

Date: May 11, 2010

Item No. 4  
File No. 10014

**SUNSHINE ORDINANCE TASK FORCE**  
**COMPLAINT COMMITTEE**  
**AGENDA PACKET CONTENTS LIST\***

- Jurisdiction; Michael Robinson against the Rent Board**
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Completed by: Chris Rustom

Date: May 06, 2010

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



Mayor's Office of Neighborhood Services:  
Citizen Assistance Intake Form



Constituent # [REDACTED]

Date: 4/9/10

Date of Birth: 6/15/57

Name: MICHAEL J. ROBINSON

Social Security #: [REDACTED]

Phone Number: 415- [REDACTED]

Address: [REDACTED] O'FARRELL ST. # [REDACTED]  
SF CA 94102

What's the problem?

WHILE AT A RENT BOARD HEARING,  
THE ADMIN. JUDGE IGNORED  
MY COMPLAINT TO FAVOR  
MY LANDLORD WHICH IN  
A COMMISSIONER OF THE  
RENT BOARD. EVEN WHEN I  
USED A RENT BOARD PUBLICATION  
TO EXPLAIN MY POSITION,  
HE SAID HE DIDN'T CARE WHAT  
THE PUBLICATION SAID. AND  
DREW HIS DISCUSSION IN FAVOR  
OF LANDLORD, DESPITE  
WHAT THE CITY LAW SAYS,

What do you want us to do?

CORRECT THE FAVORITISM  
& CONFLICT OF INTEREST  
THAT GOES ON BETWEEN  
THE COMMISSIONER,  
WHICH ARE LANDLORDS,  
OF THE RENT BOARD  
AND THE RENT BOARD  
EMPLOYEES & JUDGES  
AGAINST THE TENANTS  
OF SAN FRANCISCO.



April 28, 2010

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102-4689

RE: Sunshine Complaint Received: #10014 Michael Robinson v Rent Board and  
request for pre-hearing conference on May 11, 2010

This complaint does not state a matter within the jurisdiction of the Sunshine Task Force,  
and so the Rent Board respectfully requests that it be dismissed.

On December 1, 2009, Michael Robinson filed a petition at the Rent Board (Case No.  
T091645) alleging that the landlord unlawfully increased the tenant's rent in violation of  
the Rent Ordinance. On April 9, 2010, a hearing was held before an Administrative Law  
Judge (ALJ). The ALJ issued a decision in the case on April 21, 2010, denying the  
tenant's petition.

On January 7, 2010, Mr. Robinson's landlord filed a separate petition at the Rent Board  
(Case No. L100084) seeking a rent increase based on comparable rents. That case was  
also heard by the same Administrative Law Judge on April 9, 2010. The ALJ issued a  
decision on April 21, 2010 denying the landlord's petition.

Copies of the decisions in Case Nos. T091645 and L100084 are attached for the Task  
Force's reference.

On April 22, 2010, the tenant filed an appeal of the Decision In Case No. T091645  
denying his petition, which appeal has been scheduled for consideration by the Rent  
Board Commission on May 18, 2010.

If a party believes the Administrative Law Judge's decision is in error or that an abuse of  
discretion occurred, the party can appeal the decision to the Rent Board Commission,  
which is composed of tenant, landlord and neutral representatives appointed by the  
Mayor of San Francisco. The Commissioners will consider the appeal at a regularly

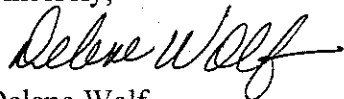


scheduled public meeting. Any party aggrieved by a final action or decision of the Board may seek judicial review by filing a Writ of Administrative Mandamus in the Superior Court, which must be done within 90 days of the Rent Board's final action. Please see enclosed Topic No. 405 - **The Appeal Process**, available from the Rent Board's web site (sfrb.org).

In his Sunshine Ordinance Complaint, Mr. Robinson alleges that the ALJ ignored the law in ruling for the landlord in his tenant petition No. T091645. Tenant Robinson's Complaint does not allege a violation of the Sunshine Ordinance. Since jurisdiction over Mr. Robinson's challenge to the Administrative Law Judge's decision clearly lies with the Rent Board Commission on appeal from the ALJ decision, and by writ of administrative mandamus to the Superior Court if the tenant disagrees with the final Rent Board decision, the Task Force has no jurisdiction over alleged legal errors in the Rent Board decision.

The Rent Board therefore requests a prehearing conference in this matter on Tuesday May 11, 2010, and requests that the Complaint be dismissed for lack of subject matter jurisdiction.

Sincerely,



Delene Wolf  
Executive Director

Enclosures

## Topic No. 405: The Appeal Process

If a party believes the Administrative Law Judge's decision is in error, that an abuse of discretion occurred or that a financial hardship will arise if the decision stands, the party can appeal the decision to the Rent Board Commission, which is composed of tenant, landlord and neutral representatives appointed by the Mayor of San Francisco. The Commissioners will consider the appeal at a regularly scheduled public meeting.

For purposes of an appeal consideration, the Commissioners review the Administrative Law Judge's decision, the appeal and accompanying documents, any written submissions that were timely filed by the parties before the date of the appeal consideration and any written comments submitted by the Administrative Law Judge whose decision is being challenged. The Commissioners may also review other material from the administrative record, as it deems necessary. No testimony is taken and no oral argument is permitted during the appeal consideration.

Appeals must be filed on the Rent Board appeal form within 15 days of the mailing of the decision. If the appeal is filed after this mandatory time limitation, a "good cause" reason for the late filing must be provided. The appeal should include the specific issues you disagree with and why you disagree with the decision. Be sure to include all relevant evidence or explanations that may support your position in an organized, concise and thorough manner.

The Appeal form contains instructions for filing an appeal, including the number of copies and envelopes required. To receive a copy of the Appeal form, you can fax it to yourself by calling 252-4660 or visit our website at [www.sfgov.org/rentboard](http://www.sfgov.org/rentboard). The appeal form is also available at our office.

A party may file a written response to an appeal at least one week prior to the appeal consideration. A copy must be sent to the opposing party at the same time. The appealing party may file a written reply to an opposing party's statements, which must also be served on the opposing party. Last minute submissions to the Commissioners of more than one page may not be reviewed.

Parties do not need to appear at the appeal consideration since no testimony or oral argument can be presented. Shortly after the appeal consideration, the Rent Board will send the parties a Notice of Action on Appeal setting forth the Commissioners' motion on the appeal.

When the Commissioners consider an appeal, they may take any of the following actions:

- deny the appeal;
- remand the case to an Administrative Law Judge for further action;
- schedule an appeal hearing before the Commissioners; or
- order correction of numerical or clerical errors in the decision.

If a case is remanded to an Administrative Law Judge, a decision might be made on the record or there may be another hearing on some or all of the issues in the case. If the Commissioners decide to conduct an appeal hearing themselves, all parties will be able to present testimony, evidence and oral arguments at the hearing. The parties do not necessarily need an attorney for this proceeding, although they are entitled to obtain representation.

Any party aggrieved by a final action or decision of the Board may seek judicial review by filing a Writ of Administrative Mandamus in the Superior Court, which must be done within 90 days of the Rent Board's final action.

June 2006

Contact  
SFGov

Accessibility Policies  
City and County of San Francisco ©2000-2010

1 Law Construed:  
2 Rules and Regulations Sections: 4.10(b); 4.12(a)  
3 Ordinance Sections: 37.2(r); 37.3(a)(1); 37.3(b)(5); 37.8(f)(1)  
4 Index Code: A1

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

7 IN RE: 545 O'FARRELL STREET, #107

CASE NO. T091645

8 MICHAEL J. ROBINSON,

HEARING: APRIL 9, 2010

9 TENANT PETITIONER,

**DECISION**

10 and

11 915 FOLSOM STREET, LLC,

12 LANDLORD RESPONDENT.

13 **INTRODUCTION**

14 This case involves a tenant petition filed on December 1, 2009, alleging that the  
15 landlord has unlawfully increased the rent over the allowable limits.

16 A hearing was held in the case on April 9, 2010. The following people appeared at the  
17 hearing: Michael J. Robinson, tenant petitioner; Marina Franco, attorney representative for the  
18 landlord; and Melissa Farris, landlord agent. At the hearing, the parties had full opportunity to  
19 present relevant evidence and argument. Those who testified did so under oath.

20 On April 9, 2010, a hearing was also held in landlord petition Case No. L100084. In  
21 that case, the landlord seeks to increase the rent based on rents for comparable units. A  
22 separate decision will be issued in Case No. L100084.

23 **FINDINGS OF FACT**

24 1. The building is located at 545 O'Farrell Street in San Francisco and has 79  
25 residential units. The property is managed by Mosser Companies.

26 **Rent History**

27 2. The subject tenancy commenced on March 1, 1995 with an initial monthly rent  
28

1 of \$485.00.

2  
3 3. Effective September 1, 2005, the monthly rent was increased by 17.7% from  
4 \$485.00 to \$570.84. (Attachment to Petition, page 1)

5 4. Effective December 1, 2009, the monthly rent was increased by 7.4% from  
6 \$570.84 to \$613.08. (Attachment to Petition, page 4) The landlord is also currently charging  
7 the tenant a bond measure passthrough of \$3.62 and a water revenue bond passthrough of  
8 \$3.12, which amounts are not challenged by the tenant.

9 **CONCLUSIONS OF LAW**

10 1. At all times relevant to the petition, the tenant's rental unit is subject to the  
11 jurisdiction of the Rent Board. [Ordinance Section 37.2(r)]

12 **Rent History Analysis**

13 2. A landlord may increase a tenant's base rent annually, in an amount published  
14 by the Rent Board on March 1 of each year, as set forth below. [Ordinance Section 37.3(a)(1)]

Effective Period	Amount of Increase
3/1/96 to 2/28/97	1.0%
3/1/97 to 2/28/98	1.8%
3/1/98 to 2/28/99	2.2%
3/1/99 to 2/29/00	1.7%
3/1/00 to 2/28/01	2.9%
3/1/01 to 2/28/02	2.8%
3/1/02 to 2/28/03	2.7%
3/1/03 to 2/29/04	0.8%
3/1/04 to 2/28/05	0.6%
3/1/05 to 2/28/06	1.2%
3/1/06 to 2/28/07	1.7%
3/1/07 to 2/29/08	1.5%
3/1/08 to 2/28/09	2.0%
3/1/09 to 2/28/10	2.2%
3/1/10 to 2/28/11	0.1%

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24  
25 3. A landlord who refrains from imposing an annual rent increase, or any portion  
26 thereof, may accumulate said increase and impose that amount on or after the tenant's  
27 subsequent rent increase anniversary date. This banked amount may only be given at the time



1  
2 of an annual increase. Only those increases that could have been imposed on, or subsequent  
3 to, April 1, 1982, may be accumulated. [Rules and Regulations Section 4.12(a)]

4 4. Any rent increase imposed after April 1, 1982 which exceeds the allowable limits  
5 renders the entire rent increase null and void, unless the amount requested equals no more  
6 than the sum of the allowable annual and banked rent increases. [Ordinance Section 37.3(b)(5);  
7 Rules and Regulations Section 4.10(b)]

8 5. The September 1, 2005 rent increase of 17.7%, from \$485.00 to \$570.84, was  
9 lawful because it did not exceed the 17.7% sum of the 1.2% annual and 16.5% banked (1.0%  
10 from 3/1/96 + 1.8% from 3/1/97 + 2.2% from 3/1/98 + 1.7% from 3/1/99 + 2.9% from 3/1/00 +  
11 2.8% from 3/1/01 + 2.7% from 3/1/02 + 0.8% from 3/1/03 + 0.6% from 3/1/04) rent increase  
12 that was available at that time. [Ordinance Section 37.3(b)(5); Rules and Regulations Section  
13 4.10(b)] Therefore, the lawful base rent for the unit was \$570.84 effective September 1, 2005,  
14 and the landlord retained no banked rent increase.

15 6. The December 1, 2009 rent increase of 7.4%, from \$570.84 to \$613.08, was  
16 lawful because it did not exceed the 7.4% sum of the 2.2% annual and 5.2% banked (1.7%  
17 from 9/1/06 + 1.5% from 9/1/07 + 2.0% from 9/1/08) rent increase that was available at that  
18 time. [Ordinance Section 37.3(b)(5); Rules and Regulations Section 4.10(b)] Therefore, the  
19 lawful base rent for the unit is \$613.08 effective December 1, 2009. The landlord currently  
20 retains no banked rent increase. The tenant's current monthly rent is \$619.82 (\$613.08 base  
21 rent + \$3.62 bond measure passthrough + \$3.12 water revenue bond passthrough = \$619.82).  
22 No determination is made regarding the lawfulness of the bond measure passthrough or the  
23 water revenue bond passthrough.

24 **ORDER**

25 Wherefore, all the evidence having been heard and considered, it is the order of this  
26 Administrative Law Judge that:

27 1. Petition T091645 is denied. The tenant's lawful base rent, effective December  
28

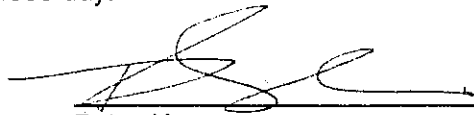
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1, 2009, is \$613.08.

2. This decision is final unless the Rent Board vacates the decision following an appeal to the Board. The parties must file appeals no later than fifteen calendar days from the date of the mailing of this decision, *on an appeal form available from the Rent Board.*

[Ordinance Section 37.8(f)(1)] If the fifteenth day falls on a weekend or legal holiday, then the parties may file their appeals on the next business day.

Dated: April 21, 2010



Peter Kearns  
Administrative Law Judge

1 Law construed:  
2 Ordinance Section: 37.2(p); 37.8(e)(4)(B); 37.8(f)(1)  
3 Rules and Regulations Sections: 4.10(b); 6.11(a)  
4 Index Code: D6

5 RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD

6 CITY AND COUNTY OF SAN FRANCISCO

7 IN RE: 545 O'FARRELL STREET, #107

CASE NO. L100084

8 915 FOLSOM STREET, LLC,

HEARING: APRIL 9, 2010

9 LANDLORD PETITIONER,

DECISION

10 and

11 MICHAEL J. ROBINSON,

12 TENANT RESPONDENT.

13 INTRODUCTION

14 This case involves a landlord petition filed on January 7, 2010. The landlord seeks to  
15 increase the rent above established annual limitations for 1 of 79 units (unit #107) based on  
16 rents for comparable units.

17 A hearing on the petition was held on April 9, 2010 at 2:00 PM. The following people  
18 appeared at the hearing: Neveo Mosser of 915 Folsom Street, LLC, landlord petitioner; David  
19 Wasserman and Marino Franco, attorney representatives for the landlord petitioner; Melissa  
20 Farris, Tom Scripps, and Joseph M. Tapia, witnesses for the landlord; Michael J. Robinson,  
21 tenant respondent; and Veena Puccinelli; court reporter retained by the landlord. At the  
22 commencement of the hearing, tenant respondent Michael J. Robinson excused himself from  
23 the hearing room, and the hearing was therefore held in his absence. At the hearing, the parties  
24 had full opportunity to present relevant evidence and argument. Those who testified did so  
25 under oath.

26 Earlier in the day on April 9, 2010 at 9:00 AM, a hearing was held in tenant petition Case  
27 No. T091645, during which hearing the tenant petitioner Michael J. Robinson appeared and  
28

1 presented evidence and argument under oath. In that case, the tenant alleged that the landlord  
2 unlawfully increased the base rent in 2005 and 2009. A separate decision will issue in that case.  
3 Administrative notice is taken of the record in Case No. T091645.

#### 4 FINDINGS OF FACT

5 1. The subject building, known as Atherstone Apartments, is located at 545  
6 O'Farrell Street in San Francisco and has 79 residential units. The landlord acquired the  
7 property from Prana Associates in August 2004. Prana Associates acquired the property from  
8 Liu Associates in approximately October 2003. During the period of Prana's ownership (October  
9 2003 through August 2004), the subject building was managed by Canyon Pacific Management  
10 Company. Liu and Associates owned the property for all relevant periods before October 2003.

11 2. At the April 9, 2010 hearing in Case No. T091645, the tenant testified that he was  
12 hired as a security guard by Liu Associates at the commencement of his tenancy on March 1,  
13 1995, and approximately nine months later Liu Associates hired him to manage the building –  
14 which time the tenant moved from unit #114 to subject unit #107. The tenant testified that his  
15 rent remained \$485.00 when he moved from unit #114 into unit #107.

16 3. The landlord submitted a copy of a March 1995 lease between former landlord  
17 Liu Associates and tenant Michael J. Robinson, which states an initial monthly rent of \$485.00  
18 beginning March 1, 1995. (Attachment to Petition, page 75) The typewritten address stated on  
19 the lease is "545 O'Farrell St. #114," and the #114 is stricken with "#107" handwritten below it.  
20 Paragraph 24 of the lease ("Additional Terms and Conditions") includes the following typewritten  
21 statement: "Performance of management security administration in exchange service." The font  
22 type for that particular paragraph is different than other typewritten sections of the lease.

23 4. Since 2005 the current landlord has treated the subject tenancy as one that  
24 commenced in March 1995 with a base rent of \$485.00. However, the landlord now alleges that  
25 the March 1995 lease is not a "true and correct rental agreement" and that the lease is in fact a  
26 fraudulent document.

27 5. The landlord submitted the following two documents which date back to Liu

1 Associates' ownership of the building:

2 (1) An August 2003 rent roll document consisting of a table that shows  
3 the actual rent charged for units in the building in August 2003 ranged  
4 considerably. The table indicates that subject unit #107 was charged no  
5 rent and the lease started in November 1995. The table further indicates  
6 that other occupants paid rents ranging from \$300.00 (unit # 504) to  
7 \$1,600.00 (#405). The table also stated that the units in the building  
8 had a market rent in August 2003 between \$800.00 and \$1,200.00, with  
9 the vast majority of units, including subject unit #107, showing an  
10 August 2003 market rent of \$800.00. (Landlord Exhibit H)

11 (2) An undated document entitled "Rent Roll for Atherstone  
12 Apartments," which consists of a table with columns showing the actual  
13 amount of rent paid and the amount of the security deposit for each unit  
14 in the building. (Landlord Exhibit G) That document shows no rent paid  
15 or security amount for the subject unit, and in the "Comment" column  
16 states "Manager." As for other units, the document shows rents ranging  
17 from \$300.00 (unit #504) to \$1,200.00 (unit #217).

18 6. Tom Scripps is the president of Canyon Pacific Management Company. Mr.  
19 Scripps testified that Prana Associates retained his company to manage the building in  
20 approximately October 2003 when it acquired the property. Mr. Scripps further testified that  
21 soon after being retained, he personally met with tenant respondent Michael Robinson to  
22 discuss the prospects of Mr. Robinson's ongoing management of the building. Mr. Scripps  
23 testified that during his initial meetings with Mr. Robinson, it became clear that Mr. Robinson  
24 desperately wanted a lease agreement with Prana Associates that would remain in effect even if  
25 he did not continue to act as the resident manager.

26 Specifically, Mr. Scripps testified that when he met with the tenant in October  
27 2003 and presented the tenant with an employment agreement whereby Mr. Robinson would be

1 the resident manager of the building while occupying the unit on a licensee basis, the tenant  
2 arduously negotiated a lease for occupancy rather than a license. (Landlord Exhibit C)

3 On October 22, 2003, Tom Scripps and tenant Robinson executed an  
4 employment agreement, which includes the following provision:

5 "Employee understands and agrees that Employee's occupancy of the  
6 Apartment is a 'tenancy' as defined by applicable law, regulation, or  
7 governmental authority and shall be governed by said laws and statutes  
8 including the San Francisco Rent Control Ordinance. Employee shall  
9 enter into a residential month to month lease for unit 107 at \$800 per  
10 month plus \$800 security deposit + \$75 for parking stall #7."

11 (Landlord Exhibit D) Mr. Scripps testified that the value of the unit was set at \$800.00 because  
12 that was the rental amount stated in the August 2003 rent roll from Liu Associates. However, the  
13 amount stated in the Liu Associates rent roll documentation states an August 2003 "market rent"  
14 of \$800.00, and does not specifically state the amount paid by the tenant or the amount credited  
15 by Liu and Associates for management services.

16 7. During the period that Prana Associates owned the building (October 2003 to  
17 August 2004), the tenant either paid monthly rent in the amount of \$800.00, or was credited with  
18 \$800.00 towards the payment of rent for work performed as the resident manager.

19 8. Tom Scripps testified that during the period he managed the building for Prana  
20 Associates, he was completely unaware of any rental agreement for the subject unit other than  
21 the October 2003 employment/tenancy agreement for \$800.00 which he negotiated with the  
22 tenant.

23 9. Both Tom Scripps and Joseph Tapia of Canyon Pacific Management Company  
24 testified that Mr. Robinson was a difficult employee who failed to take direction from his  
25 superiors. On August 5, 2004, shortly before the current landlord acquired the building, Canyon  
26 Pacific Management Company and tenant Robinson executed a severance agreement and  
27 general release, whereby Mr. Robinson's employment with Canyon Pacific was terminated as of  
28 August 12, 2004.

10. Neveo Mosser is a principal owner of landlord 915 Folsom Street, LLC, and he is

1 the president of Mosser Companies, the entity that manages the subject property. Mr. Mosser  
2 testified that when the landlord acquired the property in August 2004, Prana Associates  
3 provided him with copies of leases for every occupied unit in the building, except for the subject  
4 unit. Mr. Mosser further testified that based on rent roll documentation he received from Prana  
5 Associates, he believed the tenant's monthly rent to be \$800.00 per month. (Landlord Exhibit E)

6 11. At the time of purchase, Mr. Mosser was not advised of any difficulties between  
7 Prana Associates and Mr. Robinson, and the August 5, 2004 severance agreement was not  
8 disclosed to him. Mr. Mosser therefore believed that he could either retain Mr. Robinson to  
9 manage the property, or he could treat him as a tenant and charge him \$800.00 per month.  
10 Either way, Mr. Mosser calculated the purchase value of the property based on a monthly rent  
11 of \$800.00 for the subject unit.

12 12. Although the current landlord initially made an offer to Mr. Robinson to manage  
13 the property, that offer was quickly rescinded and the landlord compensated the tenant for work  
14 performed during the transfer of the building and the landlord's first few weeks of ownership.  
15 The landlord also began charging the tenant monthly rent of \$800.00.

16 13. On or around October 13, 2004, Mr. Robinson filed an employment  
17 discrimination claim against the landlord with the EEOC. That matter was subsequently settled.

18 14. The tenant did not pay rent for October or November 2004. In December 2004,  
19 the landlord served the tenant with a 3-day notice to pay or quit, and when payment was not  
20 made the landlord filed an unlawful detainer action in Superior Court Case No. 05-614072. The  
21 unlawful detainer went to trial at which time the tenant produced the March 1995 lease with an  
22 initial base rent of \$485.00 on the basis of the March 1995 lease for \$485.00. The Superior  
23 Court found in favor of Mr. Robinson in the action, and ruled that he was entitled to rent credits  
24 against the landlord for overpayment of rent from November 2003 through August 2004 (when  
25 Prana Associates owned the building.) Neveo Mosser testified that when the 1995 lease was  
26 produced during the 2004 unlawful detainer trial, he decided not to challenge the authenticity of  
27 the lease because he was most concerned about ascertaining the base rent for the unit.

1 15. Since the 2004 unlawful detainer action, the landlord has imposed two rent  
2 increases pursuant to the Rent Ordinance: (1) effective September 1, 2005, the monthly rent  
3 was increased by 17.7% (the allowable annual and banked rent increase since 1995) from  
4 \$485.00 to \$570.84; and (2) effective December 1, 2009, the monthly rent was increased by  
5 7.4% (the allowable annual and banked amount) from \$570.84 to \$613.08. The landlord is also  
6 currently charging the tenant a bond measure passthrough of \$3.62 and a water revenue bond  
7 passthrough of \$3.12, for a total monthly rent of \$619.82 (\$613.08 base rent + \$3.62 bond  
8 measure passthrough + \$3.12 water revenue bond passthrough = \$619.82).

9 16. After the tenant prevailed in the 2004 unlawful detainer action, the landlord  
10 brought an action against Prana Associates for various causes of action relating to non-  
11 disclosures regarding tenant Robinson. That matter was resolved through a binding arbitration.  
12 (Attachment to Petition, pages 15-25)

13 17. Neveo Mosser testified that after the non-disclosure action against Prana  
14 Associates was resolved and he was no longer an adversary of Prana Associates and/or  
15 Canyon Pacific Management, he began to seriously doubt the veracity of Mr. Robinson's March  
16 1995 lease. According to Mr. Mosser, subsequent conversations with Tom Scripps led him to  
17 believe that the 1995 lease was fraudulent since Mr. Robinson had brokered so hard to get a  
18 lease with Canyon Pacific in 2003.

19 18. The landlord's statement of the case includes the following paragraph:

20 "It is the landlord's position that the Tenant's Lease is not a correct and  
21 true rental agreement. It is not referred to in any of the disclosure  
22 agreements when Liu Associate sold the property to Prana. Moreover,  
23 Liu Associates own paperwork states that 'no actual charges' were  
24 received by Unit 107, as he was the manager. When Liu Associates  
25 sold to Prana in 2003, Tenant realized he could lose his apartment  
26 should Canyon Pacific not hire him as resident manager. He never  
27 provided any purported lease but rather pled with Canyon Pacific to give  
28 him a lease. After much negotiation they provided him with an  
employment agreement consistent with the numbers provided by Liu  
Associates, and started his official status as a tenant with the unit rent at  
\$800.00. Only after Defendant ran into problems paying his rent, and  
lost his position as resident manager (and accordingly lost his income),  
did the 1995 lease miraculously appear. Landlord contends that Michael  
J. Robinson's residency as a tenant began in 2004. Accordingly, his



1 base rent must be adjusted to \$800 as of 2004."

2 (Landlord Exhibit A, pages 1-3)

3 19. The landlord asserts that the March 1995 rental agreement is fraudulent based  
4 on the following: (1) the landlord contends that the only reason the tenant negotiated a lease  
5 with Canyon Pacific in 2003 is because he was previously a licensee when Liu Associates  
6 owned the building; (2) the tenant first produced the lease during the 2004 unlawful detainer  
7 litigation, which is suspicious; and (3) the lease has at least two font types on it.

8 20. On Schedule C of the landlord's petition, the landlord listed the following four  
9 units in the subject building as comparable units: #109, #209, #212, and #311. All four units are  
10 studio units with an initial base rent of \$800.00 established between May 2003 and April 2004.  
11 The landlord also submitted the leases for those units. (Attachment to Petition, pages 27-73)

12 21. The attorney for the landlord argued that the tenant's failure to present evidence  
13 at the hearing to contradict any evidence of fraud creates a negative inference under California  
14 Evidence Code §413, which provides that in determining what inferences to draw from the  
15 evidence or facts in a case, the trier of fact may consider, among other things, a party's failure  
16 to explain or to deny by testimony any unfavorable evidence or facts in the case.

### 17 CONCLUSIONS OF LAW

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

20 2. A rent increase based on rent for comparable units may be considered justified if  
21 extraordinary circumstances exist which result in a very low initial rent or negligible rent  
22 increases during the tenancy, and the rent for the unit is significantly below those of comparable  
23 units in the same general area. [Ordinance Section 37.8(e)(4)(B); Rules and Regulations  
24 Section 6.11(a)(1)(A)]

25 3. The provisions of Rules and Regulations Section 6.11(a)(1)(A) pertaining to  
26 comparable rents shall apply only in extraordinary circumstances, including but not limited to  
27 situations where, because of a special relationship between the landlord and tenant, or through

1 fraud, mental incompetence, or some other reason, the initial rent on a unit was set very low  
2 the rent was not increased or was increased only negligible amounts during the tenancy.

3 4. In this case the landlord alleges that the March 1995 base rent of \$485.00 was  
4 set very low through fraud. Although the Superior Court previously found that the tenant held a  
5 valid lease that commenced on March 1, 1995 with an initial rent of \$485.00, the landlord now  
6 contends that the March 1995 lease "is not a correct and true rental agreement" and is instead  
7 a fraudulent document.

8 Based on all of the evidence, including inferences to be drawn under Civil Code §413  
9 based on the tenant's failure to present evidence at the hearing, the undersigned Administrative  
10 Law Judge finds that the landlord has failed to meet the burden of proving fraud or other  
11 extraordinary circumstances in this case. [Rules and Regulations Section 6.11(a)(1)(A)] The  
12 landlord has not submitted sufficient evidence to show that the 1995 lease is fraudulent as  
13 claimed by the landlord. The 1995 lease was determined to be valid in the Superior Court  
14 eviction action filed by the current landlord against the tenant in 2004, and the landlord also  
15 imposed a banked rent increase based on an initial rent of \$485.00 beginning on March 1, 1995.  
16 The fact that the tenant negotiated a lease and employment agreement in 2003 with a rent of  
17 \$800.00 is not sufficient to establish that the 1995 lease is fraudulent. Nor does the fact that the  
18 lease was first produced in 2004 during the unlawful detainer trial, or that there is more than one  
19 font type on the lease, prove the document is fraudulent. Accordingly, the landlord has failed to  
20 establish that the initial monthly rent of \$485.00 was established through fraud, and a  
21 comparables rent increase is not warranted under Section 6.11.

22 **ORDER**


23 1. Petition No. L1000894 is denied. The base rent for unit #1 therefore remains  
24 \$613.08 per month, and the tenant's anniversary date is December 1. The tenant's current  
25 monthly rent is of \$619.82 (\$613.08 base rent + \$3.62 bond measure passthrough + \$3.12  
26 water revenue bond passthrough = \$619.82).

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2. If the landlord files a timely appeal of this decision, the monthly base rent of \$613.08 shall remain in effect pending any appeal.

3. This decision is final unless the Rent Board vacates the decision following an appeal to the Board. The parties must file appeals no later than fifteen calendar days from the date of the mailing of this decision, *on an appeal form available from the Rent Board.* [Ordinance Section 37.8(f)(1)] If the fifteenth day falls on a weekend or legal holiday, then the parties may file their appeals on the next business day.

Dated: April 21, 2010

  
Peter Kearns  
Administrative Law Judge

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