



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, November 14, 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 6:05 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.

Commissioners appearing on the record late: Abe, 6:10 p.m.; Marshall, 6:15 p.m.

President Gruber acknowledged and thanked Senior Administrative Law Judge Tim Lee upon the occasion of his retirement for his numerous years of service to the Rent Board.

III. Approval of the Minutes

MSC: To approve the Minutes of November 7, 2017.
(Wasserman/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Andrew Wiegel, the attorney for the landlord at 1355 Post Street (AL170087), asked the Commissioners to conclude that the Rent Board does not have jurisdiction over the property, because it was newly constructed, and that the Certificate of Final Completion and Occupancy (CFCO) was first issued at the very earliest in 1980. He argued that DaVinci and Burien are not on point, because in those cases the residential units were already occupied and subject to the Ordinance before any building permit was applied for, and for that reason the court concluded they were not new construction. Mr. Wiegel said that the property was previously a gas station and there was no evidence that prior to the application for the building permit there had been

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any residential use, and there's no legal basis for ignoring the fact that the CFCO was issued after 1979.

B. Michelle Lee, the landlord at 4640 Balboa Street (AL170096), told the Board that the tenant has a trust and is not sure whether the ALJ considered it as an asset or as income, and that the trust pays rent to her. Ms. Lee stated that the tenant damaged the garage and used trust funds to pay for the damage and purchases, including his car, and that this fund can pay the \$37 for the capital improvement passthrough. She said that the capital improvements for the gate & security system were made for the enjoyment of the building.

C. Chris Cole, attorney for the tenant at 4640 Balboa Street (AL170096), told the Board that the landlord raised issues on appeal that were not part of the evidence, including damage to the garage door. He said that the ALJ carefully considered the issue of the Special Needs trust, and the landlord's statement that the ALJ did not take it into account is inaccurate.

D. Alex Volkov, attorney for the landlord at 4150 Cabrillo Street #1 & #2 (AL170088 and AL170089) stated that the Mosser case is applicable to this situation because in this situation, nobody moved. He said that in Mosser, the parents moved out and their child made his own decision to stay. He told the Board that the issue in these cases is that a tenant there can only have one residence.

E. Ora Prochovnik, attorney for several of the tenants at 1355 Post Street (AL170087), stated that although the landlord is maintaining that this is new construction that was previously a gas station, about 60% of the building was fully occupied at the time the CFCO was issued in 1980. She said that the property hadn't been a gas station since 1974, and it cannot be new construction if it was full of tenants. Ms. Prochovnik told the Board that DaVinci and Burien are directly on point, as the purpose of the new construction exemption is to create new housing, not to exempt existing housing that is legalized.

F. Lynn Gavin told the Board that she was wrongfully evicted from her home in Parkmerced, and numerous 3-day notices have been issued at Parkmerced. She said that the City has received numerous amounts of money from the Parkmerced owners' corporation, and that's why the notices were never investigated, and she has initiated protocols to have one of the Commissioners removed. Ms. Gavin stated that her eviction was illegal, and false evidence was submitted as exhibits, and this may have happened to other people who might not have representation. She said that a letter will go to the Mayor, and thanked everyone for their hard work.

G. Abdel Al-Sabagh, the subtenant at 364 San Carlos Street (AT170091), stated that the master tenant's filing was an attempt to mislead because he traveled 1 month a year and the utility bills coincide with the end of the winter months, which show that consumption is about the same right before the start of the winter. The subtenant said that the master tenant lied under oath when he claimed he rented out the living room. Mr. Al-Sabagh said that the master tenant's valuation of his furniture is a lie, for which he just offered a list of arbitrarily fabricated prices, and his own contributions to the household were overlooked by the ALJ's decision.

H. Gusty Stambaugh, the master tenant at 364 San Carlos Street (AT170091), stated that he told the truth throughout the case. He said that the subtenant has attempted to devalue and discredit the furnishings by listing various brands and at the cheapest price.

V. Consideration of Appeals

A. 1409 Broderick Street

AL170095

The subtenant's petition alleging that the master tenant charged a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant in the amount of \$6,060.84. On appeal, the master tenant claims that he did not receive the Notice of Hearing, and attaches 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 master tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Mosbrucker/Abe: 5-0)

B. 1386 Pacific Avenue #A

AL170093

The subtenant's petition alleging that the master tenant charged a disproportional share of rent was granted. The ALJ found the master tenant liable to the subtenant in the amount of \$1,378.65. The master tenant appeals on the basis of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the master tenant's claim of financial hardship to consider a payment plan for refunding the rent overpayments to the subtenant.
(Abe/Mosbrucker: 5-0)

C. 141 Blake Street #Room

AL170090

The tenant's petition for unlawful rent increase was granted, and the landlord was found liable to the tenant in the amount of \$9,180.00 for rent overpayments. The landlord appeals, arguing that the original rent amount was set at \$600 because it was just for the tenant, and that rent was raised because the tenant's wife moved in, which made the bills very high.

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

D. 364 San Carlos Street

AT170091

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 \$3,736.68 for rent overpayments and \$26.68 for lack of a toilet. On appeal, the subtenant argues that the proportional rent share should be calculated based on square footage of exclusively occupied space instead of equal division between the master tenant and the subtenant, and that the

\$175.00 value assigned to the master tenant's kitchen and living room common area furnishings is too high.

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

E. 4640 Balboa Street #3

AL170096

The tenant's application requesting deferral of a capital improvement passthrough and a water revenue bond passthrough on the basis of financial hardship was granted. The landlord appeals, arguing that the tenant previously made a false statement outside of a hearing and for that reason the ALJ shouldn't have found the tenant credible at hearing; and that the tenant is benefitting from the capital improvements at the property, so he should pay the capital improvement passthrough.

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

F. 2390 Chestnut Street

AT170092

The tenant's appeal was filed 1 day late due to complications with health issues.

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

The tenant appeals the decision granting the landlord's petition under Rules and Regulations Section 1.21. In the decision, the ALJ found that the tenant was not a tenant in occupancy of the subject unit at the time the petition was filed on March 22, 2017, and that there was no other tenant in occupancy. The ALJ determined that the landlord is entitled to increase the rent without limitation under the Ordinance pursuant to Regulations Section 1.21. The tenant appeals, arguing that she had to leave San Francisco due to her health condition and had to seek treatment elsewhere, and that her condition wasn't taken into account by the ALJ.

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

G. 4150 Cabrillo Street #1 & #2

AL170088, AL170089

The tenants in two units filed two petitions alleging unlawful rent increases. The petitions were granted, and the ALJ found that the landlord was liable to the tenant petitioners in the amount of \$9,237.29 for unit #2 and \$11,466.62 for unit #1. On appeal, the landlord argues that rent increases for unit #1 are lawful as the unit is exempt from the rent increase limitations of the Rent Ordinance under Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act, and that the ALJ erred in finding that the tenants' use of the laundry area was exclusive, and that the tenants were only allowed use of a washing machine.

MSC: To deny the appeal, except to remand the case to the ALJ to strike the finding of exclusive use of the laundry area and make no determination of the scope of the added laundry service.
(Marshall/Mosbrucker: 5-0)

H. 1355 Post Street

AL170087

The landlord's petition seeking a determination of whether the Rent Board has jurisdiction over the 35 residential units at the subject property was denied. The ALJ determined that since there was residential use of the building beginning in 1978 prior to the issuance of the Certificate of Final Completion and Occupancy (CFCO) in 1984, the exemption in Rent Ordinance Section 37.2(r)(5) for "newly constructed" units is not applicable. The landlord appeals, arguing that the residential units in the property were not subject to rent control before the CFCO was issued.

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

VI. Communications

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

- A. Pending Litigation Status Report prepared by Senior ALJ Tim Lee.
- B. Monthly workload statistics for September and October 2017.
- C. Memo regarding 2018 Commission meetings from Deputy Director Varner.
- D. Draft Strategic Plan Highlights.
- E. Articles from S.F. Chronicle, S.F. Examiner, The Mercury News, SFGate, CurbedSF, Sacramento Bee, BeyondChron, and the Guardian.

VII. Director's Report

Executive Director Collins reminded the Board about the memo in their folders regarding tentative Commission meeting dates for 2018 and to contact staff if there is any issue with the dates. Executive Director Collins discussed the 5-year strategic plan update, referencing the draft plan that was sent to the Commissioners. Executive Director Collins told the Board that he would like to produce this document as a draft to highlight workload issues, and later the Board can develop something in depth, with assistance from the Mayor's Office. Executive Director Collins also reminded the Board that the holiday party and SALJ Lee's retirement party is on December 13. Executive Director Collins informed the Board about outreach updates: Roger Levin tabled at the Chinatown Community Resource Fair on October 28, supervisor Jennifer Rakowski presented at the City College property management class on October 30, and Ben Ng will present to a Chinatown community group on November 16. Executive Director Collins explained that staff will be present at the Housing Balance Report at

the Board of Supervisors' Land Use Committee Meeting on November 27. Finally, Executive Director Collins informed the Board that SALJ Lee prepared a Pending Litigation Status Report.

VIII. Old Business

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

SALJ Gartzman discussed a proposed change to the draft Rules and Regulations Section 12.14 with the Commissioners. SALJ Gartzman presented a memo and explained that Ordinance Section 37.9B(e) states that "a landlord may apply to the Rent Board for a rescission of the recorded notice of constraints," the actual Rent Board process starts with the landlord's request for rescission of the owner move-in (OMI) eviction notice. This allows a landlord to rescind an OMI eviction notice either before or after the Notice of Constraints is recorded. If the landlord's request to rescind the OMI notice is granted, the Rent Board will either record a Rescission of Notice of Constraints or refrain from filing a Notice of Constraints in the first instance. Per her memo, SALJ Gartzman asked the Board to consider amending the proposed draft amendments to Section 12.14 on page 6, lines 4 and 11 by changing the phrase "notice of constraints," to "notice to vacate." At the conclusion of the discussion, the Board agreed an amendment to language in the current draft Regulation 12.14 is within the foreseeable scope of possible changes, so the language can be changed during the public hearing.

IX. Calendar Items

November 21, 2017

Public hearing regarding proposed amendments to Rules and Regulations Sections 12.14 and 12.17 to implement the recently passed legislation sponsored by Supervisor Farrell regarding owner move-in evictions

December 12, 2017

9 appeal considerations

Old Business

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

X. Adjournment

President Gruber adjourned the meeting at 7:03 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.