



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 17, 2017
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 6:02 p.m.

II. Roll Call

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

President Gruber departed the meeting at 6:59 p.m., at which time Commissioner Marshall, as Vice-President, began officiating.

III. Approval of the Minutes

MSC: To approve the Minutes of September 12, 2017.
(Marshall/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Andrew Wiegel, the landlords' attorney for 3435 Cesar Chavez Street #335, #206, #327 & Tower Unit (AL170060, AL170061, AL170062 and AL170063), told the Board that he was not there to reargue the jurisdictional issue; rather, he was there regarding the fundamental fairness of essentially reversing the prior decision. Mr. Wiegel stated that the tenant petitioners took occupancy believing that the building was not subject to rent control, and the owners operated as such. Mr. Wiegel asked the Board to either apply rent control prospectively and not retroactively penalize the owners simply because there has been a change of policy, or, to permit those increases that could have legally been imposed had the landlords known they were subject to rent control.

B. Dennis Zaragoza, attorney for the tenants at 3435 Cesar Chavez Street #335, #206, #327 & Tower Unit (AL170060, AL170061, AL170062 and AL170063) told the Board that even though the parties are not arguing jurisdiction, the majority of the landlord's brief was an attack on jurisdiction, to which he objected. He said that the prior decisions cannot be applied to other tenants, and each case has to be adjudged on the law at the time the decision was made. Mr. Zaragoza stated that the prior decision ignored the precedent that was found in the DaVinci case, and a mistake of law was made, but this administrative body must follow DaVinci.

C. Brad Koch, the landlord representative 3435 Cesar Chavez Street #335, #206, #327, & Tower Unit (AL170060, AL170061, AL170062 and AL170063), stated that the property was a small family partnership that ran one of the first live-work buildings in San Francisco, and they are now being told that property is rent controlled. He said that the owners should be rewarded as they were able to keep many artists and their families in the property for many years, and now there are only 4 tenants bringing this case. Mr. Koch said that they have been very fair landlords, and they are not in a position to pay back over \$96,875.48 in back rent going back 3 years. He asked the Board to consider eliminating the amount going back 3 years, as this way the owners won't have to consider kicking out tenants like dance studios, and can continue to own the building.

D. James Krauss, attorney for the tenant at 1286 – 8th Avenue (AT170085), urged the Board to find that the "special" in "special circumstances" should be something positive, where the owner is innocent of any wrongdoing. He said that the two parties were previously friendly, reached a deal where the tenant would pay the rent she'd paid in her prior rent controlled unit, and the owner wanted to enter into a contract where the tenant was not on title but responsible for the mortgage. Mr. Krauss argued that to now allow the owner to raise the rent to market is abusive, and the tenant should now not be forced to pay thousands of dollars more. He said that if the Board doesn't vote to deny the petition, they should remand for a full hearing, as the landlord should not benefit from his wrong.

E. Benedict Oleforo, the subtenant at 1800 Franklin Street #402 (AT170084), stated that the master tenant has a habit of holding mail, and that she is not simply overcharging him, but tried to evict him after she increased the rent by 23%. He told the Board that the master tenant claims that she is an elderly and vulnerable woman being held by a young man, which is false, and she claims to walk with a cane, but does not do so. Mr. Oleforo stated he can't cook and use the internet, and she has falsely accused him of assault, harassment and theft. He said that the master tenant, who is not abiding by the decision, claims the photos in the appeal addendum were contrived, which is untrue, and that the unit is a 3-bedroom unit, not two.

F. Jackie Buonassisi, a friend of the master tenant at 1800 Franklin Street #402 (AT170084) told the Board that the ALJ ruled that the subtenant would be compensated for money he was overcharged and that compensation has taken the place of rent which has now run out, so he is bringing another case to stay at the property rent-free. Ms. Buonassisi asked that the ALJ's decision stand.

G. Keto Zhang, the landlord at 2182 – 26th Avenue (AL170085) thanked the Commissioners for taking the time to listen to his appeal. He said that he wanted to

emphasize that he notified the main tenant that any cotenants could move in first and then provide the landlords with identity documents, but now the main tenant hasn't made efforts to find any cotenants in a year. Mr. Zhang stated that if the master tenant is not willing to find a cotenant, then the landlords want to take back a room on the ground floor. Mr. Zhang said he also wants to reserve the other room for his mother, as she is 80 years old and has difficulty climbing the stairs.

V. Consideration of Appeals

A. 1800 Franklin Street #402

AT170084

The subtenant's appeal was filed 7 days late because he did not receive the Decision due to problems with receiving mail, and he submits a Declaration of Non-Receipt of Notice of Hearing or Decision.

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 and a substantial decrease in housing services was granted in part and denied in part. The ALJ found the master tenant liable to the subtenant in the amount of \$10,854.00 for rent overpayments and \$19.20 for the removal of gas stove burner grates. On appeal, the subtenant claims that a ground-floor storage space and two of the three bedrooms in the unit are used exclusively by the master tenant; that the furniture charge presents an additional charge already covered in the rental unit cost; and that the removal of the stove burner grates was an ongoing issue, not a one-time occurrence.

MSC: To accept the subtenant's appeal and remand the case to the ALJ to determine the subtenant's proportional share based on a division by the number of bedrooms exclusively occupied by the parties, with a hearing to be held only if necessary.
(Abe/Marshall: 4-1; Hung dissenting)

B. 2182 – 26th Avenue, In-Law Unit

AL170085

The tenant's petition alleging a substantial decrease in housing services was granted in part and denied in part. The ALJ found that no rent reduction was warranted for damage to the tenant's plants and planters, but found that the landlords' refusal to allow the tenant to sublet the unit without submitting a rental application and meeting the landlords' application standards constituted a substantial decrease in a housing service. The landlords were found liable to the tenant in the amount of \$9,632.00. On appeal, the landlords claim that they did not prevent the subtenant from moving her furniture into the unit and that they did not require a prospective subtenant to file an application and meet the landlords' application standards. The landlords submit new evidence of a written lease that did not provide any restrictions on subletting, and an additional document about the tenant's use of the garage.

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

C. 1286 – 8th Avenue

AT170085

The landlord's petition for a rent increase to \$4,267.20 based on comparable rents was granted in part and denied in part. The ALJ found that a special relationship existed between the landlord and the tenant because the parties were friends and the tenant took occupancy of the subject unit pursuant to their negotiations for her to purchase the unit from the landlord. The tenant appeals, arguing that the ALJ misinterpreted Rules and Regulations Section 6.11(a)(1)(A) on the basis that the parties' relationship was not "special."

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

D. 262 Lexington Street

AL170083

The landlord's appeal was filed 8 days late due to a mailing error.

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

The landlord's petition for certification of the costs of bathtub flooring and tub drain, hot water heater replacement, installation cost for new range, installation dryer vent pipe, new kitchen vent hood and routing, replacement of rotten window trim, contractor costs, new stove, new refrigerator, wood window replacement, exterior water damage/caulk/paint, and demolition of old brick flue chase and new electric circuits from the basement for the stove, refrigerator, and hood to one of two units on the property was granted in part and denied in part. The ALJ found that the purchase of a replacement refrigerator and range and installation costs were disallowed because they were appliances for which the tenant already had the benefit, and were not part of a remodeled kitchen pursuant to the tenant's agreement; that the window trim replacement was disallowed because it was repair work; that the contractor's two months of costs were disallowed because it included costs for work which was disallowed and no allocation of allowable costs was provided; and the exterior water damage/caulk and paint was disallowed as being repair work. The landlord appeals, arguing that the work in the kitchen was significant enough to constitute a kitchen remodel.

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

E. 2030 Fell Street

AL170082

The landlord's petition for certification of the costs of mandatory soft-story seismic retrofit work, which included asbestos abatement, common area painting, removal and replacement of facades, painting of residential units, structural work to façade, replacement of door, and a new garage door for passthrough to 12 of 15 residential units

was granted in part and denied in part. The ALJ found that the tenancy in unit 6 began less than six months prior to the commencement of the claimed work; that the tenancies in units 3, 7, 10, 12, and 12A began after the commencement of the work; and that none of the costs may be passed through to units 3, 6, 7, 10, 12, and 12A. The landlord appeals, arguing that the project should be considered to have commenced after March 2012 since she did not claim the engineering costs in the petition, that she discussed the issue with a Rent Board staff member who said the commencement date depends on whether or not the landlord is claiming the costs of the structural engineer's work in the petition, and the landlord relied on that advice in excluding the engineer's costs since she felt it would be fairer to seek less of a rent increase from more tenants.

MSC: To deny the appeal on the merits, and to stay the decision for 30 days, to allow the landlord to file an amended petition requesting certification of the engineering costs within 30 days of the mailing of the Notice of Action on Appeal. If the landlord does not amend the petition within 30 days of the mailing of the Notice of Action on Appeal, then the Decision is final.
(Mosbrucker/Marshall: 5-0)

F. 242 Divisadero Street

AL170086

The landlord's petition for certification of the costs of new hot water heaters, a new foundation, remodel of a bathroom in unit #2, and the remodel of unit #J to six of seven residential units on the property was granted in part and denied in part. The ALJ did not certify the claimed cost for the remodel of the bathroom of unit #2 because it was repair and maintenance, not a capital improvement, and did not certify the claimed cost for the "remodel" of unit #J. The ALJ found that the landlord failed to prove that the work within unit #J was performed for reasons of health or safety or because of excessive maintenance costs as required under Rules and Regulations Section 7.15(a). On appeal, the landlord argues that when plans were prepared for the foundation work, a licensed engineer determined that unit #J required demolition in order to complete the foundation work.

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

G. 3435 Cesar Chavez Street #335, #206, #327, & Tower Unit AL170060, AL170061,
AL170062, AL170063

Tenants of units 206, 327, 335 and the Tower unit at the subject property filed petitions alleging unlawful rent increases, and requested a determination of whether the Rent Board had jurisdiction over the subject tenancies. The request was granted, and on July 1, 2016 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. The landlord appealed, and at the October 11, 2016 commission meeting, the Board voted to deny the landlord's appeal on the issue of jurisdiction and to remand the tenants' unlawful rent

increase claims to the ALJ to determine the tenants' lawful rents and the amount of any overpayments, and to consider the landlord's financial hardship claim. Remand hearings were held for consideration of the unlawful rent increase claim for the four units. In the remand decisions, the ALJ determined the lawful rent and amount of overpayments for each unit. On appeal of the remand decisions, the landlord does not dispute that certain rent increases exceeded the allowable limits under the Rent Ordinance, but argues that it is not fair or just to find these increases to be null and void under the circumstances, and asks the Board to find that those unlawful rent increases imposed prior to the issuance of the first decision on July 1, 2016 be allowed or to be limited to the amount of allowable annual and banked increases that were available and could have been lawfully imposed. The landlord also argues that, for unit 206 only, the ALJ erred in determining that tenant petitioners Khaled Sayed and M. David Green, the owners of CyberBears LLC, are entitled to receive a rent refund for amounts paid by the LLC, since it may subject the landlord to a substantial risk of incurring double liability.

MSC: To deny the appeal.

(Mosbrucker/Marshall: 3-2; Abe, Gruber dissenting)

IV. Remarks from the Public (cont.)

A. Vanessa Mobley, the master tenant at 1800 Franklin Street #402 (AT170084) told the Board that the ALJ was informative and fair and taught her a lesson, that she has abided by the ALJ's rule, and will abide until the order has been fulfilled. She said that she understood that once the overpayment was credited, if the subtenant didn't pay rent, she could evict him if she wanted to. Ms. Mobley stated that she hasn't received utilities and rent in that amount of time, and wants her health, life and apartment back.

B. Benedict Oleforo, the subtenant at 1800 Franklin Street #402 (AT170084), said that both the master tenant's and Ms. Buonassisi's statements are false, and that the master tenant made a claim that was that she can evict him, but that is not true either. Mr. Oleforo said that the master tenant assaulted him physically, but she falsely claims that he's harassed her and threatened her, and colluded with her lawyer to file a false police report. The subtenant stated that he tried to resolve this amicably and was willing to pay the annual allowable increase, but she simply told him to vacate.

VI. Communications

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

A. Annual Statistical Report for Fiscal Year 2016-17.

B. Monthly workload statistics for August 2017.

C. Updated Topic 203 Notice Requirements for Evictions Based on Owner or Relative Move-In and Topic 204 Evictions Based on Owner or Relative Move-In.

D. Draft Rules and Regulations Sections 12.14 and 12.17.

- E. Articles from S.F. Examiner, S.F. Chronicle, Guardian UK, 48 Hills, East Bay Express, East Bay Times, Daily Bulletin, SF Weekly, CNBC, Sacramento Bee, and KCET.

VII. Director's Report

Executive Director Collins told the Board that they have been provided a copy of the 2016-17 Annual Statistical Report. He said that he will send the Commissioners the strategic plan summary before the November 14, 2017 board meeting so as to allow time to receive feedback. Commissioner Mosbrucker stated that she wanted something to be included in the strategic plan summary about the Rent Board's mission, not solely focusing on the perspective of office workload. Executive Director Collins informed the Commissioners that the agency has been assigned a new Mayor's budget analyst named Chris Muyo, who will attend a future meeting. He also informed the Board that the holiday party would be on December 13, which would include a retirement celebration for SALJ Lee. Executive Director Collins told the Board that staff would be present at the Housing Balance Report at the Board of Supervisors' Land Use Committee Meeting on October 24. The Board was informed by Executive Director Collins that staff would conduct outreach at the Chinatown Community Resource Fair on October 28 in Portsmouth Square, at the SF State University Legal Clinic, and at the North Beach Library, and staff would provide a training to Chinatown Community Development Center. He also informed the Board that staff member Jennifer Rakowski presented on form completion at the Small Property Owners Institute, and would be a guest speaker at the City College Property Management class on October 30, and that Deputy Director Varner and himself presented at the SF Apartment Association membership meeting on October 16.

VIII. Old Business

- A. Amendments to the Ordinance regarding owner move-in evictions and possible Regulations

Per the Board's request at the September 12, 2017 Board meeting, the Commissioners received draft Rules and Regulations Sections 12.14 and 12.17 prepared by staff at the request of the Tenant Commissioners. SALJ Gartzman conducted a discussion, reviewing Sections 12.14 and 12.17 in their entirety and the Board agreed to several changes in the proposed drafts. Once the discussion was held, the Landlord Commissioners stated that they would review the current version with legal counsel, and then contact staff to identify any further potential changes. SALJ Gartzman also informed the Board that she and Deputy Director Varner met with staff from the Controller's office regarding penalty assessment procedures under Administrative Code Chapter 100. SALJ Gartzman explained that a manual had been developed by the Controller and City Attorney's office, and that details of penalty assessment, including possible regulations, could be further developed after the pending amendments to Rules and Regulations Sections 12.14 and 12.17 were adopted. At the conclusion of the discussion, the Commissioners agreed that a special meeting would be held on November 7, 2017 solely to continue discussion of draft Regulations Sections 12.14 and 12.17, and that a public hearing for the Commissioners to take public comment and to vote on draft Regulation Sections 12.14 and 12.17 would be held on November 21, 2017.

IX. Calendar Items

November 14, 2017

10 appeal considerations

Old Business

A. Amendments to the Ordinance regarding owner move-in evictions and possible Regulations

X. Adjournment

Vice-President Marshall adjourned the meeting at 9:14 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.