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

Tuesday, March 14, 2023
at 6:00 p.m.
25 Van Ness Avenue, Room 610
San Francisco, CA 94102

Remote Access: The meeting will also be streamed online via Webex at
<https://bit.ly/3kVZhDC>

Public comment may be given by phone.

Public Comment Dial In Number: (415) 655-0001
Access Code: 2495 655 4884 / Webinar Password: RENT (7368 from phones)

The Commission strongly encourages interested parties to submit their comments in writing, by 12:00 p.m. on March 13, 2023 to rentboard@sfgov.org. The public comment call in instructions are available on the Rent Board's website at <https://sf.gov/public-body/rent-board-commission>.

Please visit the Rent Board's website for ongoing updates.

I. Call to Order

President Gruber called the meeting to order at 6:11 p.m.

II. Reading of Ramaytush Ohlone Land Acknowledgment

President Gruber read the Ramaytush Ohlone Land Acknowledgment.

III. Roll Call

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

Commissioners Not Present: Klein.

Staff Present: Brandon; Flores; Koomas; Liu; Varner.

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IV. Approval of the Minutes

MSC: To approve the minutes of February 14, 2023.
(Wasserman/Mosbrucker: 8-0; Qian abstained)

V. Remarks from the Public

A. Justin Goodman, the attorney for the landlord at 227 Brazil Avenue (AL230010), stated that the property owner is a small landlord who had an informal relationship with the tenant and neither increased the tenant's rent, nor decreased any housing services. He stated that the landlord could have passed through the increase in utility costs via an operating and maintenance expense rent increase if the tenant had not waited so long to challenge the increase, which prejudiced the landlord; and that the tenant's claim would be barred by a statute of limitations or other defenses in court.

B. Mario Lemos, a tenant at 1235 Washington Street (AL230011), stated that the prior landlord increased the rent far above the lawful amounts, but the tenants did not contest the increases at the time because they were afraid of being evicted and because the prior landlord informed them that they would have to sell the property without the increased rent. He stated that the tenants decided to file the petition after the property was listed for sale, which they felt was the right thing to do at that time.

C. Andy Gladstone, the tenant at 3459 Divisadero Street #304 (AT230014), stated that he's lived in the unit since 1995 and that his parking spot has always accommodated two cars. He stated that he submitted witness testimony at the hearing that corroborated his claim to tandem parking. He stated that the property manager's testimony that she had not seen him park tandem vehicles in his spot is of little value, because the witness admitted her visits to the property are infrequent.

D. Maung Yang, the tenant at 816 Geary Street #34 (AT230017), stated that he has lived in the unit for over 35 years and that the landlord has decreased many housing services during that time. He stated that the landlord was untruthful at the hearing, and that he could provide the Board with additional evidence to support his claim regarding a lack of water pressure in the unit.

E. Nikki Love, the attorney for the tenant at 227 Brazil Avenue (AL230010), stated that she wanted to reiterate the statements in her written appeal response, and argued that the appeal should be denied as there was no evidence that the landlord lawfully passed through the cost of water.

F. Attorney Edward Singer stated that he represents the landlord at 1950 Franklin Street, #6 (AL230012), and the landlord at 1369 Hyde Street #51 (AT230013). Regarding AL230012, he asked the Board to grant the appeal and stated that although there are two occupants in the unit, only one tenant was listed in the hardship application. Regarding AT230013, he asked the Board to affirm the decision and stated that the tenant petitioner is a subtenant who was only named on the rent increase notice because they were required to name him; that the tenants' rent payments were transmitted through an online portal system and the landlord was unaware which tenant made the payment; and that the original tenant intentionally misled the landlord into believing he was still living in the unit.

G. Caroline Elson, the tenant at 1301 La Playa Street #3 (AT230009), stated that this appeal highlights the importance of requiring landlords to provide notification to tenants before beginning construction projects that will affect their quality of life. She stated that the landlord omitted important details from their tenant notification, and that the tenants were denied due process.

H. Brad Hirn, a staff member at the Housing Rights Committee of San Francisco, made comments regarding the Tenant Right to Organize legislation. He stated that when introducing the legislation, Supervisor Aaron Peskin explained that he was involved in passing the Residential Tenant Communications Ordinance 15 years ago, and that this legislation was intended to go even further by giving tenants the “right to organize” and the right to have a “seat at the table”. He stated that he represents tenants in a number of pending Rent Board petitions asserting violations of the Tenant Right to Organize legislation, and provided the Board with a short summary of the specific issues included in the petitions.

I. Craig Berendt, a property manager at 3459 Divisadero Street #304 (AT230014), stated that at the time the landlord bought the building, they were provided paperwork showing there were 15 parking spaces, not 16, and that the parking space the tenant appellant is assigned has space for only one car.

J. Laura Campbell, the attorney for the landlord at 1301 La Playa Street #3 (AT230009), told the Board that the only issue on appeal is whether the landlord’s proposed ADU plans will result in a substantial decrease in housing services for the tenants. She stated that whether the tenants received notice “on the first go” is irrelevant, since all of the tenants have now received notice and been given an opportunity to object at the Rent Board. She stated that a landlord’s ADU Declaration doesn’t have to describe the landlord’s construction plans in great detail; that garbage and laundry services will be improved after the ADU work; that the tenants’ balconies are not being removed; and that the project will not result in a substantial decrease in housing services for the tenants.

K. Denise Shutt, a former landlord at 1235 Washington Street (AL230011), stated that the tenants came up with the rent increase amount and agreed to it, and the owners could not afford to keep the building with the low rent paid by the tenants. She stated that the property was recently sold to a new owner, and that the decision should therefore be adjusted to pro-rate liability for overpayments. She also stated that the decision is inconsistent with the Rent Board’s mission statement to ensure “fair and adequate rents”; that the tenant bullied the owners; and that the Board should take fairness into consideration.

VI. Consideration of Appeals

A. 1301 La Playa Street #3

AT230009

The tenant’s objection to the landlord’s ADU Declaration was denied. The ALJ found that the landlord’s proposed ADU construction project, as proposed, would not result in a substantial reduction in housing services pursuant to Rent Ordinance Section 37.2(r). On appeal, the tenant argues in part that she was not provided proper notice of the proposed ADU work under the Planning Code, and that she was unfairly prejudiced by the landlord’s late submission of evidence.

Commissioner Wasserman recused himself from this appeal because he represents the property owners in unrelated matters.

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

B. 227 Brazil Avenue

AL230010

The tenant's petition claiming an unlawful rent increase was granted and the landlords were found liable for rent overpayments in the amount of \$20,361.40. On appeal, the landlords argue that the tenant's increased payments represented utility costs and not "rent" subject to limitation under the Ordinance, and that the Rent Board lacks jurisdiction over the tenant's claim.

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

C. 1235 Washington Street

AL230011

The tenants' petition claiming an unlawful rent increase was granted and the landlords were found liable for rent overpayments in the amount of \$38,353.29. On appeal, the landlords claim that there were factual errors in the Decision; that the tenants' rent history evidence was insufficient; and that the tenants' corrected rent is inadequate and not comparable with rents in neighboring units.

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

D. 1950 Franklin Street #6

AL230012

The tenant's application for deferral of a capital improvement passthrough due to financial hardship was granted. The Decision found that the tenant is the sole occupant of the subject unit and qualifies for hardship relief as a recipient of means-tested public assistance. On appeal, the landlord contends that the unit is occupied by a second adult that may have additional income.

MSC: To accept the appeal and remand the case for a hearing on the issue of whether a second adult occupies the unit and has additional income.
(Wasserman/Gruber: 5-0)

E. 1369 Hyde Street #51

AT230013

The tenants' petition alleging an unlawful rent increase under the Costa-Hawkins Rental Housing Act was denied. The ALJ found that a rent increase was authorized because the original occupants have vacated, and the remaining occupant is a subtenant who moved in after the tenancy commenced. The tenant appeals the decision and asserts that he is a co-

tenant and not a subtenant because the landlord named him in the rent increase notice and accepted his rent payment.

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

F. 3459 Divisadero Street #304

AT230014

The tenant's petition alleging decreased housing services was denied. The ALJ found that the tenant failed to meet his burden of proving that tandem use of his parking space was a housing service provided by the landlord. The tenant appeals, arguing that he presented substantial evidence in support of his claim and that the ALJ gave disproportionate weight to the property manager's testimony.

Commissioner Wasserman recused himself from consideration of this appeal because he is a part owner of the landlord's property management company.

MSC: To accept the appeal and remand the case for the ALJ to consider the tenant's additional evidence that was submitted on appeal.
(Mosbrucker/Qian: 5-0)

G. 1638 – 28th Avenue

AL230015, AL230016

The tenant's petitions alleging decreased housing services and improper passthroughs were granted in two separate Decisions. The landlord was found liable for rent reductions in the amount of \$2,527.50 for decreased housing services and the ALJ also determined that there were no valid passthroughs in effect. On appeal, the landlord states that she disagrees with the Decisions and that the tenant's testimony was untruthful.

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

H. 816 Geary Street #34

AT230017

The tenant's petition alleging decreased housing services was granted in part and the landlord was found liable for rent reductions in the amount of \$575.00 for issues with the bathtub faucet and showerhead. On appeal, the tenant restates his objection to the landlord's installation of low-flow plumbing fixtures in his bathroom and kitchen.

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

V. Remarks from the Public (cont.)

A. Denise Shutt, a former landlord at 1235 Washington Street (AL230011), stated that she agrees with the Commissioner who commented that the burden of proof was on the tenant; that the tenant's evidence was scant and unverified; and that she would like the Board to adjust the

amount owed to the tenant since she only collected rent for part of January 2023 before the property was sold.

B. Colin Halliday, a property manager at 3459 Divisadero Street #304 (AT230014), stated that the tenant never informed the new owner or property manager of his parking arrangement and has no written evidence that this arrangement exists. He stated that he's been a property manager for many years, and it's generally accepted that if you don't have an agreement in writing, you have nothing to rely on.

C. Denise Shutt, a former landlord at 1235 Washington Street (AL230011), repeated her request that the decision be adjusted to account for the sale of the property.

VII. Communications

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

A. Articles from the SF Chronicle, SF Standard, KQED, and NBC Bay Area.

B. Monthly workload statistics for January 2023.

C. Decision in *NCR Properties, LLC v. City of Berkeley*.

VIII. Director's Report

Executive Director Varner first thanked the department's Public Information Unit and Housing Inventory and Rent Board Fee Unit staff for their hard work and dedication while attending to the increased public contacts through the March 1 deadline for all owners to report into the Housing Inventory and timely pay the 2023 Rent Board Fee. She said that now notices from the City's Bureau of Delinquent Revenue have gone out and the department has received a whole new wave of public contacts. She requested that in the future, owners continue to open their mail and contact 311 before delinquent obligations must be forwarded to BDR, and to please remember that staff are working their hardest to help resolve issues. She said that departmental operation remain the same, with phone counseling open and available to the public from 9:00 a.m. – 12 noon and 1:00 p.m. – 4:00 p.m., Monday through Friday, excluding holidays, and staff continue to work on a hybrid basis.

Director Varner provided outreach updates. She told the Board that the department presented at the Professional Property Managers Association monthly membership meeting on March 9, and that on March 14, Rent Board Supervisor Jennifer Rakowski presented on the Housing Inventory and other topics to tenant advocates at the Housing Rights Committee. At the same time as the evening Commission meeting, Jennifer Rakowski, Evelyn Benitez, and Van Lam presented on the Housing Inventory at the Small Property Owners of San Francisco Institute monthly membership meeting.

Director Varner again reminded property owners that although the Housing Inventory reporting deadline for owners of all properties was March 1, 2023, the Rent Board Portal has not closed for reporting, and that owners can easily access the Portal to report information on their units

to obtain a license to increase their tenants' rent, either on the Rent Board's website at sf.gov/rentboard or directly to the Portal at portal.sfrb.org. Director Varner said that timely Rent Board Fee payments were due March 1, and that payment now incurs a 5% penalty, and then a 10% penalty in April, and a 15% penalty in May. She said that owners can pay via the Rent Board Portal at portal.sfrb.org, or by mailing a check into the Rent Board's PO Box or walking a check or cash payment into the Treasurer and Tax Collector's Office during business hours. She said that if any owner is having issues with their Fee payment or reporting into the Housing Inventory, they should contact 311.

Director Varner reported that on March 7, 2023, the Board of Supervisors introduced File No. 230260, which would extend the local eviction moratorium that provides a defense to certain non-payment of rent evictions, and that the moratorium is currently set to expire at the same time as the Mayor's COVID-19 emergency proclamation, which has not yet occurred. She said that this legislation would extend the eviction moratorium to cover rent payments that come due within 60 days after the emergency proclamation ends.

Director Varner told the Commissioners that the March 14 board meeting was the last meeting before the April 3 deadline to timely file Form 700s and complete the required Ethics and Sunshine training. She reminded the Commissioners that if they do not timely file, a fine may be assessed for each day of non-reporting, and importantly, they would not be able to vote at the subsequent board meeting. She thanked the four commissioners who had completed all or part of their filings.

Director Varner introduced and welcomed Yueming Heidi Liu, a new Senior Clerk in the Housing Inventory and Fee Unit. She told the Board that Heidi formerly worked at the Human Services Agency in the CalWORKs unit, and also for the SF Public Library, and speaks Cantonese, and that she is quite accustomed to working with the public.

IX. Old Business

A. Future Rent Board Commission Meetings

Director Varner explained that Commission meetings held the year prior to March 1, 2023 were online only, and each month during the COVID health emergency, the Commissioners were required to vote on a resolution to continue to hold meetings online under California Government Code Section 54953(e). She said that this is the first in-person meeting in nearly 3 years, and that the Rent Board Commission, like all City policy bodies, was now required to hold all future meetings in person. Director Varner explained that the City Attorney and City Administrator have strongly advised that in-person meetings also be streamed online and provide remote public comment opportunities. She said that during the time the Commissioners were meeting online only, there was a desire to have meeting materials distributed electronically, while also retaining paper meeting material distribution. She said that because the Commissioners would now be required to meet in person, staff would continue to provide meeting materials both electronically and on paper, and requested Commissioner feedback on the related distribution of meeting materials. President Gruber, Commissioner Mosbrucker, Commissioner Wasserman, Commissioner Sawney, Commissioner Qian, Commissioner Haley, and other Commissioners provided feedback that it was very difficult to adequately consider and keep track of all documents submitted in regard to an agenda

appeal when they were submitted very near in time to a board meeting, for example, the day of, or day prior to a board meeting. The Commissioners directed staff to obtain City Attorney guidance on the matter and whether the Board could consider authoring a Regulation on the issue. Commissioner Wasserman and other Commissioners requested that this item remain on the agenda as Old Business to discuss document submission procedures for agendized appeals, in light of meetings now being held in-person.

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

Commissioner Wasserman asked the Commissioners to continue this discussion until the April Board Meeting, since the amendments were introduced by Commissioner Klein but she was not able to be present for the Meeting. Commissioner Mosbrucker agreed with the continuance and stated that she felt it was too early to enact Regulations regarding the Tenant Right To Organize Legislation. This item was then continued to the April Board Meeting for discussion as Old Business. Commissioner Mosbrucker asked that the proposed amendments to Rules and Regulations Section 10.10, the full text of SF Admin Code Chapter 49A, and Supervisor Chan's letter be included in the Commissioners packets for the April Board meeting.

X. New Business

There was no new business.

XII. Calendar Items

April 11, 2023

A. Consideration of Appeals

4 appeal considerations

Reader of the Ramaytush Ohlone Land Acknowledgment – Commissioner Crow.

XIII. Adjournment

President Gruber adjourned the meeting at 7:54 p.m.