



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**

CALVIN ABE  
DAVE CROW  
SHOBA DANDILLAYA  
RICHARD HUNG  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
KENT QIAN  
DAVID WASSERMAN

Tuesday, August 14, 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 6:03 p.m.

**II. Roll Call**

Commissioners Present: Abe; Crow; Gruber; Hung; Mosbrucker; Mosser; Qian; Wasserman.  
Commissioners not Present: Dandillaya; Marshall.  
Staff Present: Collins; Gartzman; Koomas; Varner.

Commissioners appearing on the record late: Hung, 6:06 p.m.; Qian, 6:07 p.m.

**III. Approval of the Minutes**

MSC: To approve the Minutes of July 10, 2018.  
(Mosbrucker/Crow: 4-0)

**IV. Remarks from the Public**

A. Jordan Davis, who sits on the SRO (Single-Room Occupancy) Task Force representing tenants, told the Board that at their July 16, 2018 meeting, the SRO Task Force voted 6-3 to amend the Uniform Hotel Visitor Policy (UHVP), and that it is within the Rent Board’s purview to remove the requirement that tenants escort their guests out at the end of their stay, thus removing the need for the building owner, operator or their agent to keep the guest’s ID. Davis stated that this came up because many tenants, particularly in the immigrant community, work unusual hours, often as domestic workers and day laborers and may not be able to comply with current sign out requirements. Davis stated that both the Mission and Chinatown SRO Collaboratives support this change, as well as other Mission and Tenderloin tenants. Davis also told the Board of an article in the Bay Area Reporter regarding a disabled gay man suing one hotel whose owner-operator refused access to his caregivers and was

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charging his caregivers the daily rate to stay in the hotel; and issues of other hotels not allowing overnight guests staying up to 8 nights to use the showers. Davis stated that the UHVP has not been updated since 2010 and many feel that changes would create a more normalized experience for SRO tenants.

B. Michael Cheung, the landlord at 2258 Pine Street (AL180041), told the Board that he accepted the decision of the Administrative Law Judge (ALJ) insofar as the corrected base rent, but wanted to appeal the overpayment. Mr. Chung said that the 2015-2017 overpayment is calculated by the difference of what the tenant has been paying against the base rent that was determined to be valid as of July 2002, but the fact that the tenant had not had a rent increase for 15 and a half years was never taken into consideration. He said that if the allowable rent increases were applied during those years, the base rent would be much higher than the \$1836 used to calculate the overpayment, and that the base rent for those years would range from \$2100 to over \$2200. He said that rather than having overpaid, the tenant enjoyed substantial savings during that time, and that he didn't raise the rent due to his friendship with the tenant and his empathy with her losing her long time job and her husband being gravely ill. Mr. Chung asked the Board to consider fairness to parties, hardship, and promotion of the policies of the Ordinance.

#### V. Consideration of Appeals

##### A. 2238 Vicente Street #3

AT180058

The tenant's petition alleging decreased housing services was denied. The ALJ found that the tenant failed to meet her burden of proving that use of the backyard for gardening or other reasons and that use of the storage cabinet were housing services provided at the inception of the tenancy or ones reasonably expected under the circumstances, and that the tenant failed to prove that the cabinet was her personal property. The ALJ also found that the tenant failed to meet her burden of proving that she suffered a substantial decrease in housing services because of the condition of the common areas, and that the landlords made necessary repairs in the common areas within a reasonable period of time after receiving notice of problems from the tenant. The ALJ also indicated that nothing in the Ordinance or Rules and Regulations allows an ALJ to require a landlord to reimburse a tenant for loss of personal property, the purchase of carpet in the rental unit, or the purchase of a refrigerator for a rental unit. The tenant appeals on the basis that she informed the ALJ that she did not want a decision to issue in this case.

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

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

##### B. 373 Ellis Street #215

AT180057

The tenant's petition alleging decreased housing services was denied. The ALJ determined that the tenant had access to the building via a landlord-provided buzzer entry

system; that the tenant did not meet his burden of proving that there is an ongoing, chronic problem with delayed tenant access to the building that caused a substantial decrease in housing services; and that key access to the exterior front door of the building is not required pursuant to Ordinance Section 37.13, which governs only rental unit keys and not building front door keys in single room occupancy hotels. The ALJ found that the tenant did not meet his burden of proving: that the landlord failed to provide operable shared-use showers or that the problem with intermittent drain clogs in a shower constituted a substantial decrease in housing services; and that the landlord failed to provide janitorial services on an ongoing basis, or that the problem with the stairway carpet in June 2017 constituted a substantial decrease in housing services. The ALJ also found that the landlord provides a reasonable alternate method of refuse removal when the garbage chute is inoperable, namely pickup of the tenant's garbage directly by the garbage chute. On appeal, the tenant argues that the ALJ did not consider the weight of the evidence; that the ALJ did not follow Ordinance Section 37.13 regarding key access; and that the ALJ was biased.

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

C. 449 – 9<sup>th</sup> Street #9

AT180054

The tenants' petition alleging an unlawful rent increase was denied. The ALJ found that original occupant John Uetz no longer permanently resided in the subject unit at the time the landlord served the notice of rent increase on November 8, 2017 and that subsequent occupant Terrill Grimes was a lawful subtenant who did not reside in the unit prior to January 1, 1996. The ALJ determined that the rent increase from \$1,089.79 to \$1,950.00 on February 1, 2018 was therefore authorized by Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act. The subsequent occupant appeals, arguing that he was a co-tenant and not a subtenant at the time the notice was served, because he tendered money orders to the landlord, and because the landlord allowed him to use a storage unit.

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

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

D. 1212 Pacific Avenue #1

AT180053

The tenant's petition alleging an unlawful rent increase was denied. The ALJ found that while the tenant petitioner had lived at the unit since November 2006 and communicated with the landlord regarding repairs and other matters, such conduct was consistent with his status as a lawful subtenant and does not by itself establish a direct landlord-tenant relationship with the landlord by conduct; and that the tenant petitioner was a lawful subtenant, and not a co-tenant, at the time the rent increase notice was served on January 11, 2018. The ALJ determined that the rent increase from \$2,065.87 to \$5,000.00

effective March 18, 2018 was therefore authorized by Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act. The tenant appeals, arguing that he was a co-tenant and not a subtenant at the time the notice was served because he communicated with the landlord and landlord's agents regarding repairs and other matters.

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

E. 1966 – 31<sup>st</sup> Avenue

AT180056

The tenant's petition alleging an unlawful rent increase was denied. The ALJ found that the subject tenancy commenced sometime after January 1, 1996; and that the Rent Board does not have jurisdiction over the amount of rent charged for the unit under Civil Code Section 1954.52(a)(3) of the Costa-Hawkins Rental Housing Act as a single-family dwelling. The tenant appeals, arguing that Civil Code Section 1954.53(d)(2) and the Drolapas case apply to the facts of this case because the tenant was a pre-1996 subtenant.

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

F. 1145 Bacon Street, Upper Unit

AT180059

The tenants' appeal was filed 1 day late because he did not receive the decision until July 5 due to the holiday, and he did not have the full 15 days to prepare his statement on appeal.

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

The landlord's petition seeking a determination of whether the Rent Board has jurisdiction over the amount of rent charged for the subject unit was granted. The ALJ determined that the subject property is exempt from the rent control provisions of the Ordinance under Civil Code Section 1954.52(a)(3)(A) as a single-family residence separately alienable from the title to any other dwelling unit. The tenants appealed, stating that they arrived late to the hearing and were unable to enter the hearing room, and that the Planning Department's dwelling unit removal application completed by the landlord was deceiving because it created the appearance that the unit remaining after removal would be a rent controlled unit. On May 8, 2018, the Board voted to accept the appeal and remand the case for a new hearing. The remand decision granted the landlord's petition. The ALJ found that the landlord met her burden of proving that the illegal lower unit of the subject property that was previously separately occupied is no longer intended for residential use as a separate unit; and that as of August 28, 2017 when the Certificate of Final Completion and Occupancy (CFCO) was issued, the Rent Board does not have jurisdiction over the amount of rent charged for the subject unit under Civil Code Section 1954.52(a)(3)(A) of the Costa-Hawkins Rental Housing Act because it is a single-family residence separately alienable from the title to any other dwelling unit. On appeal of the

remand decision, the tenants contend that the landlord has illegally obtained a permit to convert the two-unit property into a one-unit property.

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

G. 130 Grand View Avenue #3

AL180050

The tenant's petition alleging an unlawful rent increase was granted. The landlord was found liable for rent overpayments in the amount of \$59,697.17. The ALJ found that when the notice of rent increase was served on April 1, 2015, the tenant petitioner was a co-tenant and not a subtenant, and that the June 1, 2015 rent increase from \$3,011.45 to \$4,600.00 was not authorized by Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act and was null and void. On appeal, the landlord argues that the tenant waived his right to contest the Costa-Hawkins rent increase by voluntarily entering into a new rental agreement with the landlord at a higher rent; that there was no intention to create a direct landlord-tenant relationship with the tenant petitioner prior to the June 1, 2015 rent increase since the landlord never "approved" the tenant under the original lease agreement; that there was no "waiver" of the right to increase the rent on the tenant petitioner by acceptance of rent payments because there was no written notice from the original tenant that the tenant petitioner had moved into the unit; and that the tenant petitioner is not entitled to a full refund because he failed to submit any evidence that he paid rent for certain months and others living in the unit may be entitled to part of the refund.

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

H. 2258 Pine Street

AL180041

The landlord filed a petition for a determination of the lawful rent, and the tenant filed a petition alleging an unlawful rent increase. The landlord's petition was denied, and the tenant's petition was granted. The landlord was found liable to the tenant for rent overpayments in the amount of \$7,724.00, and the tenant's current lawful base rent was determined to be \$1,836.30 per month. The landlord appeals, arguing that the ALJ failed to consider that the tenant had not had her rent increased since July 2002, and asks the ALJ to order the tenant to continue paying \$2,053.00 until her new rent becomes effective in July 2018.

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

I. 1229 Vallejo Street

AT180052

The landlords' capital improvement petition for certification of the costs of a building permit; eighteen windows in the subject unit #1229; building-wide lead containment; and lead clearance testing to one of four units was granted. On appeal, the tenant contends that he lost use of his garage after the petition was filed and therefore the monthly garage

rent should not be included in his base rent for the purpose of calculating the maximum 5% increase during the first year of the capital improvement passthrough; and that the lead abatement work in the petition was required to correct a code violation for which a Notice of Violation (NOV) was issued.

MSF: To accept the appeal and remand the case to the ALJ to consider the Notice of Violation.  
(Mosbrucker/Qian: 2-3; Abe, Gruber, Hung dissenting)

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

J. 1315-1325 Sacramento Street

AL180055

The landlord's petition for certification of the costs of a mandatory soft-story seismic retrofit required by law to three of six units was granted in part and denied in part. The ALJ certified the capital improvement costs for all the items, but disallowed the cost of the siding on the shear wall under the deck because the work was not mandatory seismic retrofit work required by law and not otherwise necessary for completion of the required work. On appeal, the landlord claims that the Administrative Law Judge erred when she disallowed the \$1,800.00 cost of the siding, and submits a letter from her contractor to verify that the new siding was necessary in order to weatherproof the structural work.

MSF: To deny the appeal.  
(Mosbrucker/Qian: 2-3; Abe, Gruber, Hung dissenting)

MSC: To grant the appeal and remand the case to the ALJ to certify the siding cost.  
(Abe/Gruber: 3-2; Mosbrucker, Qian dissenting)

K. 4001-4011 – 24<sup>th</sup> Street

AL180051

The landlord's appeal was filed 5 days late because he was out of town when the decision arrived to his house, and he did not have the full 15 days to prepare the appeal.

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

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in three of eight units was denied. The ALJ denied the landlord's petition on the basis that the monthly cost increase for each of the subject units is less than the 1.6% allowable rent increase in effect at the time the petition was filed. Specifically, the landlord's increased insurance costs of 100% from Year 1 to Year 2 were the basis for the landlord's petition, but the landlord failed to provide any evidence or explanation as to why the insurance costs increased so significantly. The landlord appeals, arguing that that he does not need to explain the reason for the large increase in insurance costs as long as the paperwork establishes the cost.

MSC: To accept the appeal and remand the case to the ALJ to consider the landlord's explanation for the increase in insurance costs.  
(Abe/Qian: 5-0)

IV. Remarks From the Public (continued)

A. Michael Cheung, the landlord at 2258 Pine Street (AL180041) said that his appeal is specifically about the amount that is being ordered to pay back to the tenant. He said he felt that when the Board was voting on his appeal, they were discussing the entire Decision, which he thinks is wrong.

B. Terrill Grimes, 449 - 9<sup>th</sup> St #9 (AT180054), says he's been a tenant in the unit for 2 years, when the Lunas were the landlords, and he was waiting for a new lease when the new owners took over. Mr. Grimes said that he should have been considered a co-tenant, not a subtenant, and would like the Board to reconsider.

C. One of the landlords at 1315 Sacramento Street (AL180055) told the Board that he's hard of hearing and wanted to clarify the outcome of the appeal. He said that the wall wasn't cosmetic, and it sticks out like a sore thumb.

D. One of the tenants at 1145 Bacon Street, Upper Unit (AT180059) submitted a written statement for the Commissioners. She stated that the landlord illegally obtained the permit to convert the 2-unit property to a single family dwelling, because the Planning Department application contained false information. The tenant said that the landlord has two properties with increasing value, and that the landlord claimed that she was a single mother and low-income when she has two expensive vehicles and receives child support from her ex-husband who works at Sun Microsystems as an engineer.

E. A neighbor spoke on behalf of tenant Terrill Grimes at 449 - 9<sup>th</sup> St #9 (AT180054), and said that according to Rules and Regulations Section 6.14(c), Mr. Grimes met all three conditions regarding the prior landlord, as there was consent, it was transparent, and she knew he was there. The neighbor said that the prior landlord waived the right after 90 days for a rent increase. He said that one doesn't need a lease, as a lot of neighbors at the property don't have formal leases.

VI. Communications

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

- A. Updated copy of the Rent Ordinance.
- B. Workload statistics for June 2018.
- C. Articles from the S.F. Examiner, S.F. Chronicle, Guardian, CurbedSF, MissionLocal, S.F. Public Press.

## VII. Director's Report

Executive Director Collins told the Board that staff members Lehua Asher, Marissa Jimenez, Rene Juarez and Ben Ng conducted outreach at Sunday Streets in the Mission on July 15, and that there will not be any upcoming outreach for a few months. Executive Director Collins told the Board that the Housing Balance Report, which looks at the number of units being constructed as compared to how many units are taken off the rental market, will be scheduled to be heard on a new date in the fall, and the Rent Board is required to be present for any questions. Executive Director Collins informed the Board that he went to the SRO Task Force meeting, the SRO Task Force being comprised of the SRO collaboratives, tenants, and hotel operators. Executive Director Collins said that a member of the Task Force spoke at this meeting earlier, so he will convene meetings with community stakeholders to look at amendments to the SRO Uniform Visitor Policy.

## VIII. Old Business

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

At the Board's June 12, 2018 meeting, Senior ALJ 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 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 June 12, 2018 meeting, the Board directed staff to prepare a first draft of proposed Rules and Regulations reflecting the



amendments to the Ordinance for O&M passthroughs. At its July 10, 2018 meeting, the Board reviewed a draft of proposed amendments to Rules and Regulations Section 6.10.

At this meeting, SALJ Gartzman informed the Board that Commissioner Marshall had requested one small change on the proposed draft amendments to Rules and Regulations Section 6.10 to include the word “only” on page 3, subparagraph (e), in three locations on lines 21 and 22, and that no other commissioner had requested any additional changes. At the conclusion of the discussion, the Commissioners made and voted upon the following motion:

MSC: To put out for public hearing on September 11, 2018 the draft version of Rules and Regulations Section 6.10 that has just been agreed upon.  
(Mosbrucker/Qian: 5-0)

B. Amendment to Rules and Regulations Section 12.17 Regarding No-fault Eviction Notices

At the Board’s June 12, 2018 meeting, SALJ Gartzman explained 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 became 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 then discussed this matter at its July 10, 2018 meeting, directing staff to prepare draft Rules to bring to this meeting. Staff prepared two options, and the Board selected Option 2. At the conclusion of the discussion, the Commissioners made and voted upon the following motion:

MSC: To put out for public hearing on September 11, 2018 the draft version of Rules and Regulations Section 12.17 Option 2 that has just been agreed upon by the Board this evening.  
(Abe/Gruber: 5-0)

IX. Calendar Items

September 11, 2018

A. Consideration of Appeals

7 appeal considerations

B. Public Hearing

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

2. Amendment to Rules and Regulations Section 12.17 Regarding No-fault Eviction Notices

October 16, 2018

A. Proposal for new Rules and Regulations regarding the definition of bad faith

X. 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.**