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67547-8-I
NO. 6675478

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

TINA WADSWORTH,

Appellant/Defendant,

v.

INDIGO REAL ESTATE SERVICES, INC.,

Respondent/Plaintiff.

**RESPONDENT INDIGO REAL ESTATE SERVICES, INC.'s
RESPONSE BRIEF**

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 DEC 20 AM 10:27



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I . RESTATEMENT OF THE CASE

Tina Wadsworth and Indigo Real Estate Services entered an Apartment Lease Contract (“Lease”) for residential property in Whatcom County dated,¹ CP 134 – 144. The parties signed a “US Department of Housing and Urban Development Section 8 Housing Assistance Payments Program Lease Addendum” (“Addendum”) dated February 4, 2011². CP 21 – 26.

Indigo issued Wadsworth a 10-Day Notice to Comply or Vacate dated May 17, 2011.³ CP 117, CP 102,⁴ 105, CP 43,⁵ CP 51.⁶ The Notice required Wadsworth (1) not to allow animal waste on, or to fall through fall through, her deck floor⁷, (2) not to allow other debris to fall through her deck floor, (3) to remove plywood from her deck. CP 117.

¹. The Lease (and Management Agreement) is attached to the Complaint pursuant to Whatcom County Court Rule 17. WCCR 17.

² Addendum. Declaration of Thomas H. Flattery in Support of Defendant’s Motion to Reconsider. Hereinafter referred to as “Addendum”

The record does not state the source of Wadsworth Section 8 subsidy. In addition to a Tax Credit benefit, CP 118, Wadsworth’s apartment was subsidized pursuant to CFR 983 “Project – Based Voucher (PBV) Program.” 24 CFR 983.1 and .2 (Application) .and 3 (Definitions), and CFR 983.257 (Owner Termination), are attached as Appendix D. (Wadsworth appended her Brief with Appendixes A – C, and for ease of reference Indigo continues with the lettering).

Regardless of the subsidy the CFR 982 Addendum is part of the Lease and so governs the parties relationship. The addendum was discovered after the show cause hearing. Wadsworth Opening Brief, n. 2.

³ Service of the Notice is not contested.

⁴ Exhibits/Answer. Entry dated May 17, 2011.

⁵ Response to Order to Show Cause, para 5.

⁶ Wadsworth Declaration in support of Response to Order to Show Cause, para 5.

⁷ Indigo was directed by Whatcom County to prevent the urine and dog feces from falling through Wadsworth’s deck by putting a visquine barrier on the underside of the deck, just above the downstairs neighbor’s patio. 1 RP, p 4. Wadsworth admitted this violation. July 8 RP 7:14-17, 16:13-14.

Wadsworth complied with the Notice in part, removing an unauthorized dog, which stopped the animal's waste from accumulating on and falling through her deck to the neighbor's patio below. CP 102.⁸

Wadsworth failed to comply with the Notice by not removing the sheet of plywood and a tarp. CP 109 – 14,⁹ July 8 RP 5, July 8 RP 12:24 – 13:2, 16:7 – 15.

After Indigo served a Summons and Complaint, and Wadsworth Answered, an Order to Show Cause why a writ should not issue was set for July 8, 2011.¹⁰ At the hearing judgment entered, CP 33 – 37, and a writ of restitution issued. CP 38 – 39.

On July 15, 2011 a hearing on Wadsworth's Motion to Reconsider was held. The motion was denied and Indigo was awarded fees. CP 13.

The facts leading to this dispute are as follows:

July 8, 2011 Hearing.

At the July 8, 2011 hearing, Indigo conceded that Wadsworth had complied with two violations in the notice, by removing the unauthorized dog, July 8 RP 4: 1 – 8, but that Wadsworth did not comply with the Notice by

⁸ Exhibit/Answer, entry dated May 19, 2011, stating that the dog was removed due to receipt of a separate 10-day Notice to Comply or Vacate issued May 19, 2011.

⁹ Answer, Exhibit B: Photos. Photo's dated in June 2011 showing a tarp over the plywood on Wadsworth's deck.

¹⁰ Wadsworth does not contest service of the 10-day Notice, the Summons and Complaint, or the Order to Show and she did not designate the documents relating to service.

failing to remove the sheet of plywood until June 19, 2011.. *Id.*, 3:16 – 24, 5:5 – 11.

Indigo proffered that plywood and a tarp were on Wadsworth's balcony in the first week of June, CP 109 – 14, and that all items were removed by June 19, 2011. *Id.*, 3:16 – 24, 5: 16 – 19. Wadsworth proffered that she removed all items from her deck four days after the Notice expired. *Id.*, at 12: 22 – 13: 3. In repose to Wadsworth's concession, Indigo agreed that for purposes of the hearing, the items were not removed until four days after the Notice expired. "If it was 14 days rather than 10 days . . . I'll agree to that. It could have happened on June 2nd if [Wadsworth] wants to contest that June 19th. Regardless it is after the ten-day period." *Id.*, 13:8 – 13.

Wadsworth responded that she did not comply with the Notice "If this is narrowing down to a piece of plywood leaning against the balcony . . . that was there four days after the ten days, she can't change what happened and she doesn't deny that that's the case . . ." July 8 RP 16:7 – 17. However, she argued that her failure to remove the plywood from her balcony was not a violation of her lease under HUD regulations because Indigo had to show that the violations were serious and repeated violations. July 8 RP 13:1 – 3, 14 – 24, 14: 2 – 3.

The Court sustained Indigo's objection to the argument that HUD regulations imposed a requirement that it show the breaches were serious and repeated, July 8 RP 14:2 – 8, and ruled in Indigo's favor. July 8 RP 16 22-25.

July 15, 2011 Hearing on Motion to Reconsider.

On Reconsideration, Wadsworth argued that the Addendum supported her July 8th argument that Indigo must show a material breach of the lease before Indigo can terminate the lease. July 15 RP 4 – 10.

Indigo responded that it wasn't terminating the Lease. Rather, it issued a notice to comply or vacate under the Unlawful Detainer Act, RCW 59.12. Wadsworth's failure to comply meant she was unlawfully detaining the premises and Indigo could therefore file suit. July 15 RP 11 – 15.

The Court agreed, and denied Wadsworth's motion. "In my judgment the addendum to the lease does grant specific rights to all parties. But does not supersede 59.12 the Unlawful Detainer Statute. They are, I believe two separate ways of dealing with a situation. The situation we have here is a sound unlawful detainer not a basis for termination as contemplated by the addendum." July 15 RP 26: 25 – 27:7.

Wadsworth appeals.

II. SUMMARY OF ARGUMENT

Wadsworth rented a Section 8 subsidized apartment from Indigo. As part of her lease, she signed a HUD Addendum that limits, among other things, Indigo's ability to terminate Wadsworth's lease. Whether this Addendum affects Indigo's ability to base an unlawful detainer on a 10-day Notice to Comply or Vacate is the basis of Wadsworth appeal.

Wadsworth breached her lease, and Indigo issued two Ten-Day Notices to Comply or Vacate, RCW 59.12.030(4). Wadsworth failed fully to comply with one Notice by not removing a sheet of plywood stored on her deck. Indigo commenced unlawful detainer proceedings

At the show cause hearing, Wadsworth admitted she breached her lease, but argued that she complied with most of the Notice requirements timely, and eventually complied with the demand that she remove the plywood. The court found she met the definition of unlawful detainer and entered judgment and issued a writ of restitution.

Wadsworth asked the Court to Reconsider, arguing that the Addendum prohibited Indigo from terminating her tenancy and that the lease violation was not material. Indigo argued the Notice was not a termination notice under RCW 59.12.030(2), but was a Notice to Comply or Vacate under RCW 59.12.030 (4) because it gave her the option to comply and not be evicted.

Once she failed to comply or vacate, RCW 59.18.410, not the Notice terminated Wadsworth's tenancy.

Wadsworth's admission that she breached the lease allowed the Court to find her in unlawful detainer, to enter the judgment and to issue the writ.

III. ARGUMENT

A. Standard of Review and burden of proof.

The record consists entirely of written material and argument of the attorneys. This court stands in the same position as the trial court and reviews the record de novo. *Housing Authority of City of Pasco and Franklin County v. Pleasant*, 126 Wn.App. 382, 387, 109 P.3d 422, 424 (2005). At a hearing to show cause why a writ of restitution should not issue, the plaintiff must show by a preponderance of the evidence its right to possession. *Pleasant*, 126 Wn. App at 392, 109 P.3d at 427. A trial court's ruling on reconsideration is reviewed for a manifest abuse of discretion. *Drake v. Smersh*, 122 Wn. App. 147, 151, 89 P.3d 726 (2004).

B. The Trial Court did not err in entering a judgment in favor of Indigo a directing the clerk to issue a writ of restitution.

.Entry of the judgment and issuance of the writ of restitution was appropriate at the show cause hearing as there was no substantial material fact or issue affecting Indigo's right to relief.

Show cause hearings are summary proceedings to determine the issue of possession pending a lawsuit. *Carlstrom v. Hanline*, 98 Wn. App. 780, 788, 990 P.2d 986, 990 (2000) (citing *Meadow Park Garden Assocs. v. Canley*, 54 Wn. App. 371, 375, 773 P.2d 875 (1989)). The hearing is held pursuant to RCW 59.18.380. The statute provides in relevant part: .

. . . The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof. . . .

RCW 59.18.380 (in part). *Hartson Partnership v. Goodwin*, 99 Wn.App. 227, 230 – 31. 991 P.2d 1211 (2000) (“ The court, sitting without a jury, determines whether the landlord is entitled to a writ of restitution”). In *Leda v. Whisnand*, 150 Wn.App. 69, 207, P.3d 468 (2009), the Court reiterated the role of the court and the procedure to be used to determine possession.

The proper procedure by which a trial court should conduct an RCW 59.18.380 show cause hearing is as follows: (1) the trial court must ascertain whether either the defendant's written or oral presentations potentially establish a viable legal or equitable defense to the entry of a writ of restitution and (2) the trial court must then consider sufficient admissible evidence (including testimonial evidence) from parties and witnesses to determine the merits of any viable asserted defenses. Because RCW

59.18.380 contemplates a resolution of the issue of possession based solely on the show cause hearing, , either the court must manage its examination in a sufficiently expeditious manner to accommodate its calendar while still preserving the defendant's procedural rights or it must briefly set the matter over for a longer show cause hearing in which those rights are respected

Leda v. Whisnand, 150 Wn. App. at 83, 207 P.3d at 476,

At the July 8th show cause hearing, Wadsworth presented no defenses to excuse her breach. “Defenses arise out a tenancy when they are based on facts which excuse a tenant's breach.” *Josephinium Assocs. v. Kahli*, 111 Wn.App. 617, 624-25, 45 P.3d 627, 630 (2002) (citing *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985)). The Court first reviewed Wadsworths’ Answer and then sought to ascertain whether there were any defenses to the unlawful detainer.

THE COURT: . . . I have seen the information you provided . . . What do you have to say in response to the allegation of that she didn’t comply in a timely manner with the ten-day notice?

July 8 RP, 6:57: 1 – 11. The court then could have considered sufficient admissible evidence regarding the claims and defenses raised. *Leda, supra*.

However, Indigo simply agreed with Wadsworth’s proffer of testimony.

MR. FLATTERY: my client is saying those things were cleaned up and removed within two weeks. We’re talking about a four-day overlap between the ten days and when it actually happened. That’s her position. She’s prepared to offer witness testimony to support that.

MR. WALSH: I will – for the purposes of this hearing I’ll take counsel’s word and stipulate to it.

THE COURT: and it was 14 days rather than 10 days?

MR WALSH: If it was 14 days rather than 10 days, . . . which is after the ten-day period, I’ll agree with that. It could have happened on June 2nd if she wants to contest the June 19th. Regardless, it’s after the 10-day period.

June 8 RP 12:22 – 13:13. Indigo’s agreement to Wadsworth’s proffer of facts avoided the need to take additional testimony or for further inquiry.

Wadsworth sought to explain her breach by claiming she put up the plywood and tarp as a privacy screen because she was victim in an ongoing dispute with a downstairs neighbor. *July 8 PR.*, 7:17 – 21. However, Wadsworth’s showed she was not a victim but was a participant in the dispute, CP 63-76,¹¹ and that the neighbor sought to restrain her from harassment. CP 107,¹² CP 103¹³ Notably, Wadsworth removed the plywood after the Notice expired, despite her claimed fear, CP 86.¹⁴ This belied her assertion that the

¹¹ Exhibits B & C , “Bellingham Police Department Police Reports” Both reports document the ongoing issue between the neighbors, including documenting that Wadsworth may have been the cause of the dispute and noting that a separate report had been called in against Wadsworth. “The anonymous person advised that she has seen Wadsworth yelling at White . . . and feels Wadsworth may be antagonizing White.” CP 71.

¹² “Denial Order,” Temporary Anti-harassment Order denied and hearing scheduled for June 29, 2011.

¹³ “Answer” handwritten portion at bottom of page, “They [White and David] have since retaliated against me by serving me w/ anti-harassment papers on June 15, 2011.”

¹⁴ CP 84-87, Declaration of Tina L. Wadsworth Supporting Response to Order to Show Cause, Exhibit F “Flattery Letter,” page 3, (CP 86) After alleging compliance with the Notice, that Wadsworth “is concerned that something very serious and bad may happen to her . . . as this conflict builds.”

“plywood screen” protected her during this dispute and showed that she could have complied during the Notice period.

Wadsworth sought to excuse her breach by claiming that other tenants stored items on their balconies. *July 8 RP*, 9:3 – 11. Indigo proffered that notices to comply or vacate had issued or would issue to those tenants. . *Id.*, 12:8 – 14. Wadsworth offered no authority that another tenant’s breach excused her own, and she offers none now. Wadsworth argued that she “substantially complied” by removing the plywood after the Notice expired. *July 8 RP*, 10: 11 – 12. Wadsworth provides no authority to argue that a tenant may show compliance after an unlawful detainer notice expires, and there is none. Such an argument would eviscerate the Unlawful Detainer statute and would allow any tenant to argue that any breach under any subdivision of RCW 59.12.030 was cured by eventual compliance. The court need not consider any argument not supported by citation or authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

There is no material issue of fact requiring trial. *Hous. Auth. v. Pleasant*, 126 Wn.App. 382, 109 P.3d 422 (2005). In *Pleasant*, the Housing Authority issued two notices to terminate: a thirty day notice to terminate for cause which alleged multiple breaches of the Section 8 lease, and three-day

notice to terminate for criminal activity based on an the tenants' arrest and subsequent conviction for assault of her son.¹⁵ *Id.*, at 387, 109 P.2d at 424. Pleasant provided sworn testimony to controvert the multiple allegations of breach, and denied that the assault on her son endangered other tenants. *Id.* The Court remanded for trial and to address a bond pending trial. *Id.*, at 394, 109 P.2d at 428. Unlike Pleasant, who denied all allegations, Wadsworth admitted each of Indigo's claimed lease violations.

Indigo did not retaliate against Wadsworth by issuing the Notice to Comply.¹⁶ At the time the Notices to Comply or Vacate issued, Wadsworth was in breach of her lease requirements. RCW 59.18.250.

Wadsworth admitted that she that she failed to comply with the Notice during the ten days. She did not excuse her breach or failure timely to comply. She failed to offer any legal argument or factual issue that would require the court to deny Indigo's requested relief. Entry of judgment and issuance of the writ of restitution was appropriate.

¹⁵ Although *Pleasant* does not cite the statutory authority for this notice, authority may be found in RCW 59.12.030(5), which prohibits nuisance activity, and RCW 59.18.130(8) which prohibits tenants from being arrested for assault of another on the rental premises.

¹⁶ Wadsworth's Opening Brief, 25 – 26. Although Wadsworth argues she was in technical breach, *Brief*, at 26, this ignores the fact that Wadsworth admitted to multiple breaches *at the time the Notices were served*, and that she failed to comply with one breach during the 10-day time period.

C. The Court did not abuse its discretion when it denied Wadsworth's Motion to Reconsider.

The Court properly denied Wadsworth's motion to reconsider. Wadsworth did not present any new defenses that would require the Court to grant Wadsworth's motion.

Wadsworth argued that the Addendum required Indigo to show that Wadsworth materially breached her lease. CP 27-32, *July 15 RP*, 4 – 10, 12:4 – 14:10, CP 16-18. This argument was made at the first hearing.

Termination of a lease at the end of the first year or with a 20-day or 30-day notice under some model HUD lease[s], may only be for three enumerated reasons. Termination for repeated minor breach or a serious breach of the lease. That is the subject of a 20-day notice to terminate a month-to-month tenancy.¹⁷

July 8 RP, 11: 11-16, and on reconsideration:

The HUD Addendum, which does govern this tenancy[,] limits the landlord's ability to terminate at the end of the lease term, and, if you look, it also limits the tenants ability. They have to give 60 days notice before the end of the first lease term just for no cause. The tenant can just terminate for no cause whatsoever with 60 days notice, 30 days notice under other circumstances. The landlord can terminate only at the end of the initial lease term, with good cause.

¹⁷ Indigo further stated that the Housing Authority process addressing Wadsworth's subsidy was underway. "I think he will agree that there is a due process involved right now with the housing authority where he is representing her there for the termination of subsidy." *July 8 RP*, 11: 17-21. This addressed Wadsworth's earlier argument that the Notice terminated Wadsworth's benefits. *July 8 RP*, 11: 2-3. Wadsworth's attorney represented her in the Housing Authority administrative procedure.

July 15 RP, at 12:24 – 13:10. CP 21 – 26.¹⁸ No new facts were presented which would have excused Wadsworth breach or negated her admission that she failed to comply with the Notice with ten days.

Wadsworth presented no legal argument at the hearing on her motion to reconsider which would allow the court to reconsider its July 8, 2011 judgment. Wadsworth presented no facts to excuse her breach or her failure to comply with the Notice. The Court did not abuse its discretion in denying Wadsworth motion.

D. The Addendum did not apply because Wadsworth unlawfully detained the premises after failing to either comply or to vacate within ten days after receiving the Notice.

Wadsworth was found to be in unlawful detainer for failing either to comply with a rule of tenancy or to vacate the premises within ten days. RCW 59.12.030(4). Indigo did not terminate Wadsworth’s lease or tenancy. RCW 59.12.030 (2).

1. RCW 59.12.030(4) defines unlawful detainer as failing to comply with a 10-day notice to comply with lease terms or to vacate.

¹⁸ Addendum, “After the initial term, the lease shall continue for successive terms of one month each until termination by the landlord . . .” page 1 of 5, para. D-2. “Termination by landlord” page 2 of 5, para F (Defining cause to terminate); “Termination Notice” page 3 of 5, para. 4 (providing the requirements of the Notice to Terminate); “Termination of Lease by Tenant” page 4 of 5 para. H.

RCW 59.12.030 defines unlawful detainer. The Statute “consists of six separate sections, each of which outlines different circumstances under which a tenant is guilty of unlawful detainer and the requisite notice.” *Queen v. McClung*, 12 Wn. App. 245, 247, 529 P.2d 482, 483 (1974). Compliance with any one section is independently sufficient to establish an action for unlawful detainer. *Id.*, at 247, 529 at 484.

Indigo issued Wadsworth a notice to comply or vacate under RCW 59.12.030(4). The statute provides

A tenant of real property for a term less than life is guilty of unlawful detainer . . . When he or she continues in possession in person or by subtenant *after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held*, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplished with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

RCW 59.12.030(4) (italics added). Wadsworth failed to comply with the balcony rules in the Community Policies, Rules and Regulations which rule provides:

BALCONY or PATIO: Balconies and patios are to be kept neat and clean at all times. *No rugs, towels, laundry, clothing, appliances, or other items shall be stored, hung, or draped on railings or other portions of balconies or patios.*

CP 142.¹⁹ Wadsworth, as a Section 8 tenant, was entitled to a notice to cure before eviction proceedings commenced. “In an action for unlawful detainer alleging breach of covenant, a notice which does not give the tenant the alternative of performing the covenant or surrendering the premises does not comply with the provisions of the statute.” *Hous. Auth. of Everett v. Terry*, 114 Wn.2d 558, 564, 789 P.2d 745, 748 (1990).

In *Terry*, the Housing Authority issued a notice to terminate tenancy for numerous breaches of the lease based on threats, intimidation and destruction of property, *Terry*, 114 Wn.2d at 560 – 61, 789 P.2d at 746 – 47. The Housing Authority argued that Federal Law pre-empted Washington’s requirement to provide a tenant an opportunity to cure. The court disagreed.

Respondent Housing Authority seeks a "best of both worlds" mixture of state and federal procedures. It first sought to substitute a state trial for a federal grievance hearing. This is permissible. It then sought to substitute a federal notice for a state statutory notice. This is not permissible. *Id.*, at 563, 789 P.2d at 748. . . . Having enjoyed the federal procedural advantages of a hearing substitution, as well as the substantive advantages of accelerated trial and restitution under our state's landlord and tenant act, the Housing Authority cannot be relieved of its burden of compliance with Washington's statutory procedural requirements.

¹⁹ Complaint, Exhibit “Community Policies, Rules and Regulations Addendum”, page 2, paragraph XI. “Balcony or Patio.”

Id., at 568, 789 p.2d at 750. Unlike the Housing Authority in Terry, Indigo gave Wadsworth the opportunity to cure her breach by issuing a ten-day notice to comply or to vacate. Within ten days, Wadsworth failed to remove the plywood from her balcony and she failed to vacate. At that point, she was unlawfully detaining the premises. RCW 59.12.030(4) Indigo then commenced legal proceedings to regain possession of the premises.

2. RCW 59.18.410 requires forfeiture of tenancy incident to the legal remedy of unlawful detainer.

Wadsworth argued that the 10-day notice terminated the lease in violation of the Addendum. July 15 RP, 21:10 – 11, 15 – 16; 22:18 – 22. Indigo responded that the tenancy terminated by operation of statute, not by the failure to comply with the Notice. July 15 RP, 14:10 – 14; 21:17 – 22.

RCW 59.18.410 requires a judgment declare the tenancy forfeit when the tenant fails to perform any covenant or condition of the tenant's lease. The statute provides

If . . . the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any

condition or covenant of a lease or agreement under which the property is held . . . the judgment shall also declare the forfeiture of the lease, agreement, or tenancy.

RCW 59.18.410.²⁰ Therefore, it is the Statute, not the Notice, which operates to forfeit and end a tenancy. The Court reached this conclusion in *Thisius v. Sealander*, 26 Wn.2d 810, 175 P.2d 619 (1946).

The *Thisius* court addressed a plaintiff's burden of proof at an unlawful detainer trial based on a notice to comply or vacate issued pursuant to RCW 59.12.030(4)'s predecessor statute. The Court noted that the effect of the statute was to forfeit the lease after the failure to comply with the Notice.

The Court concluded:

Forfeiture is an incident to the legal remedy granted under the statute. When a landlord establishes in a court of law that his tenant is guilty of unlawful detainer, forfeiture of the tenant's rights under the lease necessarily follows as an incident thereto.

. . . [U]nlawful detainer is a legal remedy and that all that is required of the plaintiff is to establish his proof by a preponderance of the evidence.

Thisius v. Sealander, 26 Wn.2d 810, 818, 175 P.2d 619, 623-24 (1946).

Indigo gave Wadsworth an opportunity to comply with the rules of her tenancy or to vacate within ten days. RCW 59.12.030(4). When she failed to do so, she was unlawfully detaining the premises. *Id.* Having made that

²⁰ Although the same provision is located in the Unlawful Detainer Act, RCW 59.12.170, the Residential Landlord Tenant Act applies here. *Pleasant*, 126 Wn. App. at 390, 109 P.3d at 426. ("the procedures found in the unlawful detainer statutes, chapter 59.12 RCW, apply to the extent they are not supplanted by those found in the Residential Landlord-Tenant Act.").

finding,²¹ CP 34, the Residential Landlord Tenant Act directed the Court to issue judgment against Wadsworth, which had the effect of forfeiting her tenancy. RCW 59.18.410. The Statute, not the Notice, terminated Wadsworth's tenancy. *Thisius v. Sealander, supra*.

3. The Addendum restricts Indigo's ability to terminate Wadsworth's tenancy at the end of a rental term.

Indigo did not issue a notice to terminate Wadsworth's lease. Had it done so, it would have had to comply with both State law and Federal Regulations. *Hous. Auth. of Everett v. Terry*, 114 Wn.2d 558, 564, 789 P.2d 745, 748 (1990) (Housing Authority must comply with both Federal and State law when issuing a notice to terminate tenancy). *Barrientos v. 1801 – 1805 Morton, LLC*, 583 F.3d 1197 (2009) (Landlord enjoined from terminating tenancies to raise rent under HUD regulations when local rent stabilization ordinance prohibited termination on that ground). Indigo complied with State law by issuing a Notice to Comply or vacate. *Terry, supra*.

Washington defines termination of tenancy in RCW 59.12.030(2), which provides:

A tenant of real property for a term less than life is guilty of unlawful detainer . . . When he or she, having leased property

²¹ Findings of Fact, Conclusions of Law and Judgment, page 2, Findings of Fact IV.

for an indefinite time with monthly or other periodic rent reserved, 'continues in possession thereof, in person or by subtenant. after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

RCW 59.12.030(2). Therefore, termination of a periodic tenancy is a unilateral decision made by the landlord to end a landlord-tenant relationship at the end of a periodic tenancy. "In the event that he desires to terminate a tenancy held under an indefinite term, [the landlord] must give twenty days' notice." *Bowman v. Harrison*, 59 Wash. 56, 58, 109 P. 192 (1910). *See, Hous. Auth. v. Pleasant*, 126 Wn.App. 382, 109 P.3d 422 (2005) (Landlord issued two separate notices to terminate, a Section 8 thirty-day notice to terminate for cause (RCW 59.12.030(2) and a three-day notice to terminate for criminal activity/nuisance RCW 59.12.030(5)). *See also, e.g., Tacoma Rescue Mission v. Stewart*, 155 Wn.App. 250, 253, 228 P.3d 1289, 1290 n5 (2010)(citing to RCW 59.12.030(2) when plaintiff issued 20-day 'no cause' termination notice).

Federal Regulations also support this interpretation of termination of tenancy. "Upon lease expiration, an owner may (1) Renew the lease; (2) refuse to renew the lease for good cause . . . (3) refuse to renew the lease

without good cause (and the tenant will be issued a Section 8 voucher).” CFR 983.257(b)²²

A landlord may contract for additional requirements to issue an unlawful detainer notice. “Parties validly having contracted in their lease for a longer time period than the statute provides are bound by that provision.” *Community Investments, Ltd., v. Safeway Stores, Inc.*, 36 Wn.App. 34, 37, 671 P.2d 289, 291 (1983) (extending time for notice to comply or vacate from ten days to twenty days); *Thisius v. Sealander, supra* (extending time for notice to comply or vacate from ten days to thirty days); *Tacoma Rescue Mission v. Stewart*, 155 Wn.App. 250, 255, 228 P.3d 1289, 1292 (2010) (requiring a three-day notice to terminate to state the date tenancy will terminate).

The Addendum imposes on Indigo more requirements than the statute when issuing a notice to terminate under RCW 59.12.030(2).²³ It states that after the initial periodic term, the lease will continue on month-to-month basis until terminated the landlord.²⁴ It prohibits Indigo from terminating simply by giving notice to terminate under RCW 59.12.030(2) at the end of the term without citing cause.²⁵ It defines what cause may be grounds to issue a notice

²² Appendix A.

²³ Addendum.

²⁴ *Id.*, Para D.

²⁵ *Id.*, Paras F.1.iii, and F.2.iv.

under RCW 59.12.030(2).²⁶ It requires Indigo to state a termination date, the reasons for termination, and additional rights Wadsworth may have.²⁷ It permits termination with twenty days notice, unless other good cause is cited and then it requires thirty days.²⁸ The Addendum does not address when Indigo may direct Wadsworth to correct a lease or rules violation.

4. Wadsworths' multiple breaches were material.

Wadsworth's multiple lease and rules breaches constitute material violations of the lease.²⁹ Wadsworth was issued at least two notices. CP 104-105.³⁰ The May 17, 2011 Notice alleged: "Feces and Animal Waste coming from your Deck," "Plywood along the railing inside your deck," and "Debris, liquids, and various materials coming through your deck." CP 105. As stated above, these violated the Community Policies, Rules and Regulations. CP 142³¹. The May 19, 2011 notice alleged "Dog in the unit and on the porch." CP 104. This violated the Lease provisions.³² All breaches were admitted. July 8 RP, 8: 14 – 23, 16:7 – 16. The multiple breaches are material because each breach both separately and singularly amount to material noncompliance

²⁶ *Addendum*, Paras F.1, 2, and 3.

²⁷ *Id.*, Para F.4.i.

²⁸ *Id.*, Para F.4.ii.

²⁹ July 15 RP 13:11 – 19.

³⁰ *Answer*, 10-day Notices to Comply or Vacate dated May 19, 2011, and May 17, 2011.

³¹ *Complaint*, Exhibit "Community Policies, Rules and Regulations Addendum", page 2, paragraph XI. "Balcony or Patio."

³² "Animal Addendum,"³² CP 143 – 144, and "Lease" para. 28 "Animals," CP 137..

under the lease for one or more substantial violations,³³ or they cumulatively amount to repeated minor violations.³⁴ Additionally, Wadsworth's admission that she failed to comply amounts to material failure to carry out her obligation under RCW 59.12.030(4) to cure within 10-days of receipt of notice.³⁵ The trial court was not obligated to reach the issue of materiality because Wadsworth's tenancy was not terminated for cause with a Thirty-Day Notice at the end of a rental period. However, this court may find that the breaches were material. An appellate court can uphold the trial court on any ground supported by the record. *State v. Avery*, 103 Wn.App. 527, 538, 13 P.3d 226 (2000).

E. Indigo should be awarded fees on appeal and Wadsworth should be denied fees.

Indigo request fees for this appeal. RAP 18.1. Generally, when there is a basis for an award of attorney fees in the trial court, the party may also be awarded fees on appeal. *Landberg v. Carlson*, 108 Wn.App. 749, 758, 33 P.3d 86 (2002). The lease in this matter provides for fees to the prevailing party. CP 138. RCW 59. 18.290

³³ Addendum, Paras. 1.i., 3.I.a. Material Noncompliance is one or more substantial violations of the lease.

³⁴ Addendum, Paras F.1.i, 3.i.b.

³⁵ Addendum Paras. F.1.ii.

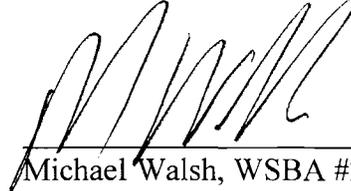
In the event of remand, no fees should be awarded until a prevailing party is determined. *See, Hous. Auth. v. Pleasant*, 126 Wn. App. 382, 394-395 (2005) (RCW 59.18.290(1) does not provide for attorney fees for a wrongfully issued writ), *Hous. Auth. of Everett v. Terry*, 114 Wn.2d 558, 570 – 71, 789 P.2d 745, 72 (1990)(fees not awarded where termination not litigated or briefed and tenant did not hold over pursuant to court order).

IV. CONCLUSION.

When Wadsworth failed to comply with a Notice to Comply or Vacate she met the definition of unlawful detainer, and the Court properly entered a judgment against her and issued a writ of restitution. The Court properly denied her motion to reconsider because she did not present any new fact to require the Court to deny relief. The Addendum did not limit Indigo's ability to issue the Notice, because it was not a Notice to Terminate Tenancy.

Respectfully submitted this 18th day of December 2011.

PUCKETT & REDFORD, PLLC.



Michael Walsh, WSBA #29352

APPENDIX D\

CFR 983.1, 983.2	APPLICATION
CFR 983.3	DEFINITIONS
CFR 983.257	TERMINATION OF TENANCY AND EVICTION

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interest in the home purchased with homeownership assistance. Further, eighteen months must have passed since the family's receipt of the downpayment assistance grant.

(f) *Implementation of downpayment assistance grants.* A PHA may not offer downpayment assistance under this paragraph until HUD publishes a notice in the FEDERAL REGISTER.

[67 FR 64494, Oct. 18, 2002]

**PART 983—PROJECT-BASED
VOUCHER (PBV) PROGRAM**

Subpart A—General

- Sec.
983.1 When the PBV rule (24 CFR part 983) applies.
983.2 When the tenant-based voucher rule (24 CFR part 982) applies.
983.3 PBV definitions.
983.4 Cross-reference to other Federal requirements.
983.5 Description of the PBV program.
983.6 Maximum amount of PBV assistance.
983.7 Uniform Relocation Act.
983.8 Equal opportunity requirements.
983.9 Special housing types.
983.10 Project-based certificate (PBC) program.

**Subpart B—Selection of PBV Owner
Proposals**

- 983.51 Owner proposal selection procedures.
983.52 Housing type.
983.53 Prohibition of assistance for ineligible units.
983.54 Prohibition of assistance for units in subsidized housing.
983.55 Prohibition of excess public assistance.
983.56 Cap on number of PBV units in each building.
983.57 Site selection standards.
983.58 Environmental review.
983.59 PHA-owned units.

Subpart C—Dwelling Units

- 983.101 Housing quality standards.
983.102 Housing accessibility for persons with disabilities.
983.103 Inspecting units.

**Subpart D—Requirements for Rehabilitated
and Newly Constructed Units**

- 983.151 Applicability.
983.152 Purpose and content of the Agreement to enter into HAP contract.
983.153 When Agreement is executed.
983.154 Conduct of development work.

- 983.155 Completion of housing.
983.156 PHA acceptance of completed units.

**Subpart E—Housing Assistance Payments
Contract**

- 983.201 Applicability.
983.202 Purpose of HAP contract.
983.203 HAP contract information.
983.204 When HAP contract is executed.
983.205 Term of HAP contract.
983.206 HAP contract amendments (to add or substitute contract units).
983.207 Condition of contract units.
983.208 Owner responsibilities.
983.209 Owner certification.

Subpart F—Occupancy

- 983.251 How participants are selected.
983.252 PHA information for accepted family.
983.253 Leasing of contract units.
983.254 Vacancies.
983.255 Tenant screening.
983.256 Lease.
983.257 Owner termination of tenancy and eviction.
983.258 Security deposit: amounts owed by tenant.
983.259 Overcrowded, under-occupied, and accessible units.
983.260 Family right to move.
983.261 When occupancy may exceed 25 percent cap on the number of PBV units in each building.

Subpart G—Rent to owner

- 983.301 Determining the rent to owner.
983.302 Redetermination of rent to owner.
983.303 Reasonable rent.
983.304 Other subsidy: effect on rent to owner.
983.305 Rent to owner: effect of rent control and other rent limits.

Subpart H—Payment to Owner

- 983.351 PHA payment to owner for occupied unit.
983.352 Vacancy payment.
983.353 Tenant rent; payment to owner.
983.354 Other fees and charges.

AUTHORITY: 42 U.S.C. 1437f and 3535(d).

SOURCE: 70 FR 59913, Oct. 13, 2005, unless otherwise noted.

Subpart A—General

§ 983.1 When the PBV rule (24 CFR part 983) applies.

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section 8(o)(13)

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of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)).

§ 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.

(a) *24 CFR Part 982.* Part 982 is the basic regulation for the tenant-based voucher program. Paragraphs (b) and (c) of this section describe the provisions of part 982 that do not apply to the PBV program. The rest of part 982 applies to the PBV program. For use and applicability of voucher program definitions at § 982.4, see § 983.3.

(b) *Types of 24 CFR part 982 provisions that do not apply to PBV.* The following types of provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) Provisions on issuance or use of a voucher;

(2) Provisions on portability;

(3) Provisions on the following special housing types: shared housing, cooperative housing, manufactured home space rental, and the homeownership option.

(c) *Specific 24 CFR part 982 provisions that do not apply to PBV assistance.* Except as specified in this paragraph, the following specific provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) In subpart E of part 982: paragraph (b)(2) of § 982.202 and paragraph (d) of § 982.204;

(2) Subpart G of part 982 does not apply, with the following exceptions:

(i) Section 982.10 (owner termination of tenancy) applies to the PBV Program, but to the extent that those provisions differ from § 983.257, the provisions of § 983.257 govern; and

(ii) Section 982.312 (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from § 983.256(g), the provisions of § 983.256(g) govern; and

(iii) Section 982.316 (live-in aide) applies to the PBV Program;

(3) Subpart H of part 982;

(4) In subpart I of part 982: § 982.401(j); paragraphs (a)(3), (c), and (d) of § 982.402; § 982.403; § 982.405(a); and § 982.406;

(5) In subpart J of part 982: § 982.455;

(6) Subpart K of Part 982: subpart K does not apply, except that the fol-

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lowing provisions apply to the PBV Program:

(i) Section 982.503 (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);

(ii) Section 982.516 (family income and composition; regular and interim examinations);

(iii) Section 982.517 (utility allowance schedule);

(7) In subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2); and

(ii) Provisions concerning shared housing (§ 982.615 through § 982.618), cooperative housing (§ 982.619), manufactured home space rental (§ 982.622 through § 982.624), and the homeownership option (§ 982.625 through § 982.641).

§ 983.3 PBV definitions.

(a) *Use of PBV definitions*—(1) *PBV terms (defined in this section).* This section defines PBV terms that are used in this part 983. For PBV assistance, the definitions in this section apply to use of the defined terms in part 983 and in applicable provisions of 24 CFR part 982. (Section 983.2 specifies which provisions in part 982 apply to PBV assistance under part 983.)

(2) *Other voucher terms (terms defined in 24 CFR 982.4).* (i) The definitions in this section apply instead of definitions of the same terms in 24 CFR 982.4.

(ii) Other voucher terms are defined in § 982.4, but are not defined in this section. Those § 982.4 definitions apply to use of the defined terms in this part 983 and in provisions of part 982 that apply to part 983.

(b) *PBV definitions. 1937 Act.* The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

Activities of daily living. Eating, bathing, grooming, dressing, and home management activities.

Admission. The point when the family becomes a participant in the PHA's

tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the PHA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

Agreement to enter into HAP contract (Agreement). The Agreement is a written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under this section. When development is completed by the owner in accordance with the Agreement, the PHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section. HUD will keep the public informed about changes to the Agreement and other forms and contracts related to this program through appropriate means.

Assisted living facility. A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria:

- (1) The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision;
- (2) The facility makes available supportive services to assist residents in carrying out activities of daily living; and
- (3) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents.

Comparable rental assistance. A subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly gross income.

Contract units. The housing units covered by a HAP contract.

Development. Construction or rehabilitation of PBV housing after the proposal selection date.

Excepted units (units in a multifamily building not counted against the 25

percent per-building cap). See § 983.56(b)(2)(i).

Existing housing. Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

Household. The family and any PHA-approved live-in aide.

Housing assistance payment. The monthly assistance payment for a PBV unit by a PHA, which includes:

- (1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and

- (2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the program. See 24 CFR 982.401.

Lease. A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Multifamily building. A building with five or more dwelling units (assisted or unassisted).

Newly constructed housing. Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the PBV program.

Partially assisted building. A building in which there are fewer contract units than residential units.

PHA-owned unit. A dwelling unit owned by the PHA that administers the voucher program. PHA-owned means that the PHA or its officers, employees, or agents hold a direct or indirect interest in the building in which the unit is located, including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The voucher program under section 8 of the 1937 Act, including tenant-based or project-based assistance.

Proposal selection date. The date the PHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in the PHA's administrative plan.

Qualifying families (for purpose of exception to 25 percent per-building cap). See § 983.56(b)(2)(ii).

Rehabilitated housing. Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the PBV program.

Rent to owner. The total monthly rent payable by the family and the PHA to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services including payment for food, furniture, or supportive services provided in accordance with the lease.)

Responsible entity (RE) (for environmental review). The unit of general local government within which the project is located that exercises land use responsibility or, if HUD determines this infeasible, the county or, if HUD determines that infeasible, the state.

Single-family building. A building with no more than four dwelling units (assisted or unassisted).

Site. The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

Special housing type. Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

State-certified appraiser. Any individual who satisfies the requirements for certification as a certified general appraiser in a state that has adopted

criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state's criteria must include a requirement that the individual has achieved a satisfactory grade upon a state-administered examination consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331-3352), the individual must comply with any additional standards for state-certified appraisers imposed by HUD.

Tenant-paid utilities. Utility service that is not included in the tenant rent (as defined in 24 CFR 982.4), and which is the responsibility of the assisted family.

Total tenant payment. The amount described in 24 CFR 5.628.

Utility allowance. See 24 CFR 5.603.

Utility reimbursement. See 24 CFR 5.603.

Wrong-size unit. A unit occupied by a family that does not conform to the PHA's subsidy guideline for family size, by being too large or too small compared to the guideline.

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

Civil money penalty. Penalty for owner breach of HAP contract. See 24 CFR 30.68.

Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 2 CFR part 2424.

Definitions. See 24 CFR part 5, subpart D.

Disclosure and verification of income information. See 24 CFR part 5, subpart B.

Environmental review. See 24 CFR parts 50 and 58 (see also provisions on PBV environmental review at § 983.58).

Fair housing. Nondiscrimination and equal opportunity. See 24 CFR 5.105(a)

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§ 983.257 Owner termination of tenancy and eviction.

(a) In general. 24 CFR 982.310 applies with the exception that § 982.310(d)(1)(iii) and (iv) do not apply to the PBV program. (In the PBV program, "good cause" does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. Part 5, subpart L of 24 CFR, on protection for victims of domestic violence, dating violence, or stalking applies to this part.

(b) Upon lease expiration, an owner may:

- (1) Renew the lease;
- (2) Refuse to renew the lease for good cause as stated in paragraph (a) of this section;
- (3) Refuse to renew the lease without good cause, in which case the PHA would provide the family with a tenant-based voucher and the unit would be removed from the PBV HAP contract.

(c) If a family resides in a project-based unit excepted from the 25 percent per-building cap on project-basing because of participation in an FSS or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66265, Oct. 27, 2010]

§ 983.258 Security deposit: amounts owed by tenant.

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or

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other amounts which the tenant owes under the lease.

(d) The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

(e) If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

§ 983.259 Overcrowded, under-occupied, and accessible units.

(a) *Family occupancy of wrong-size or accessible unit.* The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a:

- (1) Wrong-size unit, or
- (2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA's offer of continued assistance in another unit pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.*

- (1) If a family is occupying a:
 - (i) Wrong-size unit, or
 - (ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.
- (2) The PHA policy on such continued housing assistance must be stated in the administrative plan and may be in the form of:
 - (i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);
 - (ii) Other project-based housing assistance (e.g., by occupancy of a public housing unit);
 - (iii) Tenant-based rental assistance under the voucher program; or

Declaration of Service

Michael Walsh, upon oath and duly sworn, states the following is true and correct to the best of her knowledge and belief.

On, December 18, 2011 I placed in the U.S. Mails, the original and one copy of the foregoing brief, addressed to:

The Court of Appeals, Division I
One Union Square
600 University St.
Seattle, WA 98101

And one copy of the foregoing brief addressed to:

Harry E. Johnsen
Raas, Johnsen, & Stuen, P.S.
1503 E. Street
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DATED this 18th day of December, 2011, at Seattle, Washington.



Michael S. Walsh

 O.K. L