Case # 28808 - Thurston County District Court
10/29/2009 9:00 AM

TEXT OF INITIAL ORAL PRESENTATION

Your Honor, I am suing the Defendant for compensation for diminished rental value, per Revised Code of Washington (RCW) 59.18.110. Defendant's contractor [Redrock Resurfacing] made us have to vacate our apartment that (a) was supposed to be fully renovated but (b) was not even ready for tenancy upon our move-in.

The Defendant advertised [*ForRent* Magazine, 20 August 2008] and then offered [DEPOSIT AND RENT STATUS form of 24 August 2008, filled out and signed by leasing agent, Jennifer Engel] to us a "fully renovated" apartment. However, the apartment had a latent defect – the surface of the walls surrounding the bathtub/shower, or the "surround" as Defendant's agents call it - was peeling off. The landlord's repair of the latent defect caused us to have to vacate the apartment for the day and rent a hotel room.

We cite the following two artifacts documenting the defect:
1. The Move-In/Move-Out List signed [by leasing agent Jennifer Engel] the day we began tenancy [1 September 2008] states, quote-unquote "Surround needs replacement."
2. Our List of Defects sent within two days of start of tenancy [3 September 2008] states, quote-unquote "Caulking and finishing in tub area not completed" [on page 5 under category of BATHROOM].

Further indication that we were misled into renting an apartment that was not quote-unquote fully renovated as advertised and offered were the faulty railings on all of the drawers in the kitchen and bathroom cabinets. According to their own advertisement [*ForRent* Magazine 20 August 2008] "New Interior Features" included "Custom Cabinetry". And per Defendant's Work Order [9888, Date Call 9/2/2008], Defendant's maintenance crew had to quote-unquote "REPLACE THE DRAWER RAILINGS ON ALL DRAWERS IN KITCHEN AND BATHROOM SO THEY SLIDE CORRECTLY." .

Also, the apartment was not even sanitary when we began tenancy. Caked-on bird droppings covered the floor, walls, railings, and light fixture of the balcony. We told Defendant of the bird droppings in our List of Defects [on page 1 under category of Patio], and per Defendant's Work Order [9888, Date Call 9/2/2008], Defendant's maintenance crew had to quote-unquote "POWER WASH AND SANITIZE THE PATIO AND MAKE SURE ALL BIRD CRAP IS REMOVED." .

But the surface of the walls surrounding the bathtub/shower, or the "surround", was a **violation** of Items (2), (5), and (7) **of RCW 59.18.060** [Landlord's duties: Item (2) is to maintain walls. Item (5) is to make repairs to keep premises in good condition at commencement of tenancy. And Item (7) is to maintain all facilities in reasonably good working order.]. A tenant is not expected to take a bath/shower in falling chunks of wall debris.

(Continued on Page 2)

TEXT OF INITIAL ORAL PRESENTATION (Continued from Page 1)

Defendant was aware of this defect from the all of the following:
-> Defendant's own Move-In/Move-Out List, signed by their leasing agent [Jennifer Engel] on 1 September 2008 - the day we began tenancy - states, quote-unquote "Surround needs replacement."
-> Our List of Defects that we sent to Defendant by facsimile (FAX) on 3 September 2008 states, quote-unquote "Caulking and finishing in tub area not completed" [on page 5, under category of BATHROOM].
-> Our FAX on 8 September 2008 and again on 12 September 2008, requested Defendant to fix the bathtub/shower surround.

But we heard nothing on this matter until 15 September 2008, with a FAX we received from the Defendant's contractors [Redrock Resurfacing]. The resurfacing of the bathtub/shower surround caused us monetary damage because it required that we vacate our apartment. Redrock Resurfacing's FAX [dated 15 September 2008, page 1] specifically states, quote-unquote "ALL RESIDENTS...MUST VACATE THE APARTMENT upon our arrival, until early evening of the same day." It further states quote-unquote "PLEASE ALLOW 24 - 48 hours for our surfaces to cure." Hence, the fumes from the curing process made our apartment uninhabitable for the entire day. The result diminished our rental value by one day – 18 September 2008, making it necessary for us to rent a hotel room for that day.

Also, by the time the Defendant's contractor fixed the "surround" - 18 September 2008 – fifteen days had passed since we first notified the Defendant of the defect [Our List of Defects, sent by FAX on 3 September 2008]. That is **five days beyond the time limit to fix according to RCW 59.18.070** [at most 10 days to fix defect] which qualifies our loss as diminished rental value per RCW 59.18.110.

Since the monthly rent for Unit E-304 was $1,175 [per our RENTAL AGREEMENT – WASHINGTON, signed on Monday, 1 September 2009], the pro-rated loss on 18 September 2008 was [$1,175 divided by 30 days in September, or] $39.17. Our hotel bill was $190.80 for a room [at SpringHill Suites Mariott, 200 SW 19th Street, Renton, WA 98505. Breakdown of total hotel bill is as follows:

Room Charge:	$ 169.00
Occupancy Sales Tax:	15.21
City Tax:	1.69
County Tax:	4.90
TOTAL Hotel Cost for 18 September 2008:	$ 190.80
Pro-rated loss of rent on 18 September 2008:	39.17
TOTAL LOSS DEMANDED FROM DEFENDANT:	$ 229.97]

We have documentation substantiating all of our claims if Your Honor would like to see them.

END OF TEXT OF INITIAL ORAL PRESENTATION

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. **Why did you sue PPC Newport LLC for this compensation? What do they have to do with your loss? Why did you not sue Newport Crossing Apartment Homes instead?** **Answer:** PPC Newport LLC is the owner of Newport Crossing Apartment Homes, located at 7311 Coal Creek Parkway SE, Newcastle, WA 98059. Per [the legal doctrine of] *respondeat superior*, the owner of Newport Crossing Apartment Homes is responsible for our loss.

According to the on-line map of the King County Assessor's Office, the Parcel Number corresponding to this address is 2824059026. And both of the following documents filed in the King County records show PPC Newport LLC as the owner of this Parcel:
(a) REAL ESTATE EXCISE TAX AFFIDAVIT # E2256923, filed on 12/21/2006.
(b) Grant Deed # 20061221001541, also filed on 12/21/2006.
Both of these documents refer back to Parcel Number 2824059026.

3. **Why did you bring this matter to this Small Claims Court? Since your loss happened at Newport Crossing Apartment Homes in Newcastle, WA, why did you not bring this matter to the district court there?** **Answer:** Per Item (1) of RCW 3.66.020, the district court has jurisdiction and cognizance of an action arising for recovery of money. Per Item (1) of RCW 3.66 040, the appropriate district court is the one for the district where Defendant – or his agent – resides. Defendant's agent in the State of Washington is Unisearch, Inc., an affiliate of National Registered Agents, Inc. (NRAI) for NRAI's business in the State of Washington. According to the web-site of the Washington Secretary of State – Department of Corporations, the registered agent for PPC Newport LLC in the State of Washington is NRAI.

4. **Why did you serve your summons onto Unisearch, Inc.? What do they have to do with this matter?.** **Answer:** Unisearch is the affiliate of National Registered Agents, Inc. (NRAI) in the State of Washington, and NRAI is the registered agent for PPC Newport LLC in the State of Washington. I found that out from the web-site of the Washington Secretary of State – Department of Corporations. [Their UBI Number is 602672733.] Per RCW 4.28.185, the registered agent of PPC Newport LLC is subject to the jurisdiction of the courts in the State of Washington, and Item (9) of RCW 4.28.080 allows me to serve summons to the corporation's registered agent.

POSSIBLE CHALLENGES

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5. **You know that you cannot rely on the web-site of the Washington Secretary of State – Department of Corporations. How do you know that Uniserarch is in fact the agent in this State of Washington for PPC Newport LLC? Answer:** On Friday, 5 June 2009, I called National Registered Agents, Inc. (NRAI) at (800) 767-1553 and spoke to Ronique, Customer Service at NRAI's main office in Princeton, NJ. Ronique confirmed that PPC Newport LLC is in fact a client of NRAI, from NRAI's office at 1780 Barnes Blvd. SW Bldg. G, Tumwater, WA 98512. Ronique furnished the following for that office:

-> Telephone Number: (800) 722-0708
-> Facsimile (FAX) Number: (800) 531-1717

Also, on Friday, 5 June 2009, I called the number (800) 722-0708 and spoke to Cheryl, who identified herself as the Operations Manager for a company called Unisearch, and then explained the following:

(a) Unisearch is an affiliate of NRAI, acting as their operation in the State of Washington.
(b) PPC Newport LLC is in fact a client of NRAI, using Unisearch's office for that purpose.
(c) Unisearch's address is the **correct address for service of process** for any legal business in the State of Washington for their client, PPC Newport LLC.

6. **Why did you not inspect the apartment before signing the lease? Answer:** The cited advertisement in *ForRent* magazine on 20 August 2008, and the cited DEPOSIT AND RENT STATUS form, would lead any reasonable person to believe that we were going to get a fully renovated apartment, with the exception of the washer and dryer, which would be used but workable. The Defendant's leasing agent [Jennifer Engel], told us that the apartment, Unit E-304, would not be available for any viewing before 1 September 2008, when we were supposed to begin our tenancy. Because Defendant's leasing agent [Jennifer Engel] specified in the DEPOSIT AND RENT STATUS form that Unit E-304 would be fully renovated and signed on behalf of Defendant, we had every reason to expect that our new apartment would be fully renovated and saw no need to inspect.

7. **Why did you go to such an expensive hotel? Answer:** We did not have a credit card, so we had to go to a hotel that accepts cash for payment. From Monday, 15 September 2008, when we first received the FAX from RedRock Resurfacing, to 18 September 2009, when we had to vacate for the repair of the "surround," the only hotel in the area that we were able to find that accepted cash for payment was the SpringHill Suites Marriott in Renton, WA.

POSSIBLE CHALLENGES

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8. **How do you claim that the hotel bill is part of "diminished rental value" per RCW 59.18.110? Answer:** We had no place to stay for the time that Defendant's contractor, RedRock Resurfacing, needed us out of the apartment. **People rent apartments precisely to HAVE A PLACE TO STAY.** So not only were we out the money for loss of the apartment for Thursday, 18 September 2008, but we still needed a place to stay for that day. And the need to repair the bathtub/shower "surround" during our tenancy arose because Defendant's leased an apartment to us that was not even ready for tenancy – after assuring us that not only would our Unit E-304 at Newport Crossing Apartment Homes be ready for tenancy, but fully renovated as well.

Defendant's agents knew or should have known that this apartment had a latent defect that would require the tenant to vacate in order to fix. As a result of their omission of material facts regarding the apartment's condition, we were put in a situation where we had to use a hotel for that day.

Besides that, the Defendant's contractor did not fix the "surround" until 15 days from when we first notified Defendant's agents of the problem with the "surround" on [page 5, under the category of BATHROOM, of] our List of Defects sent on 3 September 2009. That is five days beyond the 10-day limit to fix from Item (3) of RCW 59.18.070. In accordance with Item (1-b) of RCW 59.18.110, our loss therefore qualifies as a diminished rental value.

Redrock Resurfacing's FAX [dated 15 September 2008, page 1] specifically states, quote-unquote "ALL RESIDENTS...MUST **VACATE** THE APARTMENT upon our arrival, **until early evening** of the same day." It further states quote-unquote "**PLEASE ALLOW 24 - 48 hours for our surfaces to cure.**" This means that we had to be out of our apartment from 9:00 AM, when RedRock came to our apartment, until early evening – about 6:00 PM. Where were we supposed to stay during that time? Also, this means that the fumes from the curing process made our apartment uninhabitable for the entire day. Again, where were we supposed to stay while our apartment is still full of fumes from the curing process?

POSSIBLE CHALLENGES

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9. **The Defendant claims that his agents specifically worked with you on choosing a date when you would be able to be out of your home for the day, and not need shower facilities for 48 hours, to re-surface the bathtub/shower "surround" and that the work had to be done between 9:00 AM and 11:00 AM. So how can you claim that you needed a hotel room for the day of the re-surfacing work? Answer:** This is a lie by the Defendant, and we can cite the following four artifacts to show that we had to communicate three times to get the Defendant to fix the bathtub/shower "surround":

1. Our List of Defects that we sent to Defendant by facsimile (FAX) on 3 September 2008 states, quote-unquote "Caulking and finishing in tub area not completed" [on page 5, under category of BATHROOM].
2. Our FAX on 8 September 2008 requested Defendant to fix the bathtub/shower "surround".
3. Our FAX on 12 September 2008 requested again that Defendant fix the bathtub/shower "surround".

But we heard nothing on this matter until 15 September 2008, when we received a FAX from the Defendant's contractors [Redrock Resurfacing] informing us that they were coming to fix the bathtub/shower "surround" on 18 September 2008 between 9:00 AM and 11:00 AM.

10. **The Defendant says that the bathtub/shower "surround" resurfacing was never a guaranteed component of the renovation. So how can you prosecute for reimbursement for fixing the bathtub/shower "surround"? Answer:** Defendant's leasing agent [Jennifer Engel] wrote in the DEPOSIT AND RENT STATUS form that, quote-unquote "This unit will be fully renovated [w/new carpet, paint & blinds, Linoleum, appliances Light fixtures] w/exception of Washer and dryer." Defendant's leasing agent **did NOT write**, "with exception of the bathtub/shower surround."

Also, the condition of the walls surrounding the bathtub/shower is NOT a matter of renovation. They should be in good condition – renovation or no renovation – **before** we move in. Having dilapidated walls surrounding the bathtub/shower is a **violation** of Items (2), (5), and (7) **of RCW 59.18.060** [Landlord's duties: Item (2) is to maintain walls. Item (5) is to make repairs to keep premises in good condition at commencement of tenancy. And Item (7) is to maintain all facilities in reasonably good working order.]. A tenant is not expected to take a bath/shower in falling chunks of wall debris.

POSSIBLE CHALLENGES

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11. **The Defendant claims that you were dissatisfied with the aesthetic appearance of the bathtub/shower "surround" and that the work was purely cosmetic. So how can you prosecute for reimbursement for fixing the bathtub/shower "surround"? Answer:** This is a lie by the Defendant, and we can cite the following four artifacts to show that this is a lie:
1. Our List of Defects that we sent to Defendant by facsimile (FAX) on 3 September 2008 states, quote-unquote "Caulking and finishing in tub area not completed" [on page 5, under category of BATHROOM].
2. Our FAX on 8 September 2008 requested Defendant to fix the bathtub/shower "surround".
3. Our FAX on 12 September 2008 requested again that Defendant fix the bathtub/shower "surround".
4. Defendant's own Move-In/Move-Out List, signed by their leasing agent [Jennifer Engel] on 1 September 2008 - the day we began tenancy - states, quote-unquote "Surround needs replacement."

Defendant's claim that the work on the bathtub/shower "surround" was purely cosmetic is non-sense, because what **landlord fixes anything for purely cosmetic reasons for just one tenant**? Also, if the work on the bathtub/shower "surround" was purely cosmetic, then why did the Defendant not answer our two FAXes of 8 September 2008 and 12 September 2008?

12. **The Defendant claims that the peeling wall of the bathtub/shower "surround" did not interfere with your ability to use the shower/tub facilities. So how can you prosecute for reimbursement for fixing the bathtub/shower "surround"? Answer:** Twice in her letter on 26 June 2009, Defendant's agent [Stacy Pegram, manager of Newport Crossing Apartment Homes] admits that the walls of the bathtub/shower "surround" were peeling.
-> In the last sentence of the third paragraph on Page 1.
-> In the first sentence of the last paragraph on Page 2.

The "surround" was a **violation** of Items (2), (5), and (7) **of RCW 59.18.060** [Landlord's duties: Item (2) is to maintain walls. Item (5) is to make repairs to keep premises in good condition at commencement of tenancy. And Item (7) is to maintain all facilities in reasonably good working order.]. A tenant is not expected to take a bath/shower in falling chunks of wall debris. This condition of the walls surrounding the bathtub/shower was not sanitary. In all the years that we have rented apartments, we have never had such an obviously unacceptable defect in any apartment that we ever lived in.

POSSIBLE CHALLENGES

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13. **Normally, when a landlord has to repair something that necessitates that the tenant vacate, the tenant just vacates and that is that. But you are (a) demanding reimbursement from the Defendant for your hotel expense and (b) doing so on grounds of fraud. Why? Answer:** Well, the advertisement from Newport Crossing Apartment Homes on 20 August 2008 and the DEPOSIT AND RENT STATUS form were clear that this Unit E-304 was supposed to be a **fully renovated apartment,** but when we first gained access when we began tenancy, we discovered that the apartment was not even ready for tenancy. This was definitely NOT a case of something breaking unforeseeably and needing the landlord to fix. The bathtub/shower "surround" was **dilapidated BEFORE WE EVEN MOVED INTO OUR APARTMENT,** and the **Defendant's agents either knew or should have known about this defect.** And yet they insisted on keeping the rental agreement in full force, even though they mis-led us when we signed it.

It was fraud for the Defendant to lead us to believe that Unit E-304 at Newport Crossing Apartment Homes would be fully renovated, and then deliver an apartment not even ready for tenancy.

As a result, we had to spend money to go to a hotel for the day that the Defendant's contractor fixed the bathtub/shower "surround". Had we known that the "surround" would be dilapidated when we began our tenancy, we could have made the reasonable decision not to rent this apartment, or rent it after the defects were fixed, and there would have never been a need for us to rent a hotel room. Our hotel expense is **solely due to the fraud of Defendant's agents.**

14. **Why did you not just vacate the apartment and leave? After all, vacating is a remedy under Item (1) of RCW 59.18.090. Answer:** We were very concerned that Stacy Pegram, Defendant's manager of Newport Crossing Apartment Homes, would use our vacating the apartment as an excuse to report to credit agencies that we had abandoned the apartment. We were also very concerned that she would use our Rental Agreement as an excuse to force us to pay rent for the entire term of the Rental Agreement, even though we move out.

Besides, vacating would not make us whole for the loss that we suffered in losing use of the apartment for a day and our hotel bill.

POSSIBLE CHALLENGES

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15. **Why did you wait so long after accruing the cause of action to presente your claim? Answer:** Well, first of all per RCW 4.16.130, the statute of limitations is two years after the cause of action occurred, which in this case was 18 September 2008, when repair activity by Defendant's contractor, RedRock Resurfacing, made it necessary for us to vacate our apartment and rent a hotel room for that day.

Secondly, Stagy Pegram, manager of Newport Crossing Apartment Homes and therefore Defendant's chief agent, acted in bad faith from the beginning of our tenancy at Newport Crossing Apartment Homes. We signed our Rental Agreement on 1 September 2008 in good faith, from Newport Crossing's advertisement in *ForRent* magazine on 20 August 2008 and from the DEPOSIT AND RENT STATUS form completed by Defendant's leasing agent [Jennifer Engel] on 24 August 2008. But after we saw that the apartment was not even ready for tenancy, we told Stacy Pegram that we no longer wished to rent that apartment. We even offered her to keep both the holding deposit and application fees if she would dissolve our Rental Agreement. It was a fair proposal because (a) Defendant would not lose any money keeping the apartment off the market and (b) the apartment was not even ready for tenancy anyway. But Stacy Pegram refused our offer.

This made it clear to us that Stacy Pegram acts in bad faith. So we became concerned that, if we were to present our demand for diminished rental value between 18 September 2008, when we accrued this cause of action, and 31 March 2009, when our lease expired, Stacy Pegram's reaction might be (a) to retaliate against us, forcing us to vacate early with some bogus complaint or (b) to declare us in arrears in rent if we should deduct our diminished rental value from the "surround" from a subsequent rent. Either response could result in a wrongful eviction, which, once on our record, would make it very difficult to rent another apartment.

By the way, Stacy Pegram confirmed our fears of bad faith dealings when she wrote the following in her letter of 26 June 2009. I quote:
-> "the tub/shower was perfectly usable as it was" and
-> "the work was purely cosmetic" and
-> "the peeling wall did not interfere with your ability to use shower/tub facilities."
Stacy Pegram had the audacity to make such statements even though:
(a) her own subordinate, Jennifer Engel reported on the Move-In/Move-Out List on 1 September 2008 that, quote-unquote "**Surround needs replacement**,"
(b) we reported in our List of Defects on 3 September 2008 that quote-unquote "Caulking and **finishing in tub area not completed**,"
(c) we sent two FAXes to Defendant's agents on 8 September 2008 and 12 September 2008, requesting to fix the bathtub/shower "surround", and
(d) Defendant's own contractors, RedRock Resurfacing, fixed the bathtub/shower "surround" on 18 September 2008.

POSSIBLE CHALLENGES

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16. **I am not sure that RCW 59.18.110 covers this loss. Would this better be a common-law case of negligence? Answer:** Well, per Howard vs. Horn [61 Wn. App. 520 810 P.2d 1387], " .. common law negligence encompasses four basic elements: duty, breach, proximate cause, and injury." Also, "(a) duty may arise from common law principles or a statue or regulation."

Duty comes from Item (5) of RCW 59.18.060, which requires a landlord to "make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy. Also, Items 2 and 7 of RCW 59.18.060 specify s lsndlord's duty to maintain walls (Item 2) to resist normal usage and maintain the plumbing and other facilities (Item 7).

Breach comes from the peeling surround that we found when we began tenancy, as documented in (a) the Move-In/Move-Out List signed [by leasing agent Jennifer Engel] the day we began tenancy [1 September 2008], which states, quote-unquote "**Surround needs replacement,**" (b) our List of Defects sent within two days of start of tenancy [3 September 2008], which states, quote-unquote "Caulking and **finishing in tub area not completed**" [on page 5 under category of BATHROOM].

Proximate cause comes from having to vacate our apartment for resurfacing the "surround," as documented in a FAX from RedRock Resurfacing, Defendant's contractor, on 15 September 2008.

And injury comes from (a) losing a day's rent and (b) having to go to a hotel, as documented with our hotel bill.

Furthermore, in Dexheimer vs. CDS [104 Wn. App. 464], Item [9] states: "Under the common law a tenant may recover damages from a landlord for injuries caused by a latent defect in the leased premises if the landlord had knowledge of the defect." In this case, the Defendant either **knew or should have known about the dilapidated "surround" but it was latent to us** because we saw no reason to view the apartment until after we signed our lease, because of the advertisement in *ForRent* magazine and the DEPOSIT AND RENT STATUS form. That latent defect cost us a day's rent and a stay at a hotel, for which we now sue for compensation.