



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 13, 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 6:04 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hung; Isbell; Klein; Mosbrucker;
Qian; Tom; Wasserman.
Commissioners not Present: *(None.)*
Staff Present: Collins; Koomas; Varner.

Commissioners Appearing on the Record Late: Hung, 6:07 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 16, 2019.
(Mosbrucker/Qian: 5-0)

IV. Remarks from the Public

A. Kendrick Clayton of Property Management Systems appeared on behalf of landlord representative Michelle Horneff-Cohen to discuss the appeal for 50 Lupine Avenue #8 (AL190090). Mr. Clayton said that some of the statements made in the decision were a bit biased; for instance, the decision stated that the tenants credibly testified, but did not state the same about the landlord representative. He told the Board that the landlords took as much action as they could at the guidance of their attorney; and that the tenant petitioners did not make enough effort as they never contacted the police regarding the noise disturbances because they did not want to be woken up again, which showed that it was not such a large disruption.

B. The tenants at 50 Lupine Avenue #8 (AL190090), told the Board that Property

Management Systems had their opportunity to appeal and missed it; and that the Administrative Law Judge (ALJ) issued the decision 6 to 8 months ago.

C. Yesenia Pozo, a tenant who lives with her parents and brother at 750 O'Farrell Street #412, said their issue was not on the Board's agenda. She said that she wanted the Board to know that their landlord, Mosser Companies, is attempting to take away their storage space because they are building market rate accessory dwelling units (ADU) in the building, and the tenants were given very little notice. Ms. Pozo said that it's unfair to take away services that they've had for a long time, especially to construct expensive, market-rate units.

D. Rosa Maria Cavalho told the Board that she is representing Yesenia and her family on their matter. Ms. Cavalho, of the Tenderloin Housing Clinic's Code Enforcements Outreach Program (THC-CEOP) said that after 6 years she came to say goodbye to pursue her dream of law school at UC Hastings. She told the Board that when she arrived at THC-CEOP 6 years ago, unbeknownst to anyone, she was living in a closet in an apartment on the corner of O'Farrell and Hyde Streets that lacked heat and hot water. She said that before that, after graduating from UC Berkeley, she was homeless and living in her car in Rockridge. She said that economic challenges and housing insecurity are not theoretical concepts for her, but are experiences which she has known intimately. She said that she has chosen to be a passionate and sometimes outspoken advocate for the low-income and marginalized, and these opportunities have also given her the fuel and confidence to finally attempt her dream of law school and hopefully become a public interest attorney. Ms. Cavalho told the Board that she came to express her absolute appreciation for this forum. She said that the Rent Board has given her the opportunity to learn how to support tenants in their quest for justice, to effectively express their voices and the courage to speak their truth. She thanked the Commissioners, the ALJs, senior staff, and front line staff from whom she has learned an immense amount.

V. Consideration of Appeals

A. 314 Anzavista Avenue

AT190086

The tenant's petition alleging decreased housing services was dismissed due to the tenant's non-appearance at the hearing. The tenant appeals on the basis that he was ill on the day of the hearing and could not attend, and requests another opportunity for his case to be heard.

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

B. 1028 Newhall Street, Lower

AL190054
(cont. from 7/16/19)

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

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

The tenants' petition alleging decreased housing services was granted. The landlords were found liable to the tenants 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 deny the appeal.
(Mosbrucker/Qian: 5-0)

C. 50 Lupine Avenue #8

AL190090

The landlord's appeal was filed 81 days late because of a claimed problem with the USPS that delayed receipt of the decision.

Commissioner Crow recused himself from the consideration of this appeal.

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

The tenants' petition alleging decreased housing services was granted. The ALJ found the landlord liable for rent reductions in the amount of \$3,500.00 for loss of quiet enjoyment caused by noise from a neighboring unit from April 24, 2018 through January 15, 2019. The landlord appeals, arguing that the landlord and property manager timely responded to the noise complaints, and requests further review of the amount awarded.

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

D. 1370 Pine Street #F

AT190071

The landlord's petition for a rent increase to \$3,200.00 based on comparable rents was granted in part and denied in part. The ALJ found that a special relationship existed between former owner Choy and tenant Oei at the time the tenancy commenced on or about May 1, 2017 based on the fact that they had been good friends since 2010, and the tenant had lived in the building and worked as the former landlord's handyman since 2013. The ALJ additionally determined that, as a result of the special relationship, the initial base rent of \$500.00 was set lower than market rent due to non-market conditions; and while the tenant made some repairs to the unit after the tenancy commenced, the evidence did not establish that the condition of the unit was so poor as to justify an initial rent of \$500.00; and that the current landlord is entitled to impose a comparables rent

increase. The ALJ further found that the comparable market rent for the unit at the inception of the tenancy on or about May 1, 2017 was \$2,400.00, less than the \$3,200.00 set by the landlord in the petition, and that the landlord was entitled to increase the rent to \$2,438.40 per month. The tenant appealed, arguing that the testimony of the landlord's witness appraiser should not have been allowed because he is not a licensed appraiser by the State of California, and that the landlord should not be allowed to raise the rent based on comparables because there are numerous outstanding code violations at the property. At its February 12, 2019 meeting, the Board voted to accept the appeal and remand the case to the ALJ for the sole purpose of considering the new evidence submitted on appeal and to determine whether the comparable rent increase should be deferred until the Notice of Violation (NOV) was abated. In the remand decision, the ALJ determined that unabated code violations existed at the property, and therefore the comparables rent increase authorized by the decision could not be imposed until the Department of Building Inspection (DBI) abated all items in the outstanding NOV. On appeal of the remand decision, the tenant argues that there is no evidence of extraordinary circumstances, that he rented the unit "as-is," and submits a statement that a neighboring tenant also rented his unit "as-is."

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

E. 1250 Grove Street #5

AL190088

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that when the landlord served original occupant Kent Brown with the notice of rent increase on February 11, 2019, Mr. Brown continued to permanent reside in and remained an occupant in lawful possession of the subject unit during a temporary, reasonable, absence for the purpose of caring for his elderly mother who was ill and who died on April 19, 2019, and that the rent increase from \$827.79 to \$2,850.00, effective May 1, 2019, was therefore not authorized by Civil Code Section 1954.53(d)(2). On appeal, the landlord argues that a negative inference should have been drawn from the tenant's failure to provide corroborating post-hearing documents; that the ALJ erred in concluding that tenants are not limited to a single residence, and are not required to maintain the unit as an exclusive or principal place of residence under Costa-Hawkins; and that if the Board is "leaning to deny the appeal," the Board should defer consideration of the appeal until January 2020 and allow both sides to provide additional evidence.

Commissioner Wasserman recused himself from the consideration of this appeal.

MSF: To accept the appeal and remand the case to the ALJ to allow the ALJ to obtain evidence that was promised by the tenant including his 2016 tax returns and his credit/debit card statements.
(Klein/Gruber: 2-3; Mosbrucker, Qian, Dandillaya dissenting)

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

F. 1308 Anza Street, Upper Unit

AL190087

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the landlord respondent did not meet its burden of proving that the vacant, unwarranted ground floor unit was no longer intended or available for separate residential use, or that the tenants' unit was separately alienable from the title to any other dwelling unit at the time the February 26, 2019 rent increase notice was served; and that the tenants' unit is not exempt from the rent increase limitations of the Rent Ordinance under Civil Code Section 1954.53(a)(3) of Costa-Hawkins, and the May 15, 2019 rent increase from \$1,900.00 to \$4,288.00 is null and void. On appeal, the landlord contends that as of February 26, 2019, the tenants rented the entire property, which is separately alienable from the title to any other dwelling unit, and therefore the landlord was authorized to set the initial and subsequent rental rates.

MSC: To deny the appeal.

(Mosbrucker/Qian: 4-1; Wasserman dissenting)

G. 1801 California Street #105, #201, #202, #203, #204, #205, #302, #306, #402, #404, #501, #502, #504, & #505

AT190072 - AT190085

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 22 of 31 units was granted. The ALJ found that the landlord had met its burden of proving 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 105, 201, 202, 203, 204, 205, 302, 306, 402, 404, 501, 502, 504, and 505 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.

Commissioners Dandillaya and Isbell recused themselves from the consideration of these appeals.

MSC: To deny the appeals.

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

H. 642 Alvarado Street #109, #203, #204, #206, #208, & #311

AT190091 - AT190096

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 21 of 34 units was granted. The ALJ found that the landlord had met its burden of proving 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 109, 203, 204, 206, 208, and 311 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 continue consideration of the appeals to the September 10, 2019 meeting.
(Qian/Mosbrucker: 4-1; Wasserman dissenting)

I. 665 Pine Street #204, #302, #503, #701, #703, #704, #901, #902, #903, #904, #1001, #1002, #1003, #1004, & #1100

AT190097 - AT190111

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 21 of 40 units was granted. The ALJ found that the landlord had met its burden of proving 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, 302, 503, 701, 703, 704, 901, 902, 903, 904, 1001, 1002, 1003, 1004, and 1100 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 continue consideration of the appeals to the September 10, 2019 meeting.
(Qian/Mosbrucker: 4-1; Wasserman dissenting)

J. 41 Lafayette Street

AT190112

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 4 of 12 units was granted. The ALJ found that the landlord had met its burden of proving 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 41 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 continue consideration of the appeals to the September 10, 2019 meeting.
(Qian/Mosbrucker: 4-1; Wasserman dissenting)

IV. Remarks From the Public (continued)

A. Melissa Griffin, the tenant in 1801 California Street #201 (AT190073) told the Board that the reason they didn't create specific guidelines on what constitutes reasonable reliance was because they didn't think there were going to be enough cases to warrant specifics beyond anything that was in the statute itself. And so, she said, it seems odd to her that an advantage is being taken of this fact, because now there are dozens of these cases, and there is no guidance. Ms. Griffin said that the Board has set the bar so low for landlords to establish reasonable reliance that it has rendered the requirement meaningless surplusage. She told the Board she would encourage them to establish legitimate guidelines in light of the fact that this is happening all over the city.

VI. Communications

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

- A. Workload statistics for June 2019.
- B. Updated staff phone list.
- C. Articles from ABC 7 News, MissionLocal, BeyondChron, SF Examiner, CBS San Francisco, Curbed SF.

VII. Director's Report

Executive Director Collins provided the Board an outreach update: staff member Aaron Morrison will table at Sunday Streets in SOMA on August 18. Executive Director Collins informed the Commissioners that Board of Supervisors file number 190843, which is the legislation regarding general obligation bond measure passthroughs to tenants will amend the Administrative Code to allow tenants to request a waiver of some bond passthroughs, based on financial hardship. He told the Board that the Board of Supervisors will hold a hearing on file number 190858 in approximately October, examining the criteria, regulations and frequency of landlord petitions, passthroughs and rent increases. Executive Director Collins told the Board about an unpublished Court of Appeal decision Sainez v. SF Rent Board, which reaffirms a Rent Board decision concerning the Costa-Hawkins Rental Housing Act. Executive Director Collins also informed the Board about the writ in KLW Investments v. SF Rent Board, which concerned Rules and Regulations Section 1.17(g). Senior ALJ Koomas explained that the trial court has now remanded the case to the Rent Board for further proceedings, so staff will issue an order to allow the parties to provide supplemental briefing or evidence, and an ALJ will make supplemental findings. Executive Director Collins introduced the Board to new counselors Anita Pandhoh and Nick Pagoulatos.

Finally, Executive Director Collins informed the Board that Senior Administrative Law Judge Sandy Gartzman is retiring, and that her last day working in the office will be August 27. He said that SALJ Gartzman has been instrumental to the workings of the department and was a very dedicated public servant. Executive Director Collins said that SALJ Gartzman started working at the Rent Board almost 30 years ago; in 1987 she started as a commissioner, then a contract hearing officer; in 1990 she became a full-time hearing officer, and in 1992 she became a senior hearing officer. He said that SALJ Gartzman has been intricately involved in drafting regulations, and every form that the Rent Board has in the office, which only very briefly describes her enormous contributions.

VIII. Old Business

- A. Rules and Regulations Clean Up

This item will be continued for discussion at the September 10, 2019 meeting.

IX. New Business

(There was no New Business.)

X. Calendar Items

September 10, 2019

A. Consideration of Appeals

14 appeal considerations (including 3 continued appeals)

B. New Business

1. Proposal to Amend Rules and Regulations Section 6.10
2. Proposed Amendment to Rules and Regulations Regarding Tenant's Permanent Place of Residence

XI. Adjournment

President Gruber adjourned the meeting at 7:26 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.