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DAVID WASSERMAN

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

Tuesday, October 8, 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 6:01 p.m.

II. Reading of Ramaytush Ohlone Land Acknowledgment

President Gruber read the Ramaytush Ohlone Land Acknowledgement.

III. Roll Call

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

Commissioners Not Present: Hung; Klein.

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

IV. Remarks from the Public

A. Edward Singer, attorney for the landlord at 1301-1361 La Playa Street (AL240047, AL240048, AL240049), said that the Rent Board decisions make it clear that the tenants' decorative balconies were never designed or intended for human use or occupancy because there are no doors leading out to these balconies and that access would have to be made by crawling through a window. He also said that the city of San Francisco never conducted a Building Code Section 604 inspection, never asked the landlord to provide a declaration of deck structure, nor issued a Notice of Violation

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stating that the building owner needed to comply with Section 604, the law that prevents decks from collapsing and injuries to people using decks. He said that when a tenant filed a complaint with the Department of Building Inspection claiming that the decks were necessary as a protection from falling, a City inspector concluded that there were no violations because the balconies do not provide usable open space. He also said that the tenants in 1311 La Playa Street, Unit 5 (AL240047) and 1331 La Playa Street, Unit 16 (AL240048), never claimed they were promised the use of these balconies, and simply claim that they began using them at one point in time and the landlord never told them they could not. He said that the tenants' illegal use of the balconies cannot become a housing service through "waiver" and that removal of the balconies did not result in a loss of air or view.

- B. Aleida Garcia Aguirre, representative for the tenant at 51 Sycamore Street (AT240043), said that the Board should grant the tenant's appeal because the decision was unfair and overlooks key facts. She said that the tenant has limited literacy and struggled to fully explain at the hearing that the prior landlord verbally agreed to permanently waive rent increases in exchange for the tenant's maintenance work. She said that the tenant now has a letter from the prior landlord confirming this agreement that proves the tenant's original testimony and it would be unjust to deny the appeal without considering that new evidence. She said that without a new hearing, the tenant would face rent increases that violate the original agreement, and a new hearing would allow for the presentation of all relevant facts and a correction of the prior decision.
- C. Neil Daniels, the tenant at 110 Albion Street (AT240042), said that in June 2018, he had a co-tenant and they were paying a total of \$4,425.58 in monthly rent. He said that on June 5, 2018, the landlord served a 120-day Ellis Act eviction notice with a withdrawal date of October 4, 2018. He said that after his co-tenant vacated, he paid \$2,500.00 for his September 2018 rent to the landlord, which the landlord accepted and cashed without comment but at the hearing the landlord characterized this as accepting underpayment of the rent. He said that on October 4, 2018, his original tenancy was terminated and the next day the landlord had the opportunity to file an unlawful detainer action but did not, and instead that month cashed the tenant's October rent check for \$2,500.00. He said that by cashing that rent check, the landlord agreed to create a new tenancy at a new rental amount. He said that the landlord claims in their appeal response that "if the notice of termination is invalid, then the tenancy was never terminated," but there is no evidence to support that the Ellis notice was invalid. He said that the landlord also testified at the hearing that they never agreed to a rent extension or reduction, but a new tenancy is neither of those things.
- D. Olivia Dopler, attorney for the landlord at 110 Albion Street (AT240042), said that the landlord disagrees with the tenant's contention that the tenancy was terminated by the Ellis Act notice. She said that the landlord dismissed the Ellis Act eviction case and the tenant never gave up possession of the unit. She said that the landlord continued to accept rent checks at the reduced amount because the landlord thought the property would be withdrawn from the rental market under the Ellis Act, and there was no need to go forward with a non-payment eviction at the time for the disputed amount. She

said that since the tenant remains in possession of the unit and the Ellis Act eviction was dismissed, no termination of the tenancy ever took place.

- E. Ray Yetka, attorney for the landlord at 3050-3058 Chavez Street (AL240041), said that the appeal concerns the Rent Board's denial of their request to rescind Ellis Act notices for four units. He said that the owner did not recover possession of any of the units and dismissed the eviction lawsuits. He said that the legal issue is whether the withdrawal of the property under the Ellis Act was completed or not, and that if one never recovers possession, the withdrawal is not completed. He said that the Administrative Law Judge's response to the appeal indicates that there is a policy that if any tenant leaves, the Ellis notice cannot be rescinded, which requires the landlord to choose whether they should complete the eviction or be stuck in no man's land unable to rescind the notice. He said that this does not seem to further the Rent Board policy of helping tenants and does not serve the statutory goal of stopping landlords from abusing other notices. He said that if the landlord does not recover possession, there's no fear of re-renting at market rate. He also said that the landlord believes that the tenants left for reasons unrelated to the Ellis notices as their friends and family members stayed. He asked that the case be remanded so that there could be a hearing to enter new evidence into the record.
- F. Laura Campbell, attorney for the landlord at 99 Lupine Avenue (AT240046), said that the tenants had the burden of demonstrating that the landlord's plans to construct new ADU units would remove or substantially decrease their housing services. She said that the tenants' petitions filed in July 2023 prohibited the landlord from constructing new housing for over a year. She said that the decision is thorough, and that the Administrative Law Judge took into consideration all tenant objections and correctly determined that the proposed ADU project would not result in removal or substantial reduction of tenant housing services. She said that the tenant's appeal only concerns issues that they anticipate during the construction phase, such as noise pollution, access issues, or how the laundry will work during construction. She said that none of these concerns are related to the permanent loss of housing services or justify a reversal of the decision. She said that the decision should be upheld as the appeal raises no new relevant issues.

V. Approval of the Minutes

MSC: To approve the minutes of September 10, 2024.
(Tom/Wasserman: 7-0)

VI. Consideration of Appeals

A. 1311 La Playa Street, Unit 5	AL240047
1331 La Playa Street, Unit 16	AL240048
1361 La Playa Street, Unit 27	AL240049

The landlord appeals the decisions granting the tenants' claims of decreased housing services. Three tenant petitions alleging a decrease in housing services for the loss of use of balconies were consolidated for hearing. The Administrative Law Judge (ALJ) held that

use of the balconies for recreation and other purposes was a housing service reasonably expected by the tenants at the inception of their tenancies, and that the landlord's removal of the balconies constituted a substantial decrease in housing services warranting a reduction in rent. In the appeals, the landlord argues that the balconies were only decorative and therefore no rent reduction for decreased housing services should result. Alternatively, the landlord argues that the rent reductions awarded by the ALJ were excessive and should be reduced.

Commissioner Wasserman recused himself from consideration of the appeal because he represents the landlord in unrelated matters in Superior Court.

MSC: To deny the appeals.
(Mosbrucker/Qian: 3-2; Gruber and Tom dissenting)

B. 1211 Broderick Street

AT240044

The landlord appeals the decision granting the tenants' claim of unlawful rent increase. In the decision, the ALJ determined that the June 1, 2023 rent increase from \$3,200.00 to \$3,315.00 was null and void since the landlord was not licensed to increase the rent pursuant to Rent Ordinance Section 37.15. In the appeal, the landlord claims in part that it should not be liable for rent overpayments beginning June 1, 2024 because the property was sold to a new owner.

MSC: To accept the appeal and remand the case to the ALJ to consider new evidence, with a supplemental hearing to be held only if necessary.
(Wasserman/Gruber: 5-0)

C. 51 Sycamore Street

AT240043

The tenant filed their appeal 5 days late because their representative miscalculated the 15-day appeal deadline since she did not include the weekends and holiday in the calculation.

Commissioner Wasserman recused himself from consideration of the appeal as he represents the landlord in unrelated matters.

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

The tenant untimely appeals the decision denying the tenant's claim of unlawful rent increase. In the decision, the ALJ determined that the tenant did not meet their burden of proving that the former landlord agreed to permanently waive the right to impose annual and/or banked rent increases in exchange for the tenant's services maintaining the building. In the appeal, the tenant claims that he was unable to present certain information at the hearing due to language and cultural barriers and submits new evidence of his agreement with the former landlord.

MSF: To deny the appeal.
(Tom/Gruber: 2-3; Haley, Mosbrucker, Qian dissenting)

MSF: To accept the appeal and remand the case to the ALJ, for the ALJ to hold a supplemental hearing.
(Mosbrucker/Qian: 2-3; Gruber, Haley, and Tom dissenting)

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

D. 722 Jackson Street, Unit 3

AT240045

The tenant appeals the decision granting the landlord's petition seeking a rent increase under Rules and Regulations Section 1.21. In the decision, the ALJ determined that the rent increase to \$2,500.00 effective on October 1, 2023 was lawful because the tenant did not reside in the subject unit as their principal place of residence at the time the petition was filed and there was no other tenant in occupancy. In the appeal, the tenant claims that he is experiencing financial hardship limiting his ability to pay the increased rent, and that his liability to the landlord should be reduced by two months since the hearing was postponed at the request of the landlord's attorney.

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

E. 99 Lupine Avenue, Unit 101

AT240046

One tenant appeals the decision denying the tenant's objection to the landlord's declaration seeking approval to construct Accessory Dwelling Units (ADUs). In the decision, the ALJ determined that the proposed ADUs would not result in the permanent removal or substantial reduction of any tenant housing services. In the appeal, one tenant alleges that the ALJ did not adequately consider the impact of noise disturbances and other disruptions caused by the construction work, including diminished access to the garage and common areas, and interference with laundry machine usage.

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

F. 110 Albion Street

AT240042

The tenant appeals the decision granting the landlord's petition for a determination of the tenant's current lawful rent. In the decision, the ALJ determined that the tenant's rent had been temporarily reduced for reasons unrelated to market conditions and that the landlord could restore the tenant's rent to \$4,375.58 upon service of written notice. In the appeal, the tenant claims that a new tenancy with an initial monthly rent of \$2,500.00 was created by the parties because the landlord terminated the prior tenancy and thereafter accepted that amount. Alternatively, the tenant argues that the rent reduction from \$4,375.58 to \$2,500.00 was a permanent rent reduction related to market conditions that cannot be restored.

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

G. 3050-3058 Cesar Chavez Street

AL240041

The landlord appeals the decision denying their request to rescind four Ellis eviction notices. In the decision, the ALJ determined that the landlord failed to prove that no tenant vacated after the Ellis eviction notices were served and that the circumstances do not constitute extraordinary circumstances justifying rescission. In the appeal, the landlord claims that the ALJ misinterpreted the law and asserts that rescission is allowed because the landlord never recovered vacant possession of the units, or, in the alternative, the landlord requests that the case be remanded for hearing so that evidence of extraordinary circumstances be presented.

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

IV. Remarks from the Public (cont.)

There were no further remarks from the public.

VII. Communications

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

- A. News Articles from SF Chronicle and CalMatters.
- B. Departmental workload statistics for July 2024 and August 2024.
- C. Certified Decision in San Francisco Apartment Association et al. v. City and County of San Francisco.
- D. Memorandum Regarding Tentative Commission Meeting Dates for 2025.

VIII. Director's Report

Director Varner introduced Marc Uscilka, the Rent Board's first-ever data analyst. She said that Marc comes to the Rent Board with experience in data analysis and visualization, GIS analysis and cartography, database experience and software development. She said that he participated in the 2022-23 Civil Grand Jury and holds an associate degree from the California Culinary Academy, and he is currently beginning to work with the data in the department's Housing Inventory and Fee Unit and will also work on projects for the whole department. With regard to the Rent Board fee, Director Varner said that over 11,000 delinquent 2024 accounts have been forwarded to the Bureau of Delinquent Revenue (BDR), and to date, BDR has recovered about 20% of outstanding obligations. She said that the new fee and Inventory cycle began with the mailing of the first batch of Informational Notices the past week, and that several hundred parcel owners paid the 2025 fee. She said that the system will open to report into the 2025 Inventory in 10 days. Director Varner said that during the 2024 Housing Inventory reporting cycle, 19,669 parcels have reported for a total of 109,993 unit reports with 94,556 licenses generated. She said that to date, 29% of all units notified of required Inventory filing

have reported, including 57% of units in properties of 10 units, 45% of units in properties of 5-9 units, 21% of units in properties 2-4 units, and 7% of units in 1 unit properties have reported. With regard to outreach, Director Varner said that Public Information Unit staff provided a workshop to Spanish-speaking staff at Causa Justa::Just Cause on September 16, and Public Information Unit staff with Inventory and Fee Unit staff performed outreach at the SF Financial Resource Fair at the Southeast Community Center in the Bayview on October 5. She said that staff will table at the Chinatown Community Resource Fair on October 26. With regard to legislation, Director Varner said that on July 16, 2024, Supervisor Peskin introduced Board of Supervisors (BOS) File No. 240766, an Ordinance that amends the Administrative Code to prohibit the sale or use of algorithmic devices or software programs that analyze and share non-public data for the purpose of setting rents or occupancy levels for residential rental units in San Francisco, was passed by the Board of Supervisors on second reading on September 3, 2024 and signed by Mayor Breed on September 13, 2024. She said that Board of Supervisors File Number 240803 introduced by Supervisor Melgar is still at Land Use and that among other changes to the Planning Code, this will require that whenever a property owner enters into a regulatory agreement with the City that subjects newly constructed dwelling units to the Rent Ordinance, the Planning Department shall note the existence of the recorded regulatory agreement in the Property Information Map or other similar, publicly accessible website. She also said that Supervisor Melgar's BOS File No. 231224, originally introduced on November 28, 2023, which would amend the Housing Code to authorize occupants of residential dwelling units to sue a property owner to enforce the prohibition on substandard housing conditions is still at Land Use after Supervisor Melgar on July 16, 2024 requested that this matter remain active for an additional six months until January 16, 2025. Director Varner said that BOS File No. 240880 was introduced by Peskin on September 10, 2024, an Ordinance amending the Administrative Code to provide that newly constructed dwelling units that first received a certificate of occupancy between June 13, 1979 and November 5, 2024 shall be generally subject to rent control, to the extent authorized by a future modification or repeal of the Costa-Hawkins Rental Housing Act, was passed by the Land Use Committee on September 30. She said that earlier that day the item passed the full Board on first reading with specific amendments to amend the Administrative Code, one being to provide that newly constructed dwelling units that first received a certificate of occupancy between June 13, 1979 and June 13, 1994 shall be generally subject to rent control, to the extent authorized by a future modification or repeal of the Costa-Hawkins Rental Housing Act. With regard to State legislation, Director Varner said that California Assembly Bill 2347 – which extends the time that a tenant has to respond to an unlawful detainer lawsuit from five business days to ten business days and shortens the timeline for tenants to file a demurrer or motion to strike, will be effective January 1, 2025. She said that California Assembly Bill 2801 will require landlords to take photographs of a rental unit before and after any necessary repairs or cleaning for which the landlord will make a deduction from the security deposit and to provide the photographs to the tenant beginning April 1, 2025, and that for tenancies that begin on or after July 1, 2025, landlords are also required to take photographs of the unit immediately before or at the beginning of the tenancy. She said that the law also makes clarifications regarding allowable deductions from a security deposit for repairs and cleaning.

IX. Old Business

A. Proposed Amendments to Rules and Regulations

a. Reporting Obligations regarding Reporting Key Performance Indicators (KPIs).

Commissioner Mosbrucker requested that the item be removed from the agenda and no objections were raised.

X. New Business

There was no new business.

XI. Calendar Items

November 12, 2024 – regular in-person meeting at 25 Van Ness Ave, Room 610.

Reader of the Ramaytush Ohlone Land Acknowledgement – Commissioner Haley.

A. Consideration of Appeals

a. 4 appeal considerations

XII. Adjournment

President Gruber adjourned the meeting at 7:13 p.m.