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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

APPELLATE CASE NO. 243737

ED L. CHRISTENSEN, Appellant
v.
RICHARD A. ELLSWORTH, Respondent

APPEAL FROM THE SUPERIOR COURT OF
WASHINGTON FOR WHITMAN COUNTY

HONORABLE DAVID FRAZIER, JUDGE
Case No. 98-2-00148-6

RESPONDENT'S BRIEF

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

ED L. CHRISTENSEN,)	
)	Appellate Case No. 243737
Appellant,)	
)	
v.)	RESPONDENT'S
)	BRIEF
RICHARD A. ELLSWORTH,)	
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

The Statement of the Case set forth in Appellant's Brief correctly identifies the facts. Simply put, a notice to pay rent or vacate was served on a Friday. CP at 3. An action for unlawful detainer was commenced on the following Wednesday by filing with the court and serving the Respondent. CP at 1

STATEMENT OF THE ISSUES

ISSUE NO. 1

THE SUPERIOR COURT CORRECTLY RULED THAT AN UNLAWFUL DETAINER THREE DAY NOTICE TO PAY RENT OR VACATE AS REQUIRED BY RCW 59.12.030(3) SHOULD BE COMPUTED IN ACCORDANCE WITH CR 6.

ISSUE NO. 2

AN UNLAWFUL DETAINER ACTION COMMENCED BEFORE THE EXPIRATION OF THE NOTICE TO PAY RENT OR VACATE MUST BE DISMISSED.

ISSUE NO. 3

THE EXCLUSION OF A WEEKEND IN CALCULATING THE TIME PERIOD FOR A NOTICE TO PAY RENT OR VACATE DOES NOT FRUSTRATE THE PURPOSE OF THE UNLAWFUL DETAINER STATUTE

ARGUMENT

ISSUE NO. 1

THE SUPERIOR COURT CORRECTLY RULED THAT AN UNLAWFUL DETAINER THREE DAY NOTICE TO PAY RENT OR VACATE AS REQUIRED BY RCW 59.12.030(3) SHOULD BE COMPUTED IN ACCORDANCE WITH CR 6.

The applicable rules of construction for the statutes in this case should be:

(1) Statutes are construed as a whole, giving effect to each provision. State v. Merritt, 91 Wn. App. 969, 973, 961 P.2d 958 (1998)

(2) Absent ambiguity, a court will not construe a statute but will rely on its plain language. State v. Azpitarte, 140 Wn. 2d. 138,141, 995 P.2d. 31 (2000)

Applying these rules to this case leads to the conclusion that a 3 day notice to pay rent or vacate does not include intervening weekends and holidays, when computing the proper time to commence an unlawful detainer action.

When a tenant is delinquent in the payment of rent, the landlord may give a three (3) day notice to pay rent or vacate the premises. RCW 59.12.030(3). The notice may be served by posting in a conspicuous place on the premises and mailing to the tenant, if the tenant cannot be found at the premises. RCW 59.12.040. When service is made in this manner, one additional day shall be allowed before commencement of an action based upon the notice. RCW 59.12.040. Further, proof of service shall be by affidavit in like manner and with like effect as proof of service in civil actions. RCW 59.12.040.

RCW 59.12.030(3) does not define the manner of computing time nor whether days refers to business days, court days, or calendar days. However, the statute does give guidance into how the time should be computed and the days to be used. RCW 59.12.180, as it pertains to this matter provides:

Except as otherwise provided in this chapter, the provisions of the law of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in proceedings mention in this chapter; . . .

Therefore, the ambiguity of how to calculate the 3 day time period is resolved. The manner of service is directed to be the same as the service of a summons. The chapter, RCW 59.12, directs that the rules of civil practice are applicable to the chapter. The rules of civil practice define that for time periods less than 7 days, intervening

weekends and holidays, together with the date of service are excluded in calculating the 3 day time period. CR 6(a) The statute, read as a whole is not ambiguous and further legal construction is not required.

In addition to the foregoing, Canterwood Place v. Thande, 106 Wn.App. 844, 25 P.2d 195 (2001) recognizes that the civil rules provide the appropriate manner in which to compute time in unlawful detainer matters. Therein, it was held:

Unlawful Detainer actions are special proceedings within the meaning of Civil Rule 81. As such, complete rules in chapter 59 RCW will generally prevail over the civil rules. However, chapter 59 RCW does not contain a complete rule regarding the calculation of days for the purposes of return of service deadlines. There is no method for computing time, nor is there a provision regarding whether the “days” referred to in the statute are business, days, court days, or calendar days. Instead, the unlawful detainer statute defers to the civil rules to provide the rules of practice: ‘Except as otherwise provided in this chapter, the provisions of the law of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter[.]’ RCW 59.12.180.

Supra., at 847-878

After concluding that the appropriate manner to calculate days for the response time in an unlawful detainer matter, the court addressed the public policy behind its ruling:

Furthermore, applying the Civil Rule 6 method of computation of time with calculating a tenant's response period is sound public policy. Our Supreme Court has stated that it is "a well-accepted premises that '[l]itigants and potential litigants are entitled to know that a matter as basic as time computation will be carried out in an easy, clear, and consistent manner, thereby eliminating traps for the unwary who seek to assert or defend their rights.' (citations omitted) Court have a vital interest in maintaining control over the administrative functioning of the litigation process, and computation of time is a fundamental element of that administration. Consistent application of Civil Rule 6 will also lend predictability to the law.

Finally, justice requires the court to provide tenants with a minimal level of protection. Failing to apply Civil Rule 6 to the time computations here at issue would have the practical effect of leaving some tenants with less than a week and as few as four business days to find legal representation and respond to the lawsuit."

Supra., at 849-850.

ISSUE NO. 2

AN UNLAWFUL DETAINER ACTION COMMENCED BEFORE
THE EXPIRATION OF THE NOTICE TO PAY RENT OR
VACATE MUST BE DISMISSED.

RCW 59.12.030 provides that a tenant does not unlawfully detain the property until the notice to pay rent or vacate has remained uncomplished with for the applicable three day period, RCW 59.12.030(3) or four day period, RCW 59.12.030(3) and RCW 59.12.040. Wooding v. Sawyer, 38 Wn.2d 381, 229 P.2d 535 (1951). An action commenced before the expiration of the applicable time period has expired must be dismissed because the court lacks subject matter jurisdiction to hear the matter. Sowers v. Lewis, 49 Wn. 2d 891, 307 P.2d 1064 (1957).

In Sowers, supra., the plaintiff served a notice demanding both the payment of rent and the payment of an insurance bill. Both used a 3 day notice to pay or vacate. The defendant moved to dismiss the matter based upon the courts lack of jurisdiction to hear the matter. On appeal it was held:

. . . As a jurisdictional condition precedent, where a tenant is in default in the payment of rent, the statute requires (1) that the tenant be served with a written notice to pay rent or, in the alternative, vacate the premises within three days from the

date of service (RCW 59.12.030(3), and (2) that a summons and complaint be served upon the tenant which shall fix a date certain for appearance of not less than six nor more than twelve days from the date of service. RCW 59.12.070

The jurisdictional condition precedent to the maintenance of an unlawful detainer action for breach of a covenant is a ten day written notice. RCW 59.12.030(4). The three day notice which was given in the instant case were not a substantial compliance with the statute relating to the second cause of action. The motion to quash the process on the second cause of action should have been granted.

Sowers, Supra., at 894-895.

ISSUE NO. 3

THE EXCLUSION OF A WEEKEND IN CALCULATING THE
TIME PERIOD FOR A NOTICE TO PAY RENT OR VACATE
DOES NOT FRUSTRATE THE PURPOSE OF THE UNLAWFUL
DETAINER STATUTE

Counsel argues that, by excluding weekends and holidays from the computation of the three days notice, it has the effect of converting an unlawful detainer action into an action for ejectment

with its attendant delays. This is simply not the situation. In this case, the exclusion of the weekend merely extended the time period to cure the default by 2 days. Such an extension does not undermine the unlawful detainer statute nor unduly delay proceeding with an unlawful detainer action. The underlying purpose of allowing a summary proceedings to recover property unlawfully detained, and balancing the rights of a tenant, are not defeated by following the court rules and allowing 2 additional days to cure a default. Certainly, this does not convert an unlawful detainer action into an action for ejectment, (RCW 7.28) with its attendant delays, as suggested. Neither does it create a more burdensome situation for a landlord, but rather, provides the tenant with a minimum level of protection.

CONCLUSION

The conclusion that a tenant does not unlawfully detain a property until the time to comply with the notice has expired is inescapable.

The time to comply is measured by the civil rules relating to computation of time, CR 6. Intervening weekends and holidays are excluded and therefore, a three day notice, or a four day notice if served by posting and mailing, served on a Friday does not commence until the following Monday and would expire on the following Thursday at midnight. An action commenced on Wednesday would be premature. Therefore, the court did not have jurisdiction to hear the matter.

The underlying case was properly dismissed and the court's ruling should be affirmed.

Respectfully submitted this
8th day of November, 2005

AITKEN, SCHAUBLE, PATRICK,
NEILL, RUFF & SHIRLEY

A handwritten signature in black ink, appearing to read 'Howard M. Neill', is written over a horizontal line.

Howard M. Neill WSBA No. 05296
Attorney for Respondent

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By _____

CERTIFICATE OF MAILING

I certify that on this 8th day of November, 2005, I caused a full, true and correct copy of this RESPONDENT'S BRIEF to be mailed to attorney for Appellant, Mark Mumford, Mabbutt & Mumford, PO Box 9303, Moscow ID 83843, by first class United States Mail, with postage fully prepaid thereon.



Howard M. Neill