



Edwin M. Lee
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, October 11, 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 6:06 p.m.

II. Roll Call

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

III. Approval of the Minutes

MSC: To approve the Minutes of September 13, 2016.
(Mosbrucker/Marshall: 5-0)

IV. Remarks from the Public

A. Andrew Wiegel, the attorney for the landlord at 3435 Cesar Chavez Street #206, #327, #335, and Tower (AL160085) argued that after 35 years of established law with regard to this 60 unit building, a landlord who has followed the law will now retroactively face huge administrative expenses and potential arguments of retroactive criminal activity. He asked the Board to consider the just and fair position of applying the law prospectively if it is to be applied at all.

B. Brett Gladstone has been a real estate land use attorney for almost 30 years, and spoke in support of the landlord at 3435 Cesar Chavez Street #206, #327, #335, and Tower (AL160085). He told the Board that this property involved the creation of new units by entirely new construction and that what happened here would not be considered conversion, and it was not possible to convert to "live/work" in 1979.

C. Dennis Zaragoza, the tenants' attorney at 3435 Cesar Chavez Street #206, #327, #335, and Tower (AL160085) stated that he objected to the landlord's submission on due process grounds and told the Board that the subject units are live/work units. He argued that landlord's counsel has argued that retroactivity is not fair, but this was specifically addressed in the Denekas case, where the appellate court found that retroactivity could be applied by S.F. Rent Regulations. Mr. Zaragoza said that if there was a mistake in statutory interpretation, it is the duty of the agency to correct it, not to continue to ignore it.

D. Maurice Campbell told the Board that he has sat on various commissions and wanted to address the process of self-representation at the Rent Board. He stated that more than 80% of tenants cannot afford attorneys, while many landlords can afford attorneys. Mr. Campbell said he thinks ALJs need to be brought up to speed on this, or else they will wind up with lots of cases going to Superior Court.

E. Edward Singer, the landlord's attorney at 52 Calhoun Terrace (AT160112) urged the Board to support the decision on this matter because there was substantial evidence in the record. Mr. Singer stated that subsequent evidence suggested that there was a duty to provide a reasonable accommodation for an accommodation that was never requested, but the correct decision was rendered.

F. The subtenant at 752 4th Avenue (AT160114), Nathan Pierce, stated that he filed a petition for disproportionate rent in a non-rent controlled unit. He said he understood that the Rent Board is allowed to prohibit what landlords can do, but Costa-Hawkins is allowed to overrule some of those laws. Mr. Pierce argued that Costa-Hawkins does not prohibit a city's ability to prohibit a master tenant from charging disproportionate of rent, and that this issue is not preempted by Costa-Hawkins. He asked that the Board give this matter full consideration.

G. Ethan Schur stated that he lives with his senior citizen father at 3 Coso Avenue (AT160116). Mr. Schur stated that the ALJ erred because she did not give sufficient weight to the evidence provided of his father's voter registration, utilities that have been paid at the subject property, his father's personal possessions there, the fact that his father never filed a homeowner's tax exemption on any other property, that the tenant returns there every day, and that he had four ex-roommates that know the place as his normal place of return.

H. Michael Rossoff, the landlord attorney at 3 Coso Avenue (AT160116) told the Board that the ALJ went through all of the evidence in favor of the landlord, specifically because the tenant was using the premises to sublet while he was living a mile away with his name on that mailbox. Mr. Rossoff stated that the tenant made additional submissions, but none of the declarants were living in the subject unit at the time the tenant was served with the notice of rent increase, so there's no reason to overturn the decision.

I. Steven Schur, the tenant at 3 Coso Avenue (AT160116) stated that he sleeps at the subject property every night. He said that it's true that the evidence is conflicting and the evidence that was submitted is contradicted by the landlord's own petition. Mr. Schur told the Board that some of the people who submitted statements are family members of the former landlord who had to sell the property for medical reasons, and that he couldn't reach those people at the time of hearing, and one was out of state.

J. Margaret Harvey stated that she lived at 52 Calhoun Terrace (AT160112) for 47 years, and is a disabled self-represented litigant. Ms. Harvey told the Board that she only went to live at her mother's house that was vacant for 5 years when she was required to remove the barrier that kept the pets off the balcony. Ms. Harvey explained that she pays her bills at the subject property, and that her telephone number is at the subject property, and she only gave an alternate number at the time her mother was ill for emergencies. She said that one of the landlord's detectives that interviewed her neighbor claimed that Ms. Harvey moved in right after her mother passed away, and that statement should not be taken as fact.

K. Khaled Sayed, a tenant at 3435 Cesar Chavez Street #206 (AL160085) told the Board that he lived in the subject unit with his husband for 10 years. Mr. Sayed stated that the Board requested the tenants find evidence that people were living there and now they have found evidence that people were living there before 1979 and they are entitled to rent control. Mr. Sayed stated that the landlord is on the wrong side of the law, and that it's in the Board's hands.

V. Consideration of Appeals

A. 3870 – 18th Street #C

AL160113

The tenant's petition alleging decreased housing services for the denial of the use of a roof deck was granted. The landlord was found liable to the tenant in the amount of \$550.00. On appeal, the landlord argues that the former landlord's agreement with the tenant for use of an unpermitted roof deck is void as an illegal contract, and therefore, the use of the unpermitted roof deck is a not a valid housing service that can be decreased.

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

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

B. 850 Oak Street #3

AL160119

The subtenant's petition alleging that he paid a disproportional share of his rent was granted. The master tenant was found liable to the subtenant in the amount of \$5,771.63. On appeal, the master tenant argues that the value of the cleaning services of \$125.00 twice per month and the value of the subtenant's storage of belongings in the basement should be considered in the subtenant's proportional share, and that there is no possibility the master tenant is able to pay back the subtenant.

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

C. 1215 Broadway Street, Lower Flat

AL160115

The tenant's petition alleging decreased housing services was granted. The ALJ found the landlord liable to the tenant in the amount of \$6,850.00 for a hole in the bathroom ceiling, a broken hallway light, inoperable exterior entrance lights, openings in the hallway wall with exposed wiring, kitchen ceilings and walls with cracked and bubbling paint, scalding hot water temperature, exposed electrical wires in the child's bedroom closet, an improperly functioning window, and mold and mildew between the bathtub and tile. On appeal, the landlord argues that the bathroom ceiling, wall plumbing access openings, bathroom tile, and windows were repaired and there had been no problem with them after the building was painted, that the scalding hot water temperature and earthquake strapping on the water heater were corrected, the hallway wall and ceiling are scheduled to be repaired, that the kitchen ceiling and wall corner leak was never reported, and that the moldy area in the bathroom just needed to be cleaned.

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

D. 52 Calhoun Terrace

AT160112

The landlord's petition requesting a determination as to whether the landlord is entitled to increase the rent without limitation pursuant to Rules and Regulations Section 1.21 was granted. The ALJ found that the subject unit was not the tenant's principal place of residence at the time of filing of the petition, and that the rent increase to \$3,250.00 was lawful. On appeal, the tenant argues that she had to move her assistance animals to a safe location because the landlord took down a protective fence at the unit, which was a denial of her rights as a disabled senior, and that some of the testimony at the hearing was not accurate.

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

E. 668 Greenwich Street

AL160117

The subtenant's petition alleging decreased housing services was granted in part and denied in part. The ALJ found that the master tenant was liable to the subtenant in the amount of \$200.00 for lack of all access to the living room. The subtenant's rent was also reduced for the lack of access to the garbage bins. The ALJ additionally found that the lack of a mailbox key was not a housing service provided at the inception of the tenancy or one reasonably expected under the circumstances, and that the subtenant's quiet enjoyment claims were adjudicated and denied in Superior Court and are barred by *res judicata* and may not be re-litigated at the Rent Board, so no rent reduction was awarded for the claims. On appeal, the master tenant argues that the subtenant's loss of the use of the living room was necessary and that there is no basis for a 10-month period of additional compensation for the loss of living room access.

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

F. 3435 Cesar Chavez Street #206, #327, #335, Tower AL160085
(cont. from 8/16/16)

Tenants of units 206, 327, 335 and the Tower unit at the subject property filed petitions alleging unlawful rent increases beyond the allowable limit, and requested a determination of whether the Rent Board had jurisdiction over the subject tenancies. The request was granted, and it was determined that all four units are subject to the jurisdiction of the Rent Ordinance. The ALJ found that the landlord did not establish that there had been no residential tenancy in the building of any kind between June 13, 1979 and the date of issuance of the Certificate of Occupancy (CFCO) and therefore did not meet their burden of proving that the subject units were exempt from the Rent Ordinance. On appeal, the landlord argues that: the ALJ failed to consider the principle of *stare decisis*, that Rules and Regulations Section 1.17(e) has been established as controlling, that the requirements of Rules and Regulations Section 1.17(g) should be found to be met, and that the doctrine of equitable estoppel bars the denial of the validity of the prior decisions and the belated attempt to apply regulation. The case was considered by the Board at the August 16, 2016 meeting and was continued to allow the parties to submit any additional evidence on whether there had been residential use of the property between June 13, 1979 and the September 27, 1979 date of issuance of the CFCO.

MSC: To deny the landlord's appeal on the issue of jurisdiction and to remand the tenants' unlawful rent increase claims for the ALJ to determine the tenants' lawful rents and the amount of any overpayments, and to consider the landlord's financial hardship claim.
(Marshall/Mosbrucker: 4-1, Abe dissenting)

G. 752 – 4th Avenue AT160114

The subtenant filed a petition for disproportional share of rent under Rules and Regulations Section 6.15C(3). The ALJ issued an administrative dismissal of the petition without a hearing due to lack of Rent Board jurisdiction since the subject property was a single-family dwelling that was exempt from rent control limitations under Civil Code Section 1954.52(a)(3) of the Costa-Hawkins Rental Housing Act and Rent Ordinance Section 37.2(r)(7). On appeal, the subtenant argues that the subtenant protections in Section 6.15C(3) apply to all rental units regardless of whether or not they are subject to the rent control limitations of the Ordinance.

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

H. 3 Coso Avenue AT160116

The tenant appeals the decision granting the landlord's petition under Rules and Regulations Section 1.21 and the Costa-Hawkins Rental Housing Act, and denying the portion of the tenant's petition alleging an unlawful rent increase. In the decision, the ALJ found that when the landlords served the notice of rent increase, the tenant did not permanently reside in the subject unit, and that the rent increase was authorized by Civil

Code Section 1954.53(d)(2). The ALJ also found that the tenant did not meet his burden of proving that the wiring in the subject unit was faulty or that it constituted a substantial decrease in housing services, that the access issue with the circuit breaker panel constituted a decrease in housing services included in the tenant's base rent, and that there was inadequate heat in the bedrooms, and that the faulty wiring in room #1 was fixed within a reasonable time. The tenant appeals only the determination that the rent increase was lawful, arguing that the ALJ gave undue weight to certain witness statements which were biased and not unimpeached, and that he provided sufficient documentation to show he has been residing at the subject unit.

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

I. 1514 Washington Street

AL160118

The landlords' petition under Rules and Regulations Section 1.21, Ordinance Section 37.3(d), and the Costa-Hawkins Rental Housing Act was denied. In the decision, the ALJ found that the landlords had not met their burden of proving that the tenant did not reside in the subject unit as his principal place of residence at the time the petition was filed and was not a "tenant in occupancy" pursuant to Section 1.21 at that time. The ALJ also found that the tenant was an original occupant who took possession of the subject unit pursuant to the rental agreement with the landlords, and that the landlords were not entitled to impose a rent increase under Costa-Hawkins. The landlord appeals, arguing that the tenant moved to a different address in 2014, that the tenant's driver's license reflects that address, that the tenant registered to vote using the subject unit address only after the landlord's petition was filed, that he submitted only one other document reflecting the address of the subject unit, and that additional evidence should be required of the tenant to prove occupancy.

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

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

IV. Remarks from the Public (cont.)

A. Alex Volcov, the attorney for the landlord at 3870 18th Street (AL160113) wanted to clarify whether the amount discussed by the Board was decreased. He stated that the only requirement was that the tenant use the deck legally.

B. Jay King, the master tenant at 850 Oak Street (AL160119), made copies of documents regarding his roommate's hoarding and wanted to know if the commissioners saw it, because he said it seemed to him like it was glazed over. He said he does not know where the money to pay the overpayment is going to come from.

VI. Communications

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

- A. Workload statistics for the month of August 2016.
- B. The Annual Statistical Report for fiscal year 2015-16.
- C. Articles from S.F. Chronicle and the S.F. Examiner.

VII. Director's Report

Acting Executive Director Collins told the commissioners that the Rent Board has been assigned a new Mayor's Office budget analyst named Raven Anderson, and that Acting Executive Director Collins and Acting Deputy Director Varner would meet soon with Mr. Anderson, who will also attend an upcoming Board meeting. Acting Executive Director Collins informed the Board that staff members Ben Ng and Jennifer Rakowski conducted outreach at the request of Supervisor Tang's office, which was a successful and well-attended event in the Sunset.

VIII. Old Business

A. Replacement of the Executive Director

After a short discussion, the commissioners voted to go into closed session to discuss replacement of the executive director.

MSC: To go into closed session regarding the Old Business item of Replacement of the Executive Director.
(Marshall/Mosbrucker: 5-0)

IX. 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)

MSC: To go into closed session regarding public employee appointment and hiring of the Rent Board Executive Director.
(Marshall/Mosbrucker: 5-0)

B. Closed session (Gov't Code 54957.9(b)(1); S.F. Admin. Code 67.10(b))

The Board went into closed session from 7:49 p.m. to 7:59 p.m. to discuss public employee appointment and hiring.

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: Not to disclose the Board's discussion regarding public employee appointment and hiring of the Rent Board Executive Director.
(Gruber/Mosbrucker: 5-0)

After the closed session concluded, an announcement was made that the Board held a closed session to discuss public employee appointment and hiring of the Rent Board Executive Director and voted not to disclose the content of that conversation.

X. Calendar Items

November 15, 2016
9 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 8:02 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.