



Edwin M. Lee  
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 13, 2017  
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; Gruber; Hung; Marshall; Mosbrucker; Mosser; Qian; Wasserman.  
Commissioners not Present: Crow; Dandillaya.  
Staff Present: Collins; Lee; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of May 9, 2017.  
(Marshall/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Lou Khaleh, the son of the landlords at 2867 – 24<sup>th</sup> Street (AL170041), told the Board that the facts in Mosser and Drolapas do not support the basis of the Administrative Law Judge’s (ALJ) decision. Mr. Khaleh stated that there is no dispute on the record that tenant Morgan MacDonald was not an original occupant, and Morgan didn’t go to school as a child in San Francisco and he always went wherever his mother lived. He argued that there was continuing residency in Drolapas, but there is no continuity of residency in this case. Mr. Khaleh asked the commissioners to remand the case.

B. David Foran, the attorney for the landlords at 2867 – 24<sup>th</sup> Street (AL170041), stated that the ALJ found that the tenant petitioner was a lawful subtenant at the time the notice of rent increase was served, and he resided in the unit prior to 1996, and therefore he’s not subject to a Costa-Hawkins rent increase. The ALJ stated there was no requirement that T must live continuously, but as in Danger Panda, Morgan was not a lawful subtenant or assignee prior to

1996, because he was still a child. Mr. Foran additionally argued that Morgan's tenancy was terminated after he moved away to go to high school in Cotati.

C. Roger MacDonald, a tenant respondent at 2867 – 24<sup>th</sup> Street (AL170041) told the Board that he trusted in the Board's consideration of the ALJ's decision.

D. Dana Rae Capizano, the tenant at 664 Larkin Street #4 (AT170043) stated that there was a lot of evidence that wasn't heard by the original ALJ. Ms. Capizano told the Board that there was some negativity in the judgment made against her, and she felt like she wasn't allowed an opportunity to speak.

#### V. Consideration of Appeals

##### A. 5530 Mission Street #22

AL170038

The tenant's petition alleging a substantial decrease in housing services was granted. The landlord was found liable to the tenant in the amount of \$300.00. On appeal, the landlord claims that he did not receive 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 landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.  
(Marshall/Mosbrucker: 5-0)

##### B. 635 Minna Street #A

AL170035, AL170036

The subtenants' petitions alleging disproportional share of rent were granted. The master tenant was found liable to subtenant Mitton in the amount of \$3,840.50 and to subtenant Kawczynski in the amount of \$215.25. On appeal, the master tenant claims that he did not receive the Notice of Hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeals and remand the cases for a new hearing. Should the master tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.  
(Mosbrucker/Marshall: 5-0)

##### C. 326 Eddy Street #203

AT170044

The tenants' petition alleging a substantial decrease in housing services was denied. The ALJ found that the tenants failed to meet their burden of proving that the noise from the upstairs unit was substantial. On appeal, tenant Ly argues that the ALJ did not fully evaluate the effect the upstairs neighbors' Chihuahua had on the noise level, and that, during the presentation of the upstairs neighbors' video at hearing, the ALJ did not verify whether the tenant was actually drunk.

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

D. 664 Larkin Street #4

AT170043

The tenant's petition alleging a substantial decrease in housing services was granted in part and denied in part. The landlords were found liable to the tenant in the amount of \$66.00 for bathroom mold. The ALJ denied the tenant's claims regarding no heat, no mailbox, no security, faulty wiring, poor plumbing, and protruding screws and nails on the staircase. The tenant appeals on the basis that there should be an individual locking mailbox for each residential unit and that there was inadequate heat in prior years.

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

E. 1528 – 44<sup>th</sup> Avenue

AL170039

The tenant's petition alleging a substantial decrease in housing services was granted in part and denied in part. The landlord was found liable to the tenant in the amount of \$1,860.00 for the loss of common space in the unit. The ALJ denied the tenant's claims regarding rodents, a non-working oven, unclean common areas, and trash can overflow. The landlord appeals, arguing that two other residents never saw the tenant using the living room, and he told the tenant that he was converting the living room.

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

F. 418 Persia Avenue

AL170042

The tenant's petition alleging a substantial decrease in housing services was granted. The landlord was found liable to the tenant in the amount of \$4,700.00 for a hallway leak, colored water coming from the kitchen faucet, bathroom mold, power outages in the tenant's room, a missing door on the bathroom vanity, mice infestation and holes, and a broken glass panel on the front door. The landlords appeal, arguing that the water leak was not coming from the bathroom and was fixed right away, that they hired a pest control company, that the tenant testified falsely, and that the landlords did not receive written notice regarding the items for which the tenant was granted a rent reduction.

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

G. 436 Union Street

AL170040

The landlord's appeal was filed 1 date late due to her travel outside of the country.

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

The tenants' petition alleging an unlawful rent increase was granted. The landlord was found liable to the tenants for rent overpayments in the amount of \$176.11. On appeal, the landlord argues that she served the tenants with a corrected notice of rent increase, and that tenant petitioner Seidman purposely withheld the revised rent increase notice from the ALJ.

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

H. 2867 – 24<sup>th</sup> Street

AL170041

The landlords' petition requesting an unlimited rent increase under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that an unlimited rent increase was not authorized by Civil Code Section 1954.53(d)(2) of the statute since the evidence showed that (1) tenant respondent Morgan MacDonald resided in the unit prior to January 1, 1996, and (2) he was a lawful subtenant at the time the notice of rent increase was served on November 16, 2016. On appeal, the landlord argues that the ALJ erred in finding that an unlimited rent increase was not authorized because the tenant respondent was a minor when he resided in the unit prior to January 1, 1996, and also because he did not occupy the unit as his home from 2004 to early 2009, and therefore did not continuously reside in the unit prior to January 1, 1996.

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

I. 9 Broderick Street, Lower

AL170037

The tenant's petition alleging an unlawful rent increase was granted. The landlord was found liable to the tenant for rent overpayments in the amount of \$660.00. The landlord appeals, arguing that the unit is exempt from the Rent Ordinance because it is a newly constructed unit for which a certificate of occupancy was issued after June 13, 1979, and because the dwelling unit is in a building which has undergone substantial rehabilitation after June 13, 1979.

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

#### IV. Remarks from the Public (continued)

A. Dana Rae Capizano, the tenant at 664 Larkin Street #4 (AT170043), stated that she believed that heating was the more important issue in her appeal, and that she doesn't understand why the mailbox issue was the focus of the Board's discussion.

B. Rudy Balderama, an attorney representing Ana Margarita Hernandez who formerly lived at 3309A Cesar Chavez Street, told the Board that the property was withdrawn under the Ellis Act on February 25, 2016, and despite the issuance of the recorded Notice of Constraints, there was an action to remove Ms. Hernandez and several other tenants. Mr. Balderama stated that the subsequent occupant subtenant was allowed to remain in possession, but the

elderly tenant Ms. Hernandez was not. He stated that the Rent Board should have authority to enforce the Notices of Constraints.

C. Morgan MacDonald, a tenant at 2867 – 24<sup>th</sup> Street (AL170041) said that the Board's decision helped keep two San Francisco public school teachers in San Francisco.

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 2017.

B. Articles from the S.F. Examiner, the S.F. Chronicle, SFGate, Mission Local, 48 Hills, CurbedSF, Guardian UK, Daily Californian, Bloomberg, and the Press-Democrat.

VII. Director's Report

Executive Director Collins informed the Board that he will be presenting at the SRO Task Force on June 15 regarding Uniform Visitor Policy enforcement. He said that staff will be tabling at the Accessory Dwelling Unit (ADU) Fair on June 26 at the Jewish Community Center, which is sponsored by the Department of Building Inspection (DBI), SFAA, and Supervisor Peskin's office. Executive Director Collins reminded the Board that staff will be participating in workshops and tabling at the Earthquake Safety Fair on June 15. He told the Board that Deputy Director Varner presented at a property management class at City College on May 1 and staff members Lehua Asher, Marissa Jimenez, and Josh Vining tabled at the SF Housing Expo on June 3. Executive Director Collins also told the Board that he attended the Board of Supervisors' Land Use Committee meetings on June 6 and 12 as a resource for Supervisor Farrell and Supervisor Peskin in regards to proposed owner move-in (OMI) legislation, and will again attend on June 26. Executive Director Collins said that interviews for the vacant 2975 Citizens Complaint Officer (counselor) positions will soon begin. Finally, Executive Director Collins informed the Board that he appeared before the Board of Supervisors' Budget and Finance Committee last week, and the fiscal year 2017-2018 budget is likely to be approved.

VIII. Calendar Items

July 11, 2017  
7 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:21 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.**