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**Superior Court of Washington  
For Spokane County**

Autumn Leaf Furnished Apartments, dba  
Classyapartments.com, LLC,

Plaintiff,

v.

Carole Pentz, Nicole Graves, Tim Pentz, and all  
occupants at 12911 W. 13<sup>th</sup> Ave., Unit A203,  
Airway Heights, ,  
Defendants.

No. 21-202995-32

**Memorandum in Opposition to  
Plaintiff's Motion for Writ of Restitution.**

**1. Relief Requested.**

Defendants Pentz and Graves ask this Court to deny Plaintiff's Motion for Writ of Restitution and dismiss Plaintiff's Complaint.

In the alternative, Defendants ask this Court to set this matter for trial to determine whether Plaintiff entered into a landlord-tenant relationship with Defendants.

1 **2. Issues Presented.**

2 2.1. According to RCW 52.12.030, a pre-eviction notice must give a tenant the alternative of  
3 performing the alleged breach of covenant. Here, the 7-day notice provided by Plaintiff  
4 alleges that tenants breached the covenant of not paying rent. The notice did inform  
5 tenants of their opportunity-to-correct. Should this Court dismiss Plaintiff's Complaint  
6 because Plaintiff's pre-eviction notice was deficient?

7 Brief Answer: Yes. Because it gave deficient notice, Plaintiff cannot prove a cause of  
8 action for unlawful detainer. Thus, this Court lacks jurisdiction to hear the case.

9 2.2. Providing lodging for a continuous period of one month or more to a guest, resident, or  
10 other occupant is a rental or lease of real property. Here, Defendant Graves and  
11 Defendant Pentz have resided in unit A203 since July 2020. The utility bill in in  
12 Graves's name. Plaintiff's license to operate as a transient accommodation expired on  
13 May 21, 2021.<sup>1</sup> Did Plaintiff form a landlord-tenant relationship and subject itself to the  
14 Residential Landlord-Tenant Act?

15 Brief Answer: Yes.

16 **3. Statement of Facts**

17 Defendants expect to present the following facts at the show cause hearing.

18 On July 24, 2020, Nicole Graves filled out an online contact form saying she was looking for  
19 an immediate move in furnished or 2 bedroom. She received an email response back from  
20 [info@spokanecorporatehousing.com](mailto:info@spokanecorporatehousing.com) saying that there was available housing at Autumn Leaf

21  
22  
23 <sup>1</sup> Plaintiff's Complaint, Exhibit A.

1 Furnished Apartments: at 12911 W. 13th Airway Heights WA. 99001. One of options was a “6-  
2 month lease: 2 bedroom \$1,895/month (resident pays their own electricity).”

3 On July 28, 2020, Carol Pentz and Tim Pentz moved into apartment A203. Nichole Graves  
4 and her daughter moved in shortly after. The agreement was that rent was due on the 4<sup>th</sup> of each  
5 month. These tenants moved in with the knowledge of Jerry Ellsworth,

6 On September 2, 2020, Graves transferred the utility bill to her name by setting up an  
7 account with Inland Power and Light Company.

8 After the initial six-month lease was up, Tim Pentz, Nicole Graves, and her daughter  
9 continued to living in A203. The expectation was that monthly rent was due on the 4th of the  
10 month. Plaintiff deducted rent payments from Graves’ debit card and from Tim Pentz debit card.

11 Tim Pentz and Graves fell behind on rent, and Graves applied for rental assistance from the  
12 Spokane County Rent/Utility Assistance Program. Plaintiff accepted rental assistant payments  
13 from this Program for the following months in 2020: December.

14 Plaintiff accepted rent assistance from this Program for the following months in 2021:  
15 January, February, March, April, May, June, July, August, and September.

16 On May 21, 2021, Plaintiff’s license to operate as a transient accommodation expired.

17 On October 6, 2021, Plaintiff sent Carol Pentz, Nicole Graves and Tim Pentz, a 7-day Notice  
18 to vacate. This notice states:

19 You are receiving this notice because the Innkeeper (Operations Manager) allege you  
20 are not in compliance with the terms of our guest registration, and property policy. By  
21 failing to properly obtain permission to live or stay at the property, for failing to  
22 comply with policy and pay, for failing to honor the pay schedule set by Carol Pentz,  
23 for failing to correct several out of policy complaints that include but not limited to  
clean up own pet waste, smoking on the non-smoking property, not registering as a  
guest, not registering extra visitors as visitors or guest, subcharging  
unregister guest a room charge, defacing property, causing several

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1 complaints from other guest that cost loss of business and revenue.

2 Daily room charges and Airway Heights water Levy due for 8/19/2021 to  
10/6/2021: **\$2723.58**

3 Daily room charges and Airway Heights water Levy due for 10/7 //2021 to  
11/1/2021: **\$1515.34**

4 Total delinquent: **\$4238.92**

5 Paragraph 8 of Plaintiff's Complaint alleges, "Pursuant to RCW 59.18.620(7), the Plaintiff(s)  
6 seek to terminate the Defendant(s) tenancy at the Property because Defendants have unlawfully  
7 defaulted in payment of rent."

#### 8 **4. Legal Authority**

##### 9 **4.1. The Rules of Evidence apply at a Show Cause Hearing.**

10 Division 3 of Court of Appeals has held, "The rules of evidence apply to unlawful  
11 detainer show cause hearings, and inadmissible evidence may not be therein considered."

12 *Housing Authority of City of Pasco and Franklin County v. Pleasant*, 126 Wn. App. 382, 392,  
13 109 P.3d 422 (2005).

##### 14 **4.2. Standard of Review at a Show Cause Hearing.**

15 Upon commencing an unlawful detainer action, the landlord may file for a Show Cause  
16 Hearing to obtain a writ of restitution to repossess the subject premises pending the lawsuit. RCW  
17 59.18.370; *Carlstrom v. Hanline*, 98 Wn.App. 780, 788, 990 P.2d 986 (2000) ("Show cause  
18 hearings are summary proceedings to determine the issue of possession pending a lawsuit.").  
19 Pursuant to RCW 59.18.370 and 59.18.380, at a Show Cause Hearing, the Court shall decide (1)  
20 whether to issue of writ of restitution immediately restoring the Plaintiff to possession of the  
21 premises pending trial; and (2) whether there are substantial issues of material fact necessitating a  
22 trial. RCW 59.18.380 provides in relevant part:

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1 “The court shall examine the parties and witnesses orally to  
2 ascertain the merits of the orally to ascertain the merits of the  
3 complaint and answer, and (1) if it shall appear that the plaintiff has  
4 the right to be restored to possession if the property, the court shall  
5 enter an order directing the issuance of a writ of restitution,  
6 returnable ten days after its date, restoring to the plaintiff possession  
7 of the property and (2) if it shall appear to the court that there is no  
8 substantial issue of material fact of the right of the plaintiff to be  
9 granted other relief as prayed for in the complaint and provided for  
10 in this chapter, the court may enter an order and judgment granting  
11 so much of such relief as may be sustained by the proof.”

7 RCW 59.18.380 (numbers inserted and emphasis added).

8 In order to obtain possession *pendente lite*, the landlord must demonstrate that he or she is  
9 entitled to possession of the premises by at least a preponderance of the evidence. *Indigo Real*  
10 *Estate Servs., Inc. v. Wadsworth*, 169 Wn.App. 412, 426, 280 P.3d 506 (2012). This requires the  
11 landlord to submit admissible proof of four elements:

12 (1) Strict compliance with the time and manner of serving the pre-eviction notice.

13 *Christiansen v. Ellsworth*, 162 Wn.App. 365, 373, 173 P.3d 228 (2007).

14 (2) Substantial compliance with the content requirements of the notice. *Provident Mut.*

15 *Life Ins. Co. of Philadelphia v. Turner*, 155 Wn. 613, 617, 285 P. 654 (1930).

16 (3) Evidence that the tenant is in possession.

17 (4) Admissible evidence supporting the allegations in the pre-eviction notice. *Housing*

18 *Authority of City of Pasco & Franklin County v. Pleasant*, 126 Wn.App. 382, 392, 109 P.3d 422

19 (2005) (“In summary proceedings, the rules of evidence still apply; inadmissible evidence may not

20 be considered.”) (citing *Unger v. Cauchon*, 118 Wn.App. 165, 177 n. 34, 73 P.2d 1005 (2003)).

21 If the court finds that the landlord has proven by a preponderance of the evidence that he  
22 or she is entitled to immediate possession of the property, the court must then make a second

1 determination to decide if there are substantial issues of material fact requiring a trial. RCW  
2 59.18.380. If there are disputes of fact, the court cannot entertain a full trial on the merits because  
3 the Show Cause Hearing is not intended to be the vehicle for the ultimate determination of the  
4 parties' rights. *Carlstrom*, 98 Wn.App. at 788 ("A show cause hearing is not the final  
5 determination of the rights of the parties in an unlawful detainer action."). See also *Leda v.*  
6 *Whisnand*, 150 Wn.App. 69, 81, 207 P.3d 468 (2009) ("The Ledas make much of the fact that a  
7 RCW 59.18.380 show cause hearing 'is not a trial.' Indeed, it is undisputed that a defendant at  
8 such a hearing is not entitled to a full trial.") (citing *Carlstrom*, 98 Wn.App. at 789).

9 If the court denies the landlord's request for a writ of restitution, then the court must order  
10 a trial on the issue of possession within thirty days. RCW 59.18.380 ("If it appears to the court  
11 that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's  
12 motion for a writ of restitution and enter an order directing the parties to proceed to trial within  
13 thirty days on the complaint and answer."). However, if the court finds that the landlord is entitled  
14 to the writ of restitution but that there are substantial issues of material fact, then the court must  
15 order the matter to be set for trial "in the usual manner" and require the landlord to post a bond.  
16 RCW 59.18.380 ("The court shall also enter an order directing the parties to proceed to trial on the  
17 complaint and answer in the usual manner."). If there are no substantial issues of material fact,  
18 the court may issue a final judgment and dispose of the case. *Id.*

19  
20 **4.3. Because Plaintiff did not serve the tenants with the required pre-eviction notice**  
21 **under RCW 59.12.030, this Court should dismiss Plaintiff's Complaint.**  
22

1 Serving a 7-day notice under RCW 59.18.620 did not exempt Autumn Leaf from serving  
2 a pre-eviction notice under RCW 59.12.030.

3 "When interpreting a statute, we consider the public policy embodied in the  
4 legislation." *American States Insurance Co. v. Bolin*, 122 Wn. App. 717, 723, 94 P.3d 1010  
5 (2004)" Likewise, "we must interpret statutes so that all language is given effect with no portion  
6 rendered meaningless or superfluous. *Perez-Farias v. Glob. Horizons, Inc.*, 175 Wash.2d 518,  
7 526, 286 P.3d 46 (2012).

8 It is anticipated that Autumn Leaf will argue that a 7-day notice served pursuant to RCW  
9 59.18.620 preempts or supersedes the requirements of notice requirements set forth in RCW  
10 59.12.030. Such an argument violates both of the principles of statutory interpretation set forth  
11 above. The intent of the new legislation is to provide tenants with more protections, not less.  
12 Likewise, Autumn Leaf's interpretation renders every provision of RCW 59.12.030 superfluous.

13 As contemplated by the legislature, this Court should hold that the 7-day notice allowed  
14 by RCW 59.18.620(7) is very narrow in scope. The first sentence of 59.18.620 delineates the  
15 statute's narrow scope. It says, "The definitions in this section apply to RCW 59.18.625 and  
16 59.18.630 unless the context clearly requires otherwise." RCW 59.18.625 prohibits a landlord  
17 from evicting a tenant for non-payment of rent. RCW 59.18.630 prohibits a landlord from  
18 evicting a tenant without first offering a repayment plan. RCW 59.18.620(7) states, "'Tenant'  
19 does not include any individual residing in a hotel or motel or camping area as their primary  
20 dwelling for more than 30 days after March 1, 2020, if the hotel or motel or camping area has  
21 provided the individual with a seven-day eviction notice. . . ."

1 Thus, the 7-day notice provided for in RCW 59.18.620(7), allows a hotel-landlord to  
2 evict for non-payment of rent and to evict without offering a repayment plan, but it does not  
3 allow the landlord to evict without complying with the requirements of RCW 59.12.030.

4 Here, Plaintiff's Complaint alleges that it served a pre-eviction notice on tenants pursuant to  
5 RCW 59.12.030 and/or RCW 59.12.040. Plaintiff's Complaint, ¶ 6. The Complaint further  
6 alleges, "Defendants have unlawfully defaulted in payment of rent." Plaintiff's Complaint, ¶ 8.  
7 Plaintiff, however, did not comply with the requirements of RCW 59.12.030.

8 Because Plaintiff is seeking to evict tenant for defaulting in rent, the pre-eviction notice must  
9 give the tenants to pay rent or to vacate the premises. RCW 59.12.030(3) states:

10 A tenant of real property for a term less than life is liable for unlawful detainer . . . when  
11 he or she continues in possession in person or by subtenant after a default in the payment  
12 of rent, and after notice in **writing requiring in the alternative the payment of the rent**  
or the surrender of the detained premises . . . ."<sup>2</sup>

13 Here, the 7-day notice did not comply with the requirement of this statute because it did  
14 not notify the tenant of the alternative of paying rent to avoid eviction.

15 Tenants asks this Court to following the precedent set forth by the Washington Supreme  
16 Court in Hous. Auth. of City of Everett v. Terry, 114 Wash. 2d 558, 564–65, 789 P.2d 745,  
17 748–49 (1990). In *Terry*, the Court stated:

18 "Where a special statute provides a method of process, compliance [with that method] is  
19 jurisdictional." In an action for unlawful detainer alleging breach of covenant,  
20 a notice which does not give the tenant the alternative of performing the covenant or  
21 surrendering the premises does not comply with the provisions of the statute. In this case,  
22 the action was brought because Mr. Terry allegedly breached a covenant in his lease.  
Therefore, he was entitled to a notice which would provide him with, and inform him of,  
a 10–day period during which he could comply with the requirements of his lease. The  
document he received did not contain the statutory notice of opportunity-to-correct.

**Because it gave deficient notice, the Housing Authority could not prove a cause of**

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23 <sup>2</sup> Emphasis Added.



1 **action for unlawful detainer.** The Snohomish County Superior Court lacked jurisdiction  
2 to hear the case. The “jurisdictional condition precedent”<sup>10</sup> of proper statutory notice was  
3 not met. Under Washington law, Mr. Terry's motion to quash the process should have  
4 been granted.<sup>3</sup>

5 Like the Plaintiff in *Terry*, the Plaintiff in this case gave deficient notice. Because it  
6 gave deficient notice, it cannot prove a cause of action for unlawful detainer. Because  
7 Plaintiff cannot prove a cause action, this Court lacks jurisdiction to hear this case. Thus, this  
8 Court should dismiss Plaintiff’s Complaint with prejudice.

9 **4.4. The relationship between Plaintiff and Pentz/Graves is a “lease or rental of real  
10 estate” under the Washington Administrative Code which equates to a landlord-  
11 tenant relationship. WAC 458-20-118(2).**

12 WAC 458-20-188(2) states:

13 A lease or rental of real property conveys an estate or interest in a certain  
14 designated area of real property with an exclusive right in the lessee of continuous  
15 possession against the world, including the owner, and grants to the lessee the  
16 absolute right of control and occupancy during the term of the lease or rental  
17 agreement. An agreement will not be construed as a lease of real estate unless a  
18 relationship of "landlord and tenant" is created thereby. It is presumed that the  
19 sale of lodging by a hotel, motel, tourist court, etc., for a continuous period of  
20 thirty days or more is a rental of real estate.

21 Hotel guests can have one of two different legal relationships with the hotel—a lease or  
22 rental of real estate, or a license to use real estate. *Id.* Though subtle, the main differences  
23 between these two arrangements revolve around length of the stay and whether or not a landlord-  
24 tenant relationship is created. *Id.*; *See Lacey Nursing Center, Inc. v. State, Dept. of Revenue*, 11

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23 <sup>3</sup> Emphasis Added

1 P.3d 839, 847 (Wash. Ct. App. 2010) (“The distinction between a ... licensee and a tenant is  
2 subtle”).

3 Contrary to Plaintiff’s arguments, the line of demarcation is not whether Plaintiff is a  
4 “hotel,” the line of demarcation is whether Plaintiff entered into a landlord-tenant relationship  
5 with Defendants.

6 When a hotel provides lodging for more than 30 continuous days to a guest, it is engaged  
7 in “a lease or rental of real estate;” and the guest is a tenant rather than a “transient guest.” WAC  
8 458-20-166(3).

9 This distinction was clearly established in *Smith v. Dorchester Hotel Co.* when the  
10 Washington Supreme Court had to determine whether an imminent divorcee was a (transient)  
11 guest or a “boarder” (tenant) at a Seattle hotel. 259 P. 1085, 1086 (Wash. 1927) (stating that “the  
12 length of stay, the special contract for the room, the existence of a home elsewhere are all  
13 necessary and material ... factors in the question”). The Court found that he was a tenant because  
14 he had been at the hotel for four months, was paying a weekly rate instead of a daily rate, and  
15 had no other home.

16 Likewise, the parties in this case are engaged in a lease or rental of real estate. First,  
17 Plaintiff’s license to operate a transient accommodation lapsed in May 2021. Second, Graves and  
18 Tim Pentz are long-term tenants. The initial lease was for six month. Third, the utilities are in the  
19 name of Nichole Graves. Fourth, Plaintiff’s accepted rental assistance money. Fifth, unit A203 is  
20 Graves and Tim Pentz’s permanent home. These facts show that the relationship in this case rises  
21 above the level of a transient guest’s license and instead establishes a tenancy.

1 In light of these facts, a landlord-tenant relationship exists between the parties. Thus,  
2 Defendants were entitled to a 14-day notice to pay rent or vacate. See RCW 59.12.030 and  
3 RCW 59.18.650(2)(a). To repeat the argument above, like the Plaintiff in *Terry*, the Plaintiff  
4 is this case gave deficient notice. Because it gave deficient notice, it cannot prove a cause of  
5 action for unlawful detainer. Because Plaintiff cannot prove a cause action, this Court lacks  
6 jurisdiction to hear this case. Thus, this Court should dismiss Plaintiff's Complaint with  
7 prejudice.

8 In the alterative, this Court should set this matter for trial and let a jury determine  
9 whether the facts support a finding of "guest" or "tenant." Until a trier-of fact resolves this  
10 factual issue, Plaintiff is not entitled to possession.

## 11 **5. Conclusion**

12 This Court should dismiss Plaintiff's Complaint because:

- 13 • Plaintiff's pre-eviction notice is deficient.
- 14 • Plaintiff entered into a landlord-tenant relationship and did not comply with the  
15 requirements of the Residential Landlord-Tenant Act.

16  
17  
18 NORTHWEST JUSTICE PROJECT

19 Dated: November 15, 2021

20 \_\_\_\_\_  
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