



Mark Farrell
Mayor

Robert A. Collins
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, June 12, 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 6:01 p.m.

II. Roll Call

Commissioners Present: Abe; Crow; Dandillaya; Gruber; Hung; Marshall;
Mosbrucker; Mosser; Qian; Wasserman.
Commissioners Not Present: *(None.)*
Staff Present: Collins; Gartzman; Koomas; Varner.

Commissioners appearing on the record late: Marshall: 6:06 p.m.; Hung 6:13 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 8, 2018.
(Crow/Abe: 5-0)

IV. Remarks from the Public

A. *(There were no remarks from the public prior to the consideration of appeals.)*

V. Consideration of Appeals

A. 756 Page Street

AL180039

The landlord's petition seeking a 7% rent increase based on increased operating and maintenance (O&M) expenses to the tenants in eight of nine residential units was dismissed due to the landlord's nonappearance at the hearing. The landlord appeals, alleging that he did not appear due to sudden illness.

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MSC: To deny the appeal.
(Mosbrucker/Qian: 4-1; Dandillaya dissenting)

B. 1800 Franklin Street #402

AL180038

The subtenant's petition alleging a disproportional share of rent and a substantial decrease in housing services was granted in part and denied in part, and the ALJ found the master tenant liable to the subtenant in the amount of \$10,854.00 for rent overpayments and \$19.20 for the removal of gas stove burner grates. The subtenant appealed, claiming that a ground-floor storage space and two of the three bedrooms in the unit were used exclusively by the master tenant; that the value of furniture was already covered in the rental unit cost; and that the removal of the stove burner grates was an ongoing issue, not a one-time occurrence. On October 17, 2017, the Board voted to accept the subtenant's appeal and remand the case to the ALJ to determine the subtenant's proportional share based on a division by the number of bedrooms exclusively occupied. In the remand decision, the ALJ found that there were three bedrooms in the subject unit, with the master tenant exclusively occupying two bedrooms, and the subtenant exclusively occupying one bedroom. The ALJ determined that the master tenant is liable to the subtenant in the amount of \$22,856.18 for rent overpayments, and \$19.20 for the loss of gas stove burner grates. The master tenant appealed, arguing that the 3rd bedroom was only exclusively used by her for two nights while she had a guest staying in her own room, and that proportionality should be determined by equal division between the two occupants; and the master tenant also appealed on the basis of financial hardship. On February 13, 2018, the Board voted to deny the master tenant's appeal on the merits, and to remand the case to the ALJ for consideration of the master tenant's financial hardship only. In the second remand decision, the ALJ denied the master tenant's claim of financial hardship due to non-appearance. The master tenant appeals, alleging that she did not appear because she is 75 years old and dyslexic and had come to the Rent Board the day of the hearing at the wrong time.

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.
(Marshall/Mosbrucker: 5-0)

C. 1053 Portola Drive #Garage Unit

AT180036

The tenant's petition alleging an unlawful rent increase was denied. The ALJ found that the tenant resided with the landlord and her family in a single family dwelling, that the landlord had never rented any other portions of the house to tenants, and that the tenancy is exempt from the rent control provisions of the Ordinance pursuant to Civil Code Section 1954.52(a)(3). The tenant appeals, arguing in part that she had exclusive use of the mezzanine bathroom at the inception of the tenancy; and that the mezzanine bedroom was rented to other tenants during her tenancy.

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

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

D. 777 Rhode Island Street

AL180037

The landlords' appeal was filed 7 days late because he received the decision shortly before he went out of town for 9 days.

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

The landlords' petition for the certification of the costs of a new roof, roof repair, replacement of skylights, roof deck repair, and two water heaters to the tenants in three units was granted in part and denied in part. The ALJ certified the capital improvement costs for a new roof and new wooden roof deck and fence/railing, but did not certify the subsequent costs to repair the roof deck, roof door, and handrail. In the decision, the ALJ found that the landlords imposed prior capital improvement passthroughs to the tenant in unit 2 pursuant to prior capital improvement decisions in an unauthorized manner, resulting in the tenant overpaying passthroughs in the amount of \$1,627.62 for the period of April 2, 2012 to April 30, 2018. On appeal, the landlords argue that the costs to repair the roof deck, roof door, and handrail were incidental to replacing the roof, and claim that they should be allowed to impose prior capital improvements in an unauthorized manner.

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

E. 142 Alpine Terrace

AT180035

The tenant's petition alleging an unlawful rent increase and decreased housing services was granted in part and denied in part. The landlord was found liable to the tenant for rent reductions due to a loss of storage space and denial of the request to add an additional occupant in the total amount of \$20,277.33, and for rent overpayments in the amount of \$2,021.08, with an ongoing base rent reduction of \$300.00 for loss of storage space. The landlord appealed, arguing that the lease signed by the parties did not provide the tenant a right to a storage unit; that the wrong rent calculation was made for the rent overpayment; and that the calculation for the denial of the request to add an additional roommate was incorrect. On February 13, 2018, the Board voted to accept the appeal and remand the case to the ALJ to consider the new evidence on appeal regarding the rent overpayments and to clarify or correct how the storage space rent reduction was calculated. In the remand decision, the ALJ reduced the amount of rent overpayments to \$1,725.08 and reduced the monthly rent reduction for loss of storage from \$300.00 to \$206.33, which amount equaled 1/3 of the cost of a storage space at a nearby Public Storage facility. On appeal, the tenant argues that the monthly rent reduction for loss of

storage should be calculated as 100% of the cost of a comparable storage facility, not 1/3, since the other two units at the property did not use the basement or garage for storage.

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

F. 2173-2175 Grove Street

AT180022
(continued from 5/8/18)

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 deny the appeal.
(Abe/Gruber: 5-0)

IV. Remarks From the Public (continued)

A. Brett Wolman, the landlord's representative for 756 Page Street (AL180039) told the Board that he came to apologize, that his letter was self-explanatory, and that he was shocked and did not expect this result. He said that he had not responded to Rent Board staff in a timely manner, and that he didn't receive the mail on time because he lives in the North Bay. Mr. Wolman said that this penalizes the landlord, and he will ask the landlord to remove him as representative.

B. Fouzia Zaheer, the landlord at 142 Alpine Terrace (AT180035) said that she did some research on her own because the tenant has been lying about everything. She stated that in the end she will respect the Board's decision but if they don't open this case, they will be letting the tenant walk away with big lies. Ms. Zaheer stated that she has called storage facilities and the amount quoted is not even close to the amount the Rent Board has granted.

VI. Communications

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

A. Monthly workload statistics for April 2018.

B. Articles from S.F. Chronicle, S.F. Examiner, New York Times, BeyondChron, SFGate, the Economist, KQED, Business Insider, S.F. Weekly, Reason, KALW, Governing, and Curbed.

VII. Director's Report

Executive Director Collins told the Board that staff member Jennifer Rakowski conducted outreach at the S.F. Housing Expo at City College on June 2, and that Ms. Rakowski and Marissa Jimenez conducted outreach at Sunday Streets in the Sunset on June 3. He said that staff will table at the Earthquake Safety Fair at the Bill Graham Civic Auditorium on June 13 from 10 a.m. to 4:00 p.m., and will also conduct outreach at Sunday Streets in the Mission on July 15 from 11:00 a.m. to 4:00 p.m. Executive Director Collins informed the Board that the Housing Balance Report was postponed at the Board of Supervisors, and will be moved to a date in July. He said that the Planning Department will conduct the presentation, and the Rent Board will be on hand if questions arise to which Rent Board staff need to respond. He also drew the Board's attention to the updated version of the Ordinance in their folders, which contains amendments regarding the protected status for educators. Executive Director Collins told the Board that the SRO (Single-Room Occupancy Hotel) Task Force meeting would convene on June 21 at 9:00 a.m. to discuss changes to the Hotel Visitor Policy. Executive Director Collins informed the Board that Proposition F, which would give tenants facing unlawful detainer eviction lawsuits the right to representation, appeared to have passed. Finally, Executive Director Collins told the Board that the legislation to amend the Ordinance regarding operating and maintenance expense passthroughs passed the Board of Supervisors on the second reading, and should become effective in about 35 days. He said that the Rules and Regulations will need to be clarified, and there may need to be amendments made to the Regulations in the July meeting. He introduced Senior ALJ Sandy Gartzman who prepared a short summary to the Board of the proposed legislation.

SALJ Gartzman told the Board that the recent Board of Supervisors Ordinance amendments regarding operating and maintenance (O&M) expense passthroughs were to Section 37.8(e)(4)(A). SALJ Gartzman explained that: any petition filed with the Rent Board before December 11, 2017, would be considered under the old rules. As to debt service, for petitions filed on or after December 11, 2017, but purchased on or before April 3, 2018, the Rent Board would not consider increased debt service costs unless the landlord demonstrates that it reasonably relied on the ability to pass through increased debt service costs at the time of purchase. For any property purchased after April 3, 2018, there would be no consideration of debt service costs. As to property taxes, for any petition filed on or after December 11, 2017, and purchased on or before April 3, 2018, there would be no consideration of the portion of property taxes resulting from reassessment due to change of ownership unless the landlord demonstrates that it reasonably relied on the ability to pass through increased property taxes at the time of purchase. Here, the portion of the increased property taxes resulting from reassessment due to completion of needed repairs or capital improvements and increase in the annual tax rate factor may be considered. As to property purchased after April 3, 2018, there will be no consideration of the portion of property taxes resulting from reassessment due to change of ownership, but the portion of increased property taxes resulting from reassessment due to completion of needed repairs or capital improvements and increase in the annual tax rate factor may be considered. As to management expenses, petitions filed before the effective date of the amendment of approximately July 15, 2018 will include consideration of management expenses without qualification. Petitions filed on or after the effective date of the amendment will consider management expenses only to the extent that they are reasonable and necessary, based on factors such as: need to provide day-to-day management of the building; the level of

management services previously required for the building; the reasonable cost of the services in an arms-length transaction; whether any tenants have objected that the cost and quality of the services are not in keeping with the socioeconomic status of the building's existing tenants; and other extraordinary circumstances.

At the conclusion of this portion of SALJ Gartzman's presentation, the Board directed staff to prepare a first draft of proposed Rules and Regulations reflecting the amendments to the Ordinance for O&M passthroughs, and agreed that proposed changes would be discussed as a new business item at the July 10, 2018 board meeting.

Secondly, SALJ Gartzman explained to the Board that per the Kim amendments beginning November 9, 2015, Ordinance Section 37.9(c) has required that notices to vacate under Sections 37.9(a)(8) (owner/relative move-in); 37.9(a)(9) (condo conversion); 37.9(a)(10) (demolition/removal from housing use); 37.9(a)(11) (capital improvements); and 37.9(a)(14) (lead abatement) state the rent for the unit at the time the notice is served. Staff have become aware that since November 9, 2015, a number of notices filed have not properly stated the rent amount. SALJ Gartzman proposed potentially amending Rules and Regulations Section 12.17 to allow staff to ask for the rent amount so that information can be correctly entered in the database and be made available to the public upon request. The Board agreed to calendar this discussion as a new business item for the July 10, 2018 board meeting.

VIII. Old Business

A. Public Meetings Rules

Commissioner Mosbrucker reminded the Board that members of the Board should avoid engaging in seriatim meetings.

IX. Calendar Items

July 10, 2018

A. 8 appeal considerations

B. Amendments to the Rules and Regulations Regarding Operating and Maintenance Expense Passthroughs

C. Amendments to Rules and Regulations Section 12.17 Regarding No-fault Eviction Notices

X. Adjournment

President Gruber adjourned the meeting at 7:03 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.