

APR 23 1986

Randy
APPELLATE
DEPT. 22

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

4-21-86 H.H. BENJAMIN TRAVIS, P.J. . Judge CHARLENE GOFF . Deputy C
WINTON MCKIBBEN, J. . Deputy Sheriff . Reporter
MARK EATON .

ACORN I, LTD Counsel appearing
for Plaintiff

Plaintiff & Appellant
vs Counsel appearing
for Defendant

AUDREY WOOD

Defendant & Respondent

NATURE OF PROCEEDINGS APPEAL ON JUDGMENT ACTION No. 1445
Muni. No. 433860

In the above entitled action oral argument presented the Court orders the case affirmed. Respondent to recover costs on appeal.

The Court finds substantial evidence to sustain the decision of the Trial Court that the document as drafted was equivical. 3-0 Remittitur to Issue.

COPIES OF THIS MINUTE ORDER MAILED THIS DATE TO:

* WILLIAM H. LIGHTFOOT
95 So. Market St., Ste. 300
Po. Box 26634
San Jose, CA 95159

* ACORNS 10 day notice -
attached

/ KATHERINE E. MEISS
Legal Aid Society of Ala. Co.
2357 San Pablo Avenue
Oakland, CA 94612

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MUNICIPAL COURT OF THE STATE OF CALIFORNIA
OAKLAND-PIEDMONT-EMERYVILLE JUDICIAL DISTRICT

ACORN I, LTD.,

Plaintiff,

vs.

AUDREY WOOD,

Defendant.

STATEMENT OF DECISION

Case No. 433260

Dept. No. 2

STATEMENT OF DECISION

This matter having been tried before this Court on July 23, 1985, the Court finds as follows:

A "Ten-Day Notice To Pay Rent or Surrender Possession of Premises" (Exhibit 2) was served on defendant Audrey Wood pursuant to the service requirements of 24 C.F.R. §247.4(a). William H. Lighfoot" credibly testified that he personally served the Notice on defendant and also mailed it to her at the premises in question, 1162 8th Street, Apt. B, Oakland, California. Service of the Notice also complied with the California requirements of notice contained in CCP§1162.

Defendant Audrey Wood occupied the above premises on a month-to-month tenancy under a written agreement (Exhibit 1)

1 with Plaintiff Acorn I, Ltd. It provided that she was to pay
2 \$93.00 per month, raised to \$109.00 per month in November 1984.

3 Plaintiff is a multi-family housing complex that receives
4 federal assistance through the Mortgage Subsidy Program, §221(b)
5 (3), under the Federal Housing Act, 12 U.S.C. §1715 1(d)(3) and
6 Section 8 of the U.S. Housing Act of 1932, 42 U.S.C. §1437F.
7 Under these programs, HUD subsidizes the plaintiff for part of
8 the rent, and defendant is responsible for the balance of the
9 rent.

10 Based on credible evidence of Jerry Dickerson, manager of
11 plaintiff, defendant was in default in rent from June 1, 1985
12 at the rate of \$109.00 per month. This was not disputed by
13 defendant.

14 The "Ten-Day Notice To Pay Rent or Surrender Possession
15 of Premises," as served, does not comply with the strict require-
16 ments applicable to such notices under California law, CCP§1159
17 et seq. The notice, in attempting to comply with the federal
18 requirements of 24 CFR 886.128, 24 CFR 886.119(a)(5), and 24 CFR
19 247.4, is equivocal. California law requires that a notice to
20 quit premises be unequivocal in demanding payment of rent in
21 default or surrender of the premises. The notice in this case
22 is defective in complying with state law because it also contains
23 notice that the tenant, under federal law requiring notice of a
24 "proposed eviction action", may request a meeting with the land-
25 lord within ten (10) days to discuss the basis for the notice.
26 The notice further states that "The management will honor this
27 HUD requirement. However, please be advised that the above notice
28 means what is says and will remain in effect, unless withdrawn

1 in writing." (Exhibit 2)

2 Compliance with the requirements of California law may
3 be accomplished by the service of two separate notices that do
4 not overlap in time: one complying with state law and one com-
5 plying with federal law. However, the one notice served in this
6 cases -- while it may comply with federal law -- does not properl
7 meet the requirements of California law and cannot properly sup-
8 port a state action for unlawful detainer.

9 Judgment will accordingly be entered for defendant.

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Dated: JUL 24 1985

CARLOS G. YNOSTROZA

Carlos G. Ynostroza
Judge