



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, July 16, 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 6:05 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of June 11, 2019.  
(Mosbrucker/Klein: 5-0)

IV. Remarks from the Public

A. Lawrence Pizano, the attorney for the tenants at 1322 – 17<sup>th</sup> Avenue #1 (AT190063), told the Board that during the hearing, the landlord introduced a video of the front door of the building. He said that the landlord had witness tenants testify that tenant Morgan was never at the building, when in fact the video did show tenant Morgan at the building, so the witness testimony should be disregarded. Mr. Pizano said that the video raised the issue as to whether there was another entrance that tenant Morgan used; and that tenant Morgan said he used the back door, as it was easier for him to access the bus stop that way. Mr. Pizano requested that the Board remand the case back to the ALJ, to allow the parties to issue a subpoena and “find out the truth.”

B. Rosa Maria Cavalho of the Tenderloin Housing Clinic (THC) Code Enforcement Outreach Program, told the Board that she was there as a representative of the tenant at 1440 Sutter Street #404 (AT190045), and that the tenant is appealing a decision denying an untimely

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hardship application and requesting that she be able to apply for hardship, and also wanted to highlight that the tenant previously had proven hardship. Ms. Cavalho said that she was also speaking for the tenants at 424 Ellis Street (AT190046, AT190047, AT190048, & AT190049), which is an operating and maintenance expense increase (O&M) case. She said that the language in the O&M reform legislation said that the landlord had to meet the burden that it had reasonably relied on its ability to pass through O&M costs, and that the ALJ simply accepted and put into the record an addendum that said it was not a contingency for buyer's approval, and that the landlord did not meet its burden of proving reasonable reliance.

C. Brad Hirn of the Housing Rights Committee spoke on behalf of the tenants at 314 Baker Street #B, 316 Baker Street #B, 322 Baker Street #A & #B (AT190057-60); 320 – 14<sup>th</sup> Street #A, 322 – 14<sup>th</sup> Street #1, 324 – 14<sup>th</sup> Street (AT190050-52); 916 Pacific Avenue #21 (AT190053); 1424 Valencia Street #10 (AT190061); and 179 Dolores Street #2, #3, #4, #5, & #7 (AT190066-69). He told the Board that he wanted to raise something that Rosa Maria Cavalho raised around reliance. Mr. Hirn said that he and the tenants have done considerable research around what reasonable reliance actually is. Mr. Hirn discussed what he said was a comparable case from Palm Springs, Palacio De Anza, as well as another case from out of state. He said that in both, the landlord showed it would be a hardship not to receive rent increases, and that in three of these Rent Board O&M cases, testimony during arbitration revealed that the loans were paid off even before the increases were paid, which is evidence that the landlord didn't rely on past due payments to pay off the loans in question. Mr. Hirn said that the guidelines for proving reasonable reliance should be specified, and that the Rent Board in the Palacio De Anza case had guidelines to work with. He said that he feels strongly that after some decisions have been made, there should be a more accurate interpretation of what reasonable reliance is.

D. Alex Lemberg of Open Door Legal, attorney for the tenants at 1028 Newhall Street, Lower (AL190054), said that he was reiterating his responsive brief. He told the Board that this landlord is one of the worst bad actor landlords he's ever dealt with: he filed four frivolous unlawful detainer cases, frivolous Rent Board petitions, a frivolous bar complaint against his colleague, and now a frivolous appeal that was very well-written and well thought-out. He thanked the Board for their time.

## V. Consideration of Appeals

### A. 775 – 11<sup>th</sup> Avenue

AT190056

The subtenant's petition alleging that she paid the master tenant, in combination with two other subtenants, more rent than the master tenant paid to the owner was granted. The ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$800.68 for the time period of July 1, 2018 through December 31, 2018, and determined that the subtenant's lawful rent was \$972.22 per month for the same time period. The master tenant appealed, contending that she never received the notice of hearing because the subtenant did not provide the master tenant's new address to the Rent Board, and submitted a Declaration of Non-Receipt of Notice of Hearing or Decision. At its April 9, 2019 meeting, the Board voted to accept the appeal and remand the case for a new hearing. At the remand hearing, the master tenant appeared by phone and the subtenant did not appear. A remand decision was issued which dismissed the subtenant's

claims. On appeal of the remand decision, the subtenant contends that she missed the hearing due to a family member's illness and death, and that the master tenant overcharged her and owes her \$3,857.00 and stole her security deposit.

MSC: To accept the appeal and remand the case for a new hearing. Should any party again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.  
(Qian/Mosbrucker: 5-0)

B. 2027 Fillmore Street #1

AL190064, AL190065

The master tenant's appeal was filed 2 days late because she is disabled and could not come into the Rent Board office to pick up an appeal form, and three of her caregivers had just been let go.

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

The subtenant's petition alleging a disproportional share of rent and decreased housing services was partially granted. The ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$5,335.26 for the time period of September 24, 2017 through May 31, 2018, including decreased housing services of \$160.00 for security issues (door lock and lockbox code) and \$200.00 for lack of cleanliness. The ALJ further determined that the subtenant's lawful rent was \$451.99 per month, with an ongoing reduced base rent of \$401.99 per month beginning June 1, 2019 for the master tenant's not changing the lockbox code, lack of regular cleaning, and reduced use of the common area. The master tenant appeals, contending that she never required the subtenant to pay \$1,100.00 in rent; that the person hearing the case was a mediator, not a judge, and not impartial; that she did not have enough time to plead her case; that the subtenant moved her storage items into the unit when the master tenant was in the hospital; and that the subtenant held all of her mail and the master tenant never had the chance to respond. The master tenant also appeals on the basis of financial hardship.

MSC: To deny the appeal on the merits and to remand the case to the ALJ for consideration of the master tenant's financial hardship only.  
(Mosbrucker/Qian: 5-0)

C. 625 Bush Street #301

AT190055

The tenant's petition alleging decreased housing services was administratively dismissed because the claims in the tenant's petition were barred by the terms of a Stipulation For Entry of Judgment entered into by the landlord and tenant on February 7, 2019. The tenant appeals, arguing she didn't agree with the stipulation, and that her room was never painted and the carpet was never changed during her 22-year tenancy.

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

D. 1440 Sutter Street #104

AT190045

The tenant's appeal was filed 194 days late because the tenant's representative had been unable to coordinate a time to meet with the tenant, did not understand that the tenant wanted to appeal, and was very busy with other areas of her work.

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

The tenant's application requesting deferral of a capital improvement passthrough and two water revenue bond passthroughs on the basis of financial hardship was granted in part and denied in part. The tenant's request to defer the capital improvement passthrough and water revenue bond passthrough effective January 1, 2018 was granted. The tenant's request to defer the water revenue bond passthrough effective from January 1, 2017 to December 31, 2017 was denied as untimely because the hardship application filed on May 1, 2018 was filed more than one year after the effective date of the passthrough. The tenant appeals, contending that her hardship application to defer the water revenue bond passthrough effective January 1, 2017 was filed late because she was not aware of her ability to file for hardship during the one-year period after the passthrough went into effect; that she meets the income and assets criteria as evidenced by the other passthroughs having been deferred; and also requests deferral of an additional water revenue bond passthrough effective January 1, 2019.

MSC: To accept the appeal and remand the case to the ALJ to prospectively consider the tenant's claim of financial hardship from the month of filing the hardship application as to the water revenue bond passthrough effective January 1, 2017, with a technical correction to be issued if necessary.  
(Mosbrucker/Qian: 5-0)

E. 555 Jones Street #304

AT190062

The tenant's petition alleging decreased housing services was denied. The ALJ found that the tenant failed to meet her burden of proving that the loss of a garbage chute constituted a substantial decrease in housing services. The tenant appeals, arguing that the landlord did not provide City notices of trash violations to the tenants; that she has had ongoing issues being harassed by the resident manager and therefore needs the garbage chute to avoid the resident manager; and there are only security cameras in the lobby, not in the hallways, elevators, stairwells, or basement.

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

F. 1028 Newhall Street, Lower

AL190054

The landlords' appeal was filed 2 days late because one of the landlords had to attend an emergency military training.

The tenants' petition alleging decreased housing services was granted. The landlord was found liable to the tenant for rent reductions in the amount of \$4,502.00 for: loss of a secondary kitchen, and loss of a secondary bedroom and removal of linoleum flooring for the period from July 5, 2018 through September 28, 2018; and lack of heat for the period from August 3, 2017 through December 21, 2018. The landlords appeal, arguing that the ALJ erred in concluding that the landlords' and tenants' prior settlement agreement was not relevant; that heat was never provided to begin with, because there was no HVAC system in the building; that the tenants separated the kitchen themselves; and that the loss of floor covering was because the landlord had to stop work in the middle of a job.

MSC: To continue the consideration of this appeal to the August 13, 2019 meeting.  
(Klein/Mosbrucker: 5-0)

G. 1322 – 17<sup>th</sup> Avenue #1

AT190063

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act and decreased housing services was granted in part and denied in part. The ALJ found that original occupant Damon Morgan no longer permanently resided at the subject unit when the notice of rent increase was served on October 17, 2018, and that Richard Colston is a lawful sublessee who did not reside in the unit prior to January 1, 1996, and that the landlord is entitled to impose an unlimited rent increase pursuant to Civil Code Section 1954.53(d)(2) of Costa-Hawkins. The ALJ found the landlord liable to tenant Morgan in the amount of \$120.00 for lack of heat for the period of December 24, 2018 through March 6, 2019. The ALJ also found that tenant Morgan did not meet his burden of proving that the change back to the original lockset, nor the garage door opener replacement in 2005 or 2006 gave rise to a loss of quiet enjoyment that rose to the level of a substantial decrease in housing services. On appeal, the tenants contend that original occupant Damon Morgan continues to permanently reside in the subject unit.

MSF: To accept the appeal.  
(Mosbrucker/Qian: 2-3; Dandillaya, Gruber, Klein dissenting)

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

H. 314 Baker Street #B, 316 Baker Street #B,  
322 Baker Street #A & #B

AT190057, AT190058,  
AT190059, AT190060

The landlord's petition for a capital improvement passthrough to 8 of 12 units was granted. The ALJ certified the costs of a replacement water heater; interior painting; common area carpeting; stairwell and interior dry rot remediation; security camera installation; common area lighting replacement; fence replacement; downspout replacement; interior framing dry rot remediation; and brick re-pointing. The tenants in four units appeal the ALJ's decision, arguing that the ALJ incorrectly interpreted Rules and Regulations Section 7.15 by not shifting the burden of proof to the landlord to establish that replacement "luxury" items in common areas of the building were of equivalent quality to the items being replaced and not excessive or "luxurious"; and that

the landlord did not demonstrate how the brick repointing satisfied the criteria for a capital improvement passthrough.

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

I. 424 Ellis Street #204, #210, #409, & #411  
AT190046, AT190047,  
AT190048, AT190049

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 41 of 62 units was granted. The ALJ determined that the evidence showed that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 204, 210, 409, and 411 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property.

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

J. 320 – 14<sup>th</sup> Street #A, 322 – 14<sup>th</sup> Street #1,  
324 – 14<sup>th</sup> Street  
AT190050, AT190051,  
AT190052

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 13 of 17 units was granted. The ALJ determined that the evidence showed that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 320-A, 322 #1, and 324 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property.

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

K. 916 Pacific Avenue #21  
AT190053

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 13 of 24 units was granted. The ALJ determined that the evidence showed that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenant in unit 21 appeals, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property.

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

L. 1424 Valencia Street #10

AT190061

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 2 of 12 units was granted. The ALJ determined that the evidence showed that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenant in unit 10 appeals, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property.

MSC: To deny the appeal.

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

M. 179 Dolores Street #2, #3, #4, #5, & #7

AT190066, AT190067,  
AT190068, AT190069,  
AT190070

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 6 of 8 units was granted. The ALJ determined that the evidence showed that at the time of the purchase of the property the landlord had reasonably relied on its ability to pass through the costs of increased debt service and property taxes through an O&M rent increase. The tenants in units 2, 3, 4, 5, and 7 appeal, arguing that the landlord did not reasonably rely on its ability to pass through the costs of property tax and debt service at the time of its purchase of the property.

MSC: To deny the appeal.

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

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

A. *(There were no remarks from the public at the second public comment period.)*

#### VI. Communications

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

A. Workload statistics for the month of May 2019.

B. Articles from S.F. Examiner, S.F. Chronicle, SFGate, New York Times, CurbedSF, Bloomberg, and S.F. Business Times.

#### VII. Director's Report

Executive Director Collins provided the Board an update about outreach events: Josh Vining and Lehua Asher tabled at Sunday Streets on July 14, and supervisor Jennifer Rakowski and Commissioner Isbell met with the Chief of Branches at the SF Public Library to explore

collaboration on public education. Executive Director Collins informed the Commissioners that the Board of Supervisors' file number 190595 passed which is an ordinance that provides for a special election to be able to submit to voters a proposition regarding affordable housing bonds, which would allow landlords to pass through to tenants 50% of any property tax increases that may result from the issuance of affordable housing bonds, with a financial hardship application available to tenants of such passthroughs.

Commissioner Isbell thanked supervisor Rakowski and staff for accommodating outreach and the public in a potential program series with the SFPL.

#### VIII. Old Business

##### A. Nomination of Board Vice-President

Pursuant to Ordinance Section 37.4(e), the Board conducted an election of the Board vice-president. Commissioner Klein nominated Commissioner Mosbrucker as the Board's vice-president. The Board unanimously supported Commissioner Klein's nomination, with Commissioner Mosbrucker abstaining, and then elected Commissioner Mosbrucker as the Rent Board's vice-president.

#### IX. New Business

##### A. Nomination of Board President

Pursuant to Ordinance Section 37.4(e), the Board conducted an election of the Board president. Commissioner Qian nominated President Gruber as the Board's president. The Board unanimously supported Commissioner Qian's nomination, and then elected President Gruber as the Rent Board's president.

#### X. Calendar Items

August 13, 2019

##### A. Consideration of Appeals

10 appeal considerations

#### XI. Adjournment

President Gruber adjourned the meeting at 7:19 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.**