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

The Commission strongly encourages interested parties to submit their comments in writing, by 12:00 p.m. on November 10, 2023 to [rentboard@sfgov.org](mailto:rentboard@sfgov.org). Please visit the Rent Board’s website for ongoing updates.

I. Call to Order

President Gruber called the meeting to order at 6:04 p.m.

II. Reading of Ramaytush Ohlone Land Acknowledgment

Commissioner Wasserman 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. Randy Lau, a member of the public, stated that he is a tenant in a building that is noncompliant with the mandatory soft story retrofit program and has an outstanding Notice of Violation (NOV) issued by the Department of Building Inspection (DBI) in October 2019. He said that the building was sold earlier this year, and after six months the new owners increased the tenants’ rent using the banked rent increases not utilized by the previous owners. Mr. Lau stated that the owners were automatically

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granted a rent increase license once they reported into the Housing Inventory Portal, so he challenged the increase by filing a Failure to Repair and Maintain petition with the Rent Board for noncompliance with the NOV and the owner later withdrew the notice of rent increase. Mr. Lau stated that the license issuance process sends mixed signals because tenants may interpret the automatic granting of a license to owners as validation of the rent increase itself and discourages tenants from submitting a petition to the Rent Board challenging such increases, while the landlord interprets that they have been lawfully granted a license since they satisfied their obligation to report into the Inventory. Mr. Lau said that 1,125 units in buildings with outstanding NOVs were already granted licenses in 2023. Mr. Lau stated that the license process puts the burden on tenants to highlight that there is an NOV even though it has already been recorded and made public by DBI and considered as a violation of law by the Rent Board. He asked the Board to consider amending the Housing Inventory Ordinance so that buildings cannot be granted a rent increase license if they have an outstanding NOV, as this would provide additional incentive to the owner to resolve NOVs and remove the burden from tenants to use City resources to highlight publicly available information.

- B. Justin Goodman, attorney for the landlord at 1033 Broadway Street (AL230067), stated that the building consists of two units that were subdivided in 2000 by the landlord's parents who then gifted one of the units to the landlord, and that the controlling issue is whether a property owner's vested right to subdivided property means that their property remains subdivided. He explained that subdivision is governed by the Subdivision Map Act, which gives cities control over design and improvement, and the Subdivided Lands Act, which conditions alienation and sale for buildings with five or more units and requires renewal every five years of a report filed with the State. He stated that in this case the property was subdivided in compliance with the Subdivision Map Act and the Subdivided Lands Act does not apply, and therefore the landlord has a vested right in the subdivision of her unit and the ability to alienate without any additional requirements. Mr. Goodman also stated that the Rent Board's Decision was based solely on the case of *City of W. Hollywood v. 1112 Inv. Co.*, but unlike the larger buildings in that case that let their final public report lapse, this property is no longer capable of losing the characteristic of being subdivided. He stated that the issue in *1112 Investments* was whether the City can now impose a conditional use requirement and if the City can, and the respondent owners have not obtained conditional use permits, then the units are not alienable and the exemption from rent control found in former Civil Code Section 1954.5(2), the law in effect at the time the City initiated the action, does not apply. He stated that in this case, the law in effect at the time was the pre-2001 version of the Costa-Hawkins Rental Housing Act and therefore the landlord never lost a vested right to the exemption. He also stated that neither the opposition nor the Administrative Law Judge's (ALJ) memorandum mention the vested rights doctrine because they don't have an answer to it. He also commented that it is undisputed that the amendment to the Costa-Hawkins Rental Housing Act is a change in law and therefore does not apply retroactively unless it substantially changes the legal consequences of past facts. He stated that this case isn't just about rent increases, but also about the choice to alienate and subdivide property received as a gift without fair value, which are not the type of past events where a change in law would substantially change the legal consequence.

- C. Adrienne Mendle, attorney for the tenant at 1475 Oakdale Avenue, Downstairs Unit (AL230066), urged the Board not to disturb the ALJ's Decision. She stated that all the items raised in the landlord's appeal were addressed in the ALJ's Decision and considered in the hearing. Ms. Mendle further stated that the tenant has been living with habitability issues that have an outstanding NOV since 2018 and remain unabated.
- D. Dora Gee, owner of 2016-2024 Taylor Street (AL230063), stated that the building has been owned by her family and managed by her father for years. She explained that when they began to perform seismic work, they were advised to include Additional Dwelling Units (ADUs) and had no idea what the process would be or how long it would take, and therefore were shocked when they received the NOV for not completing the seismic work on time. She further stated that she brought up concerns about the completion of the work several times with their engineers, architects, and contractor, and was told it would not be a problem. She stated that the project took place during the COVID shutdown when the DBI review process and the construction work took much longer. She stated that in the end, they were unable to secure financing for the ADUs and they realized it was too much work at their age to pursue. She also stated that during this time she had become ill and her father passed away, and they did everything they could to get the work done in a timely manner, and the delay caused them a lot of stress. She urged the Board to accept the appeal to provide additional information to the ALJ about the facts surrounding the delays that led to the project taking longer than expected.
- E. Megan Johnson, the attorney for the tenant at 1033 Broadway Street (AL230067), stated that the landlord's appeal should be denied and that the Decision and her opposition clearly state that all the rent increases occurred after the 2002 amendment to the law. She further stated that the last two rent increases that the landlord imposed are attempts to circumvent the just cause protections and a blatant attempt to evict the tenant. Ms. Johnson also stated that while she agreed that Decisions at the administrative level are not binding precedent, they are persuasive, and it was not improper for the ALJ to consider that Decision.

V. Approval of the Minutes

MSC: To approve the minutes of October 10, 2023.  
(Wasserman/Qian: 6-0; Sawney, Hung abstaining)

VI. Consideration of Appeals

A. 629 Guerrero Street, Unit 6

AT230062

The tenant appeals the dismissal of her claim of unlawful rent increase. In the Decision, the Administrative Law Judge (ALJ) dismissed the tenant's claim of unlawful rent increase with prejudice because the tenant failed to appear at the hearing. In the appeal, the tenant states that she failed to appear because she was traveling on the East Coast and confused the time zones.

*Appeal No. AT230062 was withdrawn on November 14, 2023.*

B. 733 Myra Way, Upstairs Unit

AT230064

The tenant appeals the decision granting in part their claim of decreased housing services. In the Decision, the ALJ found the landlord liable to the tenant for the sum of \$700.00 for a rotting wood deck from April 29, 2022 to September 2, 2022, but denied the tenant's claim that the landlord's limitations on laundry use resulted in a substantial decrease in housing services. In the appeal, the tenant claims that the landlord's laundry schedule prevents him from doing laundry on weekdays, which results in 13 fewer loads of laundry per month and is both inconvenient and unhygienic.

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

MSC: To deny the appeal.

(Wasserman/Gruber: 3-2; Mosbrucker, Qian dissenting)

C. 1475 Oakdale Avenue, Downstairs Unit

AL230066

The landlord appeals the decision granting the tenant's claims of decreased housing services and failure to repair and maintain. In the Decision, the ALJ found the landlord liable for the total sum of \$5,588.40 for rent reductions for the decreased housing services of PG&E charges, bedroom ceiling leak, damaged kitchen drawers, and lack of access to a secure mail receptacle, as well as an ongoing \$90.00 rent reduction for each month thereafter until repairs were made. The ALJ also determined that the rent increase from \$1,191.00 to \$1,366.07 effective April 1, 2023 was null and void for the landlord's failure to obtain a rent increase license as required by Rent Ordinance Section 37.15(e). On appeal, the landlord claims that she already made the necessary repairs, the tenant has not been paying the PG&E charges, and the tenant should pay an increased monthly rent without any reduction because the tenant's entire family is living in the home.

MSC: To deny the appeal.

(Mosbrucker/Qian: 5-0)

D. 3328 – 24th Street

AT230061

The tenants filed the appeal one day late. The tenants claim that they thought they were submitting the appeal timely since it was submitted within fifteen days of the date the Decision was mailed but didn't realize that submitting it in the late afternoon would result in it being marked as filed the next business day.

MSC: To find good cause for the late filing of the appeal.

(Qian/Wasserman: 5-0)

The tenants untimely appeal the decision denying their claim of unlawful rent increase under the Costa-Hawkins Rental Housing Act. In the Decision, the ALJ determined that the monthly rent increase from \$3,386.11 to \$4,500.00 was authorized by Civil Code Section 1954.53(d)(2) of the Costa-Hawkins Rental Housing Act because the evidence established that the tenant petitioners were subtenants and not lawful original occupants or co-tenants at the time the rent

increase notice was served. In the appeal, the tenants claim that the landlord made false and contradictory statements, did not properly notice a prior rent increase, that the California Tenant Protection Act of 2019 (AB 1482) restricts rent increases of more than 9.2% for anyone living in the unit, and that additional witness testimony by an employee of the landlord could support the tenants' claims.

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

E. 1033 Broadway Street

AL230067

The landlord appeals the decision granting the tenant's claims of unlawful rent increase. In the Decision, the ALJ found the landlord liable for a total of \$102,100.00 for rent overpayments from October 1, 2019 through October 31, 2023. On appeal, the landlord asserts that the 2002 amendments to the Costa-Hawkins Rental Housing Act had no effect on the exempt status of the subject condominium unit, since the condominium conversion was completed prior to the effective date of the legislation. The landlord also argues that the ALJ improperly relied on a prior Rent Board decision as authority.

Commissioner Crow recused himself from consideration of the appeal because he previously advised the tenant regarding the matter.

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

F. 4725 Irving Street

AL230065

The landlord submitted the appeal 194 days late because they did not discover an error in the Decision until long after it was issued.

MSC: To find good cause for the late filing of the appeal.  
(Wasserman/Gruber: 4-1; Mosbrucker dissenting)

The landlord untimely appeals the Decision granting their petition for a capital improvement passthrough. In the Decision, the ALJ granted the landlord's petition but found that Unit 7 was not eligible for all the passthrough costs because the tenancy began after some of the work was completed. In the appeal, the landlord requests a correction of the move-in date for Unit 7 because the original petition incorrectly listed it as 03/01/2020 when it should have been 3/01/2010, and this error caused the tenant to be improperly disqualified from receiving passthrough costs for some of the capital improvement work.

MSC: To accept the appeal and remand the case to the ALJ.  
(Wasserman/Gruber: 4-1; Mosbrucker dissenting)

G. 2016-2024 Taylor Street

AL230063

The landlords appeal the Decision denying their petition for a capital improvement passthrough. In the Decision, the ALJ found that the capital improvement work was required to

correct a code violation that was unabated for over 90 days, and that the landlords failed to establish that the circumstances causing the delay in completing the capital improvement work were reasonable or beyond the landlords' control. In the appeal, the landlords assert that they met their burden of proof at the hearing and should have another opportunity to provide additional evidence to prove that they made timely good faith efforts to complete the capital improvement work.

MSC: To accept the appeal and remand the case to the ALJ for a new hearing to consider the newly submitted evidence on appeal.  
(Mosbrucker/Wasserman: 5-0)

#### VII. Remarks from the Public (cont.)

*There were no further remarks from the public.*

#### VIII. Communications

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

- A. Article from SF Examiner.
- B. Departmental workload statistics for September 2023.
- C. Tenant Right To Organize Amendments passed on October 3, 2023; Proposed amendments to Rent Board Rules and Regulations Section 10.10 by Commissioner Klein, and a Memo from Supervisor Chan.
- D. Board of Supervisors file number 231020 (Legislative Version), Amending Rules of Order – Limiting Public Comment Opportunities.
- E. Proposed 2024 Board meeting dates.

#### IX. Director's Report

Executive Director Varner congratulated Commissioners Crow, Haley, Hung and Sawney on their reappointments to new 4-year terms, explaining that Commissioners Crow and Sawney were sworn in at the Mayor's office on November 12, with Commissioners Hung and Haley to follow. She expressed pleasure to be able to continue working with the reappointed Commissioners and stated that the department is grateful for the Mayor's continued support. Director Varner said that daily operations continue busy as usual with training our numerous newer members of staff and attending to the public. She told the Board that the department's first Inventory and Fee Unit supervisor started at the Rent Board, and that she will attend the December board meeting. She said that the department is expecting three new Administrative Law Judges to start in January and is currently in the process of filling three vacant counselor positions. With regard to outreach, Director Varner said that the Rent Board focused on slightly different types of outreach the past month, including collaborating with the Public Library, disbursing written Housing Inventory and Rent Board Fee materials to all branch libraries, placing Inventory and Fee information in the Library's weekly email newsletter, and also placing written Rent Board communications in the Assessor's quarterly email newsletter. Director Varner said that the Housing Inventory and Rent Board Fee Informational Notice has been sent out to 185,000 property owners, and that the Department has so far received over

9,000 new Fee exemption requests. Importantly, she said, the Department has seen some early compliance with the newly opened 2024 Inventory cycle, with over 1900 submissions, 950 licenses generated, and nearly 1300 parcels having reported. She said that the Fee exemption request window is open until December 11, and all property owners can report into the Inventory and request licenses through March 1, 2024. As for legislation, Director Varner told the Commissioners that [Board of Supervisors \(BOS\) File No. 230810](#), which will amend the Tenant Right To Organize legislation, was passed unanimously by the Board of Supervisors on October 3, 2023 and went into effect on November 12, and that 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. Additionally, Director Varner said that staff are working with the Ethics Commission who have newly produced a number of useful handouts and videos for increased City & County employee general understanding of complex Ethics rules and are currently in the process of producing new training modules. She said that the Commissioners may see receive some requests to complete trainings in the new year.

X. Old Business

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

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

XI. New Business

*There was no new business.*

XII. Calendar Items

December 12, 2023 – regular in-person meeting at 25 Van Ness Ave, Room 610.

A. Consideration of Appeals

4 appeal considerations

Reader of the Ramaytush Ohlone Land Acknowledgement – Commissioner Crow.

XIII. Adjournment

President Gruber adjourned the meeting at 7:32 p.m.