

1993

Kerry Sorensen v. Miriam Morrison : Brief of Appellant

Utah Court of Appeals

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James H. Deans; Attorney for Appellee.

Utah Legal Services; Attorneys for Appellant; Eric Mittelstadt; Bruce Plenk.

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930806

IN THE UTAH COURT OF APPEALS

230 South 500 East, Salt Lake City, Utah 84102

KERRY SORENSEN

Plaintiff/Appellee,

vs.

MIRIAM MORRISON

Defendant/Appellant.

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Case No. 930806 CA

Priority No. 15

BRIEF OF APPELLANT

APPEAL FROM THE THIRD CIRCUIT COURT
SALT LAKE COUNTY, SALT LAKE DEPARTMENT
HONORABLE MICHAEL L. HUTCHINGS, PRESIDING

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FILED
Utah Court of Appeals

APR 5 1994

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TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
STATEMENTS OF ISSUES AND STANDARD OF REVIEW	1
DETERMINATIVE STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	3
SUMMARY OF THE ARGUMENT	6
ARGUMENT	
POINT ONE A TENANT ON EQUAL STANDING WITH ANOTHER TENANT IS NOT ENTITLED TO RELIEF UNDER UTAH'S UNLAWFUL DETAINER STATUTE . . .	7
POINT TWO THIS COURT SHOULD DEFINE A NUISANCE STANDARD APPLICABLE TO UNLAWFUL DETAINER STATUTES	10
POINT THREE MORRISON'S ACTS DID NOT AMOUNT TO A NUISANCE	13
CONCLUSION	15
ADDENDUM	
1. Utah Code §78-2a-3	1-1
2. Utah Code §78-36-3	2-1
3. Utah Code §78-36-5	3-1
4. Findings of Fact and Conclusions of Law	4-1
5. Order of Restitution	5-1

TABLE OF AUTHORITIES

CASES

<u>American Holding Co. v. Hanson</u> , 464 P.2d 592 (Utah 1970)	9
<u>DiLella v. O'Brien</u> , 68 N.Y.S. 2d 374, 377 (City Court of Albany 1946)	11
<u>Francis v. West Virginia Oil</u> , 162 P.394 (Cal. 1917)	9
<u>Johnson v. Mount Ogden</u> , 460 P.2d 333 (Utah 1969)	11
<u>Kransky v. Hensleigh</u> , 409 P.2d 537 (Mont. 1965)	9
<u>Morgan v. Quailbrook Condominium Co.</u> , 704 P.2d 573 (Utah 1985)	12
<u>P.H. Investment v. Oliver</u> , 818 P.2d 1018 (Utah 1991)	10
<u>Perkins v. Spencer</u> , 243 P.2d 446 (Utah 1952)	10
<u>Reese v. Wells</u> , 73 A.2d 899 (Municipal Court of Appeals for the District of Columbia 1950)	12
<u>Seidel v. Cahajla</u> , 29 A.2d 628 (N. J. 1943)	12
<u>Sovereign v. Meadows</u> , 595 P.2d 852 (Utah 1979)	9
<u>Standard Federal Savings and Loan Association v. Kirkbride</u> , 821 P.2d 1136 (Utah 1992)	2
<u>Van Zyverden v. Ferrar</u> , 393 P.2d 468 (Utah 1964)	10
<u>Williams v. Nelson</u> , 237 P. 217 (Utah 1925)	8

STATUTES

Utah Code §78-2a-3(d)	1
Utah Code §78-36-3(1)(d)	3,5, 7
Utah Code §78-36-3 (1)(b)(i)	3,7
Utah Code §78-36-5	3,8

OTHER AUTHORITY

52A C.J.S. §752	9
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Case No. 930806 CA
Priority No. 15

BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

Appellant Miriam Morrison ("Morrison") appeals the decision of the Third Circuit Court, Salt Lake Department, State of Utah. This court has jurisdiction over this appeal pursuant to Utah Code §78-2a-3(d).

STATEMENTS OF ISSUES AND STANDARD OF REVIEW

1. Can a tenant, on equal standing with another tenant, and without the consent or knowledge of the property owner, use our State's unlawful detainer statute to evict the other tenant?

Because the trial court's decision on this issue rests on both statutory interpretation and legislative intent, the court should apply the "correction of error" standard of review.

Standard Federal Savings and Loan Association v. Kirkbride, 821 P.2d 1136 (Utah 1992).

2. What standard should be applied in unlawful detainer actions in determining whether a tenant may be evicted as a nuisance?

Because the trial court's decision on this issue rests on both statutory interpretation and legislative intent, the court should apply the "correction of error" standard of review.

Standard Federal Savings and Loan Association v. Kirkbride, 821 P.2d 1136 (Utah 1992).

3. Did Morrison's acts, as found by the trial court, as a matter of law, amount to a nuisance for which a tenant may be evicted?

Because neither party is challenging the findings of fact entered by the trial court, but Morrison is instead challenging the application of those facts to the standard determined by the court to be applicable, this issue is a question of law and the court should apply the "correction of error" standard of review.

Standard Federal Savings and Loan Association v. Kirkbride, 821 P.2d 1136 (Utah 1992).

DETERMINATIVE STATUTORY PROVISIONS

The following statutes are controlling in this action:

Utah Code §78-36-3

(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

(b)(i) . . . in cases where the owner, his designated agent, or any successor in estate of the owner . . . has served notice requiring him to quit;

(d) . . . when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance . . . and remains in possession after service upon him of a three days' notice to quit;

Utah Code §78-36-5

A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him.

STATEMENT OF THE CASE

A. Nature of the Case

Appellee Kerry Sorensen ("Sorensen") and Morrison, along with one other person signed a lease as tenants and were roommates living in a house in Midvale, Utah. [R. 26, 34] The parties lived together for about a month and a half when Sorensen filed an unlawful detainer action against Morrison under Utah Code §78-36-3(1)(d). [R. 1] Morrison moved to dismiss

Sorensen's action on the basis that she was a co-tenant and roommate in the same house, and that Sorensen could not bring an unlawful detainer action against her because their relationship was not one of landlord and tenant. [R. 9] The trial court rejected Morrison's argument and after finding her to be a nuisance ordered her evicted from the premises she had rented. [R. 31] Morrison now appeals the decision of the lower court.

B. Course of the Proceedings and Disposition Below

This matter came on for hearing before the Honorable Michael L. Hutchings on December 1, 1993, in the Third Circuit Court, Salt Lake Department. [R. 26, 34] The Court heard testimony from numerous witnesses, including the parties. [R. 42] Following this testimony and closing arguments from counsel, the Court orally entered its Findings of Fact, Conclusions of Law and Order. [R. 42] These findings were later reduced to writing, signed by the Court, and are the subject of this appeal. [R. 26, 34]

C. Statement of the Facts

After responding to an advertisement for a roommate placed by Sorensen, Morrison entered into an agreement with Sorensen and JoAnne Wolfenden to lease a house as co-tenants. [R. 26, 44-46] Each roommate signed the lease agreement, making each co-tenant jointly and severally liable for the covenants contained in the

lease. [R. 26, 34]

The parties in this case did not get along almost from the beginning of the lease. [R. 44-46] They did not communicate well, did not spend time in each other's company, and could not agree on who was entitled to use the common areas of the house. [R. 44-46] In addition, Sorensen was conducting a business from the living room of the house, an activity that was not part of the parties' agreement. [R. 44-46] Morrison attempted to deal with this uncomfortable situation by suggesting that the parties attend mediation together. [R.45] Sorensen was unresponsive to this idea, and instead served Morrison with a three-day notice to quit for nuisance on November 11, 1993. [R. 4-5]

When Morrison did not vacate the premises, Sorensen served her with a summons and complaint on November 23, 1993, claiming under Utah Code §78-36-3(1)(d) that Morrison was in unlawful detainer. [R. 1-5] He alleged that Morrison was a nuisance in that she had disrupted his business dealings by erasing messages from an answering machine, removing a note from the door to the house, causing a fire hazard by using the stove, and disturbing his sleep. [R. 4-5] Morrison answered Sorensen's complaint on November 29, 1993, and moved to dismiss the action based on the fact that Sorensen was a tenant on equal standing with herself and therefore the remedies under Utah's Unlawful Detainer Statute

were not available to him. [R. 9-12]

On December 1, 1993, the Honorable Michael L. Hutchings denied Morrison's motion to dismiss and orally ordered Morrison to vacate the premises she had rented. [R. 26, 34] Judge Hutchings' decision was reduced to a written Findings of Fact, Conclusions of Law and Order on December 23, 1993. [R. 26, 34] Morrison filed her Notice of Appeal on December 15, 1993. [R. 29]

SUMMARY OF THE ARGUMENT

This court should overturn the decision of the lower court because Sorensen is not a landlord and therefore is not entitled to relief under the unlawful detainer statute.

This court should find that in order to be evicted as a nuisance, a tenant must continuously or repeatedly engage in behavior that substantially and unreasonably, in light of the circumstances surrounding of the tenancy, interferes with the rights of another of the landlord's tenants. By applying this standard to the facts at hand, this court should hold that Morrison was not a nuisance and should therefore reverse the decision of the trial court.

ARGUMENT

POINT ONE

A TENANT ON EQUAL STANDING WITH ANOTHER TENANT IS NOT ENTITLED TO RELIEF UNDER UTAH'S UNLAWFUL DETAINER STATUTE.

Sorensen is not entitled to relief under Utah's unlawful detainer statute because the parties in this action are co-tenants, not landlord and tenant, or tenant and subtenant, as is required under this statute. Utah case law, decisions from other jurisdictions, and an examination of our own unlawful detainer statute shows that the remedy of a summary eviction is only available to a landlord in a landlord and tenant relationship.

Utah Code §78-36-3 states that:

(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

(d) . . . when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance . . . and remains in possession after service upon him of a three days' notice to quit;

This section indicates that a tenant may be evicted for nuisance, but it does not indicate who can maintain the action to evict.

The statute in another section does refer to who may serve an eviction notice. Utah Code §78-36-3 (1)(b)(i) provides for an eviction at the end of a rental period and states that "the owner, his designated agent, or any successor in estate of the owner" may serve a notice terminating a tenancy under this provision.

Further, Utah Code §78-36-5 states specifically that "[a] tenant may take proceedings similar to those prescribed in this chapter to obtain possession of a premises let to an undertenant in case of the unlawful detention of the premises let to him." Such specific language in this section of the code indicates that the legislature intended to limit unlawful detainer actions to parties whose relationship is either one of landlord and tenant, or tenant and subtenant (which is in actuality a landlord and tenant relationship).

Sorensen should therefore be precluded from maintaining his action against Morrison because he is not in the position of a landlord with his co-tenant.

The Supreme Court of Utah addressed this question in 1925. The Court stated that "[i]f the defendant is not the tenant of the plaintiff. . . he has a full and complete defense to the action." Williams v. Nelson, 237 P. 217, 222 (Utah 1925).

Decisions from other jurisdictions and accepted "black letter law" agree that this interpretation of summary eviction proceedings is the correct one. Nearly every jurisdiction in the country has an eviction statute similar to Utah's and many courts have held that the remedy of a summary eviction is only available to a landlord against their tenant.

Corpus Juris Secundum states that as "a general rule under

the various statutes, a relationship of landlord and tenant must exist between the parties to sustain a summary proceeding to recover possession of the premises." 52A C.J.S. §752 b.(1).

The Supreme Court of Montana has stated that "[w]henver the unlawful detainer statutes . . . are brought into operation it is the rule that such an action may only prevail where the relation of landlord-tenant exists." Kransky v. Hensleigh, 409 P.2d 537, 539 (Mont. 1965).

The California Supreme Court agreed as long ago as 1917. That court stated that "[t]he action of unlawful detainer can be maintained only where the relation of landlord and tenant subsists between the parties to the action and hence it becomes material to determine whether parties stand in that relation to each other." Francis v. West Virginia Oil, 162 P.394 (Cal. 1917).

There is other relevant Utah case law which should be considered in connection with this question. In 1979 the Utah Supreme Court stated that the "unlawful detainer statute is a summary proceeding and in derogation of the common law. It provides a severe remedy, and this Court has previously held that it must be strictly complied with before the cause of action may be maintained." Sovereign v. Meadows, 595 P.2d 852, 853 (Utah 1979). See also, American Holding Co. v. Hanson, 464 P.2d 592

(Utah 1970); Van Zyverden v. Ferrar, 393 P.2d 468 (Utah 1964); Perkins v. Spencer, 243 P.2d 446 (Utah 1952).

The Court discussed this statute again in 1991 stating that the "statute grants the landlord a summary court proceeding to evict a tenant who has violated some express or implied provision of the lease." P.H. Investment v. Oliver, 818 P.2d 1018, 1020 (Utah 1991). The court continues, recognizing that this is a remedy only available to landlords: "The remedy for a successful landlord is restitution of the premises, treble damages, and recovery for waste and rent due." 818 P.2d at 1020 (emphasis added).

A summary eviction through the unlawful detainer statute is a remedy available only to landlords. However, a tenant experiencing problems with another tenant is not without a remedy. That remedy is to notify the landlord of the problems and allow the landlord to take action. The landlord covenants to provide quiet enjoyment to each tenant. If the landlord is notified of a breach of this covenant, it is the landlord who must take action to rectify the situation.

POINT TWO

THIS COURT SHOULD DEFINE A NUISANCE STANDARD APPLICABLE TO UNLAWFUL DETAINER STATUTES.

While there is case law in Utah concerning nuisance in other settings, these standards do not apply specifically to

landlord/tenant relationships. This court should adopt a standard combining established nuisance definitions with the decisions from courts that have considered this question as it relates to the landlord and tenant relationship.

The Utah Supreme Court has recognized that

every person has a right to use his own property as he sees fit so long as that use does not invade the rights of his neighbor unreasonably and substantially. Absolute quiet and repose is impossible and everyone must assume some burden of ordinary activities of others in the vicinity.

Johnson v. Mount Ogden, 460 P.2d 333, 336 (Utah 1969). The theory that circumstances surrounding the activity in question should be considered developed into a series of factors in the state of New York.

[T]enants are bound to a rule of reasonable conduct, taking into consideration the housing accommodations, the environment, the neighborhood, the size of the family, and the ordinary conduct of people living under the conditions in question. The application of this rule requires recognition of the acute housing shortage but it also demands that the tenant conduct himself as a reasonable person over a period of time, having regard to the comfortable enjoyment of the premises by others.

DiLella v. O'Brien, 68 N.Y.S.2d 374, 377 (City Court of Albany 1946).

The Municipal Court of Appeals for the District of Columbia has stated that for a landlord to show a nuisance "there must be

a continuousness or recurrence of the things, facts, or acts which constitute the nuisance, deriving from the notion of unreasonable use." Reese v. Wells, 73 A.2d 899, 902 (Municipal Court of Appeals for the District of Columbia 1950). The Utah Supreme Court agreed in stating that in order to sustain a finding of nuisance it must be demonstrated that "the actor maintained the condition after he knew that it was causing an invasion of another's interest in the use and enjoyment of land." Morgan v. Quailbrook Condominium Co., 704 P.2d 573, 577 (Utah 1985).

Finally, the conduct must actually disturb another tenant in order to constitute a nuisance. The Supreme Court of New Jersey for example, held that "it is not enough that the tenant's conduct is disturbing; it must be disturbing to other tenants of the landlord." Seidel v. Cahajla, 29 A.2d 628, 629 (N. J. 1943)

Morrison requests that this court find that in order to be evicted as a nuisance, a tenant must continuously or repeatedly engage in behavior that substantially and unreasonably, in light of the circumstances surrounding the tenancy, interferes with the rights of another of the landlord's tenants.

POINT THREE

MORRISON'S ACTS DID NOT AMOUNT TO A NUISANCE

By applying the standards discussed above, this court should find as a matter of law that Morrison's actions did not constitute a nuisance. At the center of Sorensen's complaint was the allegation that Morrison interfered with his business. It should be noted that the parties signed a residential lease and therefore Sorensen could not reasonably expect an atmosphere that would allow business activities. [R. 44-46] Business dealings in a house with two other roommates is an unusual practice and Sorensen's behavior was a nuisance as to Morrison.

This was a situation where three roommates chose to move in together. [R. 26, 34] In such a situation each roommate needed to make special accommodations for the others. Nevertheless in this case Sorensen expected to hold business meetings in the home. [R. 44-46] This was an unrealistic expectation. Sorensen considered the usual activities of residential living an interference. While it is clear that the roommates were not getting along, Morrison's actions were not repeatedly invasive to the point where an eviction should have been ordered. As Morrison suggested, mediation may have been a fitting response to this situation, an eviction was not.

Sorensen complained that Morrison boiled turkey parts on the

stove all night creating a fire hazard, lost telephone messages, removed a note from the front door, interfered with his sleep and in general interfered with his business. [R. 44-46] Viewed in the context of a residential rental agreement, Morrison's actions were not seriously and repeatedly invasive of Sorensen's tenancy.

Cooking, watching television and typing are usual residential activities, yet to Sorensen they were a source of interference with his business. Morrison testified that once she was made aware that her typing was disruptive, she ceased that activity. [R. 46] She testified that the reason she was boiling turkey parts for broth at night was that she felt uncomfortable using the kitchen when her roommates were around and that she did what she could to avoid them and to avoid conflict. [R. 46] Finally, Morrison testified that she did remove a note from the front door of the premises and she admitted sending letters to Sorensen proposing mediation and to the landlord explaining the ongoing situation. [R. 45-46] Morrison testified that she removed the note for the purpose of showing that note to the property owner to prove a business was being run on the premises. [R. 45] She further testified that she sent letters to the landlord and Sorensen in hopes of resolving the conflicts between the roommates. [R. 45-46] Morrison's activities were reasonable under the circumstances and cannot be characterized as seriously

invasive of Sorensen's tenancy.

With the circumstances surrounding this tenancy in mind, and after finding that Morrison's actions were not seriously or repeatedly invasive of Sorensen's rights, the trial court should have held, as a matter of law, that Morrison was not a nuisance.

CONCLUSION

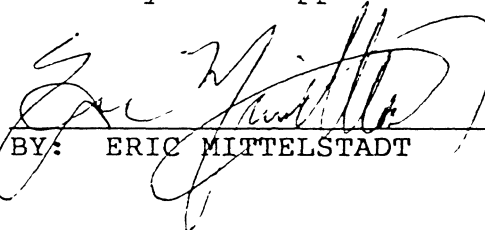
This court should overturn the decision of the lower court because Sorensen is not a landlord and therefore is not entitled to relief under the unlawful detainer statute.

This court should clarify the nuisance standard applicable to unlawful detainer actions and should hold, by applying such a standard to the facts of this case, and given the facts as determined by the trial court, that Morrison was not a nuisance.

Morrison asks this court to reverse the decision of the Third Circuit Court, Salt Lake Department.

RESPECTFULLY SUBMITTED this 5th day of April, 1994.

UTAH LEGAL SERVICES
Attorneys for Appellant


BY: ERIC MITTELSTADT

CERTIFICATE OF MAILING

I hereby certify that I mailed 2 true and correct copies of the above Brief of Appellant to James H. Deans, Attorney for Appellee, at 440 South 700 East #102, Salt Lake City, Utah 84102, this 5th day of April, 1994.

A handwritten signature in dark ink, appearing to read "James H. Deans", is written over a horizontal line.

H:\wp\common\housing\appeals\morrisn#.brf

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) appeals from the circuit courts, except those from the small claims department of a circuit court;

(e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons except in cases involving a first degree or capital felony;

(i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(j) appeals from the Utah Military Court; and

(k) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings.

1992

less than life.
(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

(a) when he continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) when, having leased real property for an indefinite time with monthly or other periodic rent reserved:

(i) he continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, his designated agent, or any successor in estate of the owner, 15 days or more prior to the end of that month or period, has served

notice requiring him to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, where he remains in possession of the premises after the expiration of a notice of not less than five days;

(c) when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, has remained uncomplied with for a period of three days after service, which notice may be served at any time after the rent becomes due;

(d) when he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises, or when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78-38-9, and remains in possession after service upon him of a three days' notice to quit; or

(e) when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon him and upon any subtenant in actual occupation of the premises remains uncomplied with for three days after service. Within three days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, then no notice need be given.

(2) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(3) The notice provisions for nuisance in Subsection 78-36-3(1)(d) are not applicable to nuisance actions provided in Sections 78-38-9 through 78-38-16 only.

78-36-5. Remedies available to tenant against undertenant.

A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him. 1953

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CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

ERRY SORENSEN,)	
)	
)	FINDINGS OF FACT
)	AND
Plaintiff,)	CONCLUSIONS OF LAW
)	
vs.)	
)	
RIAM MORRISON,)	Civil No. 930013247 CV
)	
Defendant.)	Judge Hutchings
)	

The above-entitled action came on regularly for hearing the 2nd day of December, 1993, the Honorable Michael L. Hutchings presiding and plaintiff appearing in person and by counsel James H. Deans, and defendant appearing in person and by counsel Eric Mittelstadt, and the court having heard the testimony and arguments and having considered the evidence and good cause appearing now enters its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. That plaintiff and defendant are co-tenants and roommates at 7383 South Union Park Avenue, Midvale, Utah.
2. That plaintiff has served defendant with the 3-Day Notice to Vacate dated November 4, 1993 attached as Exhibit "A" to plaintiff's complaint.
3. That plaintiff may proceed against defendant although they are co-tenants, in nuisance pursuant to Section 78-38-1 U.C.A. and the landlord is not a necessary party in this action. *This is a conclusion of law to be in the conclusions of law section - amy 12-10-93*

4. That plaintiff and his witnesses testified to the items of nuisance stated in the nuisance notice.

5. That defendant testified that she was not a nuisance.

6. That defendant did disrupt plaintiff's business activities and on at least 25 occasions did not pass telephone messages on to plaintiff.

7. That defendant did remove a note intended for plaintiff's business associates.

8. That defendant did unplug plaintiff's answering machine.

9. That defendant did conduct activities that interfered with plaintiff's sleep.

10. That defendant created a fire hazard in the premises by leaving the burners on the stove on.

11. That defendant has interfered with plaintiff's relationship with his landlord by sending the landlord letters alleging that plaintiff used drugs.

12. That all of these factors combined together persuades the court that although it is a close case, that plaintiff has shown by a preponderance of the evidence that defendant is a nuisance as defined by Section 78-38-1 U.C.A. and that the nuisance can be abated by terminating defendant's tenancy.

CONCLUSIONS OF LAW

1. That defendant's conduct constituted a nuisance and she must vacate the subject premises by December 17, 1993 and thereafter plaintiff may enforce a Writ of Restitution to the subject premises.

2. That defendant is to pay her portion of the rent due the landlord through December, 1993 and thereafter plaintiff is to assume full responsibility for the lease and hold defendant harmless from any payment due under the lease and indemnify defendant for any non-performance of plaintiff under the lease.

3. That plaintiff is to post a \$500.00 cash bond in landlord's favor unless landlord waives such a bond to secure plaintiff's performance under the lease.

4. That plaintiff's counsel is to notify landlord of these proceedings.

5. That the parties, for the remaining days of defendant's tenancy, are mutually restrained from annoying or harassing each other and are to comport themselves with courtesy towards each other.

DATED this 10 day of December, 1993.



MICHAEL L. HUTCHINGS
CIRCUIT COURT JUDGE

MES H. DEANS, #846
Attorney for Plaintiff
10 South 700 East - #101
Salt Lake City, Utah 84102
Telephone: 575-5005

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

ERRY SORENSEN,

Plaintiff,

vs.

IRIAM MORRISON,

Defendant.

ORDER OF RESTITUTION

Civil No. 930013247 CV

Judge Hutchings

The above-entitled action came on regularly for hearing the 2nd day of December, 1993, the Honorable Michael L. Hutchings presiding and plaintiff appearing in person and by counsel James H. Deans, and defendant appearing in person and by counsel Eric Mittelstadt, and the court having heard the testimony and arguments and having considered the evidence and having entered its Findings of Fact and Conclusions of Law and good cause appearing, now, therefore,

IT IS HEREBY ORDERED:

1. That defendant's conduct constituted a nuisance and she must vacate the subject premises by December 17, 1993 and thereafter plaintiff may enforce a Writ of Restitution to the subject premises.

2. That defendant is to pay her portion of the rent due the landlord through December, 1993 and thereafter plaintiff is to assume full responsibility for the lease and hold defendant harmless from any payment due under the lease and indemnify defendant for any non-performance of plaintiff under the lease.

3. That plaintiff is to post a \$500.00 cash bond in landlord's favor unless landlord waives such a bond to secure plaintiff's performance under the lease.

4. That plaintiff's counsel is to notify landlord of these proceedings.

5. That the parties, for the remaining days of defendant's tenancy, are mutually restrained from annoying or harassing each other and are to comport themselves with courtesy towards each other.

DATED this _____ day of December, 1993.

MICHAEL L. HUTCHINGS
CIRCUIT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law and Order of Restitution _____ to the following, postage prepaid, this

3rd day of December, 1993 .

Eric Mittelstadt
Attorney for Defendant
124 South 400 East - #400
Salt Lake City, UT 84111

