



London N. Breed
Mayor

Christina A. Varner
Executive Director

DAVID GRUBER
PRESIDENT

DAVE CROW
JULIET HALEY
RICHARD HUNG
ASHLEY KLEIN
CATHY MOSBRUCKER
KENT QIAN
KION SAWNEY
ARTHUR TOM
DAVID WASSERMAN

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

Tuesday, September 12, 2023
at 6:00 p.m.
25 Van Ness Avenue, Room 610
San Francisco, CA 94102

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

Public comment may be given by phone.

Public Comment Dial In Number: (415) 655-0001
Webinar Number: 2662 575 0684 / Webinar Password: RENT (7368)

The Commission strongly encourages interested parties to submit their comments in writing, by 12:00 p.m. on September 8, 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 6:08 p.m.

II. Reading of Ramaytush Ohlone Land Acknowledgment

Commissioner Sawney read the Ramaytush Ohlone Land Acknowledgement.

III. Roll Call

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

Commissioners Not Present: Hung; Klein; Qian.

Staff Present:

Garcia; Koomas; Texidor;
Van Spronsen; Varner.

IV. Remarks from the Public

A. An unidentified member of the public spoke regarding the tenant at 963 Capp Street (AT230047). She stated that she has known the tenant and his mother for many years and they have lived at 963 Capp Street since 2002, and that the tenant Edwin Lopez has always lived in the home with his mother.

B. An unidentified member of the public spoke regarding the tenant at 963 Capp Street (AT230047). She stated that the Edwin Lopez has always lived on Capp Street with his mother, that she has known the tenant for over 25 years and that he has been living there for that time. She also offered to be available for further questions if the information was helpful to his case.

C. Marta Lides stated that she has known Edwin Lopez, the tenant at 963 Capp Street (AT230047) and his now-deceased mother Gladys Martinez since 1997, when she met Mr. Lopez at a church group and he then introduced her to his mother. Ms. Lides further commented that ever since, she has known the different places Mr. Lopez and his mother have lived. She offered to be available to answer any questions regarding his case since she is there to support Mr. Lopez as he is a US citizen that is fighting for his housing rights, which is very difficult to pay for.

D. Braxton Haake, an attorney for tenant appellant Frederic Ferris at 563 17th Avenue (AT230049), stated that if the Decision stands and the tenant's rent is raised without limitation from \$1,136.00 to \$4,000.00 a month, it will result in the eviction of a senior citizen from his home of over 30 years. Mr. Haake strongly urged that the Decision be vacated and the landlords be prevented from increasing the tenant's rent to market rate because it was "made in error and constitutes an abuse of discretion." Mr. Haake explained that the Rules provide specific guidance on how to determine whether a subject unit is a tenant's principal place of residence and instruct the Rent Board to evaluate the totality of circumstances, and that the ALJ's analysis did not follow the specific guidelines outlined in the Rule and failed to evaluate the totality of circumstances. Mr. Haake said that the ALJ's "hyperfocus" on the tenant's physical presence in the unit was at the "expense of other factors whose analysis was required by the Rules," the most pertinent factor being number five that requires consideration of whether a tenant's temporary absence is caused by a family emergency. Mr. Haake further stated that any alleged absence from the unit in this case was caused by a family emergency, as the tenant has two very sick and elderly in-law relatives that he looks after who were in great need during the pertinent period. Mr. Haake concluded that the decision was made in error and he strongly encouraged that it be vacated.

E. Frederic Ferris, the tenant appellant at 563 17th Avenue (AT230049), stated that the landlords misled the ALJ about wanting to continue renting the apartment. The tenant said that as soon as the original Decision was made, the landlord contacted him about selling the building and as such had no intention of keeping the two units on the rental market, which goes against the Rent Board's goal of keeping units available to the public. He said that he is still

caring for elderly in-laws and the landlord is using a “loophole in the law” to evict a senior citizen and 33-year tenant to sell the building.

F. Jessica Juarez, representing tenant Edwin Lopez at 963 Capp Street (AT230047), told the Board that the tenant has openly resided at the property since August 1, 2002 when he moved in with his mother. She said that the ALJ erred and abused her discretion when she ignored the landlord’s inconsistent and not credible testimony regarding the signatures on the lease, and that the lease is not executed or signed by anyone. Ms. Juarez said that the ALJ relied on irrelevant documents; that Mr. Lopez and his mother were known to the landlord as previous tenants in other buildings they own; and that none of the former property managers provided oral or written testimony even though there were several staff changes throughout the tenancy. Ms. Juarez stated that although the landlord knew the tenant’s mother did not speak or read English, all documents were provided in English; that improper weight was given to landlord documents and expert witness testimony; that the ALJ disregarded neutral third-party testimony presented by the tenant; and that the ALJ discounted the tenant’s credibility. Ms. Juarez concluded that the tenant is an original occupant and valuable community member who has lived in his home for over two decades, and “would be a shame” to lose due to an unlawful rent increase from \$2,773.81 to \$4,500.00.

V. Approval of the Minutes

MSC: To approve the minutes of August 15, 2023.
(Wasserman/Mosbrucker: 6-0; Sawney abstaining)

VI. Consideration of Appeals

A. 963 Capp Street

AT230047

The tenant appeals the decision denying their claim of unlawful rent increase. The Administrative Law Judge (ALJ) determined that the rent increase from \$2,773.81 to \$4,500.00 effective January 1, 2023 was authorized under Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act since the evidence established that the tenant petitioner was a lawful subtenant and not an original occupant. On appeal, the tenant claims that the decision should be reversed because the ALJ abused her discretion by not properly evaluating the evidence and testimony. The landlord submitted a response to the appeal claiming that based on the evidence, the ALJ made a reasonable conclusive decision that the tenant was never an original occupant.

Commissioner Mosbrucker recused herself from consideration of the appeal because she is an employee of the agency that represents a tenant in this case.

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

MSC: To deny the appeal.
(Tom/Gruber: 3-2; Crow, Sawney dissenting)

///

B. 563 – 17th Avenue

AT230049

One tenant appealed the decision granting the landlord’s petition seeking a rent increase under Rules and Regulations Section 1.21. The ALJ determined that there was no “tenant in occupancy” of the unit at the time the petition was filed since the tenant respondents primarily resided in Southern California in both 2022 and 2023. In the appeal, the tenant alleges that the ALJ misapplied the law by improperly focusing his analysis on whether the tenant was physically present in the unit without considering other factors. The landlord submitted a response to the appeal claiming that the requested relief to vacate the decision goes beyond the actions that can be taken by the Board and the tenant’s argument is unsupported by the evidence.

Commissioner Mosbrucker recused herself from consideration of the appeal because she is an employee of the agency that represents a tenant in this case.

MSC: To deny the appeal.
(Wasserman/Gruber: 3-2; Crow, Sawney dissenting)

C. 1475 Oakdale Avenue, Upper Unit

AL230051

The landlord appeals the decision granting in part the tenant’s claim of decreased housing services. In the decision, the ALJ found the landlord liable for rent reductions in the amount of \$550.00 for a pest infestation from September 15, 2022 until February 25, 2023, but determined that no reduction in base rent was warranted for the tenant’s other claims. In the appeal, the landlord claims that she should not be liable to the tenant for \$550.00 because she paid for a pest control company to abate the pest infestation, and because the tenant does not pay water or electricity, is using the garage and hallway closet without her permission and does not allow the landlord to rent the other rooms to other tenants.

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

D. 1475 Oakdale Avenue, Upper Unit

AL230052

The landlord’s appeal was 4 days late. The landlord states that they submitted the appeal late because they returned from traveling abroad on August 5, 2023, and had not seen the mailed decision prior to that date.

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

The landlord untimely appeals the decision granting in part the tenant’s claim of unlawful rent increase. In the decision, the ALJ determined that while the rent increases effective June 1, 2019 and February 1, 2023 were lawful because they did not exceed the allowable annual rent increases available to the landlord at the time, the landlord was still liable to the tenant for a rent overpayment from January 1, 2020 to January 31, 2023 totaling \$69.56. On appeal, the landlord claims she should not be liable for the tenant’s rent overpayment

because the tenant voluntarily paid the extra amount and does not pay for water and electricity, as well as uses the hallway closet and garage without the landlord's approval.

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

E. 58 Williams Avenue, Downstairs Unit

AL230053

The landlord's appeal was filed 3 days late because the landlord claims they did not understand that an appeal submitted to the Rent Board via email after 5:00 p.m. on the final day would be considered "received" the next business day.

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

The landlord untimely appeals the decision granting the tenants' claim of unlawful rent increase and decreased housing services. In the decision, the ALJ found the landlord liable for \$5,507.50 in rent overpayments resulting from null and void rent increases from September 1, 2019 to August 14, 2023, and \$1,245.00 for removing access to the backyard from March 1, 2020 to August 14, 2023. The ALJ also held that the tenants' rent will continue to be reduced by \$65.00 per month until backyard access is returned to the tenants. On appeal, the landlord asserts that the ALJ made an error of fact because access to the backyard was removed to increase the safety of the property.

MSC: To deny the appeal and issue a Technical Correction to the Decision regarding the monthly rent reduction stated in the Order for the decrease in housing service.
(Mosbrucker/Sawney: 5-0)

IV. Remarks from the Public (cont.)

There were no further remarks from the public.

G. Communications

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

- A. Articles from SF Chronicle and Mission Local.
- B. Departmental workload statistics for July 2023.

VIII. Director's Report

Executive Director Varner told the Board that daily operations continue as usual at the Rent Board, and that the Rent Board's new Deputy Director and Board Secretary Barbara Texidor was present at the meeting. Director Varner also said that new staff are expected to be present at upcoming Commission meetings.

With regard to outreach, Director Varner said that on August 28, Public Information Unit staff Marissa Jimenez and Jessica Gallegos provided a training to Spanish-speaking housing counseling volunteers participating in a 12-week training course sponsored by the Housing Rights Committee called Escuela Del Pueblo, and on September 1, Public Information Unit staff Abe Field, Diana Flores, and Jennifer Rakowski presented to the Mayor's Office of Housing and Community Development's Eviction Prevention Network on Reports of Alleged Wrongful Eviction. Director Varner said that staff will present to Community Boards mediators in the next month regarding the Rent Board's services.

Director Varner also told the Board that the Housing Inventory and Rent Board Fee unit is preparing for its next Rent Board fee cycle starting with the exemption request period in October, and property owners should look out for notices arriving to them in October.

With regard to legislation, Director Varner told the Commissioners that [Board of Supervisors \(BOS\) File No. 230810](#), which would amend the Tenant Right To Organize legislation, was introduced on July 11, 2023 and is currently with the Rules Committee. The amendments would specify that an individual tenant may have a tenant association representative present during their meetings with the landlord and require landlords to remain in attendance at meetings of a tenant association for up to two hours. The amendments would also clarify what it means to confer in good faith and the types of matters that may be discussed with a tenant association, and clarify that a duly-formed tenant association remains in good standing unless and until either: 1) it fails to re-certify on the landlord's request, which can happen no more than once every three years; or 2) a new tenant association is formed to take its place. Director Varner also told the Commissioners that [Board of Supervisors File No. 230770](#) went into effect on August 28, 2023. She said that the Ordinance amends the Rent Ordinance to provide that tenant-occupied units in buildings that will be receiving either low-income housing tax credits or tax exempt multifamily revenue bonds shall remain subject to the Rent Ordinance, as long as any of the existing tenants continue to reside in the unit, or unless all the tenants in the unit agree otherwise in writing; and for any such units that may have previously become exempt from the Rent Ordinance since 2018, restoring rents to the levels allowed had the Rent Ordinance continuously applied.

IX. Old Business

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

President Gruber and Commissioner Wasserman asked the Board to continue this item for discussion at the October 2023 Commission Meeting and no objection was raised.

X. New Business

There was no new business.

XI. Calendar Items

October 10, 2023 – regular in-person meeting at 25 Van Ness Ave, Room 610, also streamed via Webex.

A. Consideration of Appeals

8 appeal considerations

Reader of the Ramaytush Ohlone Land Acknowledgement – Commissioner Tom.

XII. Adjournment

President Gruber adjourned the meeting at 7:37pm.