



Edwin M. Lee
Mayor

Robert A. Collins
Acting 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, September 13, 2016
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 6:08 p.m.

II. Roll Call

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

Commissioner Dandillaya appeared on the record at 6:11 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 16, 2016.
(Mosbrucker/Marshall: 4-0)

IV. Consideration of Appeals

A. 1850 Sacramento Street #505 AT160107

The landlord's petition seeking 7% rent increases based on increased operating and maintenance expenses to the tenants in 23 units was granted. The tenant in one unit appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship.
(Marshall/Mosbrucker: 5-0)

B. 260 San Jose Avenue #106

AT160110

The tenants' petition alleging decreased housing services was dismissed due to their failure to appear at the scheduled mediation. On appeal, the tenants claim not to have received the Notice of Mediation and attach 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 tenants again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Marshall/Mosbrucker: 5-0)

C. 2438 – 18th Avenue

AT160104

The tenants' petition alleging decreased housing services of lack of heat, the poor condition of the bathroom wash basin, a leaking kitchen sink, the poor conditions of the bathtub and bathtub drain, an improper wall outlet, a running toilet, an improperly-sized garage side door, lost mail, the hallway being too bright at night or the failure to install a night light, the garage light not functioning properly, and the loss of hot water was denied. The Administrative Law Judge (ALJ) found that the claims: were not supported by the evidence and not credible, or, that the tenants did not meet their burden, or, that the landlord was not responsible for the condition of the item or conditions beyond his control, or, that the repair time was not unreasonable, or, that the condition of the item did not constitute a substantial decrease in housing services. On appeal, the tenants argue that they met their burden, that the landlord should have been responsible for some of the conditions, that the repair time was unreasonable, and that the items constituted a substantial decrease in housing services.

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

D. 555 Eddy Street #40

AT160108

The landlords' petition seeking a 7% rent increase based on increased operating expenses to the tenants in 29 units was granted. The tenant in unit 40 appealed, arguing that the landlords' petition was flawed and questionable, that it had wildly changing figures, deceptive or exaggerated expenses, questionable services, and that the property managers had inappropriate business practices. The Board voted to accept the appeal of the tenant in unit #40 and remand the case to consider the tenant's claims on appeal regarding the discrepancies between the expense amounts claimed in the petition and those found in the decision. On remand, the ALJ found that discrepancies between the expense amounts claimed in the petition and those found in the decision were primarily due to mathematical errors in the petition amounts claimed, and granted the petition. On appeal of the remand decision, the tenant argues that it is inappropriate to substitute new figures at a hearing which are different from those initially filed with the petition, that remand of cases following appeals should be referred to different administrative law judges, that there are still wildly changing figures, and that the petition should be dismissed.

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

E. 1780 McAllister Street #5 AT160109

The tenant's petition alleging decreased housing services and a rent increase beyond the allowable limits was denied. The ALJ found that the tenant did not meet his burden of proving that the landlord failed to reasonably respond to his complaints concerning pest control, lack of heat, and mold in the unit. The ALJ also found the landlord's rent increases did not exceed the allowable limits. On appeal, the tenant argues that management should independently inspect the property to ascertain whether or not rodents had been eliminated, and that the ALJ erred in concluding that management had provided adequate heating by failing to ask the tenant to provide independent evidence of such, and that the ALJ erred in concluding that the owner remediated the mold problem based on the evidence provided.

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

F. 1010 Hollister Avenue AL160105

The tenant's petition alleging that the landlord unlawfully increased the rent over the allowable limits and request for determination of whether their rent is a lawful amount was granted. The ALJ found that the subject unit is not exempt from the rent control limitations of the Ordinance and that the landlord was liable to the tenant in the amount of \$5,375.00 for rent overpayments resulting from null and void rent increases. The landlord appeals, arguing: that her failure to prepare and submit capital improvement and utility passthrough petitions was an oversight, that the tenant should reimburse her for changed locks, that there is ambiguity regarding the landlord liability for the overpayment sum, and that the new rent amount should be implemented retroactively.

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

G. 2238 - 2240 – 19th Street AL160106

The landlord's petition seeking a 7% rent increase based on increased operating and maintenance expenses to the tenants in two units was denied. The ALJ found that the evidence did not show that the operating and maintenance expense increase between Year 1 and Year 2 exceeded the 1.9% annual rent increase. The landlord appealed, arguing that the new bathroom fan installed in unit 2240 was a replacement of a previously installed fan that had broken, and should be considered a repair in Year 2 rather than being disallowed because it is a capital improvement.

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

H. 78 Waller Street

AL160111

The landlord appeals the decision denying the landlord's petition under Rules and Regulations Section 1.21, Ordinance Section 37.3(d), and the Costa-Hawkins Rental Housing Act. In the decision, the ALJ denied the landlord's petition requesting a determination that the landlord is entitled to impose an unlimited rent increase pursuant to Rules and Regulations Section 1.21 and the Costa-Hawkins Rental Housing Act. The ALJ found that the master tenant is an original occupant who took possession of the subject unit pursuant to a written agreement with the landlord, and that the landlord had not met its burden of proving the master tenant no longer permanently resided in the subject unit on the date of the filing of the landlord's petition. The ALJ denied the tenant's petition as moot. The landlord appeals, arguing that the tenant's maintenance of two residential rental units is contrary to the purpose of the Rent Ordinance, that the tenant should not be allowed more than one unit in which she permanently resides, and that the ALJ should have considered other evidence in determining the tenant's primary residence.

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

V. Remarks from the Public

A. Landlord Tracey Ramirez of 1010 Hollister Avenue (AL160105) stated that she had six points in her appeal and has submitted a utility passthrough petition and a capital improvement passthrough petition and asked if everything in her appeal had been denied.

B. Chelsea Khoo, one of the tenants at 2438 – 18th Avenue (AT160104) asked why the Board would not consider the 2014 claims against the prior landlord. Ms. Khoo asked the Board to reconsider the denial of her appeal.

C. Joy Baby Tun, the other tenant at 2438 – 18th Avenue (AT160104) stated that whenever they complained, the landlord's lawyer argued the house should be exempted, but that she thinks the house should not be exempted because the landlord rented the house out to several people.

VI. Communications

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

- A. A copy of amended Rent Ordinance Sections 37.2 and 37.9 with updated Table of Contents and List of Rent Ordinance Amendments, effective September 4, 2016.
- B. Copy of San Francisco Superior Court Order granting petition for writ of mandate and enjoining enforcement of Board of Supervisors Ordinance #160100 entitled "No Fault Eviction Protections During School Year," dated August 31, 2016.
- C. A letter from landlord John Artal expressing his displeasure with the Board's disposition of his recent appeal. (AL160086)

- D. Litigation Status Report prepared by Senior ALJ Tim Lee.
- E. The office workload statistics for the month of July 2016.
- F. Articles from San Francisco Chronicle, the S.F. Examiner, SFGate, MissionLocal, the Sacramento Bee, BeyondChron, and the Santa Rosa Press Democrat.

VII. Director's Report

Acting Executive Director Collins told the Board that the Superior Court enjoined enforcement of the Board of Supervisors' ordinance regarding no fault eviction protections during the school year for educators on August 31, 2016. He explained that Rent Ordinance Section 37.9 has reverted back to the version that was in effect prior to the enactment of this Board of Supervisors ordinance amendment, and that the City Attorney has not informed Rent Board staff if the City will appeal. Acting Executive Director Collins informed the Board that the Governor has signed State Assemblymember David Chiu's AB 2819 which keeps more unlawful detainer records private if the tenant does not lose the lawsuit. Staff members Jennifer Rakowski, Aaron Morrison and Roger Levin performed outreach at Sunday Streets: on August 21 in the Mission, and on September 11 in the Western Addition. Acting Executive Director Collins and Senior ALJ Gartzman will present at the SF Apartment Association's Member Meeting on September 19.

VIII. Old Business

A. Replacement of the Executive Director

The Board briefly discussed the process for replacement of the Executive Director. President Gruber stated that he would meet with the Mayor regarding the issue prior to the October 11, 2016 Board Meeting.

MSC: To continue the Old Business agenda item regarding replacement of the Executive Director to the October 11, 2016 Board Meeting.
(Gruber/Abe: 5-0)

IX. Potential Closed Session: Public Employee Appointment/Hiring – Rent Board Executive Director

- A. Vote on whether to go into closed session (S.F. Admin. Code 67.10(b), 67.11)
- B. Potential closed session (Gov't Code 54957.9(b)(1); S.F. Admin. Code 67.10(b))
- C. Vote on whether to disclose and possible disclosure of any/all conversations held in closed session (S.F. Admin. Code 67.12(a))

MSC: To continue the Potential Closed Session agenda item regarding Public Employee Appointment/Hiring – Rent Board Executive Director, to the October 11, 2016 Board Meeting.
(Gruber/Abe: 5-0)

X. Calendar Items

October 11, 2016

8 appeal considerations

Old Business

Replacement of the Executive Director/Hiring

Potential Closed Session

XI. Adjournment

President Gruber adjourned the meeting at 7:10 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.