

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
NORTH COUNTY**

**MINUTE ORDER**

DATE: 05/07/2014

TIME: 03:00:00 PM

DEPT: N-08

COMMISSIONER: Ernest M. Gross

CLERK: Sherry Rose

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2014-00005549-CL-UD-NC CASE INIT.DATE: 03/06/2014

CASE TITLE: Escondido Malibu Terrace LLC vs. [REDACTED] [IMAGED]

CASE CATEGORY: Civil - Limited CASE TYPE: Unlawful Detainer - Residential

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**EVENT TYPE:** Unlawful Detainer Court Trial

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 5/7/2014 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Three Day Notice to Pay or Quit dated February 26, 2013 is ineffective because it overstates the total amount of rent due. PLAINTIFF ESCONDIDO MALIBU TERRACE, LLC commingled rent, utility and late charges. Prior to May 1, 2013, DEFENDANT [REDACTED] was paying \$74.00 per month on the balance of these charges. His payments included payments for both utilities charges he should have been credited when he moved into the unit and two \$75.00 late charges which should have been \$7.40 each. DEFENDANT is entitled to a credit toward his rent for paying these monies. The lack of credit makes PLAINTIFF'S notice overstated and ineffective.

The Three day Notice to Cure or Quit is also ineffective both because it overstates the amount of late charges as explained above and incorrectly references the unpaid utility bills. The correct months for the unpaid utility bills are November 2013, December 2013 and January 2014. Moreover, PLAINTIFF ESCONDIDO MALIBU TERRACE, LLC accepted DEFENDANT [REDACTED] payment of those utility charges.

The preponderance of the evidence also established that PLAINTIFF ESCONDIDO MALIBU TERRACE, LLC'S unreasonable failure to make timely repairs to the unit triggered a domino effect which ultimately caused DEFENDANT [REDACTED] rent not to be paid. DEFENDANT [REDACTED] had no choice but to write his December 16, 2013 letter, in order to keep his housing assistance. His letter caused the Housing Authority of the County of San Diego to stop its investigation of the completion of those repairs and lead to its termination of the housing assistance for that unit. The end result was DEFENDANT'S rent not being paid beginning January 1, 2014.

The Court finds judgment on the Complaint Demanding Less than \$10,000 for [REDACTED] and against Escondido Malibu Terrace LLC, DBA Estancia Apartment Homes in the amount of: \$0 damages, \$according to proof pre judgment costs and \$according to proof attorney fees. Possession of the premises is awarded. All unknown occupants are not included in the judgment. Attorney Fees are awarded by Declaration per par. 31 of lease agreement. Costs awarded per Memorandum of Costs

Attorney Franciscus is directed to prepare the judgment.

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
NORTH COUNTY  
MINUTE ORDER**

DATE: 05/15/2014

TIME: 04:00:00 PM

DEPT: N-08

COMMISSIONER: Ernest M. Gross  
CLERK: Sherry Rose  
REPORTER/ERM:  
BAILIFF/COURT ATTENDANT:

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The following is in response to the 5/12/2014 request of Plaintiff's Counsel

The Court did not make a specific finding as to the amount of rent due by the Defendant [REDACTED] as of the Three day Notice to pay rent or Quit, other than it was overstated. The amount claimed was necessarily overstated because it included utility charges and late charges that were excessive. The utility charges for the first month should have been prorated. There was no evidence of the prorated amount. The Court did not independently calculate the prorated amount. The late charges should have been \$14.80 not \$150.00. In addition, Defendant did not owe any rent for January 2014 and February 2014 because PLAINTIFF ESCONDIDO MALIBU TERRACE, LLC was the cause of 100% of the rent/Housing Assistance Payments not being paid by the Housing Authority of San Diego County beginning January 1, 2014.