

TEXT OF ORAL ARGUMENT

Your Honor, the Defendant cost us **\$750.83** by unlawfully withholding our security deposit, in violation of CA Civil Code Section 1950.5(e), by acting in bad faith, and by breaching our Residential Lease contract with him. In our letters of 6/13/03(CNR,F) and 9/3/03(F) to the Defendant, we detailed the amounts that Defendant owes us.

1. Defendant unlawfully withheld **\$328.40** from our security deposit for a repair-and-deduct to fix a leaky toilet, which we were allowed under CA Civil Code Section 1942 [Exhibit Defendant's letter of 5/20/03 and copy of security deposit refund]. We notified the Defendant of the leaky toilet in our letters of 1/13/03(F), and 1/16/03(CNR,F,T). We never heard a response from the Defendant. Thirty days later on 2/16/03 we fixed the leaky toilet [Exhibit invoice from Cole Services, with letter dated 2/25/03(CR,F,T), and letter from Cole dated 5/29/03]. We notified Defendant of our repair-and-deduct in our letter of 2/25/03(CR,F,T). We EARLIER notified the Defendant of the leaky toilet in our correspondence to him on 11/03/02(F). The Defendant responded on 12/6/02 that he adjusted the floats to the leaky toilet, but this did not remedy the problem.

2. Defendant cost us a total of **\$44.42** by refusing to pick up February 2003 rent payment, thereby acting in bad faith. According to the Post Office, the initial February rent check sat in Defendant's Post Office from 1/23/03 to 2/26/03 [Exhibit USPS Track and Confirm of 2/27/03 for Certified Mail 7002 2410 0003 8680 0618]. However, Defendant claimed to have attempted to pick up this check on 2/15/03 and claimed it was not in the Post Office in his letters of 2/18/03 and 2/21/03 [qv]. (a) The certified mail for February rent check cost **\$4.42** [Exhibit certified mail receipt 1/21/03]. Because of our prior bad faith relationship with Defendant, we felt we had to send him the rent in a documented way. (b) The Stop Payment Order [qv for Check #1748, with letter dated 2/25/03(CR,F,T)] cost **\$15.00**; we had to stop payment on first February rent check because it was lost. (c) The wire transfer cost **\$25.00** [Exhibit Outgoing Wire Transfer Application 2/25/03, with letter dated 2/25/03, and Bank Statement of 3/22/03]. Due to our bad faith relationship with Defendant, we had to send him the rent in a documented way. In Defendant's letter of 2/21/03, he gave us until 2/28/03 to re-send February rent. We wired the money to the Defendant because he did not pick up the first certified mailing for February rent check.

3. Defendant breached our Residential Lease [Exhibit Residential Lease dated 5/4/02] for a condominium with TWO bathrooms at a rent of \$1900.00 per month, by leaving us without a functioning toilet in one bathroom for 30 days. We estimated the cost of this breach at **\$90.48** per month, using a method similar to that of *Cazares v. Ortiz* [1980, 109 Cal.App.3d Supp.23; 168 Cal.Rptr. 108]. We also feel we are entitled to an additional month and 21 days because we had to shut off the leaky toilet on 11/26/02. Defendant responded on 12/6/02 that he adjusted the floats to the leaky toilet, but this did not remedy the problem. We explained our reasoning to the Defendant in our letters of 1/16/03 [qv,CNR,F,T] and 9/3/03 [qv,F]; not having a toilet for 2 months and 21 days comes to **\$244.28**.

(Continued on Page 2)

TEXT OF ORAL ARGUMENT (Continued from Page 1)

4. The Defendant did not pick up four certified mailings that we needed to send him. These included pre-existing conditions of the condo required by lease paragraph 9(c) which we attempted to send him on 5/13/02 [qv] and 1/16/03 [qv], letter regarding leaky toilet on 1/16/03 [qv], and letter regarding inadequacy of security deposit refund on 6/14/03 [qv]. These four certified mailings cost us **\$18.35**.

5. In addition, we are asking the Court for reimbursement of the cost of the additional water usage on our water bill, which was **\$26.57** due to the leaky toilet. [Exhibit notice 2002, sent with letters of 1/13/03(F) and 1/16/03(CNR,F,T), and "Notice from water company on 10/29/02 and water bill for October, November, and December "How much water bill" worksheet.]

6. Due to Defendant's bad faith with us, we had to document the leaky toilet and the condition of the condo at the end of our lease using a video camera. We had to purchase six VHS videocassette cartridges, which cost a total of **\$13.49** [See letters to Defendant dated 6/13/03(CNR,F) and 9/3/03(F)].

7. Finally, the Defendant withheld **\$75.32** from our security deposit for two garage door remotes for an OLD garage door, which we returned to him [Exhibit Defendant's letter of 5/20/03]. However, on 11/03/02, he picked up these above parts along with all his other OLD garage door parts [Exhibit Defendant's letter dated 12/6/02, and our letter dated 12/9/02(F)]. [We sent back all properties belonging to Defendant before expiration of lease via insured mail. See our letter dated 4/19/03(F,T FAX DTD 4/21/03). See also receipts for package via insured mail sent 4/26/03 and received 5/13/03 via USPS confirmation].

We attempted to resolve this dispute through mediation on 7/1/03, [Exhibits paperwork from Saint Vincent de Paul Institute for Conflict Management (ICM) and FAX dated 7/2/03 to Paul Croulet of ICM] but we never received any reply from the Defendant.

We also petition the court to award us for "Bad Faith Claim" Statutory damages up to \$600.00 per CA Civil Code Section 1950.5 (k).

We have documentation of our claims, if you would like see them [wave the pile]. We did not cash Defendant's security deposit refund check, as we are in dispute about its amount.

END OF ORAL PRESENTATION

Code for Plaintiff's correspondence:

CNR = Sent by certified mail but not received by Defendant.

CR = Sent by certified mail and received by Defendant.

F = Sent by facsimile (FAX) to Defendant.

I = Sent by insured mail to Defendant.

T = sent with USPS Delivery Confirmation (i.e. tracker) to Defendant.

POSSIBLE CHALLENGES

DON'T BE INTIMIDATED BY THEM. REMEMBER YOU STAND ON TRUTH. GET ANGRY AT THEIR UNJUST ACTIONS AGAINST YOU!

1. **The judge does not let me speak.** **Answer:** Your honor, may I finish presenting my case? Is it not my *right* to present my case?

2. **Defendant/Judge claims the bill for the leaky toilet was too high.** **Answer:** We had to use week-end rates because this was the only time I could arrange for a plumber to fix the toilet, as I was very busy with work during that time and we have only one car, and my wife has an ongoing heart condition. [Exhibit Hoag Memorial Hospital Test dated 12/23/02].

3. **Defendant/Judge claims I had no right to charge so much to fix the leaky toilet.** **Answer:** The only legal limit on the amount is that it cannot exceed one month's rent, according to CA Civil Code Sections 1942(a) and (b), and according to *Grazer v. Flanagan* [1917, 35 Cal. App. 724].

4. **Defendant/Judge claims we did not need to fix the toilet because we moved out.** **Answer:** It was our legal right to fix the leaky toilet and deduct the cost from rent, per CA Civil Code Section 1942(a), because we were **still obligated to pay rent** on the unit until the end of April 2003, when the lease expired. We were paying \$1900.00 per month rent on this condo, which is supposed to have TWO bathrooms. We offered Defendant to end the lease in our letters of 12/9/02 [qv,F] and 1/16/03 [qv,CNR,F,T], but Defendant never responded.

5. **Defendant/Judge says, "It was minor what happened to toilet and so you could have just paid for your extra water bills and then sued Defendant in court for those costs."** **Answer:** This toilet DID NOT ALWAYS FLUSH; sometimes the stuff in the bowl would not go down. And the toilet leak cost us \$26.57. The water wastage kept going up higher every month. It went from our normal usage of 7 units for September, to 13 in October, and 14 in November, and then we shut off the toilet. We did not know the extent of malfunction of the toilet until the plumber evaluated it on 2/16/03 [Exhibit Cole Invoice of 2/16/03,sent with letter dated 2/25/03(CR,F,T)].

POSSIBLE CHALLENGES

DON'T BE INTIMIDATED BY THEM. REMEMBER YOU STAND ON TRUTH. GET ANGRY AT THEIR UNJUST ACTIONS AGAINST YOU!

6. **Defendant/Judge claims, "You can't claim damages for the first 60 days you had a leaky toilet because you did not let me know that the remedy of adjusting the floats did not work".** **Answer:** Defendant told us in his letter of 12/6/02 [qv] that he had adjusted the floats. Adjusting the floats has nothing to do with a leak; it has to do with how much water the toilet tank fills up with and uses in each flush. We were still researching the particulars of the leaky toilet. We had already notified Defendant on 11/03/02 [qv,F] that the toilet was leaking, but we were waiting for the water bills so we could let him know how much the damage was, which we did in our letters to him on 1/13/03 [qv,F] and 1/16/03 [qv,CNR,F,T].

7. **Defendant claims Steve Ruiz tried to handle our problem with leaky toilet, but we would not let him.** **Answer:** Steve Ruiz, the Defendant's listing agent, expressed to us that he wanted to look at the toilet [Exhibit Steve Ruiz's business card of 1/23/03]. We let him, but he never followed through on repairing the leaky toilet. We did ask for some documentation in our letter of 1/24/03 [qv,F] and Steve objected. In our response of 2/1/03 [qv,CR,F,T] to Steve, we gave permission to come regardless of any documentation. And a landlord does not need permission. According to CA Civil Section 1954, he only needs to give 24-hour notice and then can enter, with or without tenant's permission.

8. **Judge asks, "Why would a landlord even think of delaying receipt of rent for any month?"** **Answer:** According to the Post Office, the initial February rent check sat in Defendant's Post Office from 1/23/03 to 2/26/03 [Exhibit USPS Track and Confirm of 2/27/03 for Certified Mail 7002 2410 0003 8680 0618]. However, Defendant claimed to have attempted to pick up this check on 2/15/03 and claimed it was not in the Post Office in his letters of 2/18/03 and 2/21/03 [qv]. We contend that the Defendant's MOTIVE for delaying receipt of the rent for February 2003 is to deliberately put us in arrears so that we would not be permitted to use the repair-and-deduct remedy, as we said we would in our letter of 1/16/03 [qv,CNR,F,T] to Defendant.

POSSIBLE CHALLENGES

DON'T BE INTIMIDATED BY THEM. REMEMBER YOU STAND ON TRUTH. GET ANGRY AT THEIR UNJUST ACTIONS AGAINST YOU!

9. **Judge asks, "What mediation or alternate dispute resolution (ADR) did you try?"** **Answer:** After we attempted to send Defendant our claims by certified mail on 6/14/03, which Defendant never picked up and which the Post Office returned to us, we FAXED him that letter on 6/27/03, hoping for a reply. When we got none, we contacted the Institute for Conflict Management of the St. Vincent de Paul Society on 7/1/03, working with mediator Paul Croulet, at (714) 288-5600. To help Mr. Croulet mediate, we sent him on 7/2/03 a FAX copy of the Residential Lease contract, Defendant's letter to us of 5/20/03 describing his illegal keeping of some of our security deposit, and our letter of demand of 6/13/03.

10. **Judge asks, "On what do you base the assessment for not having a toilet?"** **Answer:** We pay \$1900.00 per month for this two-bedroom TWO-bath condo, which has a total of seven rooms. One of them, the master bedroom bathroom, has a dysfunctional toilet. Since we have lost the functionality of one-third of one room, and that room is one-seventh of the condo, we figured that the pro-rated value should be the one-third of one-seventh of the rent, or \$1900.00 divided by seven divided by three, which comes to \$90.48 per month. For the remaining 21 days, we use a *per diem* of \$90.48 divided by 30, or \$3.02. Our Residential Lease calls mentions prorating based on 30 days in Paragraph 1C. $(\$90.48 \times 2) + (\$3.02 \times 21) = \$244.28$. This is similar to the methodology given in *Cazares v. Ortiz* [1980, 109 Cal.App.3d Supp.23; 168 Cal.Rptr. 108]. We explained our methodology in our letters of 1/16/03 and 9/3/03 to Defendant, but Defendant never responded.

POSSIBLE CHALLENGES

DON'T BE INTIMIDATED BY THEM. REMEMBER YOU STAND ON TRUTH. GET ANGRY AT THEIR UNJUST ACTIONS AGAINST YOU!

11. **Judge asks, "How do you figure the excess water bill for the leaky toilet?"** **Answer:** We base this on the cost of our water bill over and above normal usage of water, which is 7 "units" of water. One "unit" equals 100 cubic feet. Before we got the notice from the Santa Margarita Water District on 10/29/02 [qv, attached to letters of 1/13/03(F) and 1/16/03(CNR,F,T)], 7 units was our monthly water consumption. Then, in October 2002, it rose to 13 "units", and in November 2002, it rose to 14 "units". We then shut off the leaky toilet on 11/26/03 to stop the water waste, as we told Defendant in our letters of 1/13/03 [qv,F] and 1/16/03 [qv,CNR,F,T]. The cost of water for 7 "units" per month is \$30.69 [Exhibit water bill 1/06/03 for Dec. 2002, sent with letters of 1/13/03(F) and 1/16/03(CNR,F,T)]. The bill was \$42.90 for October and \$45.05 for November [qv]. Therefore, the amount due to the leaky toilet was \$12.21 for October and \$14.36 for November, which adds up to \$26.57 [Exhibit "How Much water bill" worksheet]. We explained all this to our letters of 1/13/02 [qv,F] and 1/16/02 [qv,CNR,F,T] to the Defendant, but we never got any reply.

12. **Judge asks, "On what do you base your petition for the 'Bad Faith' claim for statutory damages per CA Civil Code Section 1950(k)?"** **Answer:** We cite the following as evidence of Defendant's bad faith:

(1) Illegally deducting our repair-and-deduct cost from our security deposit, in violation of CA Civil Code Section 1950(e) [Exhibit Defendant's letter of 5/20/03].

(2) Refusing to pick up our rent check for February 2003 [Exhibits USPS Track & Confirm for Certified Mail 7002 2410 0003 8680 0618, and Defendant's letters of 2/18/03 and 2/21/03].

(3) Refusing to fix a leaky toilet after first being given 60 days and then another 30 MORE days after informing Defendant that his so-called remedy did not work [Exhibits letters of 11/03/02, 1/13/03, and 1/16/03, and Defendant's letter of 12/6/03].

(4) Refusing to pick up certified mail which we had to document that we sent to Defendant, on 5/13/02, 1/16/03 (two letters), and 6/14/03.