

No. 64608-7-I

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

CHRSTIAN BRYANT,

Appellant,

v.

CAPITOL HILL HOUSING IMPROVEMENT PROGRAM,

Respondent.

REPONSE BRIEF

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TABLE OF CONTENTS

Restatement of Issues.3

Restatement of the Case4

Argument

1. Bryant held over past his fixed-term tenancy, and was subject to eviction proceedings.7

2. The Addendum is unambiguous, and created a fixed-term tenancy of seven days after termination of employment.8

3. Bryant was an employee of CHHIP, and therefore was not subject to tenant protections under RCW 59.18.9

4. The Seattle Municipal Code does not apply to Bryant.....12

5. Bryant was afforded due process.13

6. Bryant’s arguments, briefed without authority or citation, should be not be considered. ...13

7. Request for attorneys fees and costs. 14

8. Request for attorneys fees and costs RAP 18.1 and 18.9..... 16

Conclusion.18

TABLE OF AUTHORITIES

Cases

Bly v. Henry, 28 Wn. App. 469, 624 P.2d 717 (1980)..... 13

Bonney Lk. v. Delany, 22 Wn. App. 193, 588 P.2d 1203 (1978).. 13, 14

Carlstrom v. Hanline, 98 Wn. App. 780, 788-90, 990 P.2d, 990-91
(2000) 7, 8, 10, 11, 12, 14

Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809,
828 P.2d 549 (1992). 13

Grant County Constructors v. E.V. Lane Corp., 77 Wn.2d 110, 121,
459 P.2d 947 (1969)..... 9

In re Marriage of Wherley, 34 Wn. App. 344, 349,
661 P.2d 155, 157 (1983)..... 13

Landberg v. Carlson, 108 Wn.App. 749, 758, 33 P.3d 86 (2002)..... 14

Ladum v. Utility Cartage, Inc., 68 Wn.2d 109, 411 P.2d 868 (1966)
10

McGary v. Westlake Investors, 99 Wn.2d 280, 285, 661 P.2d 971
(1983) 9

Meadow Park Garden Assocs. v. Canley, 54 Wn.App. 371, 375, 773
P.2d 875 (1989)..... 12

Metropolitan Bldg. Co. v. Curtis Studio, 138 Wash. 381, 244 P.
680(1926)7

Negash v. Sawyer, 131 Wn.App. 822, 826-27, 129 P.3d 824 (2006 ... 15

State v. Miller, 19 Wn. App. 432, 576 P.2d 1300 (1978) 14

Streater v. White, 26 Wn.App. 430, 435, 613 P.2d 187 (1980)..... 16

Universal/Land Constr. Co. v. City of Spokane, 49 Wn. App. 634, 637,
745 P.2d 53 (1987)..... 9

Western Union Tel. Co. v. Hansen & Rowland Corp., 166 F.2d 258
(9th Cir. 1948)..... 7

Statutes

RCW 59.12.030 (1)..... 8

RCW 59.18.040..... 9, 10

RCW 59.18.055..... 14, 15

RCW 59.18.290..... 14

SMC 22.206.160(C)..... 10, 11

Rules

RAP 18.1 16

RAP 18.9(a)..... 16

RESTATEMENT OF ISSUES.

1. Whether Bryant held over past his fixed-term tenancy, and was subject to eviction proceedings.7

2. Whether the Addendum is unambiguous, and created a fixed-term tenancy of seven days after termination of employment.8

3. Whether Bryant was an employee of CHHIP, and therefore was not subject to tenant protections under RCW 59.18.9

4. Whether Bryant was subject to the Seattle Municipal Code10

5. Whether Bryant was afforded due process at the show cause hearing.12

6. Whether Bryant’s arguments, briefed without authority or citation, should be disregarded.13

7. Whether CHHIP should be awarded fees and costs on appeal.14

8. Whether CHHIP should be awarded fees and costs because this appeal is frivolous. 16

RESTATEMENT OF THE CASE

Capitol Hill Housing Improvement Program (“CHHIP”) owns the real property commonly known as the Melrose Apartments located at 1520 Melrose Avenue, Seattle, King County. (CP 3). The Melrose Apartments receive Federal subsidy under Title 42 of the IRS code, and all occupants of the Melrose Apartments are required to qualify as low income to occupy the Apartment, employees included. (see CP 38-58)¹

CHHIP hired defendant, Christian Bryant (“Bryant”) to be a Resident Manager of the Melrose Apartments (CP 10, 20-21, 76, VP 3-4).² Bryant qualified as a low income in order be employed as a Resident Manager, (CP 52-58, VP 12, 18)) and occupied the Resident Manager apartment, number 304 (CP 25).³

As an employee, Mr. Bryant was required to live in the Resident Manager apartment, and was given a credit for reduced rent and

¹ The Clerks Papers numbered 27-84 were filed by Bryant after the October 13, 2010 show cause hearing. They were not provided to counsel for Plaintiff until this appeal, nor were they presented to the trial court. CHHIP reserves any evidentiary objections to these documents, however, they seem to support CHHIP’s trial court case and this Response Brief.

² VP, Verbatim Report of Proceedings. Bryant did not transcribe Verbatim Report of the Proceedings, RAP 9.2, nor did he seek agreement on a report of proceedings. RAP 9.4. CHHIP has transcribed the Verbatim Report of Proceedings and filed it it was transmitted to the Court of Appeal as CP 104-144. CHHIP assumes Bryant does not object to the Verbatim Report being transmitted to the Courts of Appeals clerks papers.

³ The Lease (CP 24-26, 38-42) names apartment 301 as Bryant’s apartment. Nevertheless, Bryant testified that it is the lease for apartment 304. VP 12.

utilities (CP 25). In connection with his hiring, he signed a “Resident Staff Housing Addendum, which provides for a fixed-term tenancy upon termination of employment. (“Addendum”)(CP 93). The operation of this addendum is the sole issue in this appeal.

Bryant was terminated from his employment on June 3, 2009. (VP 4, CP 3, 68, 75). By operation of the Addendum, a seven-day fixed-term tenancy commenced, ending June 10, 2010. (CP 93 “Addendum”). By agreement of the parties, the fixed-term tenancy was extended to July 31, 2010, with rent payable accordingly. (CP 3, 20-21, 68-74, VP 3-5).⁴ During this time, the parties negotiated for Bryant to qualify for tenancy elsewhere and move out of the Resident Manager apartment. (see CP 69-74, VP 3-5).

Bryant failed to vacate, and CHHIP commenced unlawful detainer proceedings, by filing the summons and complaint (CP 1-5), and seeking to serve Bryant. Attempts at personal service failed and CHHIP obtained an order for alternative service pursuant to RCW 59.18.055. (CP 85-87).

⁴ The email string which documents the Parties’ agreement to extend the fixed-term tenancy were introduced at the show cause hearing (VP 18) and are attached to the Judgment (CP 17-22). They are referred to in the Complaint as Exhibit A, but inadvertently they were not attached to the Complaint or filed with the Clerk.

On August 26, 2009, an amended summons (CP 7-8) and complaint (CP 3-5) for unlawful detainer was mailed to Bryant, and on August 27, 2009 the documents were posted on Bryant's door. (CP 89-90). Bryant Answered, claiming that he should be considered a month-to-month tenant when his employment terminated (CP 9-15).

A show cause hearing was scheduled for October 13, 2009.(CP 88).

A hearing was held on October 13, 2009, where Bryant appeared pro se, arguing that the Addendum should be ignored and his tenancy should be considered a month-to-month tenancy. The court ruled against Bryant and entered judgment for a writ of restitution. (CP 17-22). A Writ issued, and Bryant vacated prior to enforcement of the writ of restitution. (CP 100-103).

Bryant sought to stay enforcement of the Writ. The Court denied that motion. (CP 94-98). Bryant then sought revision (CP 27-30) which was also denied. (CP 31). Bryant Appealed (CP 32).

ARGUMENT

1. Bryant held over past his fixed-term tenancy, and was subject to eviction proceedings.

It is well settled law in Washington that an occupant who holds over after a fixed term lease is subject to eviction proceedings without further notice. Accord, Carlstrom v. Hanline, 98 Wn. App. 780, 990 P.2d 986 (2000). See also Metropolitan Bldg. Co. v. Curtis Studio, 138 Wash. 381, 244 P. 680(1926), and Western Union Tel. Co. v. Hansen & Rowland Corp., 166 F.2d 258 (9th Cir. 1948). (holdover strictly construed against occupant). Washington defines a hold over tenant to be guilty of unlawful detainer without other notice.

A tenant of real property for a term less than life is guilty of unlawful detainer . . .

When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

RCW 59.12.030 (1). Having held over, Bryant was subject to unlawful detainer proceedings without further notice.

Bryant was terminated on June 3, 2009. As such he was required to vacate seven days later. By agreement, the fixed term lease

was extended from June 10, 2009 to July 31, 2009, and rent was paid accordingly. Bryant failed to vacate, and after July 31, 2009, he was unlawfully detaining the premises.

2. The Addendum is unambiguous, and created a fixed-term tenancy of seven days after termination of employment.

Bryant seems to urge the Court to find that the Addendum did not establish a fixed term tenancy when his employment terminated. Although his argument is unclear and presented without authority, he seems to argue that because he signed both the Lease and the Addendum, that the Addendum is ambiguous. It is not.

Whether a written instrument is ambiguous is a question of law for the court. McGary v. Westlake Investors, 99 Wn.2d 280, 285, 661 P.2d 971 (1983)). An ambiguity will not be read into a contract where "it can reasonably be avoided by reading the contract as a whole." McGary, 99 Wn.2d at 285. Where a written instrument contains words that are ambiguous, but "taken as a whole are plain and unambiguous, the meaning should be deduced [*785] from the language alone" Universal/Land Constr. Co. v. City of Spokane, 49 Wn. App. 634, 637, 745 P.2d 53 (1987) [***6] (citing Grant County Constructors v. E.V. Lane Corp., 77 Wn.2d 110, 121, 459 P.2d 947 (1969)).

Carlstrom, at 785. Bryant's argument fails because the Addendum is clear and is not in conflict with the Lease. Upon termination of employment, a fixed term lease of seven days was created. Further, the

Addendum allowed the parties to agree to extend that time period, which they did, to July 31, 2009. Bryant paid rent for July, 2009, and was expected to vacate by the end of that month. Bryant's failure to vacate subjected him to eviction.

3. Bryant was an employee of CHHIP, and not subject to tenant protections under RCW 59.18.

Bryant was hired by CHHIP to be a resident manager at Melrose Apartments. (CP 10, 20-21, 76, VP 3-4) Once hired, he was required to live in the Resident Manager apartment, and to pay a reduced rate of rent and utilities.(CP 25, 38, 63). His right to occupy the Resident Manger apartment was therefore conditioned on his employment. His assertion that the Residential Landlord-Tenant Act should apply to his is without merit.⁵

RCW 59.18.040 exempts employees from the provisions of the Residential Landlord-Tenant Act. The Act provides:

Living arrangements exempted from chapter:

The following living arrangements are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application, in which event the provisions of this chapter shall control:

* * *

⁵ Bryant argues that his "tenancy is conditioned on the RLTA, and not on employment" (Brief at 11).

(8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises.

RCW 59.18.040 (8). Bryant was hired as a Resident Manager, a person whose employment requires him to live on the premises to manage the apartments there located. Bryant's right to occupy the unit was solely based on his employment. As such the provisions of RCW 59.18 do not apply to his tenancy.

4. The Seattle Municipal Code does not apply to Bryant.

Fixed term leases do not require notice under the Seattle Just Cause for Eviction Ordinance, SMC 22.206.160(C) Carlstrom v. Hanline, 98 Wn. App. 780, 786-787 (2000). Bryant's argument the Seattle Just Cause for Eviction Ordinance, SMC 22.206.160(C)⁶ applies to his tenancy is therefore without merit..

⁶ As Bryant states (Brief at 11) SMC 22.206.160(C) allows for termination of an employee occupant if employment is also terminated. The Ordinance provides:

C. Just Cause Eviction.

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

* * *

In Carlstrom, a tenant who first was subject to a month to month tenancy signed a new tenancy agreement which terminated on a specific date. The tenant then refused to vacate after that date. The tenant argued in part that the landlord was required give "just cause" under the Seattle Municipal Code prior to commencing an unlawful detainer suit. Carlstrom, at 786, 990 P.2d at 989. The Court disagreed, holding that the lease terminated as a matter of law upon expiration.

RCW 59.18.220 says "[i]n all cases where premises are rented for a specified [period of] time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time." As a matter of law, the lease was terminated on April 1, 1998.

A tenant holding possession of leased property after the expiration of the term is guilty of unlawful detainer. RCW 59.12.030. When real property is leased for a specified period of time, the tenancy "shall be terminated without notice at the expiration of the specified term or period." RCW 59.12.030(1). Hanline retained possession of the premises until June 8, 1998, well after the April 1, 1998 termination date. Hanline's holdover in the premises was illegal. A tenant cannot exclude the landlord "after the termination of the rental agreement and . . . [a]ny landlord so deprived of possession . . . may recover possession of the property and damages sustained by him . . . and reasonable attorney's fees." RCW 59.18.290.

g. The tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated;
SMC 22.206.160 (C). Seattle, like Washington, allows Bryant's right to occupy the Resident Manger's unit to be terminated when his employment terminated.

Because the lease was terminated as a matter of law, there is no question of just cause eviction or retaliatory eviction.

Carlstrom v. Hanline, 98 Wn. App. 780, 786-787 (2000). Bryant's tenancy, like the tenant's in Carlstrom, terminated at specified date and therefore the ended as a matter of law. Bryant's right to occupy the Resident Manager apartment ended seven days after his employment ended. That date was extended to July 31, 2009 by agreement of the parties and rent was paid accordingly. The Seattle Ordinance does not apply to Bryant.

5. Bryant was afforded due process.

Bryant's claim that he was denied due process (Brief at 13) is without merit and contrary to case law. It is well settled that the procedures of a show cause hearing provide due process. *Accord*, Carlstrom v. Hanline, 98 Wn. App. 780, 788-90, 990 P.2d, 990-91 (2000) (citing Meadow Park Garden Assocs. v. Canley, 54 Wn.App. 371, 375, 773 P.2d 875 (1989)).

6. Bryant's arguments briefed without authority or citation should not be considered.

Bryant offers no citation or authority for the bare assertions in his brief, which I summarize as follows: the Addendum should not be enforced and his tenancy should be construed as a month to month tenancy despite his employment (Brief at 8); "his occupancy is conditioned upon the RLTA not employment" (Brief at 11); and, he was denied due process (Brief 13-14). This 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).

Bryant should not be allowed to argue that his failure to adequately brief his argument is excusable based on his pro se status. A pro se litigant is held to the same standard as an attorney. "The law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel -- both are subject to the same procedural and substantive laws." In re Marriage of Wherley, 34 Wn. App. 344, 349, 661 P.2d 155, 157 (1983) (citing Bly v. Henry, 28 Wn. App. 469, 624 P.2d 717 (1980); Bonney Lk. v. Delany, 22 Wn. App. 193, 588 P.2d 1203 (1978); State v. Miller, 19 Wn. App. 432, 576 P.2d 1300 (1978)). "An orderly judicial system cannot have one set of rules for cases handled by attorneys, and another

set for those who wish to take the risk of representing themselves.”

State v. Miller, 19 Wn. App. 432, 437, 576 P.2d 1300, 1302 (1978).

7. Request for fees/cost on appeal.

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). RCW 59.18.290⁷ allows for fees and costs to be awarded a landlord when a tenant holds over at the trial level, and that basis may be used as an award in this Court, if the court has jurisdiction over Bryant.

Judgment in the trial court was reserved on the basis that the Amended Summons and Complaint were served via alternative service under RCW 59.18.055, which provides:

When service on the defendant or defendants is accomplished by this alternative procedure, the court's jurisdiction is limited to restoring possession of the premises to the plaintiff and no money judgment may be entered against the defendant or defendants until such time as jurisdiction over the defendant or defendants is obtained.

⁷ It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees. RCW 59.18.290 (2)

RCW 59.18.055. No judgment was entered because the trial court had jurisdiction only to restore possession of the premises, until jurisdiction over the Bryant is obtained.

Jurisdiction over an unlawful detainer defendant may be obtained if the defendant submits to jurisdiction of the court by voluntarily submitting to the Court's jurisdiction by making an affirmative request for relief. Negash v. Sawyer, 131 Wn.App. 822, 826-27, 129 P.3d 824 (2006).

Affirmative relief is defined as relief for which defendant might maintain an action independently of plaintiff's claim and on which he might proceed to recovery, although plaintiff abandoned his cause of action or failed to establish it. A defendant who files a cross claim, for example, seeks affirmative relief and thereby waives the defense of lack of personal jurisdiction. Similarly, a defendant personally submits to a court's jurisdiction by asking the court to enforce previously adjudicated rights.

Id. Although Bryant did not seek affirmative relief at the trial level, he does in this appeal. Bryant seeks injunctive relief and punitive damages. (Brief at 20-21). By doing so, Bryant submitted himself to the court for personal jurisdictional purposes, and he is subject to paying costs and fees accordingly. CHHIP respectfully requests that it be awarded costs, fees and expenses.

8. Request for fees/costs on appeal. RAP 18.1 and 18.9.

Pursuant to RAP 18.1, and 18.9, CHHIP hereby requests an award of reasonable attorneys' fees, costs and expenses incurred on review. Irrespective of the reservation of judgment at the trial level, CHHIP is entitled to award of its attorneys' fees, costs and expenses in this appeal on the basis that this appeal is frivolous. Pursuant to RAP 18.9(a)

“the appellate court on its own initiative . . . may order a party or counsel who uses these rules for the purposes of delay, files a frivolous appeal, or fails to comply with these rules. . . to pay terms or compensatory damages to any other party who has been harmed by the delay or failure to comply . . . “ RAP 18.9(a).

In determining whether an appeal is brought for delay the Court must, when considering the record as a whole, inquire whether the appeal was frivolous. Streater v. White, 26 Wn.App. 430, 435, 613 P.2d 187 (1980) “An appeal is frivolous if there is no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal.” Streater, 26 Wn.App. at 435.

This appeal is frivolous. Bryant has put forth no issues, or assignments of error, which would require the appellate court to reverse the decision of the trial court. In fact, Bryant fails to cite legal

authority for the majority of his brief, and all his claims are contrary to existing case law. Bryant failed to order a verbatim report of proceedings, failed to seek agreement on a narrative report, failed to transmit a complete record, and failed to provide any citations to the record. CHHIP is entitled to an award of attorneys' fees, costs and expenses on the basis that this appeal was frivolous. CHHIP respectfully requests that this court award CHHIP its attorneys' fees, costs and expenses.

CONCLUSION

Bryant's appeal should be dismissed. His arguments were provided without authority or citation, and they are made without in fact or support of law. All of Brant's positions are contrary to Carlstrom v. Hanline, *supra*, yet he makes no attempt to cite to or distinguish that case. Bryant's appeal is frivolous, and fees and costs should be awarded to CHHIP.

Respectfully submitted April 29, 2010, by

PUCKETT & REDFORD, PLLC

by 
Michael Walsh, WSBA 29352

Declaration of Service

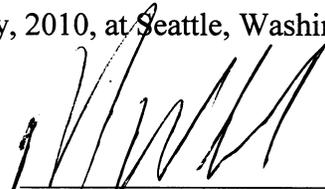
Michael Walsh, upon oath and duly sworn, states the following is true and correct to the best of her knowledge and belief.

On May 14, 2010, I placed in the U.S. Mails, the foregoing brief, t

n. .. addressed to:

Christian Bryant
308 14th Ave E, #301
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DATED this 14th day of May, 2010, at Seattle, Washington.



Michael Walsh

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