



London N. Breed
Mayor

Christina A. Varner
Acting 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
CATHY MOSBRUCKER
KENT QIAN
KION SAWNEY
ARTHUR TOM
DAVID WASSERMAN

Tuesday, November 9, 2021
at 6:00 p.m.

Remote Meeting via video and teleconferencing
<https://bit.ly/30UWxvR>

Public Comment Dial In Number: (415) 655-0001 / Access Code: 2508 289 5046

On February 25, 2020, Mayor London Breed declared a state of emergency in regards to COVID-19. Thereafter, Governor Newsom issued a statewide order for all residents to shelter-in-place, and following that, numerous orders of the county health officer and supplemental Mayoral proclamations and directives were issued to slow and reduce the spread of COVID-19.

In several Mayoral proclamations and memorandums, the Mayor and City Attorney detailed emergency orders suspending select laws applicable to boards, commissions, and other policy bodies, and permitting boards and commissions to meet, so long as the meetings are held remotely. Additionally, at its October 12, 2021 meeting, the Rent Board Commission made a finding to allow teleconferenced meetings under California Government Code Section 54953(e). Therefore, the Rent Board Commission meetings will be held via videoconferencing and will allow for remote public comment until further notice.

The Commission strongly encourages interested parties to submit their comments in writing, by 12:00 noon on November 9, 2021 to rentboard@sfgov.org. The meeting will be streamed live at 6:00 p.m. at <https://bit.ly/30UWxvR>. The public comment call in instructions are available on the Rent Board’s website at <https://sfrb.org/meetings/9>.

Please visit the Rent Board’s website for ongoing updates during the COVID-19 emergency.

I. Call to Order

President Gruber called the meeting to order at 6:07 p.m.

II. Reading of Ramaytush Ohlone Land Acknowledgment

Commissioner Crow read the Ramaytush Ohlone Land Acknowledgment.

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III. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hung; Mosbrucker; Qian; Sawney; Tom; Wasserman.

Commissioners not Present: Klein.

Staff Present: Brandon; Flores; Koomas; Varner.

IV. Approval of the Minutes

MSC: To approve the minutes of October 12, 2021.

(Wasserman/Mosbrucker: 9-0)

V. Remarks from the Public

A. Lance Nally, the tenant at 1440 Clement St., #5, told the Board that the landlord's appeal is based on opinion, not facts, and that he already explained why he claimed a homestead exemption on a different property in great detail at the hearing. Regarding his parking space, he stated that the landlord did not prove that the tenant's car will not fit in his designated parking space, but the evidence did prove that the landlord provided his parking space to a different tenant, thus preventing him from using it. He stated that the landlord made many false statements at the hearing and in the appeal.

B. John Garibaldi, the landlord at 3033 Franklin St., stated that his parents were the former owners of the subject property, which is where he was born and raised. He stated that the property has been in his family for 90 years, that his mother was economically dependent on the building's rental income to survive in San Francisco, and that this is the first time any of the building tenants have filed a complaint at the Rent Board or in court. He stated that he was shocked to receive the tenants' petition months after they had already moved out. He stated that his appeal summarizes his position, and that the agreement with the tenants to increase their rent was uncoerced and benefitted both sides.

C. Dean Eriksen, the landlord at 3740 Irving St., #A, told the Board that the written terms in the tenants' lease were not acknowledged in the ALJ's decision. He stated that the owners are a small, family-owned business that was devastated by the pandemic, and that he has only asked for the tenants to pay for the utilities they consume. He stated that the owners were surprised by the tenants' petition, as the tenants had agreed to pay the utilities several years ago. He asked the Board to acknowledge the lease terms that are "clearly" stated in the lease, and that such terms should dictate the relationship between the landlord and tenant.

D. Hanna Leung, the attorney for the landlord at 1683 Greenwich Street, stated that she outlined the landlord's position in the appeal response, and that the tenant's appeal failed to describe any factual errors in the decision. She asked the Board to confirm the ALJ's decision, except that she stated the garage is not part of the tenant's lease, and therefore the garage is a "separate rental item" that should not have been included in the description of the tenant's base rent. Otherwise, she stated, the landlord agrees with all of the ALJ's factual findings.

VI. Consideration of Appeals

A. 3656 – 20th Street

AL210070, AL210071

The subtenant's petition alleging a disproportional share of rent was granted and the master tenant was found liable to the subtenant in the amount of \$10,312.52 for rent overpayments during various periods of the subtenancy. The master tenant appeals, asserting that the petitioner was not his subtenant and that the ALJ should have used some other method to calculate proportional share besides equal division between the bedrooms. The master tenant also appeals the decision on the grounds of financial hardship.

MSC: To deny the appeal on the merits [AL210071] and to grant the appeal solely on the basis of financial hardship [AL210070].
(Wasserman/Mosbrucker: 5-0)

B. 1534 – 15th Street

AL210072

The tenant's petition alleging a decrease in housing services was granted and the landlord was found liable to the tenant in the amount of \$5,800.00 for unreasonably withholding consent to the tenant's request for a replacement roommate. On appeal, the landlord contends that she had good reason to suspect that the rental application submitted by the prospective roommate was fraudulent, and that the tenant had ulterior motives for filing the petition and has not been truthful.

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

C. 3495 – 16th Street, #A

AT210073

The subtenant's petition alleging payment of a disproportional share of the rent was denied. The ALJ found that the evidence was insufficient to prove that the subtenant paid rent in the amount of \$1,200.00 per month, and that even if proven, the claimed rent of \$1,200.00 would not be a disproportional share of the total rent. The subtenant appeals, claiming there were errors in the decision, that the ALJ was biased towards the master tenant, and that the master tenant lied under oath.

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

D. 3740 Irving Street, #A

AL210074

The tenants' petition alleging a decrease in housing services was granted. The ALJ determined that payment of certain utility costs were housing services provided by the landlord at the inception of the tenancy, and that the landlords were liable for rent reductions in the amount of \$1,990.31 to offset utility costs paid by the tenants. On appeal, the landlords assert that the ALJ was biased towards the tenants and that the

“unambiguous” language of the written lease requires the tenants to pay for their own utility usage.

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

E. 3033 Franklin Street, #5

AL210068

The tenants’ petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenants in the amount of \$2,601.29 because the rent increase of \$120.00 was due to an additional occupant in the unit. On appeal, the landlords maintain that tenant Afanah moved his wife and newborn child into the unit without disclosing it to the landlords, and that the parties negotiated the rent increase in good faith to forestall an eviction. The landlords also contend that the equitable doctrines of unclean hands and unjust enrichment bar the tenants’ claim.

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

F. 788 South Van Ness Avenue

AT210069

The tenant’s petition alleging an unlawful rent increase was denied because the ALJ found that the original tenant no longer permanently resides at the unit, the petitioner is a lawful subtenant who commenced occupancy after the tenancy began, and that the rent increase was therefore authorized by Costa-Hawkins. On appeal, the tenant asserts that she is an original occupant who moved into the unit at the inception of the tenancy with her husband, and that even if the landlord was entitled to increase the rent under Costa-Hawkins, the rent increase exceeded 10% of the rent and therefore violated California Penal Code Section 396.

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

G. 1440 Clement Street, #5

AL210065, AL210067

A consolidated decision issued on the landlord’s petition requesting a determination pursuant to Rules and Regulations Section 1.21 and the tenants’ petition alleging a decrease in housing services. The ALJ held that: the rent increase notice effective September 1, 2020 was not authorized by Section 1.21 because it was improperly served before the landlord’s petition was filed; that no increase was otherwise permitted under Section 1.21 because tenant Lance Nally continues to occupy the unit as a principal place of residence; that the September 1, 2020 rent increase was not authorized by Costa-Hawkins because no subtenant occupied the unit; and that the landlord is liable for rent reductions in the amount of \$2,600.00 for loss of a parking space that was included in the tenant’s initial base rent. On appeal, the landlord maintains that the ALJ ignored the evidence that the tenant claims a homestead exemption on a separate property, which is where the tenant actually resides, and that the ALJ misconstrued the circumstances surrounding the tenant’s use of the parking space in the back of the building.

Commissioner Crow recused himself from the consideration of these appeals because he represented one of the tenants' witnesses in the past and is familiar with the subject property.

MSC: To deny the appeals.
(Mosbrucker/Qian: 5-0)

H. 1683 Greenwich Street

AT210066

The landlord's petition seeking a rent increase based on comparable rents was granted. The ALJ found that the tenant was the brother-in-law of the former landlord and that the initial rent was set low due to the family relationship, and not because of habitability issues in the unit. On appeal, the tenant contends in part: that the opinion of the landlord's real estate appraiser is unreliable; that the comparable rent determination underestimated the impact of defective conditions in the unit; that the landlord charged low rents in general because his operating expenses were low; and that the tenant will be displaced as a result of the decision.

Commissioner Wasserman recused himself from the consideration of this appeal because, although he did not represent the landlord in this matter, the landlord is his client.

MSC: To deny the appeal.
(Tom/Gruber: 3-2, Mosbrucker and Qian dissenting)

V. Remarks from the Public (cont.)

E. Hanna Leung, the attorney for the landlord at 1683 Greenwich Street, thanked the Commissioners and stated that the subject unit is not an "illegal" unit as described by a Commissioner, but is a legal one-bedroom unit in the Marina District and that the landlord's professional appraiser took the unit's unique characteristics into account to arrive at a rental value.

VII. Communications

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

A. Articles from the SF Chronicle, SF Public Press, Mission Local, KTVU, and Bloomberg News.

VIII. Director's Report

A. Rent Board Operations Update During COVID-19 Health Emergency

Acting Director Varner acknowledged that former Director Collins had retired, and welcomed Commissioner Sawney to the Board. In regards to departmental operations during COVID-19, she stated that the office and counseling phone lines are open five days per week, and staff

continue to work a hybrid in-office/remote schedule per City policy. She also stated that plans are underway to relocate the Rent Board's office to the 6th and 7th floors of the existing building.

Regarding legislation – Acting Director Varner notified the Commissioners (1) that Board of Supervisors (BOS) File No. 211096, regarding tenant associations and organizing activities, is currently at the Rules Committee for consideration; (2) that BOS File No. 210699, version 2, which amends the Planning Code and Rent Ordinance regarding Accessory Dwelling Units and tenant housing services, passed second reading at the BOS on November 2nd, and that Rent Board staff had appeared at the BOS Land Use Committee on October 18th to assist the Supervisors with any questions; and (3) that BOS File No. 210963, an Ordinance to extend the local residential eviction moratorium through December 31st, 2021, also passed 2nd reading by the BOS on November 2nd.

Regarding the Rent Board Fee – Acting Director Varner stated that informational postcards were recently mailed to property owners alerting them to the change in how the Fee is paid, which has generated many contacts from property owners. She stated that a subsequent informational notice will be mailed out to property owners this week, which explains how owners can request an exemption from the Rent Board Fee using the new online “portal” between November 15th and December 15th. Acting Director Varner stated that staff is working very hard to prepare for the exemption request period, and thanked the Rent Board's public information unit for all their work. She stated that the Fee payment invoice period will begin in January 2022. Owners will have until March 1st to pay the Fee without penalty, and will be assessed late penalties after that date. She strongly urged property owners to use the Rent Board's online portal to pay the Fee. Finally, she stated that the Rent Board's Rental Housing Inventory will be administered using the same online portal, which will go live on June 1, 2022. Commissioner Wasserman asked whether property owners will be able to enter Housing Inventory information into the portal for multiple units or properties simultaneously, and Acting Director Varner responded that staff is considering how to develop that option.

IX. Old Business

A. AB 361, Mayoral Directive, and Future Remote Commission Meetings

Acting Director Varner stated that during the last Board Meeting on October 12th, the Commissioners made a finding to allow teleconferenced meetings pursuant to California Government Code 54953(e), and that the Commissions must make a similar finding at least once every 30 days to continue having teleconferenced meetings. Commissioner Wasserman then made a motion, seconded by President Gruber, to make a resolution making findings to allow a teleconference meeting on December 14, 2021 pursuant to California Government Code 54953(e). After Acting Director read the Board's findings into the record, the Board voted unanimously to approve Commissioner Wasserman's motion passing the resolution. (Wasserman/Gruber: 9-0)

X. New Business

(There was no New Business.)

XI. Calendar Items

December 14, 2021 – remote meeting via WebEx Events

A. Consideration of Appeals

2 appeal considerations

Reader of the Ramaytush Ohlone Land Acknowledgment – Commissioner Sawney.

XII. Adjournment

President Gruber adjourned the meeting at 7:21 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.