



RENT BOARD

May 24, 2023

5:00 PM

ZOOM INFORMATION:

- a. Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/85197146617?pwd=UzNBeTkvcWNPUWFKeHNpWk1ScVpuQT09>

Passcode: 798946

Or One tap mobile :

+19292056099,,85197146617#,,,*798946# US (New York)

+13017158592,,85197146617#,,,*798946# US (Washington DC)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

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+1 646 931 3860 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

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International numbers available: <https://portlandmaine-gov.zoom.us/j/kcbNofunj0>

II. ROLL CALL:

III. APPROVAL OF MINUTES

- a. May 10, 2023 Minutes

IV. COMMUNICATIONS:

Please note: Written public comment must be received via email (rentboard@portlandmaine.gov) by 12pm the day before the scheduled meeting. The subject line must read "Written Public Comment"

- a. Written Public Comments

V. UNFINISHED BUSINESS:

- a. Rent Increase Application - Public Comment
Owner: Eastern Residential Inc
Landlord's Representative: Dave Bergeron with Port Property
Address & Unit #: 16 Walnut St, Units 1-8 & B (Legal Address is 304 Eastern Prom)
CBL: 015-B-001-002
Increase Requested: Increased Housing Service Costs
- b. Vote for the next Board Chair and Vice Chair

VI. NEW BUSINESS

- a. Discussion to Prepare for the Annual Report

VII. ADJOURN

Remote Rent Board Meeting Minutes - Held Via Zoom

Wednesday, May 10, 2023

Start time: 5:02pm

II. Roll Call

Elliott Simpson, Tenant, District 3 - Chair
Barbara Vestal, Landlord, At-Large - Vice Chair
Vacant, District 1
Matthew Walker, Tenant, District 2
Ian McCracken, Landlord, District 4
Philip Mathieu, Tenant, District 5
Vacant, At-Large

Staff present:

Katlyn Sawyer, Licensing & Registration Coordinator
Zachary Lenhert Licensing & Housing Safety Manager
Benjamin Plante, Esq., Counsel for the Rent Board

III. Executive Session - 00:02:11

A. Executive session pursuant to 1 M.R.S. 405(6)(E) to consult with the Rent Board's attorney regarding the Board's legal rights and duties to address conflicts of interest and comply with the public meetings law

The Vice Chair makes a motion referencing the verbiage above, seconded by Philip. Vote: 5-0 (Two vacancies on the Board).

At 6:09pm, the Vice Chair motioned to adjourn Executive Session and return to the public meeting, seconded by Philip. Vote: 5-0 (Two vacancies on the Board).

01:07:44 - The Board returned to the public meeting

IV. Approval of Minutes - 01:08:13

A. March 22, 2023 Minutes with Appendix A

01:08:43 - The Vice Chair makes a motion to approve as written, seconded by Matthew Walker. Vote: 5-0 (Two vacancies on the Board).

V. Communications - 01:09:10

A. 655 Congress St - Rent Appeal Review

There was no discussion on this item.

B. Written Public Comments

There was no discussion on this item.

VI. Unfinished Business - 01:10:46

A. Rent Increase Application - Public Comment

Owner: Seaforth Housing LLC

Landlord's Representative: David M Hirshon, Hirshon Law Group

Property Address: 389 Cumberland Ave, All 116 Units

CBL: 036-I-037-001

Type of Increase: Capital Improvement Costs and Fair Rate of Return

The Vice Chair made it known to members of the public that there was discussion of conflict of interest and appearance of conflict where a new Board member participated in this item in the previous meeting as a member of the public. Based on change of roles and statements made at that meeting, in order to avoid the appearance of a conflict of interest, a motion will be made that the Board vote to recuse the newest Board member, Matt Walker, from participating as a member of the Board in deliberation and voting on the application of Seaforth Housing LLC. Seconded by Ian.

01:13:21 - Matt Walker speaks on this matter

01:15:16 - Other members of the Board voiced their opinions

01:18:21 - Benjamin Plante, Esq., Counsel, suggested the Board hears input from the applicant in the event they have any objections to this. And that the current motion is tabled

01:19:17 - The Vice Chair tables the motion so that the Board can check in with the applicant

01:20:27 - The Landlord's Representative, David Hirshon, speaks.

01:24:11 - The Vice Chair puts the motion back on the table, seconded by Ian. Vote: 4-1 (Matt Walker voted against the motion and there are two vacancies on the Board)

The Chair will allow Matt Walker to speak as a member of the public

No tenants spoke as objectors.

01:31:50 - Public Comment

1. Matt Walker, who lives at 655 Congress St, spoke on the application.

01:36:29 - The Vice Chair made a motion that the Board find that an additional rent increase is appropriate based on capital improvement costs and that the Board accept Landlord's claim of \$626,040.00 for a new roof amortized over 10 years, reduced by twenty-five percent (25%) for the common area with the net recovery of \$46,754.00 per year, averaging \$33.59 per month per unit for 116 units. The actual monthly rent increase to be allocated among the units in proportion to square footage and incorporating the applicant's exhibit B, column 6 monthly increase with proof. Seconded by Philip. Vote: 4-0 (Two vacancies on the Board and Matt Walker was recused).

Remote Rent Board Meeting Minutes - Held Via Zoom

B. Rent Increase Application - Public Comment - 01:38:45

Owner: Eastern Residential Inc

Landlord's Representative: David Bergeron with Port Property

Property Address: 16 Walnut St, Units 1-8 & B

CBL: 015-B-001-002

Type of Increase: Increased Housing Service Costs

The Vice Chair made a motion that the Board vote to recuse Matt Walker from participating as a member of the Board in deliberations and voting on the application of Eastern Residential Inc concerning 16 Walnut Street, due to the appearance of a conflict of interest based on comments made at the prior meeting as a member of the public.

01:41:28 - The Landlord's Representative, David Bergeron, has asked the Board to recuse Matt Walker on this application.

01:43:34 - Matt Walker speaks on the matter

01:45:43 - Members of the Board voiced their concerns

01:49:20 - The Vice Chair puts the motion back on the table, seconded by Ian. Vote: 4-1 (Matt Walker voted against the motion and two vacancies on the Board)

The Chair allowed Matt to participate as a member of the public

No tenants spoke as objectors.

01:57:52 - Public Comment

1. Matt Walker, who lives at 655 Congress St, spoke on the application

03:16:12 - The Vice Chair made a motion that the Board table this to either the May or June meeting for the applicant to submit sample leases and/or promotion material for the apartment units in question. Seconded by Philip. Vote: 4-0 (Two vacancies on the Board and Matt Walker was recused).

C. Rent Increase Application - Public Comment - 03:18:16

Owner: West Bayside Partners LLC

Landlord's Representative: David Bergeron with Port Property

Property Address: 132 Marginal Way, All 196 Units

CBL: 442-A-001-001

Type of Increase: Capital Improvement Costs

The Vice Chair made a motion that the Board vote to recuse Matt Walker from participating as a member of the Board in deliberations and voting on the application of West Bayside Partners LLC pertaining to 132 Marginal Way, due to the appearance of a conflict of interest based on comments made at the prior meeting as a member of the public. Seconded by Philip.

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03:19:39 - Matt Walker speaks on the matter

03:21:06 - The Landlord's Representative, David Bergeron, initially did not object to Matt Walker participating as a member of the Board. However, after discussion from Counsel, the previous statement was retracted and they requested that the Board vote to recuse Matt.

03:22:11 - Benjamin Plante, Esq., Counsel for the Board provided clarity and guidance to the statement initially made by Port Property.

03:25:29 - A vote was taken on the original motion presented. Vote: 4-1 (Matt Walker voted against the motion and two vacancies on the Board)

The Chair allowed Matt to participate as a member of the public

No tenants spoke as objectors.

03:29:12 - Public Comment

1. Matt Walker, who resides at 655 Congress St, spoke to the application
2. Jessica Purser, a former tenant, spoke about constant issues with a broken elevator and the hot water

03:39:27 - Philip made a motion to approve the increase in the amount of \$5.59 per unit, following a ten-year amortization under capital improvements. Seconded by the Vice Chair. Vote: 4-0 (Two vacancies on the Board and Matt Walker was recused).

VII. New Business - 03:40:34

A. Rent Increase Application - Public Comment

Owner: National Society of the Colonial Dames in the State of Maine

Property Address: 1267 Westbrook St, Upstairs Floor Unit

CBL: 213-D-002-001

Type of Increase: Increased Housing Service Costs and Fair Rate of Return

03:46:22 - A current tenant, Roy Depasquale, spoke on the application submitted

No public comment was received

04:23:06 - The Vice Chair made a motion that based on fair rate of return, the Board approve an increase in current rent to \$1,200.00 per month with the stipulation that the applicant is not able to also take a CPI increase for 2023, with the clarification that this is subject to the ten percent (10%) cap so some of the increase will be banked for a future year. Seconded by Philip. Vote: 5-0 (Two vacancies on the Board).

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B. Rent Increase Application - Public Comment - 04:25:01

Owner: Rockprop LLC

Property Address: 14 Veranda St

CBL: 429-C-006-001

Type of Increase: Increased Housing Service Costs and Fair Rate of Return

The applicant was not present at the time of discussion.

No tenants spoke as objectors

No public comment was received

04:31:18 - The Chair made a motion that HSO inform the applicant that the Rent Board has advised that they will need to resubmit their application using the new Maintenance and Net Operating Income (MNOI) worksheet, which can be sent via email. Seconded by the Vice Chair. Vote: 5-0 (Two vacancies on the Board)

04:36:15 - The Chair made a motion that the Board goes past 9:30pm to continue with the last agenda item, seconded by Matt Walker. Vote: 5-0 (Two vacancies on the Board).

C. Nominations for the next Board Chair - 04:37:14

The Chair stated that this is for nominations only and that voting will happen at the next meeting.

Barbara Vestal nominated Elliott Simpson as Chair. Elliott accepted the nomination.

Matt Walker nominated Barbara Vestal as Vice Chair.

Barbara did mention that her term is up in March 2024, at which she does not anticipate renewing.

Ian McCracken nominated Philip Mathieu as Vice Chair. Philip accepted the nomination.

04:42:17 - Decision Forms

389 Cumberland Ave

Edits were made to the form.

04:53:11 - Philip made a motion to accept the decision form as written, seconded by the Vice Chair. Vote: 4-0 (Two vacancies on the Board and Matt Walker was recused).

Remote Rent Board Meeting Minutes - Held Via Zoom

04:54:35 - 132 Marginal Way

Edits were made to the form.

04:58:49 - Philip made a motion to accept the decision form as presented, seconded by the Vice Chair. Vote: (Two vacancies on the Board and Matt Walker was recused).

05:00:22 - 1267 Westbrook St

Edits were made to the form

05:13:03 - Matt Walker made a motion to approve the decision form as written, seconded by the Vice Chair. Vote: 5-0 (Two vacancies on the Board).

05:13:48 - Zachary Lenhart, Licensing & Housing Safety Manager for the Housing Safety Office (HSO) made a request to the Board, specifically the Chair and Philip, to sit down and discuss the MNOI worksheet to be able to help applicants fill out the new application

VIII. Adjourn

05:16:08 - Matt Walker made a motion to adjourn the meeting, seconded by Philip. Vote: 5-0 (Two vacancies on the Board).

Meeting end time: 10:19pm

Written statement for tonight's Rent Board meeting and appeal filed under Sec. 6-263(c)

5 messages

Vivienda Apoyo <portlandmainerentersrights@gmail.com>
To: "rentboard@portlandmaine.gov" <rentboard@portlandmaine.gov>

Wed, May 10, 2023 at 11:38 AM

Hello,

We understand written statements from the public are read at the beginning of Rent Board meetings; we would like the following statement to be included. As noted in the statement we are also submitting this as a written appeal before the Rent Board under Sec. 6-263(c) addressing "matters falling within the scope of the Rent Stabilization Ordinance"; we recognize this appeal is distinct from our upcoming Rent Increase Appeal that we have yet to file for.

Thank you.

Hello, my name is Vivienda Apoyo, our email is PortlandMaineRentersRights@gmail.com. I am writing as a Tenant Union for 231 State St.; we filed a Rent Stabilization Complaint with the Housing Safety Office ("HSO") against our Landlord, BJB Realty on March 28.

Our complaint provided an email sent March 21 from our Landlord that stated our currently occupied basement storage was to become 'optional'. It stated, *"we wanted add a addendum to all current leases(that are subject to change) that tenants will now be given the option to pay \$100/Per storage unit or move items out of storage" and "Tenants already using said storage will be charged for it after 5/1/23 or encouraged to move items away if the extra charge is not in there best interest. Unpaid charges to the account to those whom still have items in storage is subject to late rent payment fees."*

This \$100 fee is Rent under the definitions of the Rent Stabilization Ordinance ("RSO"); the definition in Sec. 6-232 includes any monies rendered to the landlord for the Rental Unit or any housing service. Adding provisions to a lease that say the Landlord may charge for previously included housing services does not qualify as a Rent Stabilization Allowance under the RSO. This attempt to collect additional Rent is not listed in Sec. 6-234(b) and as such it violates Sec. 6-239 as an attempt to waive our rights to Rent Stabilization under the RSO.

We want to be clear about the storage in question, it is in the basement of our building and numbered by apartment unit. The definition of Rental Unit in the RSO explicitly includes storage "held out for use by the tenant".

Below is a link to a 1:30 minute YouTube video showing our basement, the apartments listed on our mailbox and the numbers of the storage units.

https://youtu.be/_nMUi3endW8

The HSO asked for a signed lease stating storage is included in our Rental Unit in order to investigate our Rent Stabilization Complaint. When it was not provided, they claimed the dispute was a civil matter about our lease. This is inconsistent with the RSO in a number of ways but our repeated attempts at reasoning using the RSO were stonewalled.

We refiled our complaint on March 30 explicitly as a Tenant Union asking for the protections under Sec. 6-243(a)(b) but the HSO continued to insist on a signed lease and refused to investigate otherwise. We have filed complaints with the City Manager's office and received explanations of the HSO's behavior from the office of the Corporation Counsel. Thus far the explanations provided have been inconsistent with the RSO. We are happy to forward them on request.

We have repeatedly appealed this inconsistency. We have been repeatedly told, despite our protests, that the Rent Board is the appropriate venue for the complaint of inconsistency between the HSO and the RSO when it comes to its dutiful investigations of Rent Stabilization Complaints.

If it is indeed the case that the Rent Board has jurisdiction and authority over the HSO's investigational activities and that they can in fact do the administrative work of making sure those activities are not inconsistent with the RSO (as required by the City Charter), we ask the Rent Board to do so in our regards to our Rent Stabilization Complaint.

If it is not the case that the Rent Board has such jurisdiction and authority, we ask the Rent Board to instruct the HSO that the investigational findings of Rent Stabilization Complaints by the HSO cannot be appealed to the Rent Board and that the HSO is obligated under Sec. 6-234(e) to "conduct investigations of such complaints and take appropriate action" in a manner that is not inconsistent with the RSO.

We request that this matter be resolved collectively between the City Manager, the Corporation Counsel, the HSO, and the Rent Board.

We recognize that the RSO is relatively new and that the implementation that has been provided so far is a first pass. Just as violations of the RSO need to be reported by Tenants, the process of accessing rights under the RSO needs to be reviewed by those who have used it.

We have asked for the process to propose agenda items before the rent board and received no response. We are requesting that this statement be considered a written appeal under Sec. 6-263(c) addressing "matters falling within the scope of the Rent Stabilization Ordinance" and that as such the following items be considered for inclusion on the Rent Board's Agenda.

1. Recreate the *Rent Stabilization Complaint* and *Rent Increase Appeal* forms to reflect the requirements of Sec. 6-243(a)(b). Specifically, the forms should provide access to rights for Tenant Unions under the RSO, per Sec. 6-243(a), while also expressing and providing for the rights to anonymity for both the members of the Tenant Union and the Tenant Union itself under Sec. 6-243(b).
2. Review and clarification of the HSO's applied investigational guidelines.
3. Review and clarification of the Rent Board's jurisdiction and authority over the process and findings of investigational activities of the Housing Safety Office as noted above.
4. Establish a process for proposing Agenda items by appeal under Sec. 6-263(c).

Should these items be taken up by the board we request the opportunity for the public (and our Tenant Union specifically) to provide further details both in the forming of the agenda items and in their discussion before the board where appropriate.

We will be filing the Rent Increase Appeal for our Rent Stabilization Complaint to be heard in an upcoming meeting. In the meantime we thank you for your consideration of this distinct appeal. Again our email is PortlandMaineRentersRights@gmail.com.

Thank you.



Written comment for tomorrow's Rent Board meeting.

1 message

Vivienda Apoyo <portlandmainerentersrights@gmail.com>

Tue, May 23, 2023 at 10:00 AM

To: Rent Board <rentboard@portlandmaine.gov>

Hello, Vivienda Apoyo here with a written comment for the upcoming rent board meeting.

In the Rent Board meeting of May 10, 2023 the Rent Board received a communication from Zachary Lenhart, Licensing and Housing Safety Manager; dated April 6, 2023; titled Re: 655 Congress Street - Tenant Appeal of Rent Increase and Request of Fines. We quote:

"The Housing Safety Office reviewed and considered all the information provided by the Landlord since the Rent Board's Decision to determine next steps as to whether or not to impose fines. Since the Rent Board's Decision, the Landlord has met all of the requirements of the Rent Board Decision including reissuing Notices and reallocating the TRRA relative to the square footage of each unit. In light of the Landlord's compliance with the Rent Board's Decision, as well as the Landlord's cooperation and ongoing compliance with the requirements of the Rent Control Ordinance, the Housing Safety Office has decided not to pursue fines in this matter."

We cannot see why the Housing Safety Office was involved at this stage. The landlord is allowed the 14 day window to correct mistakes and thereby avoid the Rent Board and its penalties.

Portland City Code ch. 6, art. XII, §§ 6-234(e) states that "the Board may impose such fines as are allowed by this Article." Under Portland City Code ch. 6, art. XIII §§ 6-263(f) the Rent Board has the jurisdiction and authority to determine penalties "in a manner consistent" with the Rent Stabilization Ordinance ("RSO"). Portland §§ 6-240 states that any violation of the Rent Stabilization Ordinance **shall** be enforced under Portland City Code ch. 1, § 1-15.

To be not inconsistent with the RSO, Portland § 1-15 must be followed for any violation of the RSO. Portland § 1-15 states, "...the violation of any such provision of this Code or any ordinance **shall** be punished by a fine not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for **each offense**. Wherever a **minimum fine** is established in this Code, it **shall** be deemed a sum certain for **each alleged offense** in any action brought to enforce this Code. Whenever in this Code a minimum but no maximum fine or penalty is imposed, the court may in its discretion fine the offender any sum of money **exceeding** the minimum fine or penalty so fixed. **Each act** of violation and **every day** upon which any such violation shall occur shall constitute a **separate offense**." [emphasis added]

The complaint brought before the Rent Board by the Trelawny Tenants Union detailed a long list of violations ranging over an extended period of time; we do not see how they could have been addressed in a manner consistent with the RSO by a fine of ~15k.

We ask that this matter be revisited by the Rent Board (they have the jurisdiction and authority to determine penalties under the RSO, not the Housing Safety Office) and that the Rent Board determine the appropriate penalties consistent with the RSO as mandated by the RSO.

City of Portland – Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

March 22, 2023 – Tabled to May 24, 2023

Owner Name and Address:

Eastern Residential Inc., 82 Hanover Street, Portland, ME 04101

Landlord's Representative and Address:

Dave Bergeron with Port Property, 82 Hanover Street, Portland, ME 04101

Property Address, Unit, and CBL:

16 Walnut Street, Units 1-8 & B (Legal Address is 304 Eastern Prom)
CBL: 015-B-001-002

Tenants/Interested Parties:

Yes

Type of Request:

- ☐ Renovation of a unit or Reconfiguration of one or more units (6-233(c))
- ☐ Capital Improvement Costs, including financing costs (6-234(b)(5)(a))
- ☐ Uninsured repair costs (6-234(b)(5)(d))
- ☒ Increased housing service costs (6-234(b)(5)(c))
- ☐ Fair Rate of Return (6-234(b)(5)(d))