



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, June 11, 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 6:03 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Isbell; Klein; Mosbrucker; Qian; Wasserman.
Commissioners not Present: Hung; Tom.
Staff Present: Collins; Gartzman; Koomas; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of May 14, 2019.
(Qian/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Dennis Zaragoza, the attorney for the tenants at 415 Jones Street #408 (AT190022) told the Board that master tenant Chand is an immigrant from Nepal who testified that he left San Francisco temporarily in 2018 after spending 30 years in S.F., because his mother’s medical condition was bad. He said that when Mr. Chand’s mother improved, he returned to SF in late February 2018 and went back to work, and then left for Nepal in late May 2018. He said that Mr. Chand testified that he was married on June 30, 2018, and stayed in Nepal in the hopes of starting a family. Mr. Zaragoza said that Mr. Chand’s absence from the unit is temporary, and asked what are facts that support that he has permanently moved from SF. He argued that the Rent Ordinance is to be interpreted in a manner consistent with Costa-Hawkins, and the Rent Board has recognized that a tenant can have two homes and still be a tenant in occupancy, and that right to have a family is a fundamental right and should not be denied of an immigrant.

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B. Curtis Dowling, the attorney for the landlords at 1400 Filbert Street #4 (AL190041) told the Board that DeWolf did not deny the tenant's application for a replacement roommate until 5 days after the email in which the tenant said she had no problem with her roommate being responsible for rent payments. He said that the issue of rent responsibility is a red herring; the petition was about whether the master tenant had to provide income information on her own behalf, and DeWolf had the right to deny Ms. Matthews as an unqualified potential roommate. Mr. Dowling argued that the Board does not need to decide the question of whether an owner has the exclusive power to decide whether or not a replacement roommate will pay rent to the owner with no veto power on the part of the master tenant; and if the Board had to decide that question, it would have to decide that the owner has the exclusive power to make that decision; and DeWolf's policy of vetting roommates and making them rent-responsible is clearly designed to minimize subtenant rent defaults. He argued that Rent Ordinance Section 37.9(a)(2)(c) still permits evictions for violation of anti-subletting provisions and leases when certain conditions are met; and that the tradeoff is that in order to preserve the right to exclude unqualified applicants, the landlord has to make them rent-responsible, otherwise, this would render this part of the Rent Ordinance meaningless.

C. Ora Prochovnik, the attorney for the tenant at 1400 Filbert Street #4 (AL190041) told the Board that the landlord is just trying to bootstrap in rent responsibility; and said that if the landlord's interpretation was accurate, it would render Rules and Regulations Section 6.15 meaningless. She stated that if the landlord has an absolute right to determine that all new roommates must be rent-responsible, then it completely gets rid of the language in Section 6.15 that says a landlord cannot determine creditworthiness. Ms. Prochovnik argued that DeWolf mandates by policy that all new roommates must be rent-responsible, that the tenant was informed that if she wanted a roommate, she must bring in somebody who is rent-responsible; and that agreeing to that is coercion. The landlord's claim that their roommate policy is designed to avoid rent defaults is illogical, she argued, because the policy forces the tenant to pay the rent by herself. She argued that if the tenant could afford the rent by herself, she could afford the rent with a proposed roommate; and that the landlord is not accomplishing anything by insisting that a new roommate be creditworthy and rent-responsible when they already have an ongoing landlord-tenant relationship.

D. Renee Curran, a tenant at 1391 8th Avenue #3 (AT190032), says she feels that when a landlord files a capital improvement petition based on mandatory seismic retrofit work, there should also be a question on the form as to whether landlords are building accessory dwelling units (ADU) at the same time. She said that this has become a very common practice, and this would alert the ALJ to ask more detailed questions regarding the building, to ensure that the landlord is not also passing onto the tenants some of the expense of building ADUs, which are done at the exact same time as the retrofits.

V. Consideration of Appeals

A. 516 O'Farrell Street #211 & #310

AT190044

The tenant's appeal was filed 7 days late because he moved and did not receive the notice of hearing and then did not check his mail until May 15.

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

The tenant's petition alleging decreased housing services was dismissed for non-appearance. On appeal, the tenant contends that he never received the notice of hearing, and submits a Declaration of Non-Receipt of Notice of Hearing or Decision.

MSC: To accept the appeal and remand the case to determine if the subject units are subject to the Rent Ordinance, with a hearing to be held only if necessary.
(Mosbrucker/Qian: 5-0)

B. 3767 Cesar Chavez Street #A

AL190038, AL190039

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 \$6,300.00 for the time period of May 1, 2017 through June 30, 2018, and determined that the subtenant's lawful rent was \$650.00 per month. The master tenant appeals, contending that the square footage for the subtenant's room was miscalculated, and should have been based on a measurement of 10'5"x16', not 10'5"x10'; and that no value was given for housekeeping or furnishings provided by the master tenant. The master tenant also appeals on the basis of financial hardship.

MSC: To deny the appeal on the merits and on the basis of financial hardship, and to remand the case to the ALJ for a technical correction regarding the room measurements.
(Wasserman/Mosbrucker: 5-0)

C. 1055 Mason Street #5

AT190040

The tenant's application requesting deferral of an operating and maintenance (O&M) expense rent increase on the basis of financial hardship was denied as untimely since it was not filed within one year of the effective date of the O&M rent increase, nor within 15 days after the decision was issued. The tenant appeals, contending that her hardship application was filed late due to confusion regarding rent payments during a change in management.

MSC: To accept the appeal and remand the case to the ALJ for find good cause for the late filing of the hardship application and to decide the hardship application on the merits, with a hearing to be held only if necessary.
(Mosbrucker/Qian: 5-0)
(Recusal: Commissioner Klein)

D. 1012 Page Street #4

AT190033

The tenant's petition alleging decreased housing services was denied. The ALJ found that the tenant did not meet the burden of proving that the removal of basement storage constituted a substantial reduction in housing services because he waited more than 22

years to take any action regarding the loss of storage. The tenant appeals, arguing that the delay in filing the petition does not mean that the lack of storage space is insignificant to him, and that the landlord's taking away his storage space has caused him to have less room in his unit.

MSC: To accept the appeal and remand the case to the ALJ to determine the value of the decrease in services, to find that the decrease in services was substantial, and to begin the rent reduction on the date of filing of the petition.

(Mosbrucker/Qian: 3-2; Gruber, Wasserman dissenting)

E. 3314 – 26th Street

AL190042

The former landlords' appeal was filed 4 days late because there had been confusion over the appeal process after a change in ownership.

MSC: To find good cause for the late filing of the appeal.

(Qian/Mosbrucker: 5-0)

(Recusal: Commissioner Wasserman)

The tenant's petition alleging decreased housing services was granted. The landlord was found liable to the tenant for rent reductions in the amount of \$1,430.00 for: lack of heat for the period from July 13, 2018 through December 31, 2018; bad condition of the living room ceiling; bad condition of the closet ceiling; and the bad condition of the entry doors for the period from July 12, 2018 through December 31, 2018. The former landlords appeal, arguing that the tenants did not allow the landlords access to the unit, and therefore they were unable to enter to make timely repairs. The new owner also joined in the appeal, contending that the tenant did not allow them access to make repairs either, and that once they were allowed access, they were able to make repairs and abate the Notice of Violation (NOV), and therefore the full base rent amount should be restored as of January 1, 2019, or alternatively, that the rent reduction should not be applied prospectively.

MSC: To deny the appeal.

(Mosbrucker/Qian: 5-0)

F. 1400 Filbert Street #4

AL190041

The tenant's petition alleging a substantial decrease in housing services was granted. The landlords were found liable to the tenant in the amount of \$6,627.66 for unreasonable withholding of consent to a replacement roommate pursuant to Rules and Regulations Section 6.15A for the period of November 1, 2018 through April 30, 2018. The landlords appeal, arguing that their denial of the tenant's prospective replacement roommate due to her lack of creditworthiness was not unreasonable since the replacement roommate would be a co-tenant, jointly and severally liable for the full rent payment, and not the tenant petitioner's subtenant.

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

G. 415 Jones Street #408

AT190022
(cont. from 5/14/19)

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was denied. The landlord's petition for a rent increase under Rules and Regulations Section 1.21 was withdrawn at hearing. The ALJ found that original occupant Samir Chand no longer permanently resided at the subject unit when the notice of rent increase was served on August 28, 2018, and that tenant Rajendra Tuladhar moved into the subject unit in May 2018 as a subtenant who never paid rent directly to the landlord before service of the August 5, 2018 6.14 Notice and the August 28, 2018 rent increase notice, and that the landlord is entitled to impose an unlimited rent increase pursuant to Civil Code Section 1954.53(d)(2) of Costa-Hawkins and Rules and Regulations Section 6.14. On appeal, the tenants contend that original occupant Samir Chand continues to permanently reside in the subject unit; that there must be a determination that an original occupant has permanently vacated before a landlord may impose a Costa-Hawkins rent increase; and that the landlord's withdrawal of his 1.21 petition was improper.

MSF: To grant the appeal and find that the tenant continued to permanently reside in the subject unit at the time the rent increase notice was served.
(Mosbrucker/Qian: 2-3; Dandillaya, Gruber, Wasserman dissenting)

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

H. 1750 Waller Street, Lower Flat

AT190035

The landlord's petition seeking a rent increase pursuant to Rules and Regulations Section 1.21 was granted. The tenant respondents did not appear at the hearing and the ALJ found that the subject unit was not the tenants' principal place of residence at the time the petition was filed. On November 28, 2018, the tenants filed an appeal with the requisite Declaration of Non-Receipt of Notice of Hearing or Decision, and contended that they did not receive the notice of hearing because the landlord's attorney provided the Rent Board with an incorrect mailing address. At its January 22, 2019 meeting, the Board voted to accept the appeal and remand the case for a new hearing. All parties appeared at the remand hearing, and a decision issued which granted the landlords' petition on remand. In the remand decision, the ALJ determined that the subject unit was not the tenant respondents' principal place of residence at the time the petition was filed, and that there were no other tenants in occupancy. On appeal of the remand decision, tenant Edelbrock argues that the ALJ erred in his review of the facts and did not consider the evidence presented; and that he resides at the subject unit.

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

I. 1000 Hollister Avenue #1

AT190043

The landlord's petition for a capital improvement passthrough to 1 of 3 units was granted. The ALJ certified the cost of a new roof. The tenant in unit 1 appeals the ALJ's decision, arguing that the passthrough should not just be allocated to his unit, but to all 3 units, and that he wasn't able to appear at the hearing due to a family emergency.

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

J. 1391 – 8th Avenue #3

AT190032

The landlord's petition for a capital improvement passthrough to 8 of 18 units was granted. The ALJ certified the cost of a soft-story seismic retrofit required by law. The tenants in unit 3 appeal the ALJ's decision, arguing that the ALJ failed to apply rent increase limits as defined by Ordinance Section 37.3(a)(3) by approving the full amount of the second capital improvement passthrough in four months, which, combined with the capital improvement passthrough certified in earlier case L180619, resulted in an increase over 10% for units 3 and 5.

MSC: To accept the appeal and remand the case to the ALJ to determine whether costs were certified that were attributable only to the construction of the accessory dwelling units (ADU), with a hearing to be held only if necessary.
(Mosbrucker/Qian: 5-0)

IV. Remarks From the Public (continued)

A. *(There were no remarks from the public.)*

VI. Communications

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

A. Workload statistics for the month of April 2019.

B. Updated staff office phone extension list.

C. Articles from the New York Times, Los Angeles Times, S.F. Examiner, ABC7, SF Weekly, CurbedSF, and East Bay Times.

VII. Director's Report

Executive Director Collins provided the Board an outreach update: on May 13, public information unit supervisor Jennifer Rakowski presented at the City College of San Francisco Property Management class; on June 1, staff members Marissa Jimenez and Josh Vining conducted outreach at the SF Housing Expo; on June 9, Lehua Asher, Aaron

Morrison, and Josh Vining tabled at Sunday Streets in the Sunset/Golden Gate Park; on June 11, Jennifer Rakowski, Lehua Asher, Marissa Jimenez, and Rene Juarez conducted outreach at the Earthquake Safety Fair; and staff would conduct outreach with Asian Pacific Islander Legal Outreach on June 17. Executive Director Collins told the Board that staff members Adena Gilbert and Roger Levin would retire from service by the end of June; that Erin Katayama was hired for the ALJ position vacated by Lela Harris; and that current counselor Rene Juarez would be hired as an ALJ in the near future to fill departing ALJ Gilbert's position. He also explained that recruitment for another counselor is underway, and staff will also have to recruit for future vacancies.

VIII. Old Business

(There was no Old Business.)

IX. New Business

A. Nomination of Board Vice-President

The Commissioners agreed to calendar this item for discussion at the July 16, 2019 meeting.

X. Calendar Items

July 16, 2019

A. Consideration of Appeals

13 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:33 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.