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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD**

Tuesday, April 16, 2024
at 6:00 p.m.
25 Van Ness Avenue, Room 610
San Francisco, CA 94102

I. Call to Order

President Gruber called the meeting to order at 6:03 p.m.

II. Reading of Ramaytush Ohlone Land Acknowledgment

Commissioner Qian read the Ramaytush Ohlone Land Acknowledgement.

III. Roll Call

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

Commissioners Not Present: Haley; Tom.

Staff Present: Koomas; Texidor; Van Spronsen; Varner.

IV. Remarks from the Public

A. Laura Campbell, attorney for the landlord at 1320 – 1360 Lombard Street (AT240011), stated that the tenant appears to be seeking more information about her private storage unit and not appealing the determination made by the Administrative Law Judge (ALJ). She stated that the landlord is willing to answer the tenant’s questions, and the Board should uphold the underlying decision as the ALJ accurately found that the landlord’s plans for the Accessory Dwelling Unit (ADU) showed that the new storage unit would accommodate the same storage space in size and characteristics for all tenants.

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- B. Lindsay Brennan, the tenant at 1976 Fell Street (AT240010), stated that the ALJ determined that her landlord had overcharged her \$39,000 when he illegally increased her rent for the last three years and misrepresented whether her unit was protected under the Rent Ordinance. She stated that she appealed the Decision because additional rent payments that she had made to the landlord via wire transfer and rent credits for out-of-pocket payments she made for needed repairs and maintenance were not reflected in the ALJ's overpayment calculation. She said that her appeal should be granted because her family is low-income and has suffered financial hardship due to the landlord's actions. She stated that the landlord has not indicated when and how he will refund her rent overcharges, and she does not understand why the landlord has filed a petition to raise the rent under special circumstances even though he has not yet made her whole. She also stated that the landlord retaliated and filed an Unlawful Detainer action against her that will be decided later this year and a restraining order that has already been dismissed.
- C. Sandra Garcia, the landlord at 1261 – 41st Avenue (AL240012, AL240013), stated that she was providing public comment on behalf of herself, the co-owner (her sister), and her deceased mother, the previous owner. She said that she moved into the property when she was five years old and that she did not know anything about her mother's business dealings. She stated that the tenant is a realtor and made a voluntary verbal contract with her mother to raise his rent \$100 annually since 2011 and that he knows San Francisco's tenant laws. She stated that the tenant is in a profession that makes him accountable as he is doing a public service by selling homes to people, and she asked the Board to review his conduct in entering into an agreement that he knew was not going to be approved. She said that in May 2023, four days after her mother passed away, she asked the tenant to make the rent payment to her directly but he wanted to pay the 2004 base rent amount instead.
- D. Roger Landry, the tenant at 1261 – 41st Avenue (AL240012, AL240013), stated that he calculated his reduced rent in accordance with net allowable rent increases going back to 1994, which was substantiated by the ALJ in the Decision. He stated that the landlords had the opportunity to sell the home in November 2023 for \$1.9 million dollars so he does not consider them to have financial hardship.
- E. Curtis Dowling, attorney for the landlord at 1331 Bay Street (AL240001), stated that the Rent Board lacked jurisdiction in this case as the Decision does not comply with Rules and Regulations Section 11.24(b) and should thus be vacated. He stated that Rule 11.24(b) required the Decision to state "to what amount the rent would be increased when and if the services are restored," that this rule is a jurisdictional limitation on the scope of ALJ power, and in order for the ALJ to comply with this rule, the tenant needs to be a tenant in occupancy at the time the decision is rendered. He stated that the landlord is asking the Board to enforce Rule 11.24(b) in a small class of cases and tenants would still have other remedies available to them in court. He stated that the ALJ also erred when he determined that he could impose successor liability on the landlord for breaches of contract by his predecessor, which account for 90% of the award, and that *Farber vs. Greenberg* held that a successor was not liable for predecessor breaches of contract. He said that a claim of decreased housing services claim is distinct from null and void rent increases that exceed the rent

limitations in Rent Ordinance Section 37.3 because if they were the same, Rules and Regulations Section 10.10(c) of which the ALJ relied on to impose liability, would run afoul of the rule in Rent Ordinance Section 37.8(e)(7) that a refund of null and void rent increases improperly collected by a landlord can only go back three years from the date of filing a petition. He stated that even if there were jurisdiction, 90% of the decision is void as it contradicts *Farber*.

- F. Stephan Howsepian, the tenant at 1331 Bay Street (AL240001), stated that he maintained a reasonable and respectful relationship with his prior landlord during his tenancy and timely submitted maintenance requests, which changed when the current landlord took ownership of the property. He stated that the current landlord denied established and reasonable modes of communication, dismissed the merits of unresolved maintenance issues, and misinterpreted codes and ordinances to justify his actions, which caused a loss of trust and good faith. He stated that through this new relationship, he learned about tenants' rights and the resources available such as the Rent Board and DBI, and the Decision is a result of engaging with these agencies. He stated the Rent Board has jurisdiction to determine the lawful rent of tenants through the period of their tenancy, the landlord steps into the shoes of the prior landlord for purposes of claims arising under the Rent Ordinance, the statute of limitations for decreased housing service claims is contained in Rules and Regulations Section 10.10(c), and he met his burden of proving that there were decreased housing services for which he gave his prior landlord sufficient written notice. He stated that the unit did not comply with minimum Housing Code heating requirements and he experienced multiple electrical fires and outages due to unpermitted circuitry. He stated that the landlord only submitted an untimely appeal approximately 260 days after the Decision was mailed when the tenant pursued action in civil court to collect the amount owed. He stated that the Decision complies with the Rent Ordinance and Rules and Regulations, and there is no relevant unfairness or injustice to support the appeal. He urged the Board to deny the appeal.
- G. Naeem Salameh, attorney for the landlord at 1976 Fell Street (AT240010), stated that after a full and fair hearing the tenant's petition was granted as the ALJ determined that the tenant's lawful rent for the unit was \$1,000 per month, resulting in approximately \$39,000 due to the tenant. He stated that despite the petition being granted, the tenant now appeals arguing that she is entitled to an additional \$32,588.72 based on her own failure to present such evidence in her petition, at the hearing, or post-hearing before the close of the record. He said that according to Rent Ordinance Section 37.8(f)(3) of the Administrative Code, in deciding whether to hear a given appeal the Board shall consider among other factors, fairness to the parties and hardship to either party, and promoting the policies and purposes of the Rent Ordinance. He also stated that according to the appeal form and Rent Board website, a party may appeal a decision if they believe it is incorrect, based on legal error, abuse of discretion, or would cause financial hardship, but the tenant's appeal is not based on any of these factors. He stated that in her appeal the tenant acknowledges that she did not realize the petition was incomplete at the time of submission. He stated that the appeal must be denied since it is based only on new evidence, which is beyond the purview of the Board since the Board can only review the record itself.

V. Approval of the Minutes

MSC: To approve the minutes of March 12, 2024.
(Wasserman/Qian: 7-0, Hung abstaining)

VI. Consideration of Appeals

A. 1331 Bay Street

AL240001

The landlord submitted the appeal 262 days late because the landlord assumed that since the tenancy had ended and no rent could be offset to satisfy the order, the case was closed.

MSC on March 12, 2024: To find good cause for the late filing of the appeal.
(Wasserman/Gruber: 3-1; Mosbrucker dissenting)

The landlord untimely appeals the decision granting in part the tenants' claims of decreased housing services and failure to repair and maintain. In the Decision, the ALJ found the landlord liable for rent reductions totaling \$28,465.00 for various decreased housing services ranging in dates back to June 24, 2015, but denied the tenants' claims for leak damage and poor boiler gas efficiency and heat. The ALJ also found the landlord liable for \$790.10 for the deferral of the annual rent increase effective March 1, 2022 for the landlord's failure to perform requested repairs or maintenance required by law. In the appeal, the landlord claims that the ALJ erred by not administratively dismissing the case for lack of jurisdiction once the ALJ learned that the tenants had vacated the unit and ceased to be "tenants in occupancy," that a successor-in-interest should not be liable for a predecessor-in-interest's breach of contract and decreased services, and that the scope of liability should be limited to three years before the date of filing of a petition for decreased housing services.

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

B. 1819 Golden Gate Avenue, Unit 12

AT240004

The tenant appeals the decision denying in part his claims of decreased housing services, failure to repair and maintain, and unlawful rent increase. In the Decision, the Administrative Law Judge found the landlord liable for rent reductions in the amount of \$350.00 for four decreased housing services but denied the tenant's claim for failure to repair and maintain and unlawful rent increase. In his appeal, the tenant argues in part that the Decision should be vacated and a new hearing scheduled because the landlord stole documents from his home and submitted evidence to the Rent Board without serving him a copy.

Commissioner Klein recused herself from consideration of the appeal as she has previously represented the landlord in unrelated matters.

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

C. 24 Wentworth Place, Unit 20

AT240017

The tenant submitted his appeal three days late because the Decision was mailed to his prior address and he did not receive it until USPS forwarded it to his new address.

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

The tenant untimely appeals the decision denying their claims of decreased housing services. In the Decision, the ALJ determined that the tenant failed to prove that he gave the landlords notice of his claims and a reasonable opportunity to correct them. In his appeal, the tenant claims that the landlords knew about crime issues at the property as indicated in two police incident reports and phone calls with the tenant. The tenant also claims that the landlords have failed to return his security deposit.

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

D. 32 Carl Street

AL240014

The master tenant appeals the decision granting the subtenant's claim that the rent charged to the master tenant exceeded the total rent paid to the landlord in violation of Rent Ordinance Section 37.3(c). In the Decision, the ALJ found the master tenant liable to the subtenant for rent overpayments in the amount of \$6,619.61. In her appeal, the master tenant argues that her contractual obligation for utility payments should have been included into the total rent for the unit, and that the landlord stopped asking her to pay for utilities without any explanation or notice.

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

E. 1261 – 41st Avenue

AL240012, AL240013

The landlords appeal the decision granting the tenant's claim of unlawful rent increase, based both on the merits and financial hardship. In the Decision, the ALJ found the landlord liable to the tenant for rent overpayments in the amount of \$33,511.25. In their appeal, the landlords claim that the 2010 written rent increase to \$1,000.00 should be used to calculate the tenant's base rent and that the Decision results in financial hardship for them as their portion for the mortgage payment for this property increased from \$500 to \$1,277.09 after their mother passed away, and they have other financial obligations such as their own monthly rent/mortgage and utility expenses.

MSC: To deny the appeal on the merits and remand to the ALJ to consider the landlords' claim of financial hardship only if both landlords submit additional evidence regarding such hardship.
(Mosbrucker/Qian: 5-0)

F. 1976 Fell Street

AT240010

One tenant appeals the decision granting the tenant's claim of unlawful rent increase. In the Decision, the ALJ found the landlord liable to the tenant petitioners for rent overpayments in the amount of \$39,305.00. In the appeal, the tenant submits new evidence showing that she paid rent by bank withdrawal or by providing the landlord with in-kind services for eleven months the ALJ calculated as zero.

Commissioner Klein recused herself from consideration of the appeal as her law firm is involved in a related dispute involving the same property.

MSC: To accept the appeal and remand the case to the ALJ to consider new evidence submitted on appeal only regarding the eleven months the ALJ calculated as zero, with a supplemental hearing to be held only if necessary.

(Mosbrucker/Qian: 5-0)

G. 1320 – 1360 Lombard Street

AT240011

One tenant appeals the decision denying the tenants' objections to the landlord's declaration regarding the construction of Accessory Dwelling Units (ADU). In the Decision, the ALJ determined that the tenants did not meet their burden of proving that the landlord's proposed ADU project will result in the removal or substantial reduction of any tenant housing services. In the appeal, the tenant argues in part that the Decision misstates her testimony, did not address the status of her storage unit at 1320 Lombard Street, and incorrectly stated that the tenant has a written lease for a parking space.

Commissioner Klein recused herself from consideration of the appeal since her law firm represented the landlord in the underlying case.

MSC: To deny the appeal.

(Wasserman/Gruber: 5-0)

H. 158 Shrader Street, Unit 4

AL240018

The landlord appeals the decision granting the tenant's application for deferral of capital improvement passthroughs based on financial hardship. In the Decision, the ALJ determined that the tenant qualified for relief from payment of capital improvement passthroughs because the tenant's rent is greater than 33% of the monthly gross household income, the tenant's assets do not exceed \$60,000.00, and the tenant's monthly gross household income is less than \$8,313.00 for a 3-person household. In the appeal, the landlord alleges that the tenant has unreported income and received favorable treatment by the Rent Board by being granted several time extensions to submit evidence.

Commissioner Wasserman recused himself from consideration of the appeal since he has previously represented the landlord in unrelated matters.

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

I. 520 Buchanan Street, Unit 21

AT240016

The tenant appeals the decision denying his application for deferral of capital improvement passthroughs based on financial hardship. In the Decision, the ALJ determined that the tenant did not qualify for relief from payment of capital improvement passthroughs because the tenant's gross monthly income is greater than \$6,467.00 for a 1-person household, his rent is less than 33% of his monthly gross household income, and he failed to establish that his assets did not exceed \$60,000.00. In his appeal, the tenant claims that the ALJ incorrectly counted some deposits to his Checking account as income in 2022 and 2023, that his household income is less than 80% of the current unadjusted AMI, and his assets do not exceed \$60,000. The tenant also submits new evidence that he qualifies for deferral of the capital improvement passthroughs because he receives CalFresh, a form of means-tested public assistance.

Commissioner Klein recused herself from consideration of the appeal as she has represented the landlord in unrelated matters.

MSC: To accept the appeal and remand to the ALJ to consider the tenant's claim of financial hardship.
(Mosbrucker/Qian: 5-0)

IV. Remarks from the Public (cont.)

- A. Stephan Howsepian, the tenant at 1331 Bay Street (AL240001), stated that he continued the original civil trial due to postponement of the appeal and the trial is currently scheduled to be heard this Friday, April 19, 2024. He asked the Board to expedite the delivery of the decision of the appeal before Friday.

VII. Communications

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

- A. Article from SF Chronicle.
- B. Rent Board Statement of Incompatible Activities.
- C. Rent Board Annual Eviction Report 2023-2024.
- D. Departmental workload statistics for February 2024.
- E. City Attorney Memorandum re Proposition D – City Ethics Laws.

VIII. Director's Report

Director Varner acknowledged the passing of Rod Wong, who worked at the Rent Board as a counselor for 30 years. She said that Rod was a dedicated resource to the landlords and tenants of San Francisco and had a huge following as members of the public would come specifically when Rod was on shift to speak with him and learn their rights and responsibilities.

She said that he was funny, smart, clever, and thoughtful, and the Rent Board is saddened but he leaves having made an impact in San Francisco and passed surrounded by a very loving family. Director Varner also said that as of April 16, 2024, the Rent Board fee collection was at 82%. She said that owners can currently make late payments with a 10% penalty on the Rent Board's online portal, or by mailing in a check, or paying in person at the Treasurer and Tax Collector's office in City Hall, during business hours, and that the penalty will increase to 15% on May 1. With regard to the Housing Inventory, Director Varner said that 17,113 parcels have reported for a total of 99,089 reports with 85,086 licenses generated. With regard to outreach, Director Varner said that there have been a few great key outreach collaborations this past month, including at the SF Apartment Association's Landlord Expo on March 27, and at the Professional Property Managers Association membership meeting on April 11, and that on May 18, staff will perform outreach at the Homeownership SF Housing Expo. She said that legislation sponsored by Supervisors Melgar and Peskin, Board of Supervisors File No. 231185, which amended the Planning Code to change the Conditional Use Authorization requirement for removal of an unauthorized dwelling unit (UDU), was passed by the Board on March 19, 2024 and was signed by the Mayor on March 28, 2024. She said that the legislation also amended the Rent Ordinance to require that where an owner obtains an exemption from the Conditional Use Authorization requirement to remove an unauthorized unit from a qualifying single-family home, the single-family home will then be subject to rent control. Director Varner said that Supervisor Melgar's Board of Supervisors File No. 231224, which would amend the Housing Code to authorize occupants of residential dwelling units to sue a property owner for substandard housing conditions as defined in Housing Code Section 1001, if the conditions pose a substantial risk to the occupants' health and safety, is still at Land Use. She also said that legislation sponsored by supervisors Peskin, Chan, Melgar, Ronen, Safaí, Preston, and Walton is Board of Supervisors File No. 240174, which would amend the Rent Ordinance to change the methodology used to calculate the amount of property taxes attributable to general obligation bonds that landlords can pass through to tenants. She said that the legislation would also allow tenants who can demonstrate hardship to seek deferral of the entire general obligation bond passthrough, not just a portion of the passthrough as currently allowed and would require landlords to file a copy of the worksheet used to calculate the general obligation bond passthrough with the Rent Board and that the Rent Board attended and presented on this item at the Rules Committee on April 15, where it passed.

As part of the Director's report Senior Administrative Law Judge Joey Koomas said that last year AB12 was passed last year, which changes the amount of security deposits that landlords can charge on or after July 1, 2024 to a maximum amount of one month's rent unless the owner is a natural person or an LLC that is comprised of natural persons and that ownership owns no more than two properties that have no more than four units. He said that previously landlords were allowed to collect up to two months' rent for an unfurnished unit and up to three months' rent for a furnished unit. He said that the Rent Board is conducting outreach to educate landlords on this change in the law. Senior Administrative Law Judge Koomas also said that the Rent Board is monitoring the "California Prohibit State Limitations on Local Rent Control Initiative", a voter initiative that will appear on the November 2024 statewide ballot, which would repeal the Costa-Hawkins Rental Housing Act. He said that the Los Angeles based AIDS Healthcare Foundation, who funded similar ballot measures in both 2018 and 2020 that did not pass, is leading the repeal campaign. He said that if the measure is passed, it would have a significant impact on rent control locally and throughout the state as it would remove the impediment that local cities and counties have to certain types of rent control.

IX. Old Business

A. Proposed Amendments to Rules and Regulations Section 10.10 Regarding Tenant Right To Organize Legislation

Commissioner Klein requested that this item be continued to the May 14, 2024 Commission meeting and no Commissioners raised any objection.

X. New Business

XI. Calendar Items

May 14, 2024 – regular in-person meeting at 25 Van Ness Ave, Room 610.

A. Consideration of Appeals
a. 1 appeal consideration

B. Old Business

a. Proposed Amendments to Rules and Regulations Section 10.10 Regarding Tenant Right To Organize Legislation

Reader of the Ramaytush Ohlone Land Acknowledgement – Commissioner Mosbrucker.

XII. Adjournment

President Gruber adjourned the meeting at 7:29 p.m.