



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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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, June 9, 2015
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; Dandillaya; Gruber; Marshall; Mosbrucker;
Mosser; Qian; Wasserman.
Commissioners not Present: Hung.
Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of May 12, 2015.
(Mosbrucker/Marshall: 5-0)

IV. Remarks from the Public

A. Attorney Clifford Fried, representing the landlord in the case at 559 Waller (AT150050), told the Board that this is a factual dispute only, and there is no issue of law. Mr. Fried said that Costa-Hawkins doesn't require a landlord to forfeit 60 days' rent when asserting their right to a rent increase. In this case, the notice of a Costa-Hawkins increase had already been given -- rent was accepted from the subtenant afterwards. Unlike the Mosser case, this tenant was not there at the inception of the tenancy.

B. Attorney Jessica Alexander, representing the tenant at 44 Whitney (AT150049), said that, under Costa-Hawkins, an unlimited rent increase is not allowed if the previous tenancy was terminated. Since the unit in this case was an exempt single family dwelling, the Administrative Law Judge (ALJ) ruled that vacancy decontrol would be an absurd result and the exception only applies if the previous tenancy was rent controlled. However, Ms.

Alexander maintained that the policy intent of Costa-Hawkins was to allow for increased rents but not to evict tenants, which is what this above-market rent increase did.

C. Attorney Jonathan Siegel, representing the landlord in the case at 44 Whitney, told the Board that the contention that the landlord said this was the “only way she could get the tenants out” is completely false. Mr. Siegel said that Ms. Alexander’s examples are incorrect in that both the Ellis Act and OMI provisions of the Rent Ordinance provide that vacancy control only applies if the previous tenancy was rent controlled.

D. Attorney Douglas Robbins, representing the landlord in the case at 1290 – 25th Ave. #301 (AT150051), said that a Rent Board ALJ ruled that this building is exempt 24 years ago because it didn’t come on the market until after the enactment of the Rent Ordinance. The landlord has always been informed that the property is exempt, and the current ALJ has come to the same conclusion. Mr. Robbins asked that the Commissioners affirm the Decision of the ALJ.

V. Consideration of Appeals

A. 2 Meacham Pl.

AT150055

The tenant’s appeal was filed over a month late because the tenant was in the hospital.

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

The tenant filed a petition alleging decreased housing services, but the Administrative Law Judge (ALJ) determined that the subject unit is separately alienable from any other dwelling unit and therefore exempt from Rent Board jurisdiction. On appeal, the tenant claims that he was locked out of his apartment and did not have access to his possessions.

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

B. 2615 Lake St.

AL150056

The landlord’s petition seeking a determination pursuant to Rules Sections 1.21 and Costa-Hawkins was denied because the ALJ found that the subject unit is still the tenant’s principal place of residence. On appeal, the landlord argues that: the decision is contrary to the policy purposes of the Ordinance; the tenant is using the unit as a pied-a-terre for social occasions and for when he works late and does not want to return to the family home in Tiburon; married couples that are not legally separated or contemplating divorce should only be allowed one primary residence; and the tenant’s documentary evidence is a paper façade that masks his true residence, so he should be required to prove the number of nights he spends in the San Francisco unit.

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

C. 559 Waller St.

AT150050

The tenant's appeal was filed one day late because she had to work on the day that the appeal was due.

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

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the tenant did not move in at the inception of the tenancy and never established a direct landlord-tenant relationship with the owner of the property. The tenant appeals the decision on the grounds that the landlord accepted rent from her and thereby waived their right to a Costa-Hawkins rent increase.

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

D. 44 Whitney

AT150049

The tenants' petition alleging unlawful rent increase was consolidated with the landlord's petition seeking a determination as to Rent Board jurisdiction over the subject single family dwelling. The ALJ found that, although a previous tenancy was terminated pursuant to a lawful rent increase, the exception under Costa-Hawkins does not apply because the legislature intended to take single family dwellings out from rent control. On appeal, the tenants argue that: the plain language of the statute brings a dwelling under rent control if the prior tenancy was not terminated voluntarily; had the legislature intended to restrict the specified exemptions to units not yet phased out of rent control, it would have done so; legislative history shows that Costa-Hawkins was intended to regulate rent control, and not permanently dismantle it, which is supported by case law; without this exception, landlords are free to evade eviction controls by raising rents above market rates; the subject unit would be exempt from decontrol for only one tenancy, and not permanently; Costa-Hawkins does not permanently phase out certain properties but, rather, phases these properties in and out of jurisdiction, depending on specific circumstances; and there is no evidence regarding any tenancy before the immediately prior one.

MSF: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing to determine the landlord's motive in issuing the rent increase that led to the previous tenants' vacating the unit.
(Mosbrucker/Marshall: 2-3; Abe, Gruber, Dandillaya dissenting)

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

E. 1290 – 25th Ave. #301

AT150051

The tenants' petition alleging an unlawful rent increase was denied because the ALJ found that it was not lawful to occupy the premises until a Permit of Occupancy was issued, which did not occur until after the effective date of the Ordinance, and so the unit is not under Rent Board jurisdiction. On appeal, the tenant argues that: the Ordinance only refers to a Certificate of Occupancy which, in this case, was issued before the effective date of the Ordinance; the Permit of Occupancy submitted by the landlords does not exist in any

verifiable public record; since a Permit of Occupancy was required at the time the Ordinance was passed, the Board of Supervisors could have made that requirement dispositive but did not, which reflects their legislative intent; the language of the Ordinance must be read according to its plain meaning; and the policy purposes of the Ordinance are not being met by this decision.

MSF: To accept the appeal and remand the case to the Administrative Law Judge to vacate the decision and find that the unit is subject to Rent Board jurisdiction. (Marshall/Mosbrucker: 2-3; Abe, Dandillaya, Gruber dissenting)

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

F. 1005 Fell #B

AT150052

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the petitioner was not an original occupant of the unit and that a Costa-Hawkins increase was warranted when her father vacated the unit. On appeal, the tenant claims that: she resided in the unit on a part-time basis after her parents' divorce in 2005 and considers it her home; the landlord perjured himself by denying that he knew she was residing in the unit; and the tenant did not pay rent to the landlord because her father paid it on her behalf.

MSC: To recuse Commissioner Mosser from consideration of this appeal. (Abe/Mosbrucker: 5-0)

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

G. 1180 Filbert #204

AT150053 & AL150054

The landlord's appeal was filed one day late because delivery by the Post Office took longer than the landlord expected.

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

The tenant's petition alleging decreased housing services was granted, only in part, and the landlord was found liable to the tenant in the amount of \$2,415.00. The tenant's failure to repair claim was denied as none of the conditions he complained of were proved to be code violations. Both the landlord and the tenant appeal the decision. The tenant argues that: there are materials errors in the decision; sufficient evidence was submitted to prove that the water intrusion constituted a code violation, which was also established in a prior case; major cosmetic defects can constitute decreased housing services, even when they don't result in a loss of use of the premises; and the ALJ erred in valuing each service separately, rather than valuing the cumulative effect of less upkeep and maintenance of the building. The landlord appeals on the grounds that they should not be held liable for delays in curing the conditions caused by the tenant.

MSC: To accept the appeals and remand the case to the Administrative Law Judge for a supplemental hearing only on the issues of when the rent reduction for the stained curtain should have commenced and whether the rent reductions for the damaged carpet and curtain should terminate on some date after April 30, 2015 based on the conduct of the tenant. The landlord's and tenant's appeals are denied as to all other issues.
(Gruber/Abe: 5-0)

VI. Communications

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

A. A letter from tenant Daniel Ozabuki expressing his displeasure with the Board's disposition of his recent appeal (AT141301).

B. The office workload statistics for the month of April, 2015.

C. Articles from the S.F. Examiner, the Mayor's Office of Communications, the S.F. Chronicle, BeyondChron, the New York Times, the S.F. Business Times, Inquirer.net, SocketSite and SFist.

VII. Director's Report

Executive Director Wolf told the Board that she would be going before the Budget and Finance Committee of the Board of Supervisors on June 15th to obtain approval for next year's departmental budget. She also let the Commissioners know that staff performed outreach with the assistance of President Gruber at the Carnival celebration in the Mission over Memorial Day weekend. Rent Board Supervisor Jennifer Rakowski estimates that 26 people visited the agency's booth over the 2 days.

VIII. Old Business

Application Procedures for CI Petitions Where the Work Totals More than \$25,000

Discussion of this issue was continued to the next meeting.

IV. Remarks from the Public (cont.)

E. Tenant David Holt of 1290 – 25th Ave. said he pursued his claim because he was advised to do so. Mr. Holt contended that the case was again wrongfully decided because the Rent Board only had the first Certificate of Final Completion and Occupancy, which is what the plain language of the Ordinance requires. Mr. Holt let the Board know that he, his wife and two children will be forced out of the City because of this Decision.

IX. Calendar Items

July 14, 2015

14 appeal considerations

Old Business: Application Procedures for CI Petitions Where the Work Totals More than \$25,000 & Backlog Reduction Measures: the No-Hearing Alternative

X. Adjournment

President Gruber adjourned the meeting at 7:30 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.