

FILED
San Francisco County Superior Court

OCT 01 2019

CLERK OF THE COURT

BY: V. M. [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 501

PHILIP H. FERNANDEZ, Trustee of the Philip
H. Fernandez Family Trust dated July 21, 1986,

Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO,
SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION AND ARBITRATION
BOARD, et al.,

Defendant(s).

) Case No. cpf-17-515670

) **ORDER RE:**
) **Petitioner's Motion for Writ of Mandate**

) Date: August 20, 2019

) Time: 9:30 a.m.

) Dept: 501

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1 The above-listed motion(s) came on for hearing on August 20, 2019. Appearances as
2 stated on the record; the Honorable Ronald Evans Quidachay, judge presiding.

3 Having considered the written and oral submissions by the parties, the Court took these
4 motions under submission. The Court now rules as follows:

5 The governing law on the issue presented by this case is *Mosser Companies v. San*
6 *Francisco Rent Stabilization & Arbitration Bd.* (2015) 233 Cal.App.4th 505. Specifically,

7
8 Moreover, the protection afforded here is limited in scope to *lawful* and *original*
9 occupants. A rent-controlled apartment cannot, as landlord fears, be passed on
10 freely “from friend to friend or generation to generation.” Only those occupants
11 who reside in the apartment at the start of the tenancy and do so with the
12 landlord's express or implicit consent are protected from unregulated rent
13 increases. Family members and friends who subsequently move into the apartment
14 are not protected **unless the landlord consents to the occupancy and accepts
15 rent from the new occupant, thus creating a new tenancy.** (*Cobb v. San
16 Francisco Residential Rent Stabilization & Arbitration Bd.* (2002) 98 Cal.App.4th
17 345,351–353.).

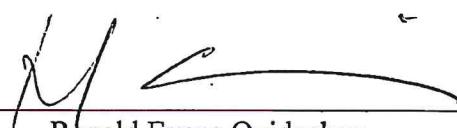
18 *Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd.* (2015)
19 233 Cal.App.4th 505, 516. (**emphasis added**).

20 The Rent Board's decision is devoid of any legal discussion or factual findings¹
21 regarding the creation of a ***new*** tenancy that included the Real Party in Interest by virtue
22 of (1) consent (which appears to be undisputed) ***and*** (2) acceptance of rent. While the
23 Rent Board's decision points out that acceptance of rent is only a factor in making a
24 determination regarding the creation of tenancy, the decision does not state what other
25 factor(s) (except for consent) is legally sufficient/determinative and is present in this
26 case. Per *Mosser Companies* the determination of creation of a new tenancy is the sole
27 necessary consideration for resolving the issue before the Rent Board.
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1 Therefore, this matter is remanded back to the Rent Board for further
2 proceedings (including additional evidentiary hearings to be held in sole discretion of
3 the Rent Board) for a determination on the September 21, 2016 Petition filed by the
4 Real Party in Interest alleging unlawful rent increase.
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8 IT IS SO ORDERED.

9 DATED: October 1, 2019

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11 _____
12 Ronald Evans Quidachay
13 Judge of the Superior Court
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26 ¹ For example, when the new tenancy was created; who are the parties to the agreement; what was the offer, acceptance
27 and consideration; how the contract was formed, etc.
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SUPERIOR COURT OF CALIFORNIA
County of San Francisco

Department 501

Case Number: CPF-17-515670

PHILIP H. FERNANDEZ

Plaintiff
vs.

CERTIFICATE OF MAILING
(CCP 1013a (4))

CITY AND COUNTY OF SAN FRANCISCO, et al

Defendant

I, Nancy B. Wong, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 01, 2019, I served the attached **ORDER RE: PETITIONER'S Motion for Writ of Mandate** by placing a copy thereof in a sealed envelope, addressed as follows:

Wayne Snodgrass
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Curtis Dowling
Dowling & Marquez LLP
625 Market Street, 4th Floor
San Francisco, CA 94105

Sadie Weller
Legal Assistance to the Elderly
701 Sutter Street, 2nd Floor
San Francisco, CA 94109

I, then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: October 01, 2019

T. MICHAEL YUEN, Clerk

By: 

Nancy B. Wong, Deputy Clerk

1 Law construed:
2 Ordinance Sections: 37.2(r); 37.8(f)(1).
3 Index Code: A72.1

4 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**
5 **CITY AND COUNTY OF SAN FRANCISCO**

6 IN RE: 3009 MISSION STREET, #108
7 MARIA I. RODRIGUEZ;
8 TENANT PETITIONER/APPELLEE,
9 and
10 PHILIP FERNANDEZ;
11 LANDLORD RESPONDENT/APPELLANT.
12

CASE NO. T161693
APPEAL NO. AL170003

**DECISION ON REMAND PURSUANT TO
REMAND ORDER IN SUPERIOR COURT
CASE NO. CPF-17-515670**

13 **INTRODUCTION**

14 This case involves a tenant petition filed on September 21, 2016, alleging that the
15 landlord unlawfully increased the rent over the allowable limits. The petition was filed in response
16 to a 60-day rent increase notice served on August 5, 2016, increasing the monthly rent from
17 \$770.35 to \$1,900.00 pursuant to Civil Code §1954.53(d)(2) (Costa-Hawkins Rental Housing
18 Act).

19 A hearing was held in the case on December 16, 2016, and a Decision was issued on
20 January 10, 2017 granting the tenant's petition. It was found that although petitioner Maria
21 Rodriguez moved into the subject unit as a subtenant, she was a co-tenant and no longer a
22 subtenant at the time the Costa-Hawkins rent increase notice was served on August 5, 2016 and
23 no rent increase was therefore authorized under Civil Code §1954.53(d)(2) of the Costa-Hawkins
24 Rental Housing Act. Although it is undisputed that the landlord had never accepted rent from the
25 tenant petitioner prior to service of the August 5, 2016 Costa-Hawkins rent increase notice, it was
26 determined that a co-tenancy was established based on other factors set forth in the Decision.

27 On January 25, 2017, the landlord filed a timely appeal of the Decision in Appeal No.
28 AL170003. On appeal, the landlord argued that Maria Rodriguez was a subtenant at the time the

1 Costa-Hawkins rent increase notice was served and not a co-tenant based on the undisputed fact
2 that the landlord had never accepted rent from Ms. Rodriguez. On February 14, 2017, the Rent
3 Board voted to deny the landlord's appeal.

4 On May 18, 2017, the landlord filed the Petition for Writ of Administrative Mandamus in
5 San Francisco Superior Court Case No. CPF-17-515670 (Philip H. Fernandez, Trustee of the
6 Philip H. Fernandez Family Trust Dated July 21, 1986 v. City & County of San Francisco
7 Residential Rent Stabilization and Arbitration Board).

8 On October 1, 2019, the court issued an Order in Case No. CPF-17-515670, wherein the
9 court remanded the case and found that the governing law is set forth in *Mosser Companies v.*
10 *San Francisco Rent Stabilization & Arbitration Bd.* (2015) 233 Cal.App.4th 505, and acceptance of
11 rent is required to create a new tenancy.

12 This Remand Decision is therefore issued based on the standard set forth in the court's
13 Order in Case No. CPF-17-515670.

14 **FINDINGS OF FACT**

- 15 1. The property is located at 3009 Mission Street in San Francisco and has 43
16 residential units. The landlord has owned the building since approximately July 1999.
- 17 2. The subject tenancy commenced on June 1, 1995, pursuant to a written rental
18 agreement with an initial monthly rent of \$550.00. (landlord Exhibit B) The tenant signatories were
19 Euphoria Savoy and Lorenzo Acu. Euphoria Savoy subsequently vacated the unit.
- 20 3. Tenant petitioner Maria Rodriguez ("the tenant") testified that she moved into the
21 subject unit in approximately July 1999 to live with her partner Lorenzo Acu. The tenant credibly
22 testified that she and Mr. Acu informed the landlord sometime in 1999 that she was residing in the
23 unit.
- 24 4. The tenant testified that after moving into the unit, she paid her portion of the
25 monthly rent to Lorenzo Acu, who in turn paid the landlord. The landlord submitted copies of
26 cashier's checks paid to the landlord between 2010 and July 2016, all of which were signed by
27 Mr. Acu. (Landlord Exhibit A)

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5. In approximately September 2011, the tenant and Lorenzo Acu temporarily moved into another unit in the building so the landlord could remodel the subject unit. While the unit was being remodeled, the landlord requested that Lorenzo Acu and tenant petitioner Maria Rodriguez execute a new rental agreement with a new rent of \$935.00 beginning October 1, 2011. The tenant submitted a copy of the proposed new rental agreement for the subject unit, which names both Lorenzo Acu and tenant petitioner Maria Rodriguez as the "Tenant." (Attachment to Petition, pages 14-18) Specifically, the rental agreement states in the first paragraph:

"Philip Fernandez ('Owner') rents to Lorenzo Acu Maria Rodriguez ('Tenant') and Tenant agrees to rent 3009 Mission Street, Apt. 108 San Francisco, California, (the 'Premises')."

6. In a letter to the landlord dated September 8, 2011, Lorenzo Acu and the tenant petitioner objected to the "New Agreement" since the stated rent of \$935.00 substantially exceeded the existing rent of \$705.26, and the landlord had not sought Rent Board approval for the rent increase. (Attachment to Petition, page 13) The landlord testified that when he asked the tenants to sign a new rental agreement with a new base rent, he did not know he had to file a capital improvement petition to increase the rent following the remodeling. It is undisputed that the tenants moved back into the subject unit after the remodel was completed at the rent of \$705.26.

7. On March 26, 2012, the landlord filed the capital improvement petition in Case No. L120510, seeking certification of capital improvement costs including the cost to remodel subject unit #108. In the petition, the landlord named "Lorenzo Acu & Maria" as the tenants of the subject unit. A Minute Order was issued in Case No. L120510 on July 11, 2012, certifying a monthly capital improvement passthrough of \$73.69 for the subject unit to be amortized over ten years (fire alarm system [\$2.89]; elevator upgrade [\$11.02]; and remodel of subject unit #108 [\$59.78]). Administrative notice is taken of that Minute Order.

8. On March 29, 2012, the landlord served "Lorenzo Acu & Maria Acu" as "Tenants in Possession" with a rent increase notice for the annual rent increase and the capital improvement passthrough certified in Case No. L120510. (Attachment to Petition, page 11)

1 9. Lorenzo Acu died on July 14, 2016. The tenant testified that sometime shortly after
2 Mr. Acu's death, she called the landlord on the telephone and informed him that Mr. Acu died.
3 The tenant further testified that the landlord told her during that conversation that the landlord
4 would accept future rental payments directly from the tenant. The landlord testified that although
5 the tenant called him to tell him that Mr. Acu died, he never told the tenant he would accept rent
6 from her.

7 10. On or around August 2, 2016, the tenant tendered a cashier's check to the
8 landlord for the monthly rent. (Tenant Exhibit 1, page 3) The tenant testified it was the first time
9 she tendered rent directly to the landlord.

10 11. On August 5, 2016, Maria Rodriguez was personally served with a 60-day rent
11 increase notice, increasing the rent from \$770.35 to \$1,900.00 effective 60 days after service
12 pursuant to Civil Code §1954.53(d)(2) of the Costa-Hawkins Rental Housing Act because no
13 original occupant continued to permanently reside in the unit. (Attachment to Petition, pages 2-3;
14 Landlord Exhibit D) Since the notice was personally served, the rent increase was effective
15 October 4, 2016. The landlord testified that the monthly rent of \$770.35 stated in the rent increase
16 notice does not include the capital improvement passthrough of \$73.69.

17 12. On August 30, 2016, the landlord's attorney returned the August rent to the tenant
18 with a letter that states in relevant part:

19 "Please note that my client will not be accepting rent directly from you or
20 from anyone on your behalf until the recently served 60 day notice of
21 change in terms of tenancy goes into effect. The purpose in not accepting
22 rent is to avoid any claim that my client has waived his right to re-set the
rent for the premises to market following the death of Mr. Acu."

23 The landlord also returned cashier's checks to the tenant which the tenant tendered for the
24 months of September 2016 through December 2016.

25 13. The tenant's representative argued that the landlord was not entitled to a Costa-
26 Hawkins rent increase at the time the August 5, 2016 rent increase notice was served because
27 tenant Maria Rodriguez was a co-tenant and not a subtenant when the rent increase notice was
28 served as evidenced by the fact that she was named as a tenant in the 2012 proposed rental

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agreement, the petition in Case No. L120510, and the March 29, 2012 rent increase notice.

14. The landlord's attorney argued that the landlord never established a direct landlord-tenant relationship with the tenant petitioner since the landlord never accepted rent directly from the tenant petitioner.

CONCLUSIONS OF LAW

1. At all times relevant to this petition, the subject rental unit is within the jurisdiction of the Rent Board. [Ordinance Section 37.2(r)]

Costa-Hawkins Rental Housing Act

2. California Civil Code §1954.53(d) provides in relevant part:

"If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. [California Civil Code §1954.53(d)(2)]

3. In this case, it is undisputed that tenant petitioner Maria Rodriguez moved into the subject unit in 1999 as the subtenant of original occupant Lorenzo Acu. It is further undisputed that Lorenzo Acu died in July 2016, and Ms. Rodriguez continued to reside in the unit. Since tenant petitioner Maria Rodriguez did not reside in the unit prior to January 1, 1996, the landlord is entitled to impose an unlimited rent increase under Civil Code §1954.53(d)(2) of the Costa-Hawkins Rental Housing Act following the death of Lorenzo Acu unless Maria Rodriguez was a co-tenant and not a subtenant at the time the notice of rent increase was served on August 5, 2016.

4. The Superior Court's Order in Case No. CPF-17-51567, issued on October 1, 2019, sets forth the legal standard in this case and provides instruction on remand as follows:

"The governing law on the issue presented by this case is *Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd.* (2015) 233 Cal.App.4th 505. Specifically,

Moreover, the protection afforded here is limited in scope to *lawful and original* occupants. A rent-controlled apartment cannot, as landlord fears, be passed on freely 'from friend to friend or generation to generation.' Only

1 those occupants who reside in the apartment at the start of
2 the tenancy and do so with the landlord's express or
3 implicit consent are protected from unregulated rent
4 increases. Family members and friends who subsequently
5 move into the apartment are not protected **unless the
6 landlord consents to occupancy and accepts rent from
7 the new occupant, thus creating a new tenancy.** (*Cobb
8 v. San Francisco Residential Rent Stabilization &
9 Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351-353.).
10 Mosser Companies v. San Francisco Rent Stabilization &
11 Arbitration Bd. (2015) 233 Cal.App.4th 505, 516.
12 (emphasis added).

13 The Rent Board's decision is devoid of any legal discussion or factual
14 findings regarding the creation of a new tenancy that included the Real
15 Party in Interest by virtue of (1) consent (which appears to be undisputed)
16 **and** (2) acceptance of rent. While the Rent Board's decision points out
17 that acceptance of rent is only a factor in making a determination
18 regarding the creation of tenancy, the decision does not state what other
19 factor(s) (except for consent) is legally sufficient/determinative and is
20 present in this case. Per Mosser Companies the determination of creation
21 of a new tenancy is the sole necessary consideration for resolving the
22 issue before the Rent Board."

23 5. The undisputed evidence in this case showed that, notwithstanding the fact that
24 the landlord specifically named tenant petitioner Maria Rodriguez in a proposed 2011 rental
25 agreement, the 2012 Rent Board petition in Case No. L120510, and a 2012 annual rent increase
26 notice, the landlord had never accepted rent from the tenant petitioner at the time the August 5,
27 2016 Costa-Hawkins rent increase notice was served.

28 Based on the fact that the landlord had never accepted rent from the tenant petitioner
prior to serving her the Costa-Hawkins rent increase notice and the court's Order in Case No.
CPF-17-515670, the undersigned Administrative Law Judge finds that Ms. Rodriguez was a
subtenant at the time the notice of rent increase was served on August 5, 2016. The October 4,
2016 rent increase to \$1,900.00 is therefore authorized by Civil Code §1954.53(d)(2).

ORDER

1. Petition T161693 is denied on remand pursuant to the Order in San Francisco
Superior Court Case No. CPF-17-515670.

2. It is determined that the landlord was entitled to increase the rent pursuant to Civil
Code §1954.53(d)(2) of the Costa-Hawkins Rental Housing Act, and the October 4, 2016 rent

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increase to \$1,900.00 is lawful.

3. This Remand Decision is final unless specifically vacated by the Rent Board following appeal to the Board. Appeals must be filed no later than 15 calendar days from the date of the mailing of this decision, on a form available from the Rent Board. [Ordinance Section 37.8(f), emphasis added] If the fifteenth day falls on a Saturday, Sunday or legal holiday, the appeal may be filed with the Board on the next business day.

Dated: November 19, 2019


Peter Kearns
Administrative Law Judge