

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING**

**July 27, 2023**

**5:30 P.M.**

**CITY HALL**

**1 FRANK H. OGAWA PLAZA, HEARING ROOM #1**

**OAKLAND, CA 94612**

**MINUTES**

**1. CALL TO ORDER**

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 5:46 p.m.

**2. ROLL CALL**

<b>MEMBER</b>	<b>STATUS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
Vacant	Tenant			
D. WILLIAMS	Tenant	X		
J. DEBOER	Tenant Alt.	X		
M. GOOLSBY	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
M. ESCOBAR	Undesignated			X
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
D. TAYLOR	Landlord	X		
K. BRODFUEHRER	Landlord			X
C. JACKSON	Landlord Alt.	X		
Vacant	Landlord Alt.			

**Staff Present**

Braz Shabrell  
Susan Ma  
Briana Lawrence-McGowan

Deputy City Attorney  
Hearing Officer (RAP)  
Administrative Analyst II (RAP)

**3. WELCOME NEW BOARD MEMBERS**

- a. Chair Ingram and fellow Board members welcomed new landlord alternate representative, Chris Jackson. Member Jackson briefly introduced himself.

**4. ANNOUNCEMENT OF AGENDA ITEM CHANGES**

- a. Chair Ingram announced that consent item 5b, the resolution for recommendation to amend the regulations, is being postponed. Additional edits are being made and the item will be re-introduced at a future meeting.

**5. PUBLIC COMMENT**

- a. No members of the public spoke during public comment.

**6. CONSENT ITEMS**

- a. Approval of Board Minutes, 7/13/2023: Member Williams moved to approve the Board Minutes from 7/13/2023. Member deBoer seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, D. Taylor, D. Williams, J. deBoer, C. Jackson  
**Nay:** None  
**Abstain:** None

The minutes were approved.

**5. APPEALS\***

- a. T21-0203, Smith v. MacIntyre

Appearances: Gregory Smith Tenant  
Stuart MacIntyre Owner  
Patrick MacIntyre Owner Representative

This case involved a tenant appeal of a Hearing Decision on the tenant’s petition—which contested numerous rent increases and alleged decreased housing services. The preliminary issue in this matter was whether there was good cause for the tenant’s failure to meet the appeal filing deadline. A hearing on the tenant’s petition was conducted and a decision was issued. The appeal was due within 20 days of that—however, the filing

deadline for the appeal was not met. The first issue that was presented to the Board was:

- 1.) Did the tenant petitioner have good cause for failure to meet the appeal filing deadline?

If there was good cause for the late filing, the Board could proceed with the appeal on the merits. If there was no good cause, the dismissal of the appeal could be upheld.

The merits of the appeal were whether the tenant should be relieved from a voluntary dismissal of prior cases that inadvertently resulted in the tenant's claims being time barred. The current petition was filed in November 2021—but the tenant had previously filed five other petitions over the course of the year leading up to the filing of this petition. The prior petitions were consolidated to a single case with the current petition on January 20, 2022. 11 days after the cases were consolidated, the petitioner filed a request to dismiss the five prior petitions—stating that the reason he wished to dismiss the other cases was to focus on the current petition because the prior petitions were redundant. The dismissal of the prior petitions ended up harming the petitioner, in that it resulted in the petitioner being time barred from contesting most of the rent increases listed. In the current petition, had the prior petitions not been dismissed, the petitioner's challenge to all prior rent increases would have been timely.

On appeal, the petitioner argues that he dismissed the prior petitions at the direction or guidance of the Hearing Officer—who informed the tenant that if he wanted to move forward with the hearing, he should dismiss the older petitions; and he was informed that all the information from the prior petitions would still be part of the record. The second and third issues that were presented to the Board were:

- 2.) Was the tenant misled or directed by staff to submit the request for dismissal?
- 3.) Is there good cause to relieve the tenant from the voluntary dismissal as it relates to the rent increases on the basis of mistake or excusable neglect?

If the petitioner was misled by staff and dismissed the prior petitions at the instruction of staff or on erroneous information from staff, the Board should consider whether it is in the interest of justice to let that serve as the basis for subsequently denying the plaintiff's claims as untimely. The fourth and

final issue that was presented to the Board was:

- 4.) Was it proper to exclude consideration of a notice of violation and other habitability related issues as they relate to the proper allowable rent for the unit, which was part of the Hearing Officer's determination?

The tenant contended that he was out of country when the original decision was rendered and that the only way he was able to file the appeal was because he sent an e-mail to the case analyst, Ms. Silveira, on April 24, 2023. The tenant argued that the case analyst sent the entire decision to him—and the following day, asked if he wanted to appeal. The tenant contended that he responded, but that he would not be back until May 22, 2023. The tenant argued that he had signed the consent to electronic service form; but that he did not receive the notice of incomplete appeal form via email, which would have informed him that the proof of service was missing. The tenant contended that he initially wrote that he would send the proof of service by May 28, 2023—but that he was planning to send it earlier.

The tenant argued that on the appeal form, it states that you have 15 days from the date that you submit the appeal to send the proof of service—and that this is what he was going by. The tenant contended that he made it within that timeframe because the proof of service was filed on May 23, which was 14 days from the date that he filed the appeal—which was May 9, 2023. The tenant argued he could have sent the proof of service by mail from another country; however, it states on the proof of service that it must be deposited in US mail—which is why he waited until he got back, which was still within those 15 days. The tenant contended that he was unaware that he had to submit the appeal and proof of service within 20 days from the date of the decision, which was April 26. The tenant argued that he sent RAP copies of his itinerary and plane tickets from those dates.

The tenant argued that he was denied his right to due process on numerous occasions by postponements, and that each time his right to due process was denied, it was based on a false statements made by the landlord's attorney—which were relied upon by Hearing Officer Lambert, without ascertaining the validity of these statements. The tenant contended that the case had been postponed based on statements surrounding the civil case proceeding, and that there were no other good causes given besides that. The tenant argued that shortly after receiving the order for consolidation, there was another postponement of the hearing that was scheduled for February 2022. The tenant contended that he requested for RAP not to further postpone the petitions, and that he spoke to Hearing Officer Lambert on several occasions. The tenant argued that he was

finally told that he could get a hearing within two weeks—however, he was also told that he would have to dismiss the prior five petitions as a condition, leaving only case T21-0203. The tenant contended that he was told that as soon as the dismissal form was received by RAP, Hearing Officer Lambert would schedule a hearing. The tenant argued that he told Hearing Officer Lambert that he believed dismissing the other five petitions would jeopardize his case—however, Hearing Officer Lambert assured him that all the documentation, dates, evidence, etc. of those five dismissed petitions would be in the case database and would be available to be referred to, cited, and relied upon in the hearing. The tenant argued that he trusted Hearing Officer Lambert and her assurances, and had no reason to doubt her—therefore, he followed her instructions and dismissed the five prior petitions. The tenant contended that January 31, 2023, he emailed the dismissal and Hearing Officer Lambert gave him a hearing instantly.

The tenant contended that the hearing was scheduled for February 15 and that he was present—but the other party wasn't. The tenant argued that Hearing Officer Lambert rescheduled the hearing for later that afternoon, but the landlord's attorney said they were not participating because the notice of violations would be dealt with in the civil proceeding. The tenant argued that Hearing Officer Lambert canceled the hearing, and never sent any formal paperwork regarding this. The tenant requested for the Board to consider reinstating and reactivating the dismissed petitions.

The owner representative contended that there was a civil case in this matter, that Mr. Smith was represented by an attorney throughout all of this, and that the attorney was informed of the decision—therefore, Mr. Smith had plenty of time to file the appeal. The owner representative argued that the tenant has filed many petitions and that this is serial abuse of his father, the property owner, who is 98 ½ years old. The owner representative contended that Mr. Smith is not their tenant—that Mr. Smith's mother was the tenant, and that he ended up there because he got kicked out of his home. The owner representative argued that their insurance company gave Mr. Smith around \$100,000.00, that he went to Japan for 3 months, and now he's back bringing up the same issues again. The owner representative contended that they do not consider Mr. Smith a tenant and that they do not consent to having the hearing go forth because the decisions have already been made.

The owner representative argued that there was a hearing and that the tenant's mother, through his sister, who has the power of attorney, agreed and paid the rent. The owner representative contended that after Mr. Smith received \$100,000, he went to Japan for 3 months and now he's coming back and attempting to take more bites of the apple. The owner representative contended that the tenant is claiming that the property was a

house and was converted into a multi-unit property without permits— however, this occurred 40-50 years ago, prior to his father owning the property. The owner representative argued that the changes that Mr. Smith wants to see are impossible because they won't be able to happen with anyone living at the property.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to determine that the tenant had good cause for the late appeal/proof of service filing. Member Williams seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, D. Taylor, D. Williams, J. deBoer  
**Nay:** None  
**Abstain:** C. Jackson

The motion was approved.

Vice Chair Oshinuga moved to find that staff provided advice that misled the tenant to dismiss the claims and based on this—there is good cause to reverse the dismissal and to bring back all of the tenant's dismissed claims. Member C. Jackson seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, C. Jackson, D. Taylor, D. Williams, J. deBoer  
**Nay:** None  
**Abstain:** None

The motion was approved.

Vice Chair Oshinuga moved to remand the case back to the Hearing Officer to consider all the issues raised in all of the petitions—excluding those matters that are precluded by the settlement agreement. In making their determination, the Hearing Officer must make findings to as whether the notice of violations are relevant regarding the rent increases and base rent—and include statute citations. The Hearing Officer is also to consider the tenant's son moving out when determining the proper rent amount and restitution. Member C. Jackson seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, C. Jackson, D. Taylor, D. Williams,  
J. deBoer  
**Nay:** None  
**Abstain:** None

The motion was approved.

## 6. INFORMATION AND ANNOUNCEMENTS

- a. Briana Lawrence-McGowan informed the Board that the next Board meeting will start at 6:00 pm.
- b. Board Training Session—*The Brown Act*: Deputy City Attorney Braz Shabrell administered a Board training session. Topics discussed included but were not limited to:
  - The purpose of the Brown Act
  - Overview of the Brown Act
  - Who is subject to the act?
  - What counts as a meeting & meeting requirements
  - Types of prohibited communication
  - Agenda & Notice requirements
  - Public Testimony
  - Brown Act Violations

## 7. SCHEDULING AND REPORTS

- a. None

## 8. OPEN FORUM

- a. No members of the public spoke during open forum.

## 9. ADJOURNMENT

- a. The meeting was adjourned at 7:36 p.m.