



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, October 16, 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: Crow; Dandillaya; Gruber; Marshall; Mosbrucker; Qian; Wasserman.
Commissioners not Present: Abe; Hung; Mosser.
Staff Present: Collins; Gartzman; Koomas; Varner.

III. Approval of the Minutes

MSC: To approve the Minutes of September 11, 2018.
(Wasserman/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Laura Daza, the non-attorney representative for subtenant Teresa Orea at 1237 Potrero Avenue #B (AT180073), stated that the subtenant filed an appeal to request an additional hearing because the subtenant's fair share of rent was calculated based on the number of rooms in the unit, when she actually lives in a closet, and her room is significantly smaller. Ms. Daza said that the subtenant should be given the opportunity to provide further evidence and the Administrative Law Judge (ALJ) should take into consideration the size of the subtenant's room and the other tenants' rooms to calculate the fair share of the rent.

B. Peter Tan told the Board that he is a nonlawyer representing himself and his family who are the landlords at 448 Peninsula Avenue, Lower Unit (AL180074). He said that they currently have evidence of forgery by the tenants, as the former tenants in the unit applied for subsidized housing claiming that his disabled sister was the landlord. Mr. Tan said that they are trying to talk to the legal department of the Housing Authority.

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C. Attorney Patrick Connolly told the Board that he is representing the landlord at 1856 Pacific Avenue (AL180070), and that one tenant is refusing to leave the unit after being served a temporary capital improvement eviction notice thereby blocking the remaining tenants from returning, and blocking the landlord from doing the work. Mr. Connolly said that the erroneous decision puts the landlord at a dead end at the Rent Board, and that there is no way to get the last tenant out other than the Ellis Act. Mr. Connolly argued that the landlord should be able to file a new petition without prejudice, and allow the tenants, including a 90-plus year old woman, back into their homes. He asked the Board to remand the case for a finding that Rules and Regulations Section 12.15 (e)(1) applies, not 12.15(e)(2), which would allow the landlord to file a new petition and serve a new notice, and to not put the LL in the "impossible box."

D. Alan Glenn, a resident of 1856 Pacific Avenue (AL180070), told the Board that one of the things the ALJ noted was that the petition was denied because all of the required permits were not in place. He said that even at the time of the ALJ's Decision and reply to the appeal, those permits were not in place. Mr. Glenn said that he is in regular contact with the aforementioned 95 year old woman who was effectively forced to move back to Canada in the middle of the winter. He said he would like these things to be taken into account.

E. Andres Sanchez, attorney for the landlord at 1440 Steiner Street #3 (AT180069) said that the tenant's response made issue with his neighbor smoking, but since they did not get a copy of the lease, so they have no prohibition in the lease that they can enforce against the other tenant. He also said that the tenant's appeal cites the Health Code, but nothing in the Health Code supported his argument, and that the tenant misstates facts. Mr. Sanchez said he hopes the Board rejects the appeal.

F. Cristian, representing master tenant Gloria Crisostomo at 1237 Potrero Avenue #B (AT180073), said that the amount the subtenant pays the master tenant is according to what the master tenant pays to the landlord. He said that the subtenant pays \$570.00 for a small room, but the others must pay more for rooms which are larger.

G. Peter Tan, one of the landlords at 448 Peninsula Avenue, Lower Unit (AL180074) said that when their tenants first moved in, there were five tenants living there, and then two more tenants moved in without any notice, which the landlords didn't find out until three months later. Mr. Tan said that the tenants in this case weren't the tenants that were on the original lease and because of the forgery they did with his sister's signature, they needed a lease agreement to show the affordable housing office, and hopes that Commissioners will reject the ALJ's Decision.

H. Patrick Connolly, attorney for the landlord at 1856 Pacific Avenue (AL180070), said that attorney Andrew Westley represents the 90-plus year old tenant, and says that she wants to return to the building, and is adamant that the settlement agreement contains that term.

I. Alan Glenn, a resident of 1856 Pacific Avenue (AL180070), says the tenant that Mr. Connolly just spoke of resides in the building.

J. Ramon Zavala, one of the tenants at 2817- 22nd Street (AL180076), told the Board that the landlord appealed the decision claiming that he has evidence, but wanted to bring up that the inspector noted that all of the items remain unabated, it's incomplete, and the landlord has to fix it. Mr. Zavala asked the Board to reject the appeal.

V. Consideration of Appeals

A. 1401 Ocean Avenue #2

AT180067

The tenants' petition alleging decreased housing services, unlawful rent increases, and challenging a water revenue bond passthrough was dismissed due to the tenants' non-appearance at the hearing. On appeal, the tenants claim that they missed the hearing because they confused the date with the date for a family member's medical appointment.

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/Wasserman: 5-0)

B. 1159 Alabama Street

AL180075

The master tenant's appeal was filed 16 days late because she did not receive the decision at the subject property due to unreliable mail service.

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

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$1,598.48 and determined that the subtenant's proportional share of the rent is \$385.19. On appeal, the master tenant contends that she never received the notice of hearing due to unreliable mail service, and submitted a Declaration of Non-Receipt of Notice of Hearing or Decision. The master tenant also argues that her room is smaller than the biggest bedroom, and that the value of her services as the master tenant should have been considered, such as her responsibilities for paying the rent on time, replacing defective appliances, and handling repair requests with the landlord.

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

C. 3890 – 22nd Street

AL180068

The subtenant's petition alleging a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$5,075.07 and determined that the subtenant's proportional share of the rent is \$833.33.

On appeal, the master tenant contends that technical difficulties and work scheduling issues prevented him from timely appearing for the rescheduled hearing. The master tenant also argues that there have only been two occupied bedrooms and one large walk-in storage room during the subtenant's tenancy, not three bedrooms as the subtenant claims; that the subtenant has always exclusively occupied one bedroom and the walk-in storage room, with one other subtenant using the second bedroom; and that monthly cleaning and internet services should increase the total value of services provided by the master tenant by \$100.00.

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

D. 1237 Potrero Avenue #B

AT180073

The subtenant's petition alleging a disproportional share of rent was denied. The ALJ found that the subtenant failed to meet her burden of proving that the master tenant increased the rent over the allowable limits. On appeal, the subtenant argues that she occupies the smallest room in the unit, and the ALJ should have calculated the proportional share based on square footage of exclusively occupied space, not by the number of bedrooms in the unit.

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

E. 1440 Steiner Street #3

AT180069

The tenant's petition alleging decreased housing services was granted in part and denied in part. The landlord was found liable to the tenant for rent reductions for the noise disturbance between March 2017 until mid-July 2017 in the amount of \$900.00. The ALJ found that the tenant failed to meet his burden of proving that the landlord's conduct with respect to the tenant's claim of secondhand smoke from adjacent unit #4 constituted a substantial decrease in housing services. The ALJ also found that the tenant failed to meet his burden of proving that: the landlord failed to adequately maintain the common areas and backyard; that there were bedbugs in the subject unit; that the presence of bedbugs in a neighboring unit constituted a substantial decrease in housing services; or that the condition of the exterior paint or the presence of paint chips in the unit constituted a substantial decrease in housing services. The tenant appeals, arguing that the ALJ erred in denying the tenant's claim of secondhand smoke because the landlord never produced a copy of the written lease agreement for neighboring unit #4 to show whether or not smoking in unit #4 is prohibited.

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

F. 2817 – 22nd Street

AL180076

The tenants' petition alleging decreased housing services was granted in part and denied in part. The landlord was found liable to the tenant for rent reductions for a broken

doorbell buzzer; broken linoleum flooring; and an inoperable bathroom window in the total amount of \$850.00. The ALJ further found that the tenants did not meet their burden of proving that the landlord or other tenants prevented their access to or use of the backyard; or that the landlord failed to reasonably respond to their complaints regarding the stovetop ventilation or that the condition of the stovetop hood itself constituted a substantial decrease in housing services; and that the tenant petitioners prevented the landlord from repairing the mailbox. The tenants appealed, arguing that the landlord's offer to repair instead of replace the mailbox was inadequate and the broken mailbox was still not fixed; that linoleum flooring in both the kitchen and bathroom had not been fixed; and that the stovetop hood ventilator did not function. The landlord also appealed, claiming that the floor was repaired after the hearing. At its May 8, 2018 meeting, the Board voted to accept both the tenants' and the landlord's appeals and to remand the cases to the ALJ solely to consider the repair date of the linoleum kitchen flooring. In the remand decision, the landlord was found liable to the tenants for rent reductions for a broken doorbell buzzer; broken linoleum kitchen flooring; and an inoperable bathroom window in the total amount of \$1,200.00. The remand decision also held that the tenants' rent would continue to be reduced by \$50.00 until the July 31, 2017 Notice of Violation is abated as to the linoleum kitchen flooring. The landlord appeals the remand decision, claiming that repairs to the broken linoleum kitchen flooring were made in January 2018.

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

G. 378 Golden Gate Avenue #326

AT180071

The tenant's summary petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that original occupants Philip Cortland and Harlean Sigmon no longer permanently resided in the subject unit at the time the landlord served the notice of rent increase on or about June 9, 2018 and tenant petitioner Arlo Hale Smith was a lawful subtenant who did not reside in the subject unit prior to January 1, 1996. The ALJ determined that the rent increase from \$728.71 to \$1,600.00 was authorized by Civil Code Section 1954.53(d)(2) and the lawful rent effective September 1, 2018 is \$1,600.00. On appeal, the tenant petitioner argues that under the Ordinance, the landlord cannot unreasonably refuse a request to add a spouse to a lease.

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

MSC: To deny the appeal.
(Gruber/Dandillaya: 3-1; Marshall dissenting)

H. 448 Peninsula Avenue, Lower Unit

AL180074

The tenants' petition alleging an unlawful rent increase was granted. The landlord was found liable for rent overpayments resulting from null and void increases for the period from February 1, 2015 through August 31, 2018 in the amount of \$4,428.78, and the

tenants' current lawful base rent was found to be \$1,300.00. The landlords appeal, arguing that the tenancy commencement date should be July 2014 at a monthly rent of \$1,390.00 instead of the tenancy commencement date of November 2, 2011 at an initial monthly rent of \$1,300.00 because the tenant petitioners were not physically present on November 2, 2011 and were not named on and did not sign the November 2, 2011 written rental agreement; and that the Decision incorrectly calculated the annual and banked rent increases available at the time of the March 1, 2018 rent increase.

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

I. 4150 Cabrillo Street #2

AT180072

The landlords' petition for a rent increase to \$1,020.68 based on comparable rents was granted in part and denied in part. The ALJ found that the initial base rent of \$350.00 on October 1, 1990 was set very low due to the special family relationship between the prior landlord's trustee and tenant respondent Sally Liang Gan, who was related to the landlord trustee's husband, whether by blood or by community connection. The ALJ further found that the comparable market rent for the unit on October 1, 1990 was \$600.00 per month. The tenants appeal on the basis that the prior landlord's trustee charged all her tenants low rent and that there was no special relationship between the prior landlord's trustee and the tenants that would justify a comparable rents increase.

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

J. 1856 Pacific Avenue

AL180070

The landlord's petition for an extension of time to complete capital improvement work was denied on the grounds that the landlord failed to timely file the petition immediately after it was apparent that the work would take longer than three months to complete; and the landlord's estimate of January 27, 2019 to complete the work was found to be unreasonable because the landlords had not obtained all the necessary permits to complete the capital improvement work as of the date of the hearing. On appeal, the landlord argues that since the landlord filed the extension of time petition before giving the April 10, 2018 notice to vacate pursuant to Rules and Regulations Section 12.15(b)(1), the petition was filed in a timely manner.

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

IV. Remarks From the Public (continued)

A. Laura Daza, the non-attorney representative for subtenant Teresa Orea at 1237 Potrero Avenue #B (AT180073), says they filed the appeal because proportion can be based on how much rent is paid to the landlord, square footage, or equal division. Ms. Daza said that the ALJ didn't question how much was paid for rent, and she doesn't understand why the

appeal was denied since the decision says the master tenant failed to meet her burden of proof.

B. Patrick Connolly, attorney for the landlord at 1856 Pacific Avenue (AL180070), asked if the Rent Board received and considered the letter filed on October 11, 2018.

C. Cristian, representing master tenant Gloria Crisostomo at 1237 Potrero Avenue #B (AT180073), said that the master tenant pays \$700.00 for her room, compared to the other one who pays about the same, plus bills on top of that.

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 2018.

B. Articles from S.F. Examiner, S.F. Chronicle, S.F. Weekly, Mercury News, S.F. Public Press, and S.F. Business Times.

VII. Director's Report

Executive Director Collins informed the Board that staff members Aaron Morrison and Josh Vining conducted outreach in the Excelsior at the last Sunday Streets event on October 14; Deputy Director Varner & Executive Director Collins presented at the SF Apartment Association membership meeting on September 17; and Executive Director Collins presented to the Small Property Owners Institute on October 9. Executive Director Collins then told the Commissioners that he sent them the Rent Board Annual Statistical Report, which is also available on the website. He highlighted the new table entitled Owner Move in Rescission Requests, 30-Year Trend and highlighted various statistics. Executive Director Collins let the Board know that if Proposition 10 should pass in November, it would make sense to calendar a discussion of Rules and Regulations Section 6.14 amendments for the November 13 board meeting, as the last changes to Section 6.14 were made in reliance on Costa-Hawkins. He finally told the Commissioners that the holiday party will be on December 6.

VIII. Old Business

(There was no Old Business.)

IX. New Business

A. Proposal for new Rules and Regulations Regarding the Definition of Bad Faith

At the September 11, 2018 board meeting, Commissioner Mosbrucker requested that the board consider a proposal for new Rules and Regulations regarding the definition of bad faith. Some court cases for the Board to consider was distributed to the Commissioners. The Commissioners agreed they would review the materials

before the November 13, 2018 board meeting, and would keep the item on the agenda to be considered as old business at the November 13, 2018 meeting.

X. Calendar Items

November 13, 2018

A. Consideration of Appeals

9 appeal considerations

B. New Business

Proposal to amend Rules and Regulations Section 6.14 due to passage of Proposition 10, discussion to be held only if Proposition 10 passes

XI. Adjournment

President Gruber adjourned the meeting at 7:15 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.