

No. 63928-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

PETER J. LANGE

Appellant,

v.

FRANCIS S. WHELAN

Respondent.

BRIEF OF APPELLANT PETER J. LANGE

Peter J. Lange, pro se
4085 Hillcrest Ave SW
Seattle, WA 98116
(206) 932-0789

FILED
COURT OF APPEALS, DIVISION I
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Brief of Appellant

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Ex2 - Application for tenancy dated 4/11/2004

- Ex3 - Affidavit by Don Idler and copy of check dated 3/31/2009
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- Ex5 - Affidavit by T.J.Whitver, receiving stub of rental payment only
- Ex6 - 20 day notice to vacate dated 4/3/2009 by certified mail
- Ex7 - Motion and amended declaration by Lange about 20-day notice
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A. INTRODUCTION

This is a residential landlord - tenant case. Francis Whelan, a single male, rented a small 2-bedroom house in Seattle from Lange for two people to occupy. The garage was not included in the lease. Lange, a retired engineer, uses the detached garage occasionally as a workshop and for storage. The agreement specifically prohibits subleasing. Whelan then built a portable building on the property and started to live in it, using kitchen, bathroom and utilities in the house while moving-in three strangers: Elisio Perez, Irma Lucas and Victor Cruz who all shared the rent. On April 1st, 2009 Whelan shorted the rent of \$950 by \$275. He claimed "loss of use" of the shower in March when Lange made repairs. On April 4th. Lange sent a 20-day notice to vacate for cause. By April 30, 2009, Whelan had not vacated and had not paid rent, sending only a check-stub. Lange had Summons & Complaint served and, acting pro se, started eviction for just cause. Whelan's attorney alleged defective service of the summons & complaint as well as retaliatory action. Commissioner Nancy Bradburn-Johnson decided to dismiss Lange's action without prejudice and award attorney fees to Whelan. By that time, Francis Whelan had moved away, leaving the house occupied by the three persons he had moved in. In a separate action, this time handled by an attorney, Elisio Perez, one of the three occupants, signed a stipulated agreement

(Ex8) that he, and all others, would vacate by September 30th, 2009, and they did.

The trial court dismissed Lange's case because of defective summons and eviction to be retaliatory. The court refused to hear Lange's motion to sanction Whelan for perjury for soliciting an unsubstantiated sworn declaration from Elisio Perez and his attorney for perjuring himself by signing a false Declaration of faxed Document (DCLR)

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in finding the summons defective.
2. The trial court erred in finding retaliatory eviction.
3. The trial court erred in finding Lange in violation of CR 11.
4. The trial court erred in refusing to hear Lange's motion to censure and for sanctions
5. The trial court erred in awarding fees to defendant.

(2) Issues Pertaining to Assignments of Error

1. Is the summons defective if it does not follow exactly the form shown in RCW 59.18.365 but contains all the language required and was acceptable at the first Show Cause hearing?
 2. Is eviction, for non-payment of rent, retaliatory?
 2. 1. Is eviction, for withholding part of the rent, retaliatory?

- 2.2 Is eviction, for violating material terms of the rental agreement, retaliatory?
3. Is alleged violation of CR 11 substantiated by evidence?
4. Is Lange entitled to have a motion for sanctions heard?
5. Is Whelan entitled to fees when the case is dismissed without prejudice?

C. STATEMENT OF THE CASE

Whelan rented a small 2-bedroom house in Seattle from Lange (Ex1). The rental application states "for two people" (Ex2). On 3/22/2009, Elisio Perez, the alleged brother of Whelan, visiting and living in the house, told Lange that tiles had fallen off in the bathroom. Whelan, in his sworn declaration (CP 6-24) says on page 1, line 24 he sent a letter. It is listed as Ex A, but Lange did not receive Ex A. Lange inspected the bathroom and found the tiled wall around the shower soaked and tiles loose. Whelan confirms on page 2, line 12 that Lange came to the house and started repairs. If Whelan in fact sent a letter on March 22, which was a Sunday, Lange would have been at the house on Tuesday, March 24. Don Idler's affidavit and Lange's canceled check (Ex 3) shows repairs finished by March 31. It does not add-up that Whelan had 10 days with no means to

bathe as claimed. Lange also found strangers living in the house, besides Elisio Perez, walls painted to hide damage, the smoke detector inoperative and dangling from the ceiling, evidence of people smoking in the house and a hole drilled in a window frame, mold and other damages and violations of the lease agreement. On about March 23rd or 24th, Lange began cleaning-up around the shower. Whelan says in his sworn declaration (CP 6-24) on page 2, line 12 that "After receiving the letter, Mr. Lange came to the house -----. If true, Lange responded within 72 hours. Indeed Lange removed more tiles and rotten plasterboard, dried-out the wall and hired Don Idler to repair the tiled wall. Most of the damage was around the shower faucets. Don removed the faucets because the tiles are set with holes cut into tiles for faucets. Don Idler repaired the tiled walls that week and finished on March 31, 2009. (Ex 3). During the time spent in the house, Lange questioned Elisio Perez, Irma Lopez and Victor Cruz, and found out they all shared the rent. Lange became suspicious of Elisio really being the brother of Whelan, but Elisio said: "Different father, same mother" and later confirmed being brother in a sworn declaration (CP 38-40 §3). On April 3rd Lange received a postal money order for \$674.24 together with a letter Ex 4 (CP 6-24, Ex B) stating that Lange had "failed to perform repairs in a timely fashion" and Whelan deducted \$275.76 from the \$950 for April's rent. On April 4th Lange sent

a 20 day notice, (Ex 6) certified, to Whelan to quit and vacate by April 30th, 2009 for breach of rental agreement:

1. Failure to pay rent, and use of the premises violating occupancy.
2. Failure to maintain premises according to agreement dated 4/14/04
3. Introducing two dogs, two chickens and two birds and not cleaning up.
4. Subletting.
5. Painting in violation of agreement.
6. Making holes in walls, doors and windows and scratches by dogs
7. Failure to maintain smoke detectors and fire extinguishers

Whelan did not pay up, address the violations, even communicate with Lange or vacate by April 30, 2009, but sent the stub of a check marked "Rent for May" via registered mail. (Ex 5). When Lange asked Whelan why there was no check, his reply by e-mail was: Talk to my lawyer. Whereupon Lange had a Summons and Complaint served. (CP 89-92). On 6/2/'09 Lange also served a 3-day notice to pay or vacate. (Ex 8)

The first Show Cause hearing was before Commissioner Eric Watness on May 20th, 2009. He found the Affidavit of Service of Summons & Complaint lacking certification, directed Lange to perfect it and set another Show Cause hearing for May 29th. Lange filed a perfected Affidavit/dclr/cert of service on 5/21/09 with the court (CP 94-95)

The second Show Cause hearing was before Commissioner Nancy Bradburn-Johnson on May 29, 2009. She found the service issue of the summons & complaint resolved (RP - 5/29/09 p.33, line 7) but dismissed Lange's claims of unlawful detainer due to defective Summons. She found plaintiff's (Lange) eviction to be retaliatory without hearing evidence about the alleged violations of the agreement by Whelan. She never heard Lange's motion for sanctions (CP 127-140) and awarded fees (in an amount reserved by the Court) under section 12 of the lease, under the provisions of the Washington State Landlord Tenant Act, and for plaintiff's violation of CR 11.

The third hearing was before Commissioner Donald Haley on July 7, 2009. He awarded \$6,450 in fees to Whelan and refused to hear Lange's motion to censure and for sanctions, (CP 127-140) saying: "That's not properly reported" (RP, July 7, 2009, p.13, line 12)

D. SUMMARY OF ARGUMENT

Whelan's counsel at the first Show Cause hearing did not object to the form of summons and the judge accepted the form. Yet, at the second hearing another judge found it fatal and dismissed the action citing the defective summons and retaliatory action without hearing evidence of material facts. When Commissioner Watness accepted the summons, it became acceptable to the Court. Because Lange started repairs within 72

hours, Whelan isn't entitled to withhold rent. Mailing the stub of a check isn't paying rent. Lange's effort to evict Whelan is not retaliatory or meant to harass, but to remove a tenant who withholds rent and violates the agreement. Leaking of the toilet causing the tenants water bills to rise and loose tiles in the bathroom after five years of tenancy is entirely under the control of the tenant (CP 6-24, p.2, line 7). Lange removing the toilet and "left it like that for five days" is an unsubstantiated allegation. Mold in the house is under control of the tenant (CP 6-24, p.3, line 13)

E. ARGUMENT

1. The trial court erred in dismissing Lange's Show Cause action because of the form of the summons

RCW 59.18.365 prescribes the form for the summons: It must contain the names of the parties, the court in which the action is brought, the nature of the action, the relief sought, etc. Lange's summons contains all the features required, except "and, if available, a facsimile number for the plaintiff".

Here, the plaintiff does not have a separate number for the facsimile machine, but uses his regular telephone line and must turn-on the facsimile machine before receiving a transmission. Therefore, facsimile isn't readily available and need not to be shown on the summons. Furthermore, the attorney for Whelan accepted the summons for what it was and responded with an answer to complaint (CP 1-3) In the answer there is no allegation

that the form of the summons is defective. He did not object to the form before Commissioner Watness at the Show Cause hearing. (RP-5/20/2009) When an objection is not raised before the Trial Court, it cannot be raised later before another judge in the same Court. It validates the summons. As a practical matter, had Commissioner Watness found the summons defective, the action would have ended right there. He only found the service defective (RP-5/20/2009 p.10) and requested notarized proof of service, proper proofs of service of the twenty day notice and of the summons & complaint (RP-5/20/2009 p.11) Proof was filed the next day. (CP 94-95) (CP 96-98) We have a situation here where Commissioner Nancy Bradburn-Johnson rules a document defective that was already accepted by the court.

2. The trial court erred in finding retaliatory eviction.

Lange's action was the result of many violations by Whelan: When an owner finds out that the tenant destroys the building, subleases to share the rent and doesn't pay his rent on top of it, an owner must evict such a tenant. But Commissioner Nancy Bradburn-Johnson did not want to get into facts, even though she saw the notice to vacate (RP-5/29/2009 p.9, line 25). She did not want to get into the facts "because this issue turns on procedure at this point" (RP-5/29/2009 p.28, line 11) It appears she ruled the action retaliatory based on the pleadings of Whelan's attorney that

were, in part, unsubstantiated allegations. RCW 59.18.240: "So long as tenant is in compliance with this chapter the landlord shall not take ---- retaliatory action ----because of--- (2) Assertions or enforcement by the tenant of his rights and remedies of this chapter" Whelan ceased to be in compliance when he withheld rent, subleased and violated the agreement in many other ways. Whelan claims it was his right to withhold a part of the rent because he lost use of the shower during repairs. RCW 59.18.070 defines landlord's failure to perform duties: "--The tenant---shall deliver written notice---" and "(2) Not more than seventy-two hours----" In this case, Whelan never delivered written notice of the defective condition. It was a verbal notice of Elisio Perez and Lange started repairs the next day. Lange was entitled to shut off the water by RCW 59.18.300 "--- an interruption of utility services for a reasonable time in order to make necessary repairs." Please note, that the water must be shut off to remove the shower faucets because there are no valves to isolate the faucets from the main water supply. It is not disputed that the water was turned back on as soon as possible and for the remainder of the time needed for repairs, water was available at all outlets, except the shower. Whelan was not entitled to withhold rent for being inconvenienced. Only when the landlord fails to carry out repairs, and the tenant must make the repairs, is the tenant entitled to withhold rent. RCW 59.18.100 states that "----when

the landlord fails to carry out duties, and notice of the defect is given----"

Therefore Lange was within his rights to demand full payment of rent and when that did not happen, and Lange discovered many other violations of the agreement, it was Lange's right to terminate tenancy. It is not disputed that Whelan withheld rent. Evidence shows that Lange started repairs promptly and within 72 hours. (CP 6-24) It is only alleged that Whelan lost use of the shower during repairs. If Whelan owned the house and if he had to make the same repairs, he would have been inconvenienced the same. There is a question whether Lange was obligated to repair the wall or if it was the tenant's responsibility. The wall is not "a mayor plumbing fixture" and tiles fell off because the tenant allowed water to seep into the wall by negligence. If the tenant destroys a part of the building under his control, it is his responsibility to repair. SMC 22.206.170 part D. "-----and maintain all sanitary facilities-----" and part E. "-----repair all damage to the building caused by negligent or intentional act of the tenant -----" The trial court did not examine the circumstances that prompted Lange's action to evict Whelan. Had the Trial Court heard evidence, it would have found eviction for just cause. There is no basis in the evidence for reprisals or retaliatory action by landlord. Whelan's sworn declaration (CP 6-24), with copies of a letter and photographs show he did not take care of the house. In the City of Seattle SMC 22.206.160 and SMC 22.206.170 applies:

Section C. Just Cause Eviction.

1. states, in part: ----the reasons for termination of tenancy listed below, and no others, shall constitute just cause under this section:

1. c. states, in part: "When the tenant fails to comply with a (10) day notice to comply with a material term of the rental agreement or that requires compliance with a material obligation under RCW 15.18 -----"

Lange submits that the evidence shows that Whelan did not comply with many and important material terms of the rental agreement besides not paying rent. Lange sent a 20-day notice to give Whelan more time to comply and a 3-day notice to pay or vacate on 6/2/2009 (Ex 8)

3. The trial court erred in finding Lange in violation of CR 11

Violations of CR 11, Signing of Pleadings, Motions and legal memoranda, are a serious matter. Pleadings --- shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader. There is no evidence that any pleadings submitted by Lange were stricken or that any omission had been called to the attention of Lange. If such were the case, it would have been a very simple matter to sign the affected document. There is no evidence that Lange filed the lawsuit to threaten or harass. It isn't logical that a landlord would want to expel a tenant who takes care of the property and pays rent. There is overwhelming evidence that Whelan did not take care of the property. Whelan was given a copy of

the pamphlet: "Got Mold" as evidenced by the certification on bottom of the 3-day notice to pay or vacate (Ex 8). It appears the court believed the unsubstantiated allegations of Whelan and ruled accordingly. However, in the next item Lange will show a deliberate effort by Whelan to mislead the court:

4. The trial court erred in refusing to hear Lange's motion to censure and for sanctions.

On or about June 5th, 2009 Lange found out that Elisio Perez had signed a sworn declaration (CP 38-40) that, if true, would have invalidated the service of Summons & Complaint. Lange knew Perez somewhat and judged him not to be a willing party to deceit. It turned out that Perez had never seen page 1 (one) of the document he signed and did not understand what he signed. Testimony in open court by Tim Whitver contradicted the sworn declaration (RP-5/29/09 p.22) and Perez retracted his declaration (Ex 9) Evidence shows that someone prepared page two of the sworn declaration for Perez to sign and after signing, Whelan faxed the page to his attorney using the fax machine of The Witt Company. (CP 127-140) The attorney signed a Declaration of faxed Document (DCLR) declaring under penalty of perjury that he had received three (3) pages, when, in fact, he had only received one page, thereby committing perjury. This could be overlooked and blamed on a simple clerical error, if the object of the

exercise had not been a substantial effort to attack service of Summons & Complaint. If this single deceit had been successful, Whelan would have prevailed in his effort to get the action dismissed.

5. The trial court erred in awarding fees to defendant Whelan.

Given the circumstances, the trial court should have permitted the action to go up for trial, and briefly considered it (RP-5/29/2009 p. 28, line 13) At trial Lange could have presented evidence that may have convinced the court that the eviction was for just cause, in which case, Whelan would not have been awarded fees. As an alternative, Commissioner Nancy Bradburn-Johnson could have elected to hear testimony about the alleged violations which, if true, would have proven Just Cause

F. CONCLUSION

The trial court should not have dismissed the case because of procedural defects, especially after the defect of the summons was not pleaded in the first trial under Commissioner Haley. The other allegations of retaliatory action and violation of CR 11 are not supported by evidence. Evidence shows that Whelan withheld rent for April and paid for May '09 by sending a useless check stub. Evidence shows that he subleased. The two violations alone are just cause for eviction.

This court should reverse the trial court's order dismissing Lange's claims against Whelan. Because Whelan has moved out, and the persons

he did sublease to, have been moved out also, this court should reverse the award of fees and grant costs to Lange. Costs on appeal should be awarded to Lange

DATED this 25th day of October, 2009

Respectfully submitted,



Peter J. Lange, pro se
4085 Hillcrest Ave SW
Seattle, WA 98116
(206) 932-0789

RESIDENTIAL RENTAL AGREEMENT AND SECURITY DEPOSIT RECEIPT

THIS INDENTURE, made this 12th day of APRIL, 2004 between PETER J. LANGE, hereinafter designated the Landlord, and FRANCIS S. WHELAN, hereinafter designated the Tenant(s),

WITNESSETH: That the said Landlord does by these presents rent the residence situated at 507 South Brandon Street in Seattle City, King County, Washington State, of which the real estate is described as follows:

Single Family, 2-Bedroom Home, all fenced and landscaped, with separate power to the workshop. The workshop is not included in the rental, the power for it will be paid entirely by the owner.

upon the following terms and conditions:

- 1. Terms: The premises are rented for a term of 12 month(s), commencing the 1st day of MAY 2004 and terminating on the 30th day of APRIL 2005.
2. Rent: The Tenant shall pay rent in the amount of \$ FIFTY FIFTY \$91.00 per month for the above premises on the 1st day of each month in advance to Landlord.
3. Utilities: Tenant shall pay for service and utilities supplied to the premises, except Power & Telephone to the Workshop which will be furnished by Landlord.
4. Sublet: The Tenant agrees not to sublet said premises nor assign this agreement nor any part thereof without the prior written consent of Landlord.
5. Tenant's Obligations: (1) To keep said premises in a clean and sanitary condition; (2) To properly dispose of rubbish, garbage and waste in a clean and sanitary manner...
6. Maintenance of Premises: Tenant agrees to mow and water the grass and lawn, and keep the grass, lawn, flowers and shrubbery thereon in good order...
7. Alterations: Tenant agrees not to make alterations or do or cause to be done any painting or wallpapering to said premises without the prior written consent of Landlord.
8. Use of Premises: Tenant shall not use said premises for any purpose other than that of a residence...
9. Landlord's Obligations: Landlord shall: (1) Immediately notify tenant, by certified mail or updated posting, of any changes as to the person or address of the Landlord; (2) Maintain all structural components in good repair; (3) Keep common areas reasonably clean and safe from defects increasing the hazards of fire or accident; (4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests...
10. Access: Landlord shall have the right to place and maintain "for rent" signs in a conspicuous place on said premises for thirty days prior to the vacation of said premises. Landlord reserves the right of access to the premises for the purpose of: (1) Inspection; (2) Repairs, alterations or improvements; (3) To supply services; or (4) To exhibit or display the premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors. Access shall be at reasonable times except in case of emergency or abandonment.
11. Surrender of Premises: In the event of default in payment of any installment of rent or at the expiration of said term of this agreement, Tenant will quit and surrender the said premises to Landlord.
12. Costs and Attorney's Fees: If, by reason of any default or breach on the part of either party in the performance of any of the provisions of any of the provisions of this agreement, a legal action is instituted, the losing party agrees to pay all reasonable costs and attorney's fees in connection therewith.
13. Security and Damage Deposit: The Tenant has deposited the sum of \$ 500 (FIVE HUNDRED) receipt of which is hereby acknowledged. I, the tenant, have inspected the property and found no hazardous conditions. If a hazardous condition develops in the future, I shall advise the property owner in writing. I agree to hold the owner harmless for any damages or injuries.

All or a portion of such deposit may be retained by Landlord and a refund of any portion of such deposit is conditioned as follows: (1) Tenant shall fully perform obligations hereunder and those pursuant to Chapter 59.18 Revised Code of Washington... (2) Tenant shall occupy said premises for term agreed to above; (3) Tenant shall clean, repair and restore said residence and return the same to Landlord in its initial condition... (4) Tenant shall surrender to Landlord the keys to premises. Any refund from deposit, as by itemized statement shown to be due to Tenant, shall be returned to Tenant within fourteen (14) days after termination of this tenancy and vacation of the premises.

DRUG STATEMENT: I, the tenant, am not using unlawful drugs, have no unlawful drugs in my possession, will not store, retain or permit to store such drugs. If I know of usage of such drugs or storage on the premises, I shall notify the property owner immediately in writing.

USE OF THE WORKSHOP: It is understood that the owner uses the workshop on an irregular basis and uses the crawl-space for storage.

MAINTENANCE of LANDSCAPING: Note §6: The tenant shall keep the grass short, edged & free of weeds. This includes parking area to be kept clean and area along fence kept trim and growth from adjacent lots cut-back. If tenant does not do this, the owner will have it done and tenant agrees to pay for it. NO SMOKING IN THE HOUSE! No more than () people living in the house. Any new persons shall be introduced to the owner. No HOLES are to be made in walls or doors, no screws except by express permission of the owner. SMOKE DETECTOR: Installation of a smoke detection device shall be the responsibility of the owner, but maintenance is the responsibility of the tenant, who shall also test the device monthly. Replacement batteries shall be provided by the tenant. FIRE EXTINGUISHER: The same as above for the smoke detector applies to the fire extinguisher.

IN WITNESS WHEREOF, the Tenant(s) and Landlord, or this agent, each hereunto sets his hand.

Peter J. Lange 4/14/04 [Signature]
LANDLORD TENANT(S)

(BY) _____
ADDRESS _____

MOVE-IN/MOVE-OUT INSPECTION AGREEMENT

NO DEPOSIT MAY BE COLLECTED UNLESS LESSOR AND TENANT FILL IN AND SIGN THIS CHECK LIST.

FRANCIS S. WHELAN
 Tenant's Name
507 S. BRANDON ST
 Address of Premises

PETER J. LANGE
 Lessor's Name

Describe the condition, cleanliness and existing damage to the premises and furnishings:

	AT MOVE-IN	AT MOVE OUT
Kitchen:		
Walls/Ceiling	<u>NEWLY PAINTED</u>	<u>FORMICA COUNTERS CUT & BROKEN</u>
Floor/Exhaust Fan	<u>OLD LINOLEUM</u>	<u>VERY DIRTY</u> <u>CE</u>
Cabinets/Counters	<u>OLD VARNISH</u>	<u>FILTHY</u> <u>CE</u>
Appliances/Drains	<u>NEW STOVE, NEW FRIDGE</u>	<u>FILTHY & FULL OF STUFF</u> <u>CE</u>
Living Room:		
Walls/Ceiling	<u>NEWLY PAINTED</u>	<u>NO STOVE, BROKEN FRIDGE</u> <u>CE</u>
Floor/Carpet	<u>NEW CARPET</u>	<u>DOOR KNOB HOLE, FILTHY, MOLD, MICE</u> <u>CE</u>
Windows/Drapes	<u>NOT BROKEN/CLEANED</u>	<u>NEEDS REPLACING</u> <u>CE</u>
Bedrooms:		
Walls/Ceiling	<u>NEWLY PAINTED</u>	<u>NEEDS NEW SHADES</u> <u>CE</u>
Floor Carpet	<u>NEW CARPET</u>	<u>NEW PAINT-GREEN</u> <u>CE</u>
Windows/Drapes	<u>NOT BROKEN/NEW SHADES</u>	<u>NEEDS TO BE REPLACED</u> <u>CE</u>
Bath:		
Walls/Ceiling	<u>NEW PAINT</u>	<u>DOOR KNOB MISSING, HOLE 3/4</u> <u>CE</u>
Floor/Windows	<u>OLD LINOLEUM/NOT BROKEN AS BEFORE</u>	<u>FILTHY</u> <u>CE</u> <u>HANDLE BROKEN</u>
Fixtures	<u>ALL FUNCTIONING</u>	<u>ALL FUNCTIONING</u> <u>CE</u>
Yard/Patio	<u>CLEAN GRASS, SOME NEW SOD</u>	<u>NEGLECTED</u> <u>CE</u>

Approved Smoke Detection Device installed outside bedroom and tested Yes No (Circle one)

Other: NEW SCREEN DOORS FRONT & BACK FIRE EXTINGUISHER

Date 4/14/04 Lange Lessor or Lessor's Agent Signature _____ Tenant Signature and Receipt for Copy

WITHIN FOURTEEN DAYS AFTER TENANT MOVES OUT, LESSOR IS REQUIRED BY LAW TO COMPLETE THE FOLLOWING (OR A SIMILAR STATEMENT) AND DELIVER PERSONALLY OR MAIL IT WITH ANY REFUND TO TENANT (AT TENANT'S LAST KNOWN ADDRESS).

AMOUNT OF DEPOSIT	\$ <u>500.⁰⁰</u>	LESS:
Unpaid rent for period <u>1/2/09</u> to <u>3/2/09</u> inclusive	\$ <u>950.⁰⁰</u>	
Deduction for damage and/or lack of cleaning (detail):	<u>100.⁰⁰</u>	
<u>LACK OF CLEANING COSTS</u>	<u>600.⁰⁰</u>	
<u>OF HAULING STUFF AWAY</u>		
Other Deductions (detail):		
<u>DAMAGE TO INTERIOR</u>	\$ <u>T.B.D.</u>	
<u>DAMAGE TO GROUNDS</u>		
TOTAL DEDUCTIONS	\$ _____	
REFUND CHECK ENCLOSED	\$ <u>-0-</u>	

Date 9/4/2009 Lange Lessor or Lessor's Agent Signature

9/1/09 WATER 1183.13 cuft
 POWER 43889
 "PATRICIA"

1 x E

DLANGE

4085 Hillcrest Ave. S.W.

Seattle, WA 98116

206) 932-0789

APPLICATION FOR TENANCY

Date 4.11.04

Date Required _____

Please Print

Applicant's Full Name FRANCIS S. WHELAN Phone 206.669.8357

Present Residence 1519 E. MADISON Res. Phone 206.767.8010

Apartment Name of Applicant's Present Residence _____ Apt. No. _____

Social Security No. 584.51.0629 Age: 40 Smoking: Yes No

Rent \$ 685.00 Plus Utility Charge \$ _____

Employed by _____ Phone _____

Occupation ACCOUNTANT How Long 4 YEARS

Average Salary or Annual Income \$ 42000.00

Number of Adults to Occupy _____ Number of Children under 18 NO

Pets to Occupy NONE

Make of Car(s) DODGE PICKUP License No.(s) 534333
2004

In Case of Serious Accident or Illness Please Notify:

Name FRANK S. WHELAN

Address 685 RIDGEMAN ROAD Phone 503.274.1248

Wife's (or Husband's) Full Name LAKE OSWEGO, OR

Employed by _____ Phone _____

Occupation _____ How Long _____

Bank Reference VIKING BANK Branch 1ST & FIDELITY

Credit References: VISA or MASTERCARD Card No: _____

- _____
- _____
- _____

Personal References:

BOWSER SHIRLEY 910 MARION

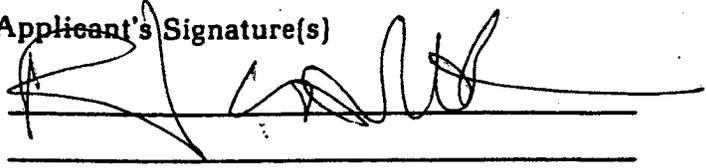
1. BRETT BOWSER Phone 206.621.9046

2. LALRIE KIPP 3026 NE 135th Phone 206.523.0786

Referred by STEPHANIE CARR

Approved _____

Credit Report _____

Applicant's Signature(s)


Approved Application _____

Date _____

Ex 2

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8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF KING**

10 PETER J. LANGE
11 Plaintiff

12 v.

13 FRANCIS S. WHELAN
14 and any and all other occupants
15 Defendant

NO. 09-2-18868-8 SEA

AFFIDAVIT by Don Idler
Unlawful Detainer

16 COMES NOW Don Idler and affirms as follows:

17 I, Don Idler, am over the age of 18 years, not a party to this lawsuit and competent to testify.

18 On March 24 2009 I met Peter Lange at 507 S. Brandon St. to look at a tiled wall in the
19 bathroom, to give an estimate of the cost of repair. I agreed to come back on 29th/31st
20 and install the tiles and to come back the next day to grout the spaces in-between. We, Peter
21 Lange and myself, agreed that the exposed wall had to dry out before I could start repairs and
22 the water remaining in the bathtub had to be wiped-up. Peter volunteered to remove the
23 handles from the faucets to prevent continued use of the shower and to allow drying. Another
24 reason to remove the handles and the spout was to have access to the wall to fit the tiles in-
25 place. When I came back to install the tiles, the area was dry and clean.
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AFFIDAVIT by DON IDLER - 1

Peter J. Lange
4085 Hillcrest Ave SW
Seattle, WA 98116
(206) 932-0789

Ex 3

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On my three visits I observed a house standing in the parking lot, elevated. I observed many beer and pop cans laying about the yard and the inside of the house was untidy.

RESPECTFULLY SUBMITTED THIS 19 day of MAY 2009

Ronald E Idler

STATE OF WASHINGTON)
COUNTY OF KING) ss.

I certify that I know or have satisfactory evidence that the above named person appeared before me and said person acknowledged to have signed this document, on oath stated that it is the truth, so help me God, and acknowledged it to be his or her free and voluntary act for the uses and purposes mentioned herein.

SUBSCRIBED AND SWORN to before me this 19 day of May 2009



Carolyn Kincaid
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON.
CAROLYN KINCAID
residing at Kent

My commission expires: 2/8/12

Ex 3



Online Banking

Account Detail Return Landscape View

Description: CHECK 3111
Posting Date: 04/01/09
Amount: -\$120.00

Peter J Lange
Hilda Lange 206-932-0789
4085 Hillcrest Ave SW
Seattle, WA 98116

Date 3/31/09 19-2/1250 WA 92602 3111

PAY to the order of DON IDLER \$ 120.00

ONE HUNDRED TWENTY ^{NO}/₁₀₀ Dollars

Bank of America
3687 10467 6600723

West Seattle 082002 J Washington

For Peter J. Lange

⑆ 25000024⑆ 78637 360⑆ 3111 ⑆0000012000⑆

FOR DEPOSIT ONLY
Do not cash or deposit this check.
If you are cashing this check, you must use a teller or a self-service kiosk.
Do not write on this check.
Do not sign this check.
Do not alter this check in any way.
Do not use this check for any other purpose.
Do not use this check for any other purpose.
Do not use this check for any other purpose.

0350521222

WFB NB PORTLAND 03312009
TR6799KT 0013
1221-0119-1
6645626783

Peter J. Lange

Ex 3

March 31 2009.

REC'D AP 03

SHOWER USABLE 3/31
HANDLES REMOVED 3/24
PAID DON IDLER 3/31

Dear Mr. Lang:

You were notified about the leakage that was occurring to the bathtub and shower on March 23 2009. You proceeded to check the repairs needed and decided to turn off the water, removed the faucets and made the shower and bath tub inoperable. *You have failed to perform the repairs in a timely fashion (defined by RCW 59.18.070). In fact you have failed in your obligation of warranty of habitability.* Instead of making emergency repairs as required by law, you have taken longer than allowed. At the time of this letter 10 days have passed and it still has not been fixed. You have instructed me to take "sponge baths" or forgo bathing at all. This is unacceptable.

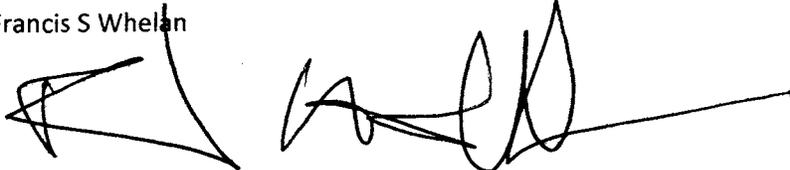
In the past I have had to purchase a stove because the one provided by you was broken and you could not fix it anymore. I was never reimbursed for that purchase. Additionally, during July 2008 you took the toilet off for 5 days, and we were not able to use the toilet at all, you actually told us to "shit in a bucket", this too was not only unacceptable but unlawful.

Due to the fact that the house was inhabitable by not making the repairs as mandated by law I will deduct the 9 days that we have been unable to bathe at all. Since the month of March has 31 days, I have arrived at a deduction of \$275.76 for those 9 days. This gives you a net of \$674.24 for the days that the house was habitable. I am offering this in good faith, as you are aware; I have been your tenant for over 5 years. If you would like to have arbitration about this matter, I am open to the idea. Remember, the aforementioned amount only relates to the 9 days that I was impeded to use the bathing facilities, any other issues are not addressed at this time. If you would like to enter my unit to do a necessary or agreed upon repair, inspection, or improvement please be sure to give me the 48 hours notice required by law.

I hope you understand that this has been very frustrating to say the least and I will like to end the matter in an amicable manner, please refrain from threatening eviction because I am claiming my rights. If you do have any questions or concern please do so in writing as I don't get to read all my emails every day.

Thank you in advance for your understanding.

Francis S Whelan



EX 4

UNITED STATES
POSTAL SERVICE

POSTAL MONEY ORDER

Serial Number

50230223234

Year, Month, Day

07 04 24

U.S. Dollars and Cents

07 4 * 24

Amount

Pay to
Address
PETER LANGRISH
4095 HILKREST SW
SEATTLE, WA 98116

07 04 24

From
FRANCIS S. WHELAN
Client

Address
SEATTLE, WA 98112

Memo

© 2008 United States Postal Service. All Rights Reserved.

SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

⑈000008002⑈

50230223234

04295805 1 04/06/09

674.24

50230223234
SEATTLE, WA 98112
07 04 24

MAXIMUM VALUE ONE THOUSAND DOLLARS

Francis S. Whelan

ENDORSEMENT SIGNATURE

WARNING-CASHIER
REQUIRE POSITIVE IDENTIFICATION
HOLD TO LIGHT AND CHECK FOR
BENJAMIN FRANKLIN WATERMARK AND SECURITY THREAD.
NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

Ex 4

04295805 1 04/06/09

674.24

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PETER J. LANGE
Plaintiff

v.

FRANCIS S. WHELAN
and any and all other occupants
Defendant

NO. 09-2-18868-8 SEA

AFFIDAVIT by T.J. Whitver
Unlawful Detainer

COMES NOW Timothy J. Whitver and affirms as follows:

1. I, Timothy J. Whitver, am over the age of 18 years and I am not a party to this lawsuit.
2. On May 1st 2009 I was at the residence of Peter Lange, Plaintiff. I witnessed the mailman asking Peter Lange to sign for one envelope of registered mail. I subsequently saw the envelope with my own eyes. Because Peter Lange had no letter opener available, I loaned him my pocket knife to slit open the envelope. I observed that there was a stub of a check inside, but no check attached. I commented on that fact and how weird that was.
3. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED THIS 6 day of May 2009

Tim Whitver

Ex 5

LANDLORD'S NOTICE TO

Date: April 3, 2009

To: **Francis S. Whelan and**
507 S. Brandon Street
Seattle, WA 98108

Fran
Sound
1463 E

To the above Tenant and all others now in possessi

Single Family, 2-Bedroom House at 507 S. Brandon St.

You are hereby requested to quit, vacate and deliver possession thereof to the undersigned on or before **April 30th, 2009**.

This notice to vacate is due to your following breach of tenancy:

1. Failure to pay rent and use of the premises violating occupancy.
2. Failure to maintain premises according to Rental Agreement dated 4/14/04
3. Introduction of two dogs, two chickens and two birds, destroying the lawn and not cleaning-up animal waste causing infestation by rodents
4. Introduction of additional occupants, living permanently in house. Subletting.
5. Painting in violation of Art. 7 of Rental Agreement
5. Making holes in walls, doors and windows and scratches by the dogs.
6. Failure to maintain smoke detection device and fire extinguishers.
7. Other contract violations of Rental Agreement as they may appear

Should you fail to vacate said premises within 20 days from service of this notice, or by the end of this Month, I will take such legal action as the law requires to evict you from the premises. You are to further understand that we shall in all instances hold you responsible for all present and future rents due under your tenancy agreement.

Peter J. Lange
Peter J. Lange

CERTIFIED MAIL, Return Receipt Requested

4554 1961 5000 DT42 2002 7002 7000 0005 7361 454

UNITED STATES POSTAL SERVICE™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	\$ 0.42	0048
Certified Fee	\$ 2.70	12 Postmark Here
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 3.12	04/04/2009

Sent To: **FRANCIS WHELAN**
Street, Apt. No., or PO Box No. **507 S. BRANDON**
City, State, ZIP+4 **SEATTLE 98108**

PS Form 3800, June 2002 See Reverse for Instructions

EX6

RECEIVED

29 MAY 2009 08 47

DEPARTMENT OF JUDICIAL ADMINISTRATION KING COUNTY WASHINGTON

RECEIVED

21 MAY 2009 09 50

DEPARTMENT OF JUDICIAL ADMINISTRATION KING COUNTY WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

PETER J. LANGE

Plaintiff(s),

vs.

FRANCIS WHELAN

, (tenants)

and all other occupants of (address)

507 S. BRANDON ST

SEATTLE, WA 98108

Defendant(s)

No. 09-2-18868-8 SEA

PLAINTIFF'S MOTION AND AMENDED DECLARATION FOR ORDER TO SHOW CAUSE

COMES NOW the Plaintiff(s), and moves the Court for an Order requiring the above-named Defendant(s) to appear before the above-captioned Court, EX PARTE Department No. W325, on the 29th day of MAY, 2009 at 9:00 a.m., and show cause why a Writ of Restitution should not be issued for eviction of the Defendant(s) from the premises.

This Motion is based on the file herein and on the following Declaration.

DATED this 20th day of MAY, 2009.

Peter J. Lange (Plaintiff's Signature)

Ex 7

DECLARATION

PETER LANGE

[Plaintiff's name] declares the following:

1. I am the owner of the property located at the address described in the caption above.

2. The foregoing action is for a Writ of Restitution by Order to Show Cause to restore possession to me of the described premises.

3. Defendant(s) took possession of the described premises at the time that the Defendant(s) rented the premises from me and the premises have been in the continuous possession of the Defendant(s) since that time.

4. Defendant(s) are delinquent in the payment of the monthly rental of \$ 950⁰⁰ for the month(s) of APRIL & MAY. ~~No~~ ^A part of said monthly rental has been paid by the Defendant(s) as of the date of this Declaration.

5. On APRIL 4th, 2009, PETER LANGE (name of individual who served notice), a competent adult, served the Defendant(s) with a 3-day Notice to Pay or Vacate in writing, informing them that rent in the total amount set forth in the Notice was due and owing, and notifying and requiring Defendant(s) to pay the same within the period set forth in the Notice, or, in the alternative, to vacate and surrender the described premises. Service was achieved on the Defendants in the following manner: (select method of service used.)

The Defendant(s) was personally served with the Notice.

The Notice was served upon a person of adequate age and discretion found in the premises and a copy was also mailed to the Defendant(s) by first class mail, postage prepaid, to the Defendant's place of residence.

The Notice was posted conspicuously at the premises and a copy was also mailed to the Defendant(s) by first class mail, postage prepaid, to the described premises. ~~A third copy of the Notice was left with an occupant of the premises,~~ (cross out if n/a).

6. The time within which the Defendant(s) were to have paid the rent owing or vacated the

3 day IS WRONG

Ex 7

1 premises has passed, and the past due rental and late charges have not been paid, nor have the
2 premises been vacated and surrendered by the Defendant(s).

3 I declare under penalty of perjury under the laws of the State of Washington that the above
4 statement is true and accurate to the best of my knowledge.

5 DATED this 20th day of MAY 2009, at SEATTLE, Washington.

6
7 Peter J. George
(Plaintiff's Signature)

8 AMENDED THIS 28th DAY OF MAY 2009

9 Peter J. George
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Ex 7

1 **NOTICE TO PAY OR VACATE**

2
3 TO: FRANCIS S. WHELAN

4 AND TO ALL TENANTS IN POSSESSION

5 You and each of you are notified that rent for the premises commonly known as

6 507 S. Brandon Street, Seattle, WA 98108
7 _____

8 is in arrears in the amount indicated:

9 rental period(s)	amount
10 <u>April 2009</u>	<u>\$275.76</u>
11 <u>May 2009</u>	<u>\$950.00</u>
12 <u>June 2009</u>	<u>\$950.00</u>
13 _____	_____
14 _____	_____

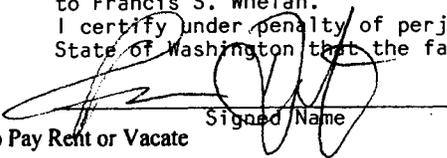
15
16 **YOU MUST PAY \$ 2,175.76 WITHIN THREE (3) DAYS**
OR VACATE THE PREMISES.

17 You are instructed to pay the above amount to the undersigned or vacate the premises
18 within three (3) days of service of this notice or your tenancy will be terminated and the landlord
19 will be entitled to all remedies relief and damages allowed by law.

20 DATED this 2nd day of June, 2009.

21 CERTIFICATION

22 I hereby certify that on JUNE 2nd 2009
23 I delivered a copy of this document to the
24 person on the premises, who called himself Rico
25 and, by knocking on the door, and when there was no
26 answer by attaching one copy each to each of the front
27 and back door and one copy to the door of the small
house on the premises, as well as one copy of "Got Mold?"
by Public Health. and I deposited in the United States Mail
a copy to which this certificate is attached for delivery
to Francis S. Whelan.
I certify under penalty of perjury under the laws of the
State of Washington that the facts alleged herein are true and accurate.


Signed Name

TRAVIS DUTY
Printed Name

Notice to Pay Rent or Vacate

Ex 8

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PETER J. LANGE
Plaintiff

v.

FRANCIS S. WHELAN
and any & all other occupants of
507 S. Brandon St. Seattle, WA
Defendant(s)

NO. 09-2-18868-8SEA

DECLARATION OF ELISIO PEREZ

My name is Elisio Perez and I declare as follows:

1. I am not a citizen of the United States but a resident of the United States. I am over the age of 18 years and competent to testify.
2. Francis Whelan asked me to sign one sheet of paper stating that Mr. Lange took paperwork away from me.
3. Because I do not read or speak English very well, I did not understand exactly what this paper was about. It looked like something the attorney wanted. I signed it. There was nothing on that paper about penalty of perjury.
4. In fact, as I recall now, thinking back, when the man gave me the paperwork, Mr. Lange did not ask for it back or forced me. Mr. Lange never forced me to do anything.

I certify under penalty of perjury under the laws of the State of Washington that the above is true and correct.

DATED THIS 1 day of 7-99 2009 in Seattle, WA

ELISIO PEREZ
Elisio Perez

DECLARATION OF ELISIO PEREZ - 1 of 1

Elisio Perez

EX 9

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 Peter Lange

No. 09-2-27340-5 SEA

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11 Plaintiff(s),

12 vs.

STIPULATION

13 Eliseo Perez

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15 Defendant(s).

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COPY

The parties, personally and/or through their respective counsel, stipulate as follows:

- 18 ① Mr Perez will send a check for \$ 950⁰⁰ to Mr
19 Lange by July 30 (via mail)
- 20 ② Mr Perez will pay the utilities of \$ 226 in exchange
21 for the first half of August rent. (Copies of bills will be
22 provided.)
- 23 ③ Mr. Perez will try to be out by Aug 15th
24 If not he will pay for the 2nd half of
25 August on a weekly basis
- 26 ④ Mr. Perez + all occupants will be out by the
27 31st of Aug

762-7348
237⁵⁰-

Ex 10

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⑤ If they are not out by the 31st of August
a Writ of Restitution can be issued, and
Walters may obtain an order for
issuance of writ of restitution
without notice to defendants or their
attorney if defendants fail to
move as agreed.

7-29-09

Date

Raymond J. White
Attorney for Plaintiff(s) / WSBA #

July 29, 2009

Date

Robert # 40646
Attorney for Defendant(s) / WSBA #

July 29, 2009

Date

Elmer Remy
Defendant (s)

Date

Plaintiff (s)