



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, August 11, 2020
at 6:00 p.m.

Remote Meeting via video and teleconferencing
<https://bit.ly/2DVddrs>

Public Comment Dial In Number: (408) 418-9388 / Access Code: 146 487 9942

On February 25, 2020, Mayor London Breed declared a state of emergency in regards to COVID-19. Thereafter, Governor Newsom issued a statewide order for all residents to shelter-in-place, and numerous orders of the county health officer and supplemental orders and directives were issued to slow and reduce the spread of the COVID-19 virus. Due to these declarations, orders, and proclamations, the Rent Board Commission's March 17, 2020 and April 14, 2020 meetings were cancelled.

In three memorandums, the Mayor and City Attorney detailed emergency orders suspending select laws applicable to boards, commissions, and other policy bodies. On May 6, 2020, the Rent Board Commission was authorized to hold its May 12, 2020 regular meeting during the shelter-in-place remotely. Subsequently, per Mayoral and City Attorney guidance, boards and commissions are allowed to meet without first obtaining Mayoral permission, so long as the meetings are held remotely. Therefore, the Rent Board Commission meetings will be held via videoconferencing and will allow for remote public comment until further notice.

The Commission strongly encourages interested parties to submit their comments in writing, by 12:00 noon on August 11, 2020 to rentboard@sfgov.org. The meeting will be streamed live at 6:00 p.m. at <https://bit.ly/2DVddrs>. The public comment call in instructions are being made available on the Rent Board's website at <https://sfrb.org>.

Please visit the Rent Board's website for ongoing updates during the COVID-19 emergency.

I. Call to Order

President Gruber called the meeting to order at 6:08 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hung; Isbell; Mosbrucker; Qian; Tom; Wasserman.

Printed on 100% post-consumer recycled paper

Commissioners Not Present: Klein.

Staff Present: Brandon; Collins; Koomas; Pagoulatos; Varner.

III. Approval of the Minutes

MSC: To approve the minutes of July 14, 2020.
(Wasserman/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Steve MacDonald, attorney for the landlord at 119 Madison Street (AL200045) told the Board that the tenant petitioners voluntarily terminated the tenancy, and vacated prior to filing the petition, so they were not “tenants” as defined by the Rent Ordinance, do not have standing to file the petition and forfeited their right to file a petition at the Rent Board when they vacated. He said that two of the three tenants of the co-tenancy filed the petition, and argued that the overpayment being granted to only two of the three tenants was improper. Mr. McDonald said that the property should not have been considered two units, as the other space in the building had never been rented.

B. Jackie Barshak, the tenant at 2067 10th Avenue (AT200047), said that she filed a decreased housing services petition in March, and then because of conditions that her landlord created, she had to leave the apartment. She said that she did not receive notice that the hearing had been scheduled as the notice was returned to sender. Ms. Barshak said that once she found out about the missed hearing, she appealed, and requested that the Board consider her appeal.

V. Consideration of Appeals

A. 2067 – 10th Avenue

AT200047

The tenant’s appeal was filed 14 days late because the mailed notice of hearing and dismissal in her case were returned to the Rent Board by USPS.

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

The tenant’s petition alleging decreased housing services was dismissed due to her non-appearance at the hearing. On appeal, the tenant states that she did not receive the notice of hearing because the post office did not deliver it and it was returned to sender; and files the requisite Declaration of Non-Receipt of Notice of Hearing or Decision.

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

B. 81 Hoff Street #A

AL200043, AL200046

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ determined that the subtenant paid more than her proportional share of rent from September 1, 2015 through June 30, 2020, and the master tenant was found liable to the subtenant for rent overpayments in the amount of \$17,747.42. The master tenant appeals, arguing that the subtenant's proportional share of rent should be higher because another subtenant at the unit vacated on July 1, 2020; and due to the COVID-19 pandemic the master tenant should have been given additional time to submit further post-hearing documentation, which would have demonstrated a higher cost of utilities. The master tenant also appeals on the basis of financial hardship.

MSC: To deny the appeal on the merits, and to remand the case for a hearing solely to consider the master tenant's financial hardship.
(Wasserman/Mosbrucker: 5-0)

C. 525 Hyde Street #5

AL200041

The landlord's appeal was filed 1 day late because the landlord representative was sick.

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

The tenant's petition claiming decreased housing services was granted. The landlord was found liable to the tenant for rent reductions corresponding with decreased housing services in the total amount of \$3,078.40 for utility costs for the period of October 1, 2017 through December 31, 2019. On appeal, the landlord contends that the lease states that no utilities are included; that the unit was marketed online with no utilities included; and that when a lease and addendum are inconsistent, the lease would be the "default document" and its terms should control.

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

D. 320 – 11th Avenue #3

AT200042

The tenant's appeal was filed 1 day late because she received the decision 10 days after it was mailed.

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

The tenant's petition alleging decreased housing services, failure to repair and maintain, and an unlawful rent increase was granted in part and denied in part. The ALJ found that the rent increases imposed by the landlord were lawful; that the tenant's failure to repair and maintain claim was denied as untimely; and that the landlord was liable to the tenant in the amount of \$3,486.50 for: non-working heaters for the period of January 12, 2018 to July 6, 2018; and for the poor condition of the second bedroom for the period of

November 26, 2016 to July 6, 2018. The ALJ also found that the tenant did not meet her burden of proving that the landlord's conduct with respect to the tenant's claim of loss of quiet enjoyment for unreasonable noise, loss of use of the south facing window fire escape, and the inability to sublease the second bedroom due to noise constituted a substantial decrease in housing services; and that the tenant failed to prove the landlord was orally informed or otherwise had notice that the tenant's heaters were not working prior to the filing of the petition. On appeal, the tenant contends that the neighboring tenants were retaliating against her and harassing her because of her former line of work, and were colluding with the landlord so that he would not repair items in the building in an effort to force the tenant to move out.

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

E. 119 Madison Street

AL200045

The tenants' petition alleging an unlawful rent increase was granted. The ALJ found that notwithstanding the legal use of the property as a single-family residence, the actual use of the property established that the downstairs and upstairs units are separate dwelling units, and the upstairs unit is therefore not separately alienable from the title to any other dwelling unit; and found the landlord liable to the tenants in the amount of \$14,135.80 for rent overpayments resulting from null and void rent increases for the period from February 1, 2017 through January 31, 2020. The landlord appeals, arguing that the tenants failed to prove that the property is a two-unit property; that the tenants did not have standing to file the instant petition because they moved out; that the tenant petitioners named the incorrect landlord; and that the overpayment amount is excessive because the rent was shared between multiple tenant occupants.

MSC: To deny the appeal, and to remand the case to the ALJ solely to issue a technical correction regarding the name of the owner.
(Mosbrucker/Wasserman: 5-0)

IV. Remarks From the Public (continued)

A. Gina Casalenuovo, the landlord at 119 Madison Street (AL200045) told the Board that the tenant petitioners voluntarily terminated their tenancy prior to the filing of the petition, so they are not tenants as defined by the Ordinance; and did not have standing to file the petition. The landlord said that the ALJ stated in their memo that this is a newly raised issue, but it was brought up at the May hearing; and regarding the amount of rent owed, the tenants did not pay the full amount of rent and the order for the tenant petitioners to distribute the overpayment accordingly doesn't prevent other cotenants from bringing a similar action, resulting in the landlord being liable for duplicate overpayments. She asked the Board to reconsider the decision.

VI. Public Hearing

7:00 p.m. Proposed Amendments to Rules and Regulations Section 10.15 – Extending Tenant Hardship Relief to the Payment of General Obligation

Bond Passthroughs Attributable to General Obligation Bonds Approved by the Voters on or After November 5, 2019

Effective December 7, 2019, Rent Ordinance Sections 37.3(a)(6) of the San Francisco Administrative Code was amended to clarify that for the purpose of calculating a general obligation bond passthrough, the landlord must use the net taxable value of the property as of November 1 of the applicable tax year; that for general obligation bond passthroughs imposed on or after January 1, 2021, the time period for tenants to pay the passthrough is extended to the same number of months covered by the property tax bills used in the passthrough calculation; that effective January 1, 2021, the landlord can no longer “bank” a general bond passthrough that was not imposed for an unlimited period of time, and general obligation bond passthroughs will be limited to only those tax bills issued within the three year period prior to the year in which the passthrough is imposed; and that tenants may seek relief from payment of general obligation bond passthroughs only for that portion of a general obligation bond passthrough that is attributable to general obligation bonds approved by the voters on or after November 5, 2019. The proposed amendment to Rules and Regulations Section 10.15 are intended to clarify that a tenant may seek relief from payment of a general obligation bond passthrough that is attributable to general obligation bonds approved by the voters on or after November 5, 2019.

President Gruber opened a public comment period for members of the public to speak specifically about proposed Rules and Regulations Section 10.15. Seeing that no member of the public wanted to speak during the public comment period, the public comment period was closed.

The Commissioners then had no discussion regarding the proposed amendments. Seeing that there was no discussion, the Commissioners made and voted upon the following motion:

MSC: To move to adopt Rules and Regulations Section 10.15 as drafted by staff.
(Wasserman/Mosbrucker: 5-0)

VI. Communications

- A. Articles from the S.F. Examiner, S.F. Chronicle, CBS8, Wolf Street, Law 360, and 48 Hills.
- B. Workload statistics for May 2020 and June 2020.
- C. Updated list of Rent Ordinance amendments.
- D. Updated copy of Rent Ordinance Section 37.9.

///
///
///

VII. Director's Report

A. Rent Board Operations Update During COVID-19 Health Emergency

Executive Director Collins provided the Board updates about operations, legislation, and the budget. He explained that staff are still in the process of finalizing the outgoing message recordings for the voice over IP call center in four languages and planning to have it go live in August. Executive Director Collins referred to the May and June 2020 workload statistics, and provided some comparisons to the June 2019 statistics, specifically, that landlord petition filings and tenant petition filings were down 64% and 42% respectively; and arbitrations and mediations held were down 32%; but that issuance of decisions, minute orders and agreements was down only 25%. Executive Director Collins highlighted that counselor line calls are up 6% and website hits are up as well. Regarding pending legislation, Executive Director Collins told the Board that both Board of Supervisors file number 200762, an Ordinance to reenact ordinance 84-20 to provide protections for single room occupancy (SRO) hotel residents during the COVID-19 pandemic, and file number 200763, an emergency ordinance to prohibit construction projects requiring suspension of water or electricity without alternative sources during the COVID-19 pandemic were continued from August 10, 2020 to August 17, 2020 at the Board of Supervisors' Land Use and Transportation committee. Executive Director Collins also explained that Supervisor Preston's legislation prohibiting landlords from evicting residential tenants for nonpayment of rent that was unpaid due to the COVID-19 pandemic and from imposing late fees, penalties and similar charges arising out of such rent payments became effective July 27, 2020; and a lawsuit challenging the law filed by the SF Apartment Association, SF Association of Realtors, the Coalition for Better Housing and the Small Property Owners Institute of SF on June 29, 2020 was denied on August 2, 2020 and an appeal was filed on August 10, 2020.

Regarding the eviction moratorium for nonpayment of rent, Executive Director Collins told the Board that it was extended, meaning that any rent payment missed due to COVID-19 between March 13, 2020 through August 31, 2020 are covered and tenants have until February 28, 2020 to pay missed rent payments. Executive Director Collins said that the eviction moratorium for all evictions, except for those arising out of violence, threats of violence, health and safety or the Ellis Act, is extended to October 31, 2020 and can be further extended. In regards to the temporary rent freeze, Executive Director Collins said that it runs through August 22, 2020, and applies to all annual, banked and passthrough rent increases, with the exception of Rules and Regulations Section 6.14 and 1.21 increases and increases under the Costa-Hawkins Rental Housing Act; landlords can preserve the anniversary dates and can re-impose the increase once the rent freeze expires.

Finally, Executive Director Collins gave an update on the budget. He explained the department was originally scheduled to present at the Board of Supervisors budget subcommittee, but have been excused from presenting due to being a small department. He said that the budget will be probably be approved as was submitted to the Mayor's office.

VIII. Old Business

(There was no Old Business.)

IX. New Business

(There was no New Business.)

X. Calendar Items

September 15, 2020 – remote meeting via Webex Events

A. Consideration of Appeals

4 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:12 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.