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

Housing Resources Bainbridge
(HRB), a Washington non-profit
organization,

 Plaintiffs/Landlord/Owner,

vs.

Louis Alloin, Jean Alloin, and any
other residents of the premises,

 Defendants/Tenants/Occupants.

NO. 24-2-01082-18

Plaintiff's Response to Show Cause
Hearing Brief of Defendants

Comes Now Plaintiff Housing Resources Bainbridge (HRB), by and through its attorneys of record, Carrie E. Eastman and Sanchez, Mitchell, Eastman & Cure, PSC, who requests the Court issue an order on show cause granting Plaintiff a writ of restitution to restore possession of the subject real property to Plaintiff.

I. Relevant Statement of Facts

Plaintiff, Housing Resources Bainbridge (hereinafter HRB), rented the real

1 property located at 381 Wallace Way, NE, #204, Bainbridge Island, Kitsap
2 County, Washington, 98110, to Defendants Louis Alloin and Jean Alloin. Decl.
3 Elliott pg. 1, ¶ 3. Pursuant to the rental agreement, Defendants' tenancy is a
4 month-to-month tenancy. Id. at pg. 2, ¶ 4. Plaintiff does not receive a section 8
5 voucher or any federal funding for payment of Defendants' monthly rent. Id. HRB
6 applies for a bi-annual grant with Kitsap County under the Housing and
7 Homelessness Grant agreement, which source of funds comes from Washington
8 State's recording fees. Id. If the grant is awarded, some HRB tenants receive
9 rental assistance. The Defendants are recipients of rental assistance from this
10 Kitsap County grant, but are personally responsible for the full amount of rent, if
11 the grant is not awarded. Id. The real property at issue, HRB's Village Home
12 community, is not a federally funded property. Id. at pg. 2, ¶ 5. There is one
13 tenant, but not the Alloins, within the Village Home community, that has a
14 Section 8 housing choice voucher, which is a voucher attached to the resident-
15 meaning if that resident moves, the voucher moves with him. Id. It is not a
16 project-based voucher and the Village Home community is not funded by any
17 federal program. Id.

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21 On April 8, 2024, Defendants allowed water in their rental unit to overflow
22 from their rental unit into unit #107, which is directly below Defendants unit
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#204, causing extensive water damage to Defendants' rental unit and unit #107.

1 Id. at pg. 2, ¶ 6. Defendant Louis Alloin left a note on the door of unit #107, after
2 the flood that reads:

3 "CSC Member
4 Had a Water Spill again
5 206-780-6885

6 Louis 204W." Id. at pg. 2, ¶; exhibit A.

7 The occupants of unit #107 were displaced. Id. at pg. 2, ¶ 7. Plaintiff has
8 received repair estimates for repair of unit #107 from Servpro Kitsap County in
9 the amount of \$10,296.81, for removal of the damaged drywall and insulation, and
10 a repair estimate from Winslow Home Repair to replace the drywall and molding
11 in the amount of \$17,244.79. Id.

12 Plaintiff has been unable to get estimates or complete repairs to
13 Defendants' rental unit because Defendants have refused to clear excess personal
14 property out of the way.
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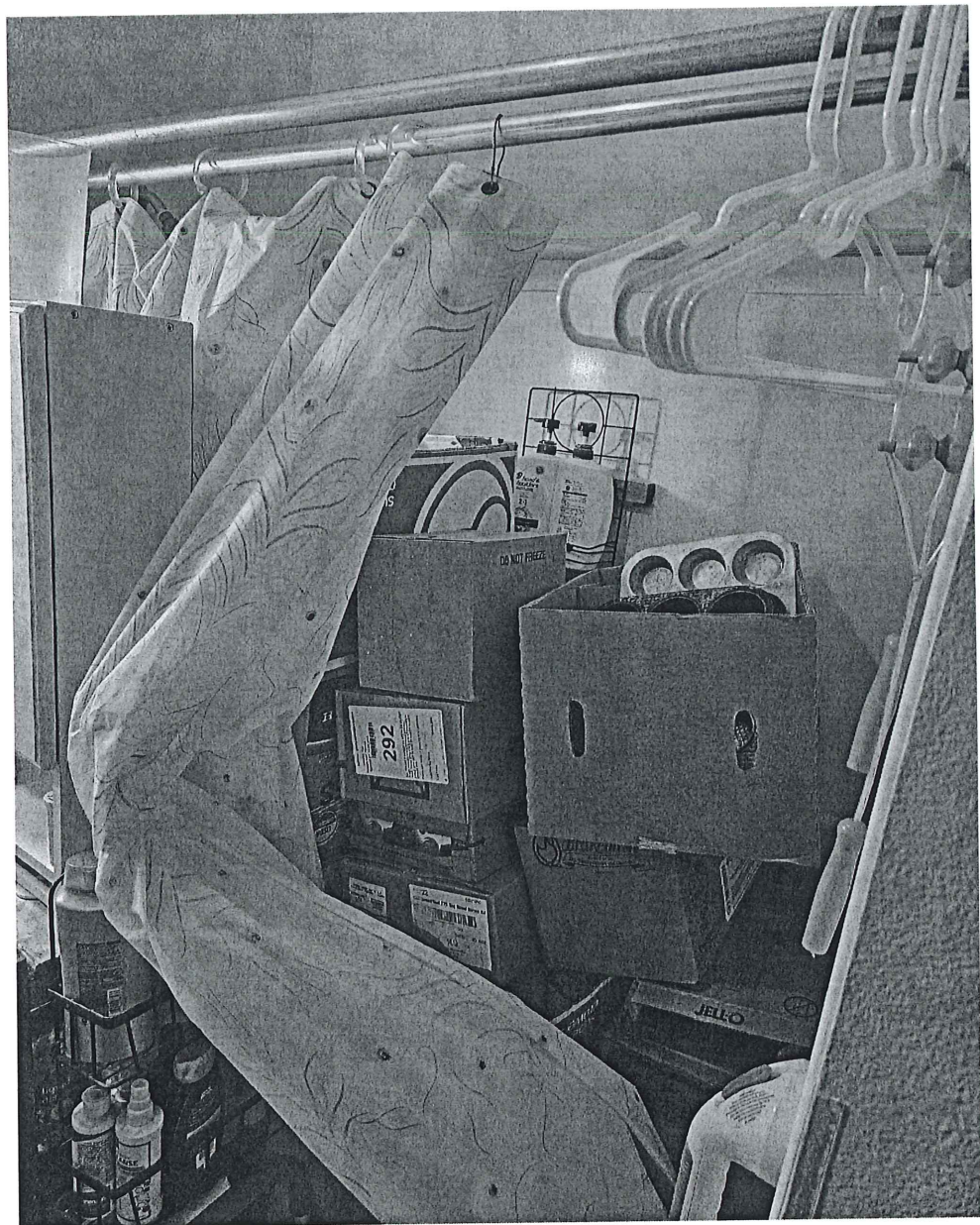
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22 The above photos are photos of Defendants rental unit taken on or about April 24,
23 2024, after the flooding. Decl. of Elliott, pg. 3, ¶ 10. Exhibit E.

1 Defendants have received a series of Ten-Day Notices to Comply or Vacate,
2 documenting Plaintiff's requests for Defendants to remove personal property
3 blocking ingress and egress from their unit, and to clear excess personal property
4 out of the way within Defendants' rental unit, so that Plaintiff can complete
5 repairs. Id. at pg. 3, ¶ 9, Exhibit D. Defendants have refused to comply with
6 Plaintiff's requests to remove excess personal property. Id. at pg. 3, ¶9.
7

8 Plaintiff had Defendants served with a 3 day notice to cure or vacate on
9 April 30, 2024, pursuant to RCW 59.18.650(2)(c).¹ Defendants did not vacate.
10 Decl. Elliott, pg. 3, ¶ 11. This Unlawful Detainer proceeding was then filed and
11 personally served on May 9, 2024.
12

13 I. Evidence Relied Upon

14 Plaintiff relies upon the Declaration of Phedra Elliott filed
15 contemporaneously herewith, the verified complaint on file herein, and the case
16 record and file herein.

17 II. Issues Presented

18 1. Did Defendants commit or permit waste or nuisance on the premises that
19 affects the use and enjoyment of the premises, such that Plaintiff's issuance of a
20 3-day notice to vacate pursuant to RCW 59.18.650(2)(c) was appropriate?
Answer: Yes.

21 2. Was a 3-day notice period sufficient, since the CARES Act does not apply
22 to this matter? Answer: Yes.

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¹ A declaration of service was filed as Exhibit B to the complaint.

III. Argument and Authority

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2 1. Defendants' flooding of their rental unit, and the unit below,
3 resulted in extensive water damage to the real property, displaced the
4 occupant from the unit below, and constitutes waste of the Plaintiff's
5 real property such that issuance of a 3-day notice to vacate pursuant to
6 RCW 59.18.650(2)(c) was appropriate.

7 RCW 59.18. does not define waste. The Washington State
8 Supreme Court, however, in *Graffell v. Honeysuckle*, tells us:

9 “ ‘Waste,’ as understood in the law of real property... is an
10 unreasonable or improper use, abuse, mismanagement, or omission
11 of duty touching real estate by one rightfully in possession which
12 results in its substantial injury. It is the violation of an obligation
13 to treat the premises in such manner that no harm be done to
14 them, and that the estate may revert to those having an
15 underlying interest undeteriorated by any willful or negligent
16 act... Waste may be either voluntary or permissive. Voluntary
17 waste, sometimes spoken of as commissive waste, consists of the
18 commission of some deliberate or voluntary destructive act, such as
19 pulling down a house, or removing things fixed to and constituting
20 a material part of the freehold. Permissive waste implies
21 negligence or omission to do that which will prevent injury, as, for
22 instance, to suffer a house to go to decay for want of repair or to
23 deteriorate from neglect.” *Graffell v. Honeysuckle*, 30 Wn. 2d 390,
398, 191 P.2d 858, 863 (1948).

18 In the case at hand, Defendants allowed water to overflow in their unit,
19 flooding the unit below. The Defendants' actions likely fall under permissive
20 waste, rather than commissive waste, but rise to the level of waste nonetheless.
21 Defendants' flooding has resulted in over \$27,000.00 in damages to the unit
22 below, and damages to the Defendants' unit, in an amount not yet known to
23

1 Plaintiff since Defendants will not remove their excess personal property, which
2 blocks access for Plaintiff to get in and make repairs.

3 Defendants want to downplay the seriousness of the damages to the real
4 property and refer to the flood as “water spillage”, but Plaintiff has provided,
5 with the declaration of HRB executive Director Phedra Elliott, photos of the
6 damage to the downstairs unit and estimates for the repairs. There is no
7 legitimate issue of material fact here. Defendant Louis Alloin, even left a note
8 on the downstairs unit door admitting to the flood. There is no disputing that
9 the flood Defendants permitted within their rental unit, resulted in substantial
10 injury to Plaintiff’s real property and constitutes waste.

11 Defendants want to distract the Court and manufacture an issue of fact
12 to delay termination of their tenancy and to do so, blame the Plaintiff for
13 Defendants’ own negligence that gave rise to the flood. The sad truth is
14 Defendants hoard excess personal property within their rental unit. They use
15 their shower as storage and have overcrowded their kitchen. It is these lifestyle
16 choices, and the actions of the Defendants, that caused the damage to the rental
17 property.

18 Whether the Defendants could have had or should have had alternative
19 methods to do their laundry, or wash their dishes, or whatever activity they
20 were doing when they allowed the flooding to occur, is irrelevant. The fact
21 that they did not have a washing machine in their rental unit, does not give
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1 them permission to be negligent with their use of water and allow significant
2 amounts of water to flood through their unit into the unit below them. With or
3 without a washing machine, Defendants had a duty not to permit waste of the
4 rental unit and they breached that duty.

5
6 Defendants permitted waste upon the rental property when they allowed
7 water to overflow and flood their unit and the unit below, and issuance of a 3-
8 day notice to vacate pursuant to RCW 59.18.650(2)(c) was appropriate.

9 **2. The Defendants' rent is not federally subsidized and the property**
10 **at issue is not federally funded, as such the CARES Act does not apply**
11 **to this matter.**

12 Defendants argue in their show cause hearing brief, that the property at
13 issue might be or could be covered by the CARES act and as such the notice
14 issued should have been a 30 day notice rather than a 3-day notice. The
15 Defendants are not on a voucher program, are not federally subsidized tenants,
16 and the subject property is NOT a federally funded property. As such the
17 CARES act does not apply to this matter. 15 USC 9058, defines a covered
18 property as:

19 **15 USC §9058. Temporary moratorium on eviction filings**

20 **(a) Definitions**

21 **In this section... (2) Covered property**

22 The term "covered property" means any property that-

23 (A) participates in-(i) a covered housing program (as defined in section
12491(a) of title 34); or (ii) the rural housing voucher program under
section 1490r of title 42; or (B) has a-(i) Federally backed mortgage loan;
or (ii) Federally backed multifamily mortgage loan.

1 The property at issue in the case at hand is located within Plaintiff's Village
2 Home Community. Plaintiff's Village Home Community is NOT funded by any
3 federal program and is not subject to a federally backed mortgage. Plaintiff's
4 Executive Director Phedra Elliott is well aware of HRB's funding sources and
5 has testified to this fact in her declaration submitted here with.
6

7 The CARES act has no application in this matter and the 3-day notice to
8 vacate issued pursuant to RCW 59.18.650(2)(c) was the appropriate and
9 applicable notice period.
10

11 IV. Conclusion

12 Defendants allowed water to flood from their rental unit, into the unit below
13 causing more than \$27,000 in damages and have failed to remove excess
14 personal property to allow for the repair of their rental unit since the flood.
15 Defendants were negligent in their actions and have permitted waste to occur
16 upon Plaintiff's real property. Plaintiff's real property at issue is not federally
17 funded and Defendants rent is not federally subsidized. The CARES act has no
18 application to this matter and the 3-day notice issued pursuant to RCW
19 59.18.650(2)(c) was the appropriate notice for Plaintiff to serve Defendants with.
20 Defendants did not comply with the notice and are in unlawful detainer.
21 Plaintiff respectfully requests the court grant its request for the issuance of a
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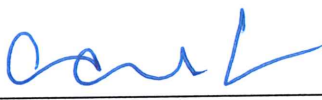
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writ of restitution.

DATED: July 10, 2024.

SANCHEZ, MITCHELL, EASTMAN & CURE, PSC

By: 

Carrie E. Eastman, WSBA No. 40792
Attorneys for Plaintiff