

**FILED**

MAR 17 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 327051

COURT OF APPEALS, DIVISION 3  
OF THE STATE OF WASHINGTON

---

FPA CRESCENT ASSOCIATES, LLC, a Delaware limited liability  
company, Respondent

v.

JAMIE'S LLC; PENDLETON ENTERPRISES, LLC, a Washington  
limited liability company, d/b/a The Daiquiri Factory Spokane; and  
JAMIE PENDLETON, an individual, Appellants.

---

APPELLANT'S REPLY BRIEF  
RAP 10.1(b)(3)

---

John Pierce  
Attorney for Appellant's

Law Office of John Pierce, P.S.  
505 W Riverside Ave., Ste. 518  
Spokane, WA 99201  
Tel: (509)210-0845  
WSBA #: 38722

TABLE OF CONTENTS

**TABLE OF AUTHORITIES.....3**  
    **Table of Cases.....3**  
    **Statutes.....3**  
**REPLY ARGUMENT.....4**  
**CONCLUSION.....7**

## TABLE OF AUTHORITIES

### Table of Cases

<u>Case Name</u>	<u>Page Nos.</u>
<i>Brine v. Bergstrom</i> , 4 Wn.App. 288 (Div. 3 1971)	5
<i>Peoples Park and Amusement Ass'n, Inc. v. Anrooney</i> , 200 Wash. 51 (Wash. 1939)	5
<i>Mounts v. Goranson</i> , 29 Wash. 261, 267 (1902).	4
<i>Shepard v. Sullivan</i> , 94 Wash. 134, 135 (1916).	7
<i>Waitt Const. Co. v. Loraine</i> , 179 N.Y.S. 167 (N.Y App. Term 1919)	5

### Statutes

RCW 59.04.030	4, 6, 7
RCW 59.12.030	4, 7
RCW 59.12.090	8

## REPLY ARGUMENT

It is long established in Washington that a fixed term tenancy expires automatically at the end of term specified in the lease agreement. The legislature has codified this rule at RCW 59.04.030, which provides: "In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated *at the end of such specified time.*" RCW 59.04.030 (*emphasis added*). For unlawful detainer actions against a holdover tenant, this statute is restated as a tenancy is similarly "terminated without notice at the expiration of the specified term or period." RCW 59.12.030(1). The purpose of this section is not to terminate the lease on account of failure to pay rent, as FPA is arguing, but it is to terminate the lease at its expiration whether rent is paid or not<sup>1</sup>. *Mounts v. Goranson*, 29 Wash. 261, 267 (1902). RCW 59.04.030(1) references the "specified time", not a capricious termination time determined at the discretion of a landlord. In this case, that *specified time* was "ninety months from the lease commencement date," plus an option to "extend the Lease Term for the entire Premises by a period of five (5) years." CP1 Ex. B pg. 1.

---

<sup>1</sup> *Mounts v. Goranson* refers to 5527, 2 Ballinger's Ann. Codes & St., which, like the current statute, states: 'A tenant of real property for a term less than life is guilty of unlawful detainer ... (1) when he holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him.'

FPA, in its Response Brief, fails to provide any legal basis that illustrates, or even hints, that the State of Washington has abandoned its long-held definition of a hold-over tenant as it pertains to unlawful detainer actions. Instead, the FPA cites examples regarding actions under the Declaratory Judgment Act (*Peoples Park v. Anrooney*); termination of a lease by a tenant, that was mutually accepted by a landlord (*Brine v. Bergstrom*); and a hypothetical analysis of their acts under New York law that has since been supplanted by statute. *Peoples Park and Amusement Ass'n, Inc. v. Anrooney*, 200 Wash. 51 (Wash. 1939), *Brine v. Bergstrom*, 4 Wn.App. 288 (Div. 3 1971), *Waitt Const. Co. v. Loraine*, 179 N.Y.S. 167 (N.Y App. Term 1919) et al. While the Appellant, admittedly, did cite a New York case, *Kramer v. Amberg*, in its Brief, the purpose was solely to illustrate another courts reasoning and differentiation of the terms "expiration" versus "termination" - not to hypothetically analyze whether FPA's claims would have been actionable under the laws of New York at the time. As to the other cases cited by the Respondent, none are relevant to the case at issue before this court.

The Respondent presents no tenable argument that can surmount the indelible and immutable facts of this case:

1. Appellant Jamie Pendleton, Jamie's LLC, and Pendleton

Enterprises LLC ("Pendleton"), executed a lease with the Respondent, FPA Crescent Associates, LLC for a *Lease Term* of ninety months from the lease commencement date, and an option to "extend the Lease Term for the entire Premises by a period of five (5) years"; CP1 Ex. B pg. 1.

2. The lease commenced on February 4, 2014, with an expiration date of July 31, 2021; CP1 pg. 3, CP1 Ex. E.
3. FPA served a Notice of Termination of Lease on Pendleton and commence an unlawful detainer action under RCW 59.12 "[b]ased upon the failure to pay Rent;" CP1 Ex. F pg. 1.
4. The notice did not comply with the notice and cure requirements prescribed in RCW 59.12.030(3);
5. RCW 59.04.030 states that a lease for a specific term, here ninety months plus a five year option, is terminated only at the end of that specified term, making RCW 59.12.030(1) inapplicable;
6. Pendleton did NOT mutually agree to the termination;
7. FPA refused to accept further payments tendered by Pendleton;
8. FPA was granted a Writ of Restitution and executed the writ on, or about, June 16, 2014;
9. Pendleton did not, and has not, waived or relinquished his right to

possession of the premises; and,

10. Pendleton has suffered extensive damages to its business as a result of the FPA's actions.

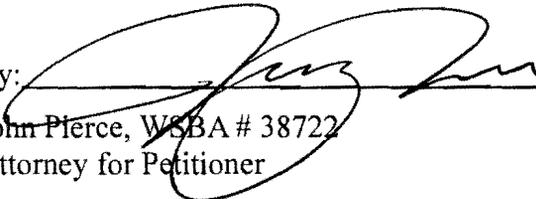
### **CONCLUSION**

The facts before this court are not complex. Neither are the requirements of a landlord who commences an unlawful detainer action under RCW 59.12. A lease may expire at the end of the specified time of the stated term, or it may be terminated sooner by lawful eviction. *Shepard v. Sullivan*, 94 Wash. 134, 135 (1916). These are two distinct actions. Here, FPA ignored the lawful eviction requirements of a landlord claiming a default of rents under RCW 59.12.030(3), and, upon recognition of its noncompliance with the statute, FPA made the desperate argument that it should instead be granted relief under RCW 59.12.030(1). It is a losing argument that was settled in the case law of this State going back for more than a century. And, the legislature directly addressed the argument attempted by the Respondent: "In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time." RCW 59.04.030.

Based on the laws of the State of Washington, the opinions of this Court, and of the Supreme Court, the writ of restitution was improperly ordered, the premises should be returned to Pendleton, and the landlord, FPA, should "pay all costs that may be adjudged to the defendant, and all damages which he or she may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out." RCW 59.12.090.

Respectfully Submitted this 17th Day of March, 2015

By:

  
John Pierce, WSB# 38722  
Attorney for Petitioner

Law Office of John Pierce, P.S.  
505 W Riverside Ave., Ste 518  
Spokane, WA 99201  
Tel: (509)210-0845

**CERTIFICATE**

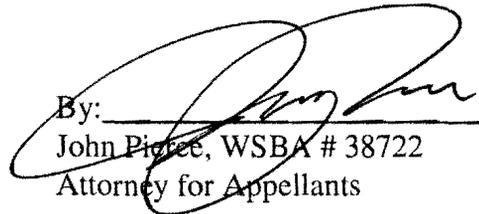
I certify that a copy of the foregoing was delivered by the method

below, and addressed to the following:

Todd Reuter  
K&L Gates LLP  
Attorneys for Plaintiff  
618 W. Riverside Ave., Ste. 300  
Spokane, WA 99201

- First Class Mail, Postage Pre-paid
- Hand Delivered
- Overnight Mail
- Telecopy (Fax)
- Email: <todd.reuter@klgates.com>

Dated this 17th day of March, 2015.

By:   
John Piggee, WSBA # 38722  
Attorney for Appellants