

No. 48992-9-II

**THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION II**

MAURICE LACOMBE,

Respondent and Plaintiff, pro se

Vs.

FRANCES DU JU,

Appellant and Defendant, pro se

FILED
COURT OF APPEALS
DIVISION II
2016 NOV -4 AM 11:24
STATE OF WASHINGTON
BY _____
DEPUTY

APPEAL FROM CLARK COUNTY SUPERIOR COURT
THE HONORABLE GREGORY GONZALES
CASE NO. 16-2-00719-1

RESPONDENT'S OPENING BRIEF

Maurice Lacombe
Respondent pro se
8018 NE 91st Ave
Vancouver, WA 98662
Tel: (360)608-3057
E-mail: moe-b-1@comcast.net

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I. INTRODUCTION

To this point in time there has been little need for the Respondent to comment on a case that is a clear cut scenario of a Tenant simply refusing to pay rent that had been agreed to. The courts have agreed with that premise and have issued decisions that have confirmed the Plaintiffs right to collect that back rent as well as legal fees associated with having to protect those rights in court. It has now become necessary for the Plaintiff to shed more light on this subject in order to respond to the Defendants arguments that she has been wronged by not only the Plaintiff, but also by our court system and its judges in enforcing the judgement handed down by the Honorable Gregory Gonzales.

There was no diminished rental value that existed at any time during the Tenant's stay. This fact will be addressed in whole later in this document. The rent remained the same as the original agreement throughout, and that only changed when the Defendant, upon helping herself to the Plaintiff's mail which had been left in its envelope at the dining room table, found and read the new contract from the management company and decided in her own mind that she was going to pay less than what she agreed to under her original agreement through AirB&B. That fee of \$39 a day included all

utilities and unrestricted use of all other areas in the home including the kitchen where she happily prepared her meals without any interference. In addition, she was given the large master bedroom which included her own bathroom and walk-in closet and all brand new furniture including a queen bed with a high end mattress. These conditions were far superior in quality and price to any public accommodations and were a benefit of dealing through AirB&B. The Landlord left all those options intact when she decided she wanted to deal directly with the Landlord instead of through the AIRB&B website because it would be easier for her then having to pay up front. This will also be detailed later. She was not asked to leave until she made it clear she wanted things on her terms, threatened to inform the management company of the sublet condition, which she followed up on, and then consequently forced the Plaintiff into seeking eviction after attempts to collect the rent as agreed to failed. At no point did the Plaintiff ever consider adding her to the lease, and any insinuations on the Defendants part to that effect are a fabrication of her own mind. The fact that she produced a note indicating that the landlord would work with her was simply that and not a statement of unlimited availability without payment. The Defendant has conveniently left out any of the conversation which led to that statement. The fact that she kept that note at all indicates

a conscious premeditated effort on her part to build a case which she felt she could profit from down the road.

The Plaintiff therefore submits that the allegations made by the Defendant of a frivolous lawsuit as well as the fact that she has been damaged financially hold no merit and will be disputed in the pages that follow.

II. TIMELINE DETAILS OF THE DEFENDANT AS TENANT

In October 2015, the Defendant reserved a room at 8018 NE 91st Ave. in Vancouver through the website AirB&B. Payment for that initial month was handled through the website. Toward the end of October the Defendant expressed her concern in conversations with the Plaintiff as well as in writing about the uncertainty about how much longer she would be staying. These concerns centered around her job which she claimed was with a law firm as some sort of legal aid directly involved in a case being litigated in court. She claimed her housing was being paid for by the law firm, but was contingent in some way by a review and release of funds by the judge involved in the case. She did not want to extend her reservation through the website because of the uncertainty of her length of stay and the need to reserve in advance to keep the room. The Defendant also stated that her

employer did not like doing business through the website because of the possibility of paying for days in advance which would not be used in the event of her shifting to a new location. The Landlord therefore told her in conversation that it would be fine to extend daily through text with the Plaintiff and not AirB&B providing she paid at the end of the month for her stay that month. The note that was left for the Defendant gave her the latitude of paying for any extended days at checkout beyond her payment at the end of the previous month and the end of the current month without having to pay daily should she decide to checkout at some point in between due payments. In no way was that note intended to provide unlimited availability without payment until checkout, whenever that might be. It was simply meant as an accommodation to having to pay daily for any departure time within that month, which the Defendant completely took out of context.

From the 28th of October 2015 through December 13th there was no rent payment by the Defendant. The usual excuse was no release of funds to pay her by the court system and her employer and that the Plaintiff would have to wait for that occurrence. Realizing the situation for what it was the Plaintiff demanded payment for 47 days of back rent of \$1833 or that the

Defendant should move out on the following Monday. The Defendant then agreed to get money wired from a relative to pay the back rent and a new agreement was made for payment on the 1st of every month for the previous month at \$39 per night. This is clearly stated in the Defendants text response from 12/13/15 in which both parties agree to that principle. (Exhibit A) If there is any confusion from the note left earlier by the Respondent in which the Defendant claims she was given the right to not pay until checkout, then that text statement should set the record correctly. In addition, the Plaintiff would no longer require a text to extend stay, but only the notification that the Defendant would be checking out when that occurred.

Toward the beginning of January, Ross Pacific Management sent a renewal lease through the mail which increased the monthly payment to \$1383 from \$1333 starting in March. Two receipts from March and October 2016 can be seen as proof of good standing with the company and owners at that rate. (Exhibit B) As stated before, the Defendant helped herself to the enveloped lease documents and then decided in her own mind to ignore the \$39 a night agreement for what she figured was fair at \$672.50, not even half of the new rental agreement. The Defendants amount, of course, does

not include any utilities, landscaping, maintenance requirements, rental insurance, deposits kept in escrow, or other responsibilities to the property, not that that matters because the \$39 a night was extremely fair and agreed on.

The Defendant made no payment on January 1st as per the agreement for the days rent from the 14th of December. It was not until February 4th that the Defendant decided to pay back rent and then wanted \$66 to be reimbursed for the wire transfer fee from the previous payment with no charge if the Plaintiff was willing to wait another couple weeks. These delays persisted every month despite the agreement, with the usual excuses that it was out of the Defendants control due to her employers coming across with the money. The \$66 charge was in no way related to any failing on the Plaintiffs part, but he agreed to take the loss to be paid the \$1845 owed the Plaintiff for the period from December 14th through January 31st. The \$1845 paid by the Defendant minus the \$66 was not within the scope of the "Written Payment Agreement" as agreed to.

From February 1st on, there was no further rent paid. The Defendant decided to not pay based on her perceived right from reading the new lease agreement. The Defendant tried to strong arm her way onto the lease by

refusing payment. There is no way the Plaintiff would ever even consider that possibility. The track record clearly indicated the Defendant was a troubled woman trying to negotiate her way into paying less by whatever means she felt available. She went to the Management Company as she threatened in an attempt to maneuver her way into a better position. The Defendants opening Brief is full of disparaging, untrue, and slanderous statements in an attempt to assassinate the Plaintiffs character and others she didn't even know, which had nothing to do with her meeting her rental agreement.

On March 1st the Defendant sent a text message asking the Appellant if she should send \$672.50 for rent due from February 1st. This confused the Respondent as the agreed to amount of \$39 a day at 29 days equaled \$1131. A response to that effect to the Defendant came back with the reply that the Real Estate management company and lawyer had made a decision on January 11 that the rent would increase to \$1345 (really \$1383 as seen in Exhibit B) and therefore the Defendant would pay 672.50 and not the \$39 a day charge. This new amount had not and would not be agreed to, and in fact, had never been discussed prior to the text. As a result, on the morning of March 2nd the Plaintiff sent a text to the Defendant (Exhibit C). In that

text the Plaintiff repeats the need for the Defendant to follow and pay the agreed upon rent amount set by both parties on December 13th of 2015. Further instructions in that text repeat the amount of \$1,131 owed along with any additional days in March be deposited into the Plaintiffs Pay Pal account and that the Defendant vacate the premises by the following evening. All instructions were ignored with no payment and no move from the property.

On March 3rd a follow up text (Exhibit C) was sent which restated the demands and also implored payment as a way of avoiding any further trouble in the matter. That was also ignored. Consequently, due to the default, on March 12th, 2016 the Plaintiff served on the Defendant a three-day notice to pay rent or vacate (Exhibit D). There was no action taken by the Defendant. The plaintiff waited until April 7th to finally file a complaint for Unlawful Detainer hoping that the Defendant would pay the back rent owed to avoid further litigation but the Defendant was not willing to budge on the matter. It should be pointed out that the Defendant makes a statement in the Introduction of her Opening Brief that “the secondhand landlord should have at least given an answer to the 50% rent offer before filing a lawsuit” which is totally false. The lawsuit was filed on April 7th and the

text message sent on March 2nd clearly pointed out the need to stick by the agreement of December 13th, 2015 for \$39 a day and that anything less was unacceptable. The Defendant had been given an answer more than a month in advance of the lawsuit being filed.

The hearing on April 15th was heard by Judge Gregory Gonzales who upon hearing the testimony of both sides decided in favor of the Plaintiff. The transcription of the event clearly shows the Defendant admitting to not having paid any rent whatsoever from February 1st, 2016 to that point in time. Judge Gonzales issued a Writ of Restitution, signed the Findings of Fact, and granted the Respondent a judgment of \$3,975. These findings and judgements were upheld at a second hearing on May 20th, 2016 when Judge Gonzales signed and entered an “Order Denying Defendant’s Motions for Reconsideration and to Alter and Amend Judgement”. The Defendant had moved out of the home on April 25th, 2016, the day before the Sheriff was due to remove her if she had still been there.

III. RESPONSE TO DIMINISHED RENTAL VALUE

There was no diminished rental value. First of all, the Defendant consistently refers to the Plaintiff as an AirB&B host, a condition that did not exist after October 27th when an agreement was struck to leave that

website out of any further business. The Respondent never asked the Defendant to pay any “Security Deposit” as the idea of the Defendant being included on the lease was never entertained. In response to the outline of diminished rental value as cited on pages 10-11 of the Appellants Opening Brief:

- A. Stated in the Defendants e-mail response from March 2nd. “TV is not a necessity for me”. Since the Plaintiff rarely watched it and the Defendant doesn’t care, there is no value in keeping it. (Exhibit E)
- B. Also from that same e-mail. “I do not need Xfinity. I have my own network and means to get access to my e-mail account”. The Xfinity account was, however, never interrupted.
- C. The Thermostat was easily excessable to the Defendant and was only turned down when nobody was expected to be home to no less than 68 degrees. A simple adjustment to the temperature setting was at the Defendants fingertips at any time of day.
- D. Bathroom tissue was always available in the hallway closet, a fact which the Defendant was well aware of.
- E. If a shower at the end of a long day is intentional harassment, then the Plaintiff is guilty of that. It was never a problem until March

when rent payments were overdue and the Defendant needed to raise the question of being harassed. The perceived issue was never voiced to the Landlord.

Friends of the Plaintiff who were invited to the house were well mannered and respectful. Whenever friends were anticipated the defendant was informed in advance that they would be present. This was done as a courtesy to the Defendant who always seemed uncomfortable in the presence of unknown guests. The comment on prostitutes is a clear example of the Defendants social ignorance and an indicament of her racial hatred. The Defendants experience of seeing a Black American woman playing backgammon with the Plaintiff in the middle of the day at the dining room table turned into a "must be" scenario for her demented imagination. Once again, comments with no bearing on her decision to withhold rent payments. Clearly, and for the last time, the Defendants inclusion on the lease was never brought up with the Management Company nor would the Plaintiff ever strike a deal with someone who could not be trusted to abide by an agreement. The perceived idea of diminished rental value simply did not exist. Nothing had changed of importance except the Defendants decision to no longer make the rental payment she had agreed on.

IV. RESPONSE TO ECONOMIC DAMAGE SUFFERED BY
THE DEFENDANT

The rights of the Defendant were never violated. She was never asked to leave the home for any reason other than her unwillingness to pay the rent agreed to. The issue of subletting was one between the Landlord and the Management Company to work out and in no way affected the arrangement that had been created by the Respondent and the Defendant to that point in time. In fact, that arrangement had been in place from the beginning and had not changed and would not change. Had the Defendant decided to pay the rent of \$39 a day, there would be no perceived damage suffered whatsoever. Perceived damage only existed because of the Defendants decision to pursue decreased rent payment that had not been agreed to and then by not paying rent at all. The awarded judgement by the court of \$3975 was not unreasonable, unfair, or excessive. It was simply payment for back due rent as agreed to and the cost of having to defend the Respondents rights in court.

The Defendant on the other hand, seeks damages under the Economic Loss Rule in excess of 133K. Even if this scenario existed, which

it did not, it should be quickly stated that the Defendant could easily obtain another place to stay through the AirB&B sight at or about the same \$39 a day fee she was being charged by the Respondent, a very market friendly rate. There would be no need to rent a motel room with a kitchenette and laundry facilities as such a place would be very much like the Respondents home and those facilities would be included. The estimated monthly cost of a motel room is shown to be in excess of \$2263 a month on page 25 of the Defendants opening brief. The cost of the Respondents home was \$39 a day by 31 days or \$1209 a month, a \$1054 savings over a motel room. Given these details, why would the Defendant force such an issue by not paying the rent due as staying in the Respondents home was clearly to her advantage? The Defendant also tries to present a case for potential damage to her credit worthiness due to the eviction as public record. Although the eviction has been upheld, it should be stated that the Defendant had been involved in a previous unlawful detainer involving the foreclosure of her home. The damage to her credit worthiness had already been done with a judgement against her in that (Case #14-9-00723-9) per Clark County Superior Court records. The present eviction would have no consequential further damage to her Rental History that had not already been affected by the initial eviction suffered at the time of the foreclosure on her home.

The fact that the Defendant could find appropriate inexpensive housing despite her negative credit and rental history is very good when the use of the AirB&B website is employed. Her declaration of economic hardships has two large flaws. The Defendant created the eviction scenario which could have been avoided, and issues pertaining to her credit history and rental history were pre-existing factors.

V. FINAL REVIEW AND COMPELLING STATEMENTS

It is important to remember a number of points in reviewing this case:

- AirB&B involvement did not exist after 10/27/15, therefore any references to the website or property designations after that point in time are meaningless. At that juncture an agreement between the two parties involved direct payment monthly through Pay Pal.
- The Respondent and Defendant reached a texted agreement on 12/13/15 that created payment of the rent on the 1st of every month for the previous month. (Exhibit A)
- There was never a statement that allowed for unlimited availability without payment until checkout as can be seen by the text agreement

cited above, only an allowance made for convenience purposes for paying for days between the 1st of one month and the end of the next should checkout occur in that time period.

- The defendant was given ample opportunity to pay rent and remain in the home. It was only after multiple attempts at collecting back rent that eviction proceedings were initiated.
- The Defendant never had a negative thing to say about her living conditions until she created the pay disagreement. She lived there in comfort without interference of any kind.
- The Respondent is in good standing with the Management Company to this point in time. Payment and care of the home have been excellent over three years. There have been no repercussions due to the sublease condition, only a reprimand for poor judgement.
- Despite the Defendants attempts at character assassination, the Respondents work history, credit rating, management of personal funds, lack of any criminal misdeeds and selection of friends are all above board.

- The Respondent never profited in any way from rent collected. Those funds helped pay for the rent, utilities, and other essentials with nothing remaining as profit.

VI. CONCLUSION

In conclusion and based upon the preceding, the Respondent denies any wrongful activity in the eviction of the Defendant for nonpayment of past due rent or any award in compensatory damages being sought by the Defendant. The Respondent therefore respectfully requests that the Court of Appeals uphold the standing decision made by the Superior Court and the Honorable Gregory Gonzales in this case. Furthermore, the Respondent seeks further compensation of \$500 to help defray the additional costs accrued in time and material for the cost of defending his position.

DATED this 1st day of November, 2016.

Respectfully Submitted,



MAURICE LACOMBE

Respondent pro se

FILED
COURT OF APPEALS
DIVISION II
2016 NOV -4 AM 11:24
STATE OF WASHINGTON
BY _____
DEPUTY

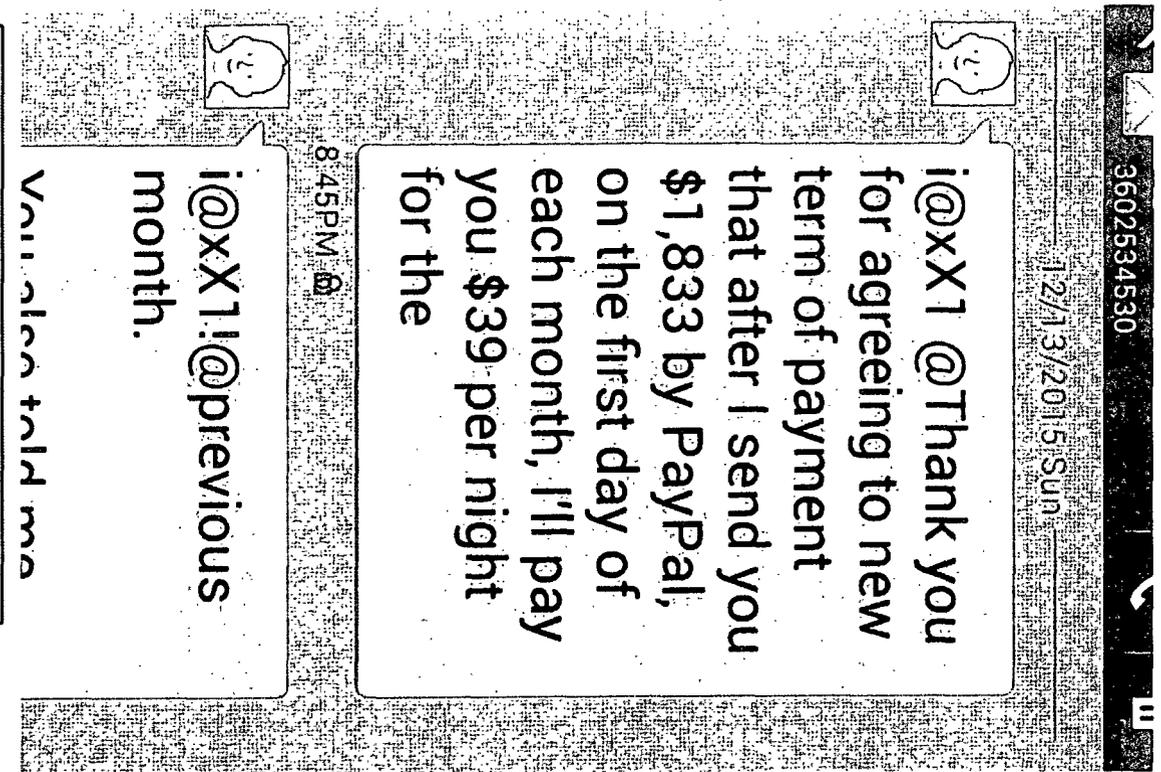
AFFIDAVIT OF PROOF OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on November 1, 2016, I served the preceding by First Class Mail upon:

FRANCES DU JU
P.O. Box 5934
Vancouver, WA 98668
DATED: November 1, 2016.


MAURICE LACOMBE, pro se

EXHIBIT A

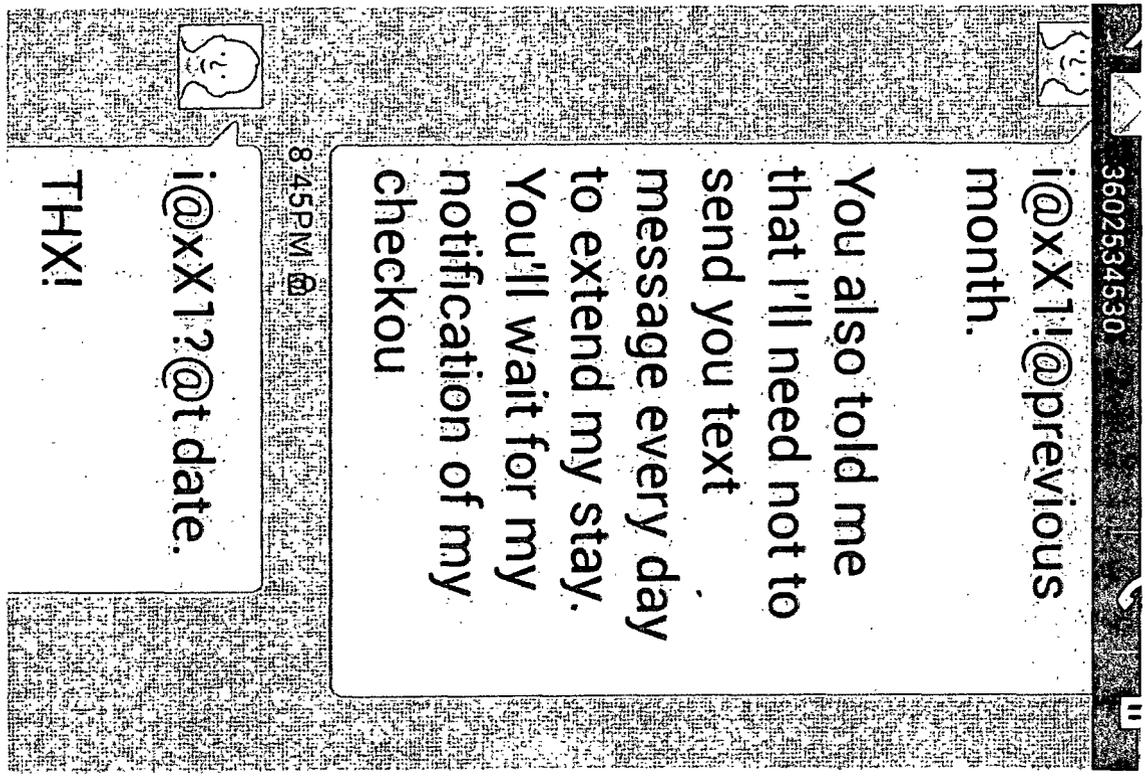


i@xx1 @Thank you for agreeing to new term of payment that after I send you \$1,833 by PayPal, on the first day of each month, I'll pay you \$39 per night for the

8:45PM

i@xx1!@previous month.

You also told me



i@xx1!@previous month. You also told me that I'll need not to send you text message every day to extend my stay. You'll wait for my notification of my checkou

8:45PM

i@xx1?@t date.

THX!

EXHIBIT B

RECEIPT		DATE <u>2/24/16</u>	No. <u>549313</u>	
RECEIVED FROM <u>Maurice Lacombe</u>		\$ <u>1385-</u>		
		DOLLARS		
<input type="radio"/> FOR RENT <u>March</u>				
<input type="radio"/> FOR _____				
ACCOUNT		<input type="radio"/> CASH	FROM <u>Ross Pacific Management</u> TO _____	
PAYMENT	<u>102</u>	<input checked="" type="radio"/> CHECK		
BAL. DUE		<input type="radio"/> MONEY ORDER		
		<input type="radio"/> CREDIT CARD		BY <u>JMC</u>

RECEIPT		DATE <u>9/30/16</u>	No. <u>253336</u>	
RECEIVED FROM <u>Maurice Lacombe</u>		\$ <u>1383-</u>		
		DOLLARS		
<input type="radio"/> FOR RENT <u>October</u>				
<input type="radio"/> FOR _____				
ACCOUNT		<input type="radio"/> CASH	FROM <u>Ross Pacific Management</u> TO _____	
PAYMENT	<u>110</u>	<input checked="" type="radio"/> CHECK		
BAL. DUE		<input type="radio"/> MONEY ORDER		
		<input type="radio"/> CREDIT CARD		BY <u>JMC</u>

Frances
3602534530

8:53 AM

I'm very disappointed you chose to invade my privacy by reading my mail. I cannot trust you or your decision to change your version of our agreement every month. As per your text on December 13th of last year you agreed to pay me \$39 a night payable on the first of the preceding month. Nothing changes that and that's what I expect. It's unfortunate that your comfort here has been compromised by your actions toward paying what has been agreed upon. It's obvious that my kindness and respect for you have been taken as a sign of weakness. You should not have underestimated me.



9:01 AM

Here are the further instructions you seek. I expect that \$1,131 plus any additional days in March added to that total be deposited immediately into my PayPal account. I expect that you vacate



Enter message





Frances
3602534530

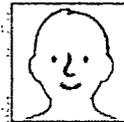


account. I expect that you vacate the house with your belongings no later then tomorrow evening, March 3rd by the time I get home. I will be making a run through your quarters after you leave to ensure there are no damages or things taken without my permission. The two keys you have should be left under the mat at the front door. I will expect all these conditions to be met or I will pursue appropriate action.

🔒 9:12AM

03/03/2016 Thu

I have yet to receive any money in my account nor have I heard anything from you. I fully expect that you will be gone when I get home tonight and I guess the rest will have to be dealt with later. I don't want any trouble in this matter and I'm sure you probably don't either. Following through on your agreement with me is the best way to avoid that.



Enter message



3 Day Pay or Quit Notice

Date (dd/mm/yyyy): 12/03/2016
Tenant's Name: FRANCES JU DU

Address of Rental Unit:
8018 NE 91ST AVE., VANCOUVER, WA. 98662

This notice is to inform you that the rent payments are overdue for the above premises which you currently hold and occupy. The total amount of payable rent is \$ 2,340.00

Your rent payments for the following time periods are due and payable immediately:

Rental Period FEB. 1 - FEB. 29, 2016 Rent Amount \$ 1,131.00

Rental Period MAR. 1 - MAR. 31, 2016 Rent Amount \$ 1,209.00

Rental Period _____ Rent Amount \$ _____

You are hereby required to pay the rent owing in FULL within 3 THREE days. No partial payment of rent will be accepted.

If you fail to do so, legal proceedings will be instituted against you to recover the premises, the rent owing and any relevant damages as allowed by the law.

PROOF OF SERVICE

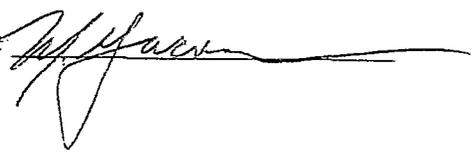
I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served the above notice, of which this is a true copy, on the following tenant(s) in possession in the manner(s) indicated below:

On 12/03/2016 I handed the notice to the tenant(s) personally.

On _____, after attempting personal service, I handed the notice to a person of suitable age and discretion at the residence/business of the tenant(s), AND I deposited a true copy in the [Name of Your Postal Service], in a sealed envelope with postage fully prepaid, addressed to the tenant(s) at his/her/their place of residence.

On _____, after attempting service in both manners described above I placed the notice in a conspicuous place at the residence of the tenant(s) AND I deposited a true copy in the [Name of Your Postal Service] in a sealed envelope with postage fully prepaid, addressed to the tenant(s) at his/her/their place of residence.

Landlord's Name: MAURICE LACOMBE

Landlord's Signature: 

XFINITY Connect

EXHIBIT E

moe-b-1@comcast.net

+ Font Size -

Re: Response to Your 13 Text Messages

From : moe-b-1@comcast.net

Fri, Mar 04, 2016 11:37 AM

Subject : Re: Response to Your 13 Text Messages**To :** Frances Ju <frances3688@gmail.com>

I'm very offended with your slanderous comments directed at people you don't even know, especially when their a minority. Keep your prejudice to yourself. There is no room for those sorts of comments in our disagreement, they are libelous and you know that. Who I have over is my business and it will continue no matter what you may think. I would never comment negatively on your race or origin or even imply any impropriety. In the past, I have been very courteous in informing you when friends were coming over. I did not have to do that and will not in the future.

From: "Frances Ju" <frances3688@gmail.com>**To:** moe-b-1@comcast.net**Sent:** Wednesday, March 2, 2016 11:14:29 AM**Subject:** Response to Your 13 Text Messages

Hi Moe,

This is in response to your 13 text messages this morning.

You have committed libel; and you should be careful with the consequences.

Your text messages state that you have a new lease starting this month. This does not mean that the Real Estate management company ("Company") has the obligation to let you rent the house for a year when you do not have the right to sublet the house. The Company is entitled to evicting you anytime because of your violation of the law. If you do not like me to pay you month to month; and you want me to sign a lease, I cannot sign a lease with a tenant whose right to sublet lacks legal grounds. You should ask the Company to process my application for a lease. The Company will decide if they will send me a lease to sign.

As you mentioned December 13, 2015, we did have long talks on 12/13/15. I have to remind you that my text message from 8:46 p.m. on 12/13/15 indicated, "You'll wait for my notification of my checkout date." Your confirmation e-mail stated, "Yes I agree to all of that. Thank you". Thus, you cannot ask me to leave when my case is still pending and I did not notify you of my checkout date. The important thing that you should do is to ask the Company to sign a lease with me when you do not like me to pay you month to month. The Company will decide how much security deposit I need to pay the Company.

If you want me to share the utilities, I do not need Xfinity. I have my own network and means to get access to my e-mail account. As we recalled, after I checked in on October 8, 2015, you gave me a wrong password to the Internet. After almost two weeks, I figured out that your password was wrong and that I was able to correct the problem. TV is not a necessity for me. This shows that I do not need to share your costs of Xfinity. If I need to pay the utilities, I will have the right to reject your bringing of your "friends", including those prostitutes, to the house.

You talked about your weakness. I am sorry that I have not found your weakness. As for the two keys, I wanted to return one of them to you when I retrieved it from the retail store. You did not want me to do it. The extra key has been kept on the roll-top desk since. If you want it back, please simply let me know.