

JUN 01 2006

APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ALAN SLATER, Clerk of the Court

BY: A. SHRADER DEPUTY

CADIGAN ARBOR PARK, A General
Partnership,

Plaintiff and Respondent,

vs.

DEEPAK VOHRA,

Defendant and Appellant.

Case No. AP-14488

JUDGMENT ON APPEAL
from the
SUPERIOR COURT
COUNTY OF ORANGE
NORTH JUSTICE CENTER

HON. RANDALL SHERMAN, JUDGE

Defendant appeals from the judgment rendered against him in plaintiff's unlawful detainer action. Defendant contends that the action was improperly filed prior to the expiration of the 90-day notice period, that the notice of the grounds for eviction was insufficient, and that the evidence at trial was insufficient to establish good cause for the eviction. We find that all of defendant's contentions have merit.

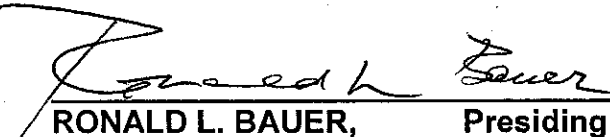
A complaint filed prior to the expiration of the required notice period cannot state a cause of action for unlawful detainer. (*Lawanna v. Vognar* (1993) 17 Cal.App.4th Supp. 4, 6-8; *Highland Plastics, Inc. v. Enders* (1980) 109 Cal.App.3d Supp. 1, 7.) Here, by its own terms, the 90-day notice expired on August 1, 2005. As a result, plaintiff's August 1st filing of the complaint was premature. In addition, while this issue was not clearly raised by defendant in the trial court, a new issue pertaining only to a question of law on undisputed facts may be raised for the first time on appeal. (*Yeap v. Leake* (1997) 60 Cal.App.4th 591, 599, fn. 6.)

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1 Defendant is also correct that the notice given to him of the grounds for the
2 termination of his tenancy was insufficient. When evicting a Section 8 tenant, the
3 landlord must give the tenant "written notice that specifies the grounds for
4 termination of tenancy...." (24 CFR 982.310(e)(1)(i).) Here, the 90-day notice
5 informed defendant only that he was being evicted for "disruptive conduct that is
6 disturbing to other residents as well as Arbor Park staff." No details regarding who
7 was involved in these incidents or when they occurred were set forth. The notice
8 was thus inadequate as it did not put defendant on notice of the acts he needed to
9 defend against.

10 And, finally, the evidence at trial was not sufficient to establish that plaintiff
11 had a "history of disturbance of neighbors." (24 CFR 982.310(d)(1)(ii).) At trial, two
12 tenants testified to acts and statements made by defendant in August 2005. As
13 these incidents occurred after service of the 90-day notice, they could not could not
14 establish disruptive conduct as alleged in the 90-day notice. Plaintiff points out that
15 a "Resident Contact Log" was introduced at trial and that this Log lists other
16 instances of allegedly disruptive conduct by defendant. However, the trial judge
17 ruled that the log was not admitted for the truth of the matters stated therein.
18 Accordingly, it cannot support a finding that defendant was disruptive to other
19 tenants.

20 The judgment is reversed. The trial court is directed to enter judgment for
21 defendant.

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23 RONALD L. BAUER, Presiding Judge

24 
25 LINDA LANCET MILLER, Judge

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27 
28 W. MICHAEL HAYES, Judge