

64608-7

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No. 64608-7

COURT OF APPEALS DIVISION 1  
OF THE STATE OF WASHINGTON

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CAPITAL HILL HOUSING IMPROVEMENT

PROGRAM, Respondent

V.

CHRISTIAN BRYANT, Appellant

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BRIEF OF APPELLANT

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CHRISTIAN BRYANT

308 14<sup>TH</sup> Ave. E. #301

Seattle, WA. 98112

206-458-3787

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COURT OF APPEALS DIV. #1  
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# Brief of Appellant

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Assignments of Error

1. On Oct. 13<sup>th</sup> 2009 the trial court erred in granting the writ of restitution by misapprehension of the law

Issues Pertaining to Assignment of Error

Is a resident manager who has a fixed term lease covered under the Residential Landlord Tenant Act (RLTA) 59.18? Is a seven day addendum

to vacate legal under the RLTA? Can a writ of restitution be granted without any notices issued prior to a summons and complaint? Did the granting of the writ of restitution violate the defendants rights under the RLTA, Seattle Municipal Code (SMC) 7.24.100, 14<sup>th</sup> amendment to the United States Constitution, and Washington State Constitution, article 1, section 3? Did the issuing of the writ of restitution constitute a basic misapprehension of the law by the trial court? (Assignment of Error 1.)

When a landlord accepts rent from a tenant does that establish a month to month tenancy under RCW, RLTA, 59.18? When CHHIP accepted the July 2009 rent was mutual assent created for a month to month tenancy? Did the court misapprehend the law on this issue? (Assignment of Error 2.)

#### STANDARD OF REVIEW

A trial court's error of law is reviewed de novo. *State v. Haney*, 125 Wn. App. 118, 123, 104 P.3d 36 (2005) (citing *Malted Mousse, Inc. v. Steinmetz*, 150

Wn.2d 51 8, 525, 79 P.3d 1 154 (2003)).

#### STATEMENT OF THE CASE

CHHIP made two arguments. One, that the resident housing staff addendum applied, which gave me seven days to vacate upon termination of employment. Two, I think, that I had agreed to enter into another fixed term agreement which expired on July 31<sup>st</sup> 2009. The term of that agreement had ended, and no notice was therefore required to terminate the agreement.

I made two arguments. One, that the resident housing staff addendum was unenforceable and illegal because I was covered under the RLTA by virtue of signing a fixed term lease, and any addendum that waives my rights under the act would be deemed unenforceable under the act. That I had a right to be served proper notice outside of Seattle for a termination of tenancy, and a right to only be evicted for just cause with proper notice inside of Seattle for termination of tenancy.

Two, that I never entered into a new agreement whether oral, implied or otherwise with CHHIP during the time between June 3<sup>rd</sup> 2009 and Oct. 13<sup>th</sup> 2009. That I had been paying my rent from a prorated rent in June 2009 up to Oct. 2009. That CHHIP took my July 2009 rent, and recorded that rent as rent paid for unit #304 at the Melrose, which in addition to my first argument, established a month to month tenancy by mutual assent.

The court found that the defendants right to occupy was based on employment, and that the resident housing staff addendum required me to vacate within seven days.

I am not sure how exactly the court ruled, or whether the court ruled, on the question of CHHIP's acceptance of the July 2009 payment, and whether the court found for CHHIP's argument that I had entered into a new contract with a specified term or period, and that the period had expired.

## ARGUMENT (1)

The first argument as to why the writ of restitution was improperly granted, and why this decision by the lower court should be overturned is as follows:

When CHHIP required me to sign a fixed term lease they demonstrated and intention to cover me under the RLTA. When they required me to sign a seven day addendum to vacate if my employment relationship ended with them they intended to abrogate the rights under the lease I had just signed.

I have worked as a resident manager for two other social service agencies, and have never signed a lease before. This is the conversation to the best of my recollection, I had with the facilitator of the paperwork, on the day I signed the lease. "Why am I signing a lease? It's just required paperwork." Lease examined. Lease signed. Presented with lease addendum regarding seven days to move out. "If I signed a lease I believe I am covered under the Washington State Landlord Tenant Act, and also

under the Just Cause Ordinance of Seattle, and doesn't this lease trump this addendum like Fed trumps State. No, I don't think so. Anyway its required paperwork. OK, I just wanted you to know my position."

The signing of a fixed term lease is the essence of what covers someone under the RLTA. The intention of CHHIP to include me under the act is clear, and their intention with another stroke of the pen, with the addendum, to remove my rights under the act is also clear.

When CHHIP requires a fixed term lease to be signed the occupancy is not conditioned on employment, it is conditioned upon the RLTA. The lease I signed is the exact same lease all other residents at the Melrose Apt.'s signed in 2005. No seven day addendum to vacate attached to a lease would stand in a court of law for any other resident at the Melrose Apt.'s, nor should it stand for me. It would be considered illegal and unenforceable for them, and should have been considered that way in my case.

The fixed term lease I signed took effect on Oct. 21<sup>st</sup> 2005, and ended on April 21<sup>st</sup> 2006. CHHIP accepted the rent for May of 2006, therefore

establishing a month to month tenancy for an indefinite time. Under RCW 59.18.200 (1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

Under Seattle Municipal Code (SMC) 22.206.160c, Just Cause Eviction Ordinance it states: Pursuant to provisions of the state Residential Landlord-Tenant Act

(RCW 59.18.290), owners may not evict residential tenants without a court order, which can be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction (RCW 59.18.380). In addition, owners of housing units shall not evict or attempt to evict any tenant, or otherwise terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause exists. The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this section:

I am omitting some of the reasons which are not relevant to this case.

- a. The tenant fails to comply with a three (3) day notice to pay rent or vacate pursuant to RCW 59.12.030(3); a ten (10) day notice to comply or vacate pursuant to RCW 59.12.030(4); or a three (3) day notice to vacate for waste, nuisance (including a drug-related activity nuisance pursuant to RCW Chapter 7.43) or maintenance of an unlawful business or conduct pursuant to RCW 59.12.030(5);
  
- b. The tenant habitually fails to pay rent when due which causes the owner to notify the tenant in writing of late rent four (4) or more times in a twelve (12) month period;
  
- c. The tenant fails to comply with a ten (10) day notice to comply or vacate that requires compliance with a material term of the rental agreement or that requires compliance with a material obligation under RCW 59.18;
  
- d. The tenant habitually fails to comply with the material terms of the rental agreement which causes the owner to serve a ten (10) day notice to comply or vacate three (3) or more times in a twelve (12) month period;

g. The tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated;

I received no notices. No three days. No ten days. No notice stating the reason for termination. CHHIP issued a summons and a compliant.

Outside of Seattle a 20 day notice is required to terminate tenancy, and inside Seattle a good cause reason has to exist for termination of tenancy.

As I stated above, reason (g) in the Seattle Just Cause Ordinance does not apply to me since my occupancy is conditioned upon the RLTA and not employment. (SMC) 22.206.160c states: rights under this ordinance cannot be waived as a term of a rental agreement.

**RCW 59.18.230 Waiver of chapter provisions prohibited -- (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.**

**(2) No rental agreement may provide that the tenant:**

This means my rights under both the RLTA and the Seattle Just Cause Ordinance were violated, and that no legal basis for the writ of restitution existed.

My rights under the 14<sup>th</sup> amendment of the United States Constitution are:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

14<sup>th</sup> amendment USC

Due process of the law did not occur since neither the RLTA or the Seattle Just Cause Ordinance were followed. Nor did I receive equal protection

under the law since for all other persons covered under the RLTA and the Seattle Just Cause Ordinance proper notice would have had to have been served.

Under the Washington State Constitution:

**SECTION 3 PERSONAL RIGHTS.** No person shall be deprived of life, liberty, or property, without due process of law.

WSC

Due process of the law did not occur because the RLTA and Seattle Just Cause Ordinance were not followed.

I cite these cases from the Washington State Supreme Court found on the Municipal Research and Service Center web site, to rein enforce the point that proper notice must be given, when an issue that involves a lease comes under the Residential Landlord Tenant Act, and that the seven day addendum is a way for CHHIP to exempt themselves from the provisions providing protections under the RLTA.

Feb. 1998 SULLIVAN v. PURVIS 459

90 Wn. App. 456, 966 P.2d 91,

#### DISCUSSION

[1-3] The law on this issue is well settled. Jurisdiction is statutory. A 10-day alternative to cure lease violations is a jurisdictional condition precedent to an unlawful detainer action for breach. *Sowers v. Lewis*, 49 Wn.2d 891, 895, 307 P. 2d 1064 (1957). Unlawful detainer is in derogation

3] Landlord and Tenant - Unlawful Detainer - Notice - Violation - Effect.

An unlawful detainer action may not be maintained against a tenant for breach of a condition or covenant of the lease (other than payment of rent) if the tenant has not been provided with 10 days' notice within which to cure the breach or surrender the premises, as required by RCW

59.12.030(4). In a pending action for unlawful detainer based on the breach of a condition or covenant of a lease other than payment of rent, if the landlord has failed to provide the tenant with the notice required by RCW 59.12.030(4), the trial court may not adjudicate the matter other than to dismiss the action.

of common law; the statutes create a summary action. In order to take advantage of the act's provisions for summary restitution, however, the landlord must strictly comply with its requirements. *Housing Auth. v. Terry*, 114 Wn.2d 558, 563-64, 789 P.2d 745 (1990).

In an action for unlawful detainer based on a covenant breach, a notice that does not give the tenant the alternative of performing the covenant or surrendering the premises does not comply with the provisions of the statute. And the court has no authority to adjudicate the controversy. *Sowers*, 49 Wn. 2<sup>nd</sup> at 894; *Kelly v. Schorzman*, 3 Wn. App. 908, 912-13, 478 P.2d 769 (1970).

?The relationship of

landlord and tenant is established where the owner of the premises permits

another to take possession thereof for a determinate period of time.?

Hughes

Since the dispute involves a residential lease we apply the Residential

Landlord-Tenant Act of 1973, chapter 59.18 RCW,

Moreover, were we to hold that the statute did apply to PCHA, any future landlord could simply create a program offering one or more of the services enumerated in the statute and become exempt from all of the RLTA's provisions providing protection for tenants.

The Residential Landlord-Tenant Act applies because the dispute involves a residential lease.(RCW 59.1)8.

#### ARGUMENT (2)

The second argument is that by CHHIP accepting the July 2009 rent for unit #304, a clear continuance of my tenancy was demonstrated by CHHIP or, a creation of a new month to month tenancy for and indefinite period of time by mutual assent was demonstrated by CHHIP. In June of 2009 when CHHIP's source of income towards my rent stopped, I replaced it, on time, each and every month up to Oct. 2009 with another source of income. CHHIP rejected the June 2009 payment, took the July 2009 payment, and rejected August, Sept. and Oct of 2009(see CP). I was paying my rent on

time each month in order to maintain my tenancy in good standing in unit #304 at the Melrose Apt.'s.

I believe CHHIP counsel made the argument that I had entered into another fixed term lease, which expired on July 31<sup>st</sup> 2009. using RCW 59.12.030 (1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period.

The problem with this argument is it just didn't happen. Even CHHIP's seven day addendum points out that for such an agreement to take place it has to be approved by the Director of Property Management or the Ex. Director in writing which never took place.

In a contract both parties must have agreement. One side telling the other what is acceptable and what is going to happen is not a contract. There was never any express or implied contract, written or oral on my part.

What is clear is that for whatever reason CHHIP accepted the July 2009 rent for unit #304 at the Melrose. I tendered the money, they received the money and deposited it for rent paid for unit #304. The rejection letters of my rent payment sent out by CHHIP for June, Aug, Sept. and Oct. 2009 demonstrate a clear pattern of payment with the sole purpose of making sure I paid my rent on time each month(see CP). When CHHIP accepted the July 2009 rent, to me , that is a de facto agreement. It has nothing to do with any new fixed term lease, because that never took place. When CHHIP refused payment for June 2009, what could I do? I cannot force them to accept. I made the on time payment.

If I am covered under the RLTA then it would appear to be merely a resumption of payment for rent. If I am not, it would appear to establish a month to month tenancy for an indefinite period of time, under RCW 59.18.200 (1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given

by either party to the other. And in Seattle terminated for good cause.

In this second scenario I am clearly no longer a resident manager for CHHIP, so the question of whether I am covered under the RLTA is not relevant. By CHHIP accepting the rent for July 2009 I became a person who is renting month to month by mutual assent covered under the RLTA and the Seattle Just Cause Ordinance.

#### CONCLUSION

This case should be overturned, and the judgment award returned in full. Back rent awarded from Oct. 21<sup>st</sup> 2009 to the present. Appellant returned to unit #304 at the Melrose Apt.'s with rent being equivalent to when he left at \$540.00. This amount must stay in effect for at least one year, and after one year, only customary and ordinary increases that apply to all other tenants at CHHIP that occur on a annual basis can apply. Reimbursement for moving expenses, storage fees, filing fees and other court costs.

If it is not possible to return tenant back to #304 at the Melrose Apt.'s, a

new lease automatically approved by CHHIP, to a unit of appellant's choosing approximately equivalent in size, with the stipulations mentioned above can be an alternative.

If I am in another fixed term lease at the time the judgment is reversed, either the remainder of that lease is paid by CHHIP, and I am returned asap to #304 at the Melrose or the alternate mentioned above, or at the end of my lease I am restored as mentioned above.

Punitive damages of \$1000.00 to send a message to CHHIP a Public Development Authority(PDA), that it is, offensive for an agency which has as it's mission statement the preservation of housing for its low income residents, to go out of its way to evict one of its tenants, when that eviction was completely unnecessary, and therefore was against CHHIP's public mandate to serve the public interest.

Respectfully Submitted

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