



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**

DAVE CROW
SHOBA DANDILLAYA
RICHARD HUNG
ASHLEY KLEIN
POLLY MARSHALL
CATHY MOSBRUCKER
J.J. PANZER
KENT QIAN
DAVID WASSERMAN

Tuesday, November 13, 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 6:05 p.m.

II. Roll Call

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

President Gruber announced that two new commissioners, Ashley Klein and J.J. Panzer, were sworn in shortly before the meeting. He remarked that Commissioners Klein and Panzer were sworn in as alternates, and that Commissioner Wasserman was made a voting landlord commissioner. President Gruber thanked Commissioner Abe for his hard work and service to the Board. President Gruber thanked Commissioner Mosser, and stated that he had sat on the Board for approximately 24 years and was a big component of the landlord commissioners on the Board.

III. Approval of the Minutes

MSC: To approve the Minutes of October 16, 2018.
(Wasserman/Marshall: 5-0)

IV. Remarks from the Public

A. Jesse Van Fleet, the subtenant at 811 Oak Street (AL180081), told the Board that his room is the biggest, but the size is negligible as to the three main rooms- about 20 square feet. He said that his room is 212 square feet but that the room next door is 196 square feet. Mr. Van Fleet said that the Administrative Law Judge (ALJ) awarded the overpayment to him, but was generous towards the master tenant, giving an extra \$100.00 for services rendered.

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He said that was essentially was for a dirty couch that had been reupholstered, which he thought was unfair.

B. Laura Campbell, the attorney for the landlord at 1225 Taylor Street #406 (AL180082), said that the ALJ memo implies that the landlord is trying to read an additional requirement into Civil Code Section 1954, but what the landlord is really arguing is an interpretation that comports with the dicta in the Drolapas case and also cases like Mosser; that the tenancy can't be passed from friend to friend or generation to generation. Ms. Campbell stated that Drolapas says that the protection afforded is limited in scope to lawful and original occupants and that only those occupants who resided at the start of the tenancy and do so with the landlord's consent are protected from unregulated rent increases. She argued that in this case, the subtenant is holding over; he didn't move in at the onset of the original tenancy; he moved out for a period of years and effectively severed any tenancy rights that he had; and that the current tenancy began in 2011, not before 1996. Ms. Campbell told the Board that it can't be the intent of Costa-Hawkins to have someone who moves out and moves back in to have the exact same rent control protections as an original occupant.

C. Daniel Bornstein, the attorney for the landlord at 1441 Quesada Avenue, Back Unit (AL180084) said that he and the landlord welcome the opportunity to have a new hearing to present the square footage of the room since the landlord came to him only after the hearing recognizing that the space size was different. Mr. Bornstein also commented on 1441 Oak Street #B (AL180078), which he thought needed to be addressed on a policy basis. He said that the landlord accepted the surrender of a month-to-month tenancy, after which, the landlord raised the rent as is permitted under the Ordinance and state law. Mr. Bornstein said that the landlord didn't name the master tenant in the rent increase, because she had accepted the tenancy being over; and said that the ALJ indicated that if the landlord firmly accepted the original tenant's offer to surrender, then that is the end of the tenancy, and that's what happened here. He argued that the ALJ made an incorrect statement of Civil Code Section 1954.53(d)(2) that the landlord's notice must include the master tenant's name, which creates confusion when raising rent on an out-of-possession terminated master tenant. Mr. Bornstein said there was no dispute about whether the master tenant was out of possession or not, that the landlord should be entitled to rent increase, and the only reason the increase was rejected was because it was out of a flawed interpretation of Civil Code 1954.53(d)(2).

D. Michael Ehrenberg, the subtenant at 1384 Filbert Street (AT180083), told the Board that the ALJ erred in finding that the that oral agreement was to rent an entire 2-bedroom unit. He said that the master tenant was clear in her communications that she was an active tenant in the unit throughout the 27-month sublet; and expressly stated that she was a roommate but intended on staying at her boyfriend's apartment, and kept her personal items there, had mail sent to the unit, insisted on keeping utilities under her name, and didn't pay rent. Mr. Ehrenberg stated that the master tenant was aware from the start that he was moving his furniture into the unit. He said that the overpayment paid the master tenant \$619.00 over the total amount that the master tenant spent on utilities.

V. Consideration of Appeals

A. 811 Oak Street

AL180081

The master tenant's appeal was filed 1 day late because he is a touring musician and was out of town shortly before filing the appeal.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Wasserman: 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 \$11,606.40 and determined that the subtenant's proportional share of the rent is \$946.20. On appeal, the master tenant contends that the ALJ erred by dividing the rent equally by five bedrooms, and argues that because the subtenant's bedroom is larger than the other subtenants' bedrooms, the subtenant's proportional share should be higher.

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

B. 1384 Filbert Street

AT180083

The subtenant's appeal was filed 1 day late because he was out of state due to a family death and he believed that he had to wait for the master tenant to file an appeal before he could file an appeal.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Wasserman: 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 \$10,171.09. On appeal, the subtenant contends that the value of the furnishings provided by the master tenant was inflated by the ALJ; that the value of cable television provided by the master tenant should be reduced because the master tenant never provided the subtenant with the password for the cable account to stream television broadcasts online; and that the ALJ erred in finding that the master tenant sublet the entire unit fully furnished.

MSC: To accept the appeal and remand the case to the ALJ solely to issue a technical correction to correct the mathematical error regarding the Comcast calculation.
(Wasserman/Gruber: 5-0)

C. 1441 Quesada Avenue, Back Unit

AL180084

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 a reduction in room size; broken room door lock; and a broken front door lock in the total amount of

\$3,749.50. The ALJ further found that the tenant did not meet his burden of proving that his rent included free wireless internet service and free cable television service at the inception of the tenancy. The landlord appeals, claiming that the tenant's new bedroom is 96 square feet instead of the 80 square feet stipulated to at hearing, and therefore the reduction in room size is only 32.5%, not 44%.

MSC: To accept the appeal and remand the case to the ALJ to consider the room size and all the amenities associated with the room in question.
(Wasserman/Gruber: 3-2; Marshall, Mosbrucker dissenting)

D. 335 Raymond Avenue

AT180077

The tenant's petition alleging an unlawful rent increase and decreased housing services was denied. The ALJ found that the tenant petitioner was a subtenant and not an original occupant who took lawful possession of the unit pursuant to the rental agreement with the landlord. Because the two original occupants no longer permanently resided in the subject unit, the ALJ found that the rent increase to \$3,500.00 was authorized by Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act. The ALJ further held that the tenant has no standing to assert a claim for decreased housing services against the landlord. On appeal, the tenant argues that one of the two original occupants still permanently resides in the subject unit.

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

MSC: To accept the appeal and remand the case to the ALJ to consider whether or not the original occupant Mohamed Ben Azaza continues to permanently reside in the unit.
(Marshall/Mosbrucker: 5-0)

E. 1441 Oak Street #B

AL180078

The tenant's petition alleging an unlawful rent increase was granted in part and denied in part. The ALJ found that a direct landlord-tenant relationship was not created between the tenant petitioner and the landlord based on conduct. The ALJ determined that since the tenant petitioner was a lawful subtenant who did not reside in the subject unit prior to January 1, 1996, the landlord was entitled to increase the rent without limitation pursuant to Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act. The ALJ further determined that since the rent increase notice did not name and was not served on original tenant Teresa Buckman, the notice is defective and invalid, and therefore the total rent remains \$1,623.00 per month for the subject unit. The landlord appeals, arguing that the ALJ incorrectly determined that the Costa-Hawkins notice of rent increase must name and be served on the original tenant.

MSC: To accept the appeal and remand the case to the ALJ to reverse the finding that the rent increase notice was improper under the facts of this particular case only.
(Wasserman/Gruber: 5-0)

F. 1225 Taylor Street #406

AL180082

The tenant's petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was granted. The ALJ found that the increase was not authorized by Civil Code Section 1954.53(d)(2) since tenant petitioner Anthony Perrin resided in the subject unit prior to January 1, 1996 with the knowledge of the previous and current landlords, and was a lawful subtenant when the Costa-Hawkins rent increase to \$3,100.00 was served on January 19, 2018. On appeal, the landlord claims that the statute includes an additional requirement that the lawful subtenant must also have continuously resided in the unit since prior to January 1, 1996.

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

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

G. 1400 McAllister Street #14

AT180079

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in eight of eighteen units was granted. The tenant in unit 14 appeals, contending that: the ALJ made a mathematical error in the Year 2 property tax calculations; the ALJ made a mathematical error on the summary at the end of Table 1; and that the ALJ misstated the base rent for unit 14 in Table 2.

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

MSC: To accept the appeal and remand the case for technical corrections to Table 1, Table 2, and Table 3 of the Decision, as stated in the ALJ's memo.
(Marshall/Klein: 5-0)

H. 750 O'Farrell Street

AL180080

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 23 of 48 units was denied. The ALJ denied the landlord's petition on the basis that the landlord failed to submit complete and adequate evidence relating to the following categories: garbage; water/sewer; property taxes; debt service; management; and elevator service, and since the claimed costs in these categories were not sufficiently established, these categories were not considered in the Decision and the landlord's petition was denied. The landlord appeals, arguing that

the failure to submit some evidence should not have disqualified the entire category, and submits new evidence regarding each category except elevator service.

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

MSF: To deny the appeal.
(Marshall/Mosbrucker: 2-3; Gruber, Klein, Dandillaya dissenting)

MSF: To accept the appeal and remand the case to the ALJ to consider any evidence submitted on appeal and within 10 days of today, with a hearing to be held only if necessary.
(Klein/Gruber: 2-3; Marshall, Mosbrucker, Dandillaya)

MSC: To accept the appeal and remand the case to the ALJ on the record to consider the new evidence submitted by the landlord on appeal, with no additional new evidence to be accepted from the landlord.
(Mosbrucker/Klein: 5-0)

I. 839 Leavenworth Street

AL180085

The landlord's petition seeking a 7% rent increase due to increased operating and maintenance (O&M) expenses to the tenants in 32 of 50 units was denied. The ALJ denied the landlord's petition on the basis that the landlord did not provide evidence of the actual sales price of the subject building, which was purchased as part of a portfolio of properties; and did not provide a supplemental tax bill to show the assessor's determination of the building value in Year 2. The landlord appeals, arguing that: there was no supplemental or escape tax bill available at the time of filing; and that the landlord is not required to explain how the purchase price of the subject building was determined, and submits new evidence in the form of supplemental tax and escape tax bills.

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

MSC: To accept the appeal and remand the case to the ALJ on the record to consider the new evidence submitted by the landlord on appeal, with no additional new evidence to be accepted from the landlord.
(Mosbrucker/Klein: 5-0)

IV. Remarks From the Public (continued)

A. Michael Ehrenberg, the subtenant at 1384 Filbert Street (AT180083), told the Board he wanted to clarify that there are two ways to access Comcast cable- that one can access it either through a cable box or through online apps. He said that the master tenant was the sole person that had the account, and in order to access the online content, he had to have

the account number and password and had to ask the master tenant for it 6 different times. The subtenant said that he paid \$1800.00 for those services and never got them, because the master tenant refused to give him the password, and is asking for half of that amount back because he could not access the account online. Mr. Ehrenberg said that the master tenant's furniture was not worth \$6700.00, and she herself offered to sell it to the subtenant for \$1000.00, and it is a considerable difference in what was awarded and what it's worth.

VI. Communications

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

- A. Workload statistics for the month of September 2018.
- B. The Rent Board 2017-2018 Annual Report.
- C. Memo from Deputy Director Varner regarding tentative 2019 commission meeting dates.
- D. Articles from the S.F. Chronicle, S.F. Examiner, BeyondChron, CurbedSF, 48 Hills, Slate, Conservative Daily News, National Review, Slate.

VII. Director's Report

Executive Director Collins welcomed new commissioners Ashley Klein & J.J. Panzer. He told the Board that Commissioner Panzer is filling the position of outgoing landlord alternate Commissioner Mosser, while Commissioner Klein is filling the role of the other landlord alternate, and Commissioner Wasserman is moving into outgoing Commissioner Abe's landlord voting role. Executive Director Collins informed the Board that staff members Jennifer Rakowski and Rene Juarez conducted outreach at the SFSU Legal Clinic on October 18 and were presenting to a group at Community Boards this evening; that staff members Rene Juarez and Josh Vining tabled at the District Attorney's Chinatown Community Resource Fair at Portsmouth Square on October 24; and that Jennifer Rakowski, Josh Vining, and Rene Juarez would be conducting a Rent Board basics presentation for new Tenants Union volunteers on November 15. Executive Director Collins said that since Proposition 10 did not pass in the November 6 election, the proposed discussion regarding amending Rules and Regulations Section 6.14 was not calendared. He reminded the commissioners that the Rent Board holiday party is on December 6, and that there would be a commissioner holiday dinner after the next Board meeting.

Executive Director Collins answered some questions for President Gruber regarding the Small Sites program.

VIII. Old Business

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

The commissioners agreed that the discussion item pertaining to Commissioner Mosbrucker's proposal for new Rules and Regulations regarding the definition of bad faith would be moved to Old Business on the December 11 board meeting agenda due to the appointment of the two new commissioners. Commissioner Mosbrucker clarified the item for the new commissioners, and told her colleagues that she had invited attorney Joseph Tobener to speak on the issue, but he did not come to this board meeting.

IX. New Business

(There was no New Business.)

X. Calendar Items

December 11, 2018

A. Consideration of Appeals

8 appeal considerations

B. Old Business

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

XI. Adjournment

President Gruber adjourned the meeting at 7:45 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.