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

Tuesday, March 12, 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 Klein read the Ramaytush Ohlone Land Acknowledgement.

III. Roll Call

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

Commissioners Not Present: Haley; Hung.

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

IV. Remarks from the Public

A. Curtis Dowling, the attorney for the landlord at 1331 Bay Street (AL240001), said that the Administrative Law Judge (ALJ) incorrectly determined that the Rent Board had jurisdiction to issue “an award.” He said that the Decision does not comply with Rent Board Rules and Regulations Section 11.24(b) because it does not state to what amount the rent can be increased when, and if, the service is restored as required by law. He said that there is no exception to this requirement in all decreased housing services decisions as it is a jurisdictional limitation on the scope of authority for an ALJ. He said that for an ALJ to comply with this requirement, the tenant still needs to

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be a tenant in occupancy at the time the Decision is rendered, and thus the ALJ lacked the power to issue any award in this case and the Decision should be vacated. He said that the landlord is asking the Board to enforce Rules and Regulations Section 11.24(b) in a small class of cases, and that if the Rent Board loses jurisdiction to decide a decreased housing services petition because the tenant moves before a decision is issued, it just means that a tenant has to pursue remedies in court. Mr. Dowling said that the ALJ also incorrectly determined that he could impose successor liability on the landlord for breaches of contract by his predecessor. He said that the Court of Appeals decreed that Civil Code Section 1466 bars successor liability for a former landlord's breach of covenant liabilities. He said that it is only the Rent Ordinance that limits an owner from raising the rent to more than 60% of CPI in any given year and this is why *Baychester* held that only statutory obligations were involved in that case, but with decreased housing services, it is the lease that determines the services that are due to the tenant. He said that even if the Rent Board had jurisdiction, ninety percent of the Decision is void and must be reversed.

- B. Stephan Howsepian, the tenant at 1331 Bay Street (AL240001), said that the Board should not consider the landlord's untimely appeal as the Decision was made almost a year ago, was considered and decided by the ALJ, was reinforced in the memorandum to the Board regarding this appeal, and would not cause undue hardship to the landlord if the appeal was denied. He said the appeal was made by the landlord only after the tenant pursued civil action because the landlord does not want to pay the awarded amount. He asked the Board to only consider the original Decision so that he could move forward with the Order.
- C. Robert Reyff, the landlord at 49 Devonshire Way (AL240007), said that this appeal is about fairness to the tenant and the landlord. He said that the property is a family home converted into two units, with the tenant residing in the lower unit with access to one garage and sole use of the backyard. He said that the landlord is not a corporation with boundless resources and has been fair to the tenant since his tenancy began in 2011, as he has not sought any passthroughs for utilities fees or capital improvements. He said his family did not charge the tenant for the use of washing machines or using the garage for his personal storage. He also said that the tenant has not suffered an economic loss while the landlord suffered economic loss by not imposing allowable rent increases. He said that after the landlord received the Decision, he reimbursed the tenant \$445 for 2015 and 2018 rent overpayments, and that after the tenant filed their initial petition regarding a \$1750 rent increase, the landlord rescinded that notice immediately after speaking with the Rent Board. He asked the Board to consider the equities in this case.
- D. Morgan L. Lee, the tenant at 2480 Washington Street (AT240005), thanked the Board for considering her appeal. She said that the landlord has not responded to any emails she sent regarding the decreased housing services in the last few years. She also said that the landlord has actively ignored violations from the Department of Building Inspection (DBI), including a 30-day Order of Abatement for the broken washing machine issue. She said that the entry system failure began in December 2022, DBI issued a Notice of Violation in February 2023, and the issue was not resolved until June 2023. She said that the landlord's inaction appears to be intentional. She said

that there is an increase in tenant departures due to these unresolved building issues and the landlord is thus rewarded for not addressing building issues as they can raise the rent of newly vacant units to market rate. She said that she is appealing the end-date of the decreased washing machine services since it still has not been restored and that at her hearing an email she submitted was misinterpreted by the ALJ as the end-date of the decrease in housing service when it was solely intended to be written documentation of the issue. She said that the total cost to her for the decrease in washing machine service is at least \$209 per month based on the difference between the cost of doing laundry in the building and the cost of her time and transportation going to another laundromat weekly using the San Francisco minimum wage rate, all of which was communicated to the landlord. She said that this cost does not include the distress she suffered from the landlord's unresponsiveness.

- E. Eric Clottes, a resident of San Francisco, said that his family had to move out of a building they were living in due to secondhand smoke, and that Commissioner Wasserman was aware of this. He said that Commissioner Wasserman's working relationship with the CEO of West Coast Property Management Company is unethical and that he intended to bring the corruption between the Commissioner and the CEO to light through journalism.

V. Approval of the Minutes

MSC: To approve the minutes of February 6, 2024.
(Tom/Wasserman: 5-0; Gruber, Crow, Sawney, abstaining)

VI. Consideration of Appeals

A. 359-363 South Van Ness Avenue AL240008

The landlord appeals the dismissal of their petition for a capital improvement passthrough. The Administrative Law Judge (ALJ) dismissed the petition with prejudice for the landlord's failure to appear at the scheduled hearing. On appeal, the landlord claims that he missed the hearing due to an unavoidable family emergency.

MSC: To accept the appeal and remand the case for a new hearing. Should the landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Wasserman/Mosbrucker: 4-0)

B. 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: 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.

MSF: To deny the appeal.

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

Due to a tie vote, this item will be continued for reconsideration at the April 16, 2024 Commission meeting.

C. 665 Eddy Street, Unit 26

AT240009

The tenant appeals the decision denying her claim of decreased housing services. In the Decision, the ALJ determined that the tenant failed to meet her burden of proving that the landlord's conduct with respect to the tenant's claim constituted a substantial decrease in housing services as the landlord reasonably investigated and responded to the tenant's reports of noise disturbance from the upstairs neighbor, informed the tenant of actions taken to address the issue, and provided the tenant with additional options to address her complaints. In the appeal, the tenant claims that the ALJ erred in their decision because the landlord failed to implement a plan of progressive actions to ensure the noise disturbance was addressed, and that the landlord's offer to relocate her to another unit at market rate when she had resided in her unit for twenty years was inappropriate and not a viable solution. The tenant claims that the appropriate remedy would have been a \$750.00 monthly rent reduction. The tenant also alleges that the decrease in housing services was substantial as the noise disturbance caused her to lose sleep, miss work, and lose income from a roommate who moved out due to the noise disturbance.

MSC: To deny the appeal.

(Wasserman/Mosbrucker: 4-0)

D. 2480 Washington Street, Unit 308

AT240005

The tenant appeals the decision denying in part the tenant's claims of decreased housing services. In the Decision, the ALJ determined that the landlord was liable to the tenant for the sum of \$965.00 for a non-functioning entry-system from December 22, 2022 through June 8, 2023, non-functioning washing machines from March 15, 2023 to March 31, 2023 and May 27, 2023 to June 26, 2023, and loss of hot water from December 7, 2022 to December 22, 2022, but denied the tenant's other claims. In the appeal, the tenant alleges that the ALJ erred by determining that the washing machines were inoperable for

1.5 months when it was in fact 9 months, and in the value assessed for the decrease in housing services for the non-functioning entry system and non-functioning washing machines, which according to the tenant should total \$3,080.00 and include an ongoing rent reduction of \$150.00 a month until the washing machines are restored.

MSC: To accept the appeal and remand the case to the ALJ solely on the issue of whether or not the washing machines have been restored.
(Mosbrucker/Wasserman: 4-0)

E. 49 Devonshire Way, Lower Unit

AL240007

The landlords appeal the decision granting the tenant's claim of unlawful rent increase. In the Decision, the ALJ found that the landlords were liable to the tenant for the sum of \$6,500.76 for rent overpayments from September 1, 2020 to February 29, 2024. In the appeal, the landlords claim that the ALJ erred and abused their discretion by awarding rent overpayments for time periods that were not included in the original petition, occurred more than three years before the petition was filed, and amounted to more than \$412.68, the amount they believe is the actual overpayment. The landlords also claim that the ALJ should have reduced or offset the amount of the overpayment in the Order because the landlords have been paying all utilities since July 1, 2016, the tenant benefitted from \$51,000.00 in repairs to the property at no cost to him, and the tenant did not previously contest any rent overcharges.

MSC: To deny the appeal.
(Mosbrucker/Qian: 4-0)

F. 50 Crestline Drive, Unit 10

AT240006

The tenant submitted his appeal 27 days late because he received the Decision 6 days after the date it was mailed and he was experiencing health issues.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Wasserman: 4-0)

The tenant untimely appeals the decision denying their application for relief from payment of a capital improvement passthrough based on financial hardship. In the Decision, the ALJ determined that the tenant had not met his burden of proving that he qualified for relief as he did not submit sufficient evidence of his monthly gross household income or annuity distribution payments. In the appeal, the tenant alleges that the ALJ made an error since there is additional evidence in support of his application that he was unable to previously submit based on his health issues.

MSC: To accept the appeal and remand to the ALJ to consider the new evidence submitted on appeal.
(Mosbrucker/Wasserman: 4-0)

IV. Remarks from the Public (cont.)

- A. Stephan D. Howsepian, the tenant at 1331 Bay Street (AL240001), requested clarity regarding the Board's ruling.
- B. Morgan L. Lee, the tenant at 2480 Washington Street (AT240005), asked the Board to confirm her understanding of the appeal decision and whether she could submit another appeal for the issues that were denied by the Board.

VII. Communications

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

- A. Articles from SF Chronicle.
- B. Departmental workload statistics for January 2024.
- C. Updated Litigation Status Report.
- D. Rent Board Annual Statistical Report for Fiscal Year 2022-2023.

VIII. Director's Report

Director Varner wished everyone a happy Women's History Month. She told the Commissioners that the Department successfully got through their March 1 timely fee payment deadline, and owners must now pay their Rent Board fee with a 5% penalty, which will increase to 10% on April 1. She said that owners can easily make payment 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. Director Varner said that as of March 12, the Rent Board has collected just under 80% of its total projected 2024 fee collection amount, which is right on target. With regard to the Housing Inventory, Director Varner said that 15,827 parcels have reported for a total of 91,039 reports with 78,389 licenses generated and that while there are about a total of 196,000 parcels that are required to report, about half of that number have a homeowner's exemption on file with the Assessor. She said that most properties that are owner-occupied don't report into the Inventory, which means that about 16 percent of properties have reported this Inventory cycle. Director Varner said that while the Rent Board is concerned that some owners are choosing not to report into the Inventory because they do not want the City to have certain information about their units, she is hoping that with regular outreach the Department will be reaching the owners who need to know about the Inventory and will understand the consequences of not reporting into the Inventory. With regard to the Rent Board's tenant improvement project for their new office suite, she said that they expect to be moving in the summer and thanked the Department of Public Works Architecture design team, construction management team, the Department of Real Estate, and the Department of Technology for devoting so much time and effort to the Rent Board. With regard to outreach, Director Varner said that Rent Board staff have participated in three successful outreach events – tabling at the Chinese New Year Community Fair in Chinatown on February 24; a February 28 training with the SF Tenants Union to train new volunteer counselors; and tabling at the Westside Affordable Housing Resource Fair sponsored by Self-Help for the Elderly on March 9. She also said that Rent Board Public Information Unit and Inventory & Fee Unit staff will give a presentation and table at the SF Apartment Association's Landlord Expo on March 27 at Fort Mason, and she will present at the Professional Property Managers Association membership meeting on April 11. With regard to legislative updates,

Director Varner said that one piece of legislation sponsored by Supervisors Melgar and Peskin, Board of Supervisors File No. 231185, which would amend the Planning Code to change the Conditional Use Authorization requirement for removal of an unauthorized dwelling unit (UDU), was passed on first reading at the Land Use Committee on March 4 and was at the full Board on March 12. She also 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. Director Varner also said that there was new legislation introduced and sponsored by Supervisors Peskin and Chan, Board of Supervisors File No. 240174, and it is currently with the Rules Committee. She said that this proposed legislation 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 and would allow tenants who can demonstrate hardship to seek deferral of the entire general obligation bond passthrough instead of 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. Director Varner also updated the Board about Proposition D, which was on the March 5 ballot and overwhelmingly passed by the voters. She said that Prop D will go into effect in six months and amend the City's Campaign and Governmental Conduct Code, which contains the City's rules regarding election campaigns, lobbying, government ethics, conflicts of interest, and protections for whistleblowers, and making significant changes to how incompatible activities are documented and communicated to City officials. She told the Commissioners that there will be upcoming training sessions regarding Proposition D, so they should keep on the lookout for communications. She also reminded the Commissioners that their Form 700 filing will be due on Tuesday, April 2, which is in three weeks. She thanked commissioners Crow, Haley, and Tom for completing their filings and reminded the Board to complete their Sunshine and Ethics training and their filings well in advance, and that the Ethics Commission is *the* resource for questions about Form 700 filings. She also said that Commissioners would be fined \$100 per day for not timely filing a Form 700, nor be allowed to participate in and vote in the next board meeting until they have filed.

IX. Old Business

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

Commissioner Klein proposed to continue the item to the April 16, 2024 meeting and no Commissioners raised any objections.

X. New Business

XI. Calendar Items

April 16, 2024 – regular in-person meeting at 25 Van Ness Ave, Room 610.

A. Consideration of Appeals

- a. 10 appeal considerations

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 7:10 p.m.