, smoke detectors, and replacement of an electrical switch unit to 1 of 5 units was granted, and the ALJ found that the costs benefitted the subject unit. The tenant appeals on the basis that the replacement of door hardware and doorknobs did not happen in unit 3675-A, nor did the installation of electrical switches, nor outlets, and that only two new smoke detectors were installed in August 2013.

MSC: To remand the appeal for the ALJ to deny the petition in its entirety per the landlord's agreement if the landlord does not file a withdrawal of the petition.
(Marshall/Mosbrucker: 5-0)

VI. Communications

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

- A. Summary of the Board of Supervisors Ordinance No. 33-16 amending the Planning Code and Building Code to require Conditional Use authorization for the removal of any residential unit.
- B. Articles from the S.F. Chronicle, BeyondChron, and the San Jose Mercury News.

VII. Director's Report

Acting Executive Director Collins informed the Commissioners that an ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit was passed by the Board of Supervisors and became effective on April 10, 2016. He also informed the Board that the Mayor has been very supportive of our request to add four new staff positions in the coming fiscal year, and that the Rent Board brings its budget to the Board of Supervisors later this May. Acting Executive Director Collins told the Board that three staff members conducted outreach at the Earthquake Retrofit Fair on April 18, the anniversary of the 1906 earthquake. He updated the Board about the office flood and explained that significant progress had been made in the remediation and clean up and the full carpet replacement and painting details should be finalized this week.

VIII. Old Business

Senior ALJ Gartzman made a follow-up presentation from the March 8, 2016 meeting on the no-hearing alternatives for mandatory seismic retrofit capital improvement petitions, one-item capital improvement petitions, and less than \$25,000 capital improvement petitions, where the Commissioners directed staff to formulate draft regulations to bring back to the Board. Senior ALJ Gartzman explained that the Board has the authority to decide petitions without holding a hearing, pursuant to Rules and Regulations Section 11.16(b). She told the Commissioners that eligible petitions are not automatically assigned into a no-hearing category simply because they meet the criteria, but rather, each case is

individually screened to determine if an ALJ would be able to issue a decision without holding a hearing. Both parties would then have the right to appeal since a decision is issued on each case. The Board asked staff to report back to the Commission six months from the implementation of the program. At the conclusion of the presentation, a motion was made and the Commissioners voted to approve the no-hearing alternative process.

MSC: To approve the no-hearing alternative for certain capital improvement cases, with a report back at the November 2016 meeting.
(Wasserman/Gruber: 5-0)

As to standardizing tenant financial hardship guidelines, Senior ALJ Gartzman explained that currently, tenants can request hardship relief from capital improvement passthroughs, water revenue bond passthroughs, utility passthroughs, and operating and maintenance expense rent increases, which have three different procedures with three different standards. At the March 8, 2016 meeting, Senior ALJ Gartzman explained that having a single standard would allow staff to process tenant hardship applications more expeditiously.

Senior ALJ Gartzman introduced a proposed new Rules and Regulations Section 10.15 that would establish a single procedure for tenants to request financial hardship relief from capital improvement passthroughs, water revenue bond passthroughs, utility passthroughs, and operating and maintenance expense rent increases, including a single standard for determining tenant hardship based on the same hardship guidelines currently in effect for capital improvement passthrough hardship applications. If the Board adopts Section 10.15, it Senior ALJ Gartzman advised the Board that they would need to amend Rules and Regulations Sections 4.14 (I) and 6.16(g)(iii) as well. At the conclusion of this part of the presentation, the Board agreed to continue the discussion on this matter to the June meeting.

IX. New Business

Acting Executive Director Collins presented on available housing data. He explained that the Housing DataBook, which was a study conducted by Bay Area Economics in 2002 pursuant to a resolution of the Board of Supervisors, was culled from various readily-available sources, and provided great detail about topics such as owner-occupied housing, and rent controlled and market rate housing. Currently, the most comprehensive data on housing in San Francisco available is the Planning Department's Housing Element. This is a 284-page report covering areas such as net change in livability, affordability, population and household growth, population by age and ethnicity, and employment of residents by industry. It also speaks to challenges regarding producing affordable housing.

X. Calendar Items

June 14, 2016
12 appeal considerations

New Business

Old Business

Standardizing tenant financial hardship application guidelines

XI. Adjournment

President Gruber adjourned the meeting at 8:31 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.