California Eviction Defense:
Protecting Low-Income Tenants 2017

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Sample Defendant's Trial Brief

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

PLAINTIFF,	**Case No. 15UXXXXX**
Plaintiff,	**DEFENDANTS' TRIAL BRIEF**
vs.	
DEFENDANT,	Date: July 27, 2015 Time:
Defendants.	Dept.:
	Hon. , Judge Presiding

TO PLAINITIFF AND PLAINTIFF'S ATTORNEY OF RECORD:

Defendants, NAMES, hereby submit the following trial brief.

I. INTRODUCTION

Judgment is properly granted in favor of Defendants, NAMES, and against Plaintiff PLAINTIFF, because the breach of covenant at issue, possession of three dogs, is trivial and does not support a forfeiture of the Defendants 20-year tenancy. In addition, Plaintiff has waived his right to enforce the covenant at issue because he accepted rent with full knowledge of the alleged breach for a period of several years, or in the alternative Plaintiff is estopped from enforcing the covenant because he led the Defendants to reasonably believe that the covenant would not be enforced and they detrimentally relied on that belief.

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II. STATEMENT OF FACTS

Plaintiff Plaintiff is the owner of the subject property known as ADRESS located in the City of Los Angeles. (*Complaint*, page 1, paragraph 3). Defendants, NAMES, have resided in unit #5 of the property since in or about September 1995. They reside in the unit with their minor son. The premises are registered as rent-controlled under the Los Angeles Rent Stabilization Ordinance (*Complaint*, page 3, paragraph 14) and their current rent is $775. The instant action is based on a three-day notice to perform or quit dated April 24, 2015, alleging that the Defendants are in violation of their modified lease agreement by keeping five dogs in their unit. (*see* Exhibit 2 of Plaintiff's Complaint, "Three-Day Notice to Cure or Quit.").

The evidence will show that since approximately late 2010, the Defendants have kept three dogs in their unit, all of which are spayed/neutered, vaccinated, and licensed. In or about September 2012, Plaintiff modified the Defendants lease agreement to allow at least two dogs on the premises, although at the time they had three dogs. Though Plaintiff alleged that the Defendants had five dogs on the premises, the Defendants have always maintained that they only have three dogs. Ms. Barrera was supplementing the household income by walking two dogs, but the evidence will show that she has stopped this practice and that those two dogs never resided in their unit. Plaintiff has not required the Defendants to remove the three dogs living in the unit and has continued accepting the Defendants' rent since the Defendants acquired the three dogs.

The Defendants did not believe that they were in breach of any of their lease obligations because they observed current tenants with dogs and observed new tenants moving into the complex who were allowed to have pet dogs. The manager of the building also has multiple dogs. The evidence will show that Plaintiff had knowledge that the Defendants had at least three dogs, and continued accepting their rent and took no action to terminate their tenancy because of the alleged "excess" dogs until her served her them with a Notice to Cure or Quit dated April 24, 2015. The evidence will also show that Plaintiff suffers no harm from the Defendants alleged breach because he has allowed long-term and new tenants to maintain dogs and other pets on the premises.

III. ARGUMENT

A. DEFENDANTS' ALLEGED BREACH IS TRIVIAL AND DOES NOT SUPPORT A FORFEITURE OF THEIR TENANCY

1. The failure to remove one dog is not a "material and substantial" breach of a covenant of the tenancy.

While a landlord may terminate a tenancy for a tenant's breach of a covenant or condition in the rental agreement, he may only do so where the tenant's breach constitutes a material breach of the agreement. *Cal. Code Civ. Pro.* §1161.3; *McNeece v. Wood* (1928) 204 Cal. 280, 285. Accordingly, a trivial or de minimus breach of a rental agreement does not constitute a sufficient ground for termination of the tenancy in question. This defense, if proven, should result in the dismissal of an unlawful detainer action against the tenant who asserts it. Whether the alleged breach is trivial or material is a question of fact to be adjudicated on a case-by-case basis.

Generally, California courts will allow any equitable defense to be raised in an unlawful detainer proceeding. *See, Union Oil Co. v. Chandler* (1970) 4 CA3d 716, 722, 726, 84 CR 756, 760-61, 763. Because "equity abhors forfeitures," courts should not find forfeiture of a rental agreement in an unlawful detainer action for a minor or trivial tenant breach. *Keating v. Preston* (1940) 42 CA2d 110, 115, 108 P2d 479, 482; *Feder v. Wreden Packing & Provision Co.* (1928) 89 CA 665, 673, 265 P 386, 388-389 (no forfeiture where landlord not injured by tenant's breach); see also *Schweiger v. Superior.Court* (Bonds) (1970) 3 Cal3d 507; Cal. Civ. Code §3275. California courts have consistently held that a minor or trivial breach by the tenant of a rental agreement will not support a forfeiture of the rental agreement. *See, Baypoint v. Mortgage v. Crest Premium Real Estate Investments Retirement Trust* (1985) 168 CA3d 818, 829, 32 (noting that the law is particularly reluctant to enforce forfeitures where the default is minor, and that minor contract defaults do not warrant extreme remedies); *Straus v. North Hollywood Hosp., Inc*. (1957) 150 Cal.App. 2d 306, 311.

In this case, the landlord has permitted multiple residents of the building to maintain dogs in their units. New tenants are moving in with dogs. Plaintiff cannot cite to any evidence that the

Defendants' dogs are a nuisance. Therefore, he suffers no harm from the presence of another dog in the building, specifically in the Defendants' unit, and where he has already agreed to allow them to have dogs in the unit. Under these circumstances, the "extra" dog in their unit is a classic demonstration of a trivial breach of a rental agreement that supports neither a 3-Day Notice to Cure or Quit nor the present unlawful detainer action against the Defendants. Accordingly, the alleged breach is not material or substantial and thus will not support a forfeiture of their tenancy.

2. Plaintiff suffers no injury from the alleged breach because there are other dogs on the premises.

At this time, the nature of Plaintiff's injury caused by the Defendants' alleged breach is unknown. New tenants on the property are allowed to move in with pets, and current tenants are allowed to keep multiple dogs in their units. Plaintiff cannot claim that allowing the Defendants to maintain one more dog on the premises poses harm to Plaintiff to other tenants because other tenants on the premises have also been allowed to keep multiple dogs. Plaintiff has not included any allegations in its Notice that the Defendants' dogs are creating a nuisance on the premises.

3. The law disregards trifles.

"The law abhors forfeitures. *Reed v. South Shore Foods, Inc.* (1964) 229 Cal. App. 2d 713, 40 Cal. Rptr. 575; *Hignell v. Gebala* (1949) 90 Cal. App. 2d 61, 202 P. 2d 378. There should be no forfeiture where the landlord is not injured by the tenant's alleged breach of covenant. *Feder v. Wreden Packing & Provision Co.* (1928) 89 Cal.App 665, 673. Finally, it is a maxim of jurisprudence that, "[t]he law disregards trifles." Cal. Civil Code §3533. An alleged breach that has had the landlord's consent for at the very least, the last 3 years, cannot the next day be a "material and substantial" breach of the lease. At time of writing, no other type of injury is known or supposed.

B. PLAINTIFF WAIVED THE ALLEGED BREACH OF COVENANT BY ACCEPTING RENT WITH KNOWLEDGE OF THE ALLEGED BREACH

A waiver is the "intentional relinquishment of a known right after knowledge of the facts." *Rutter California Practice Guide: Landlord and Tenant*, Chapter 2, Section B, ¶2:505, p. 2B-153. It

may be expressed or implied and may be implied from conduct inferentially manifesting an intention to waive. *Bettelheim v. Hagstrom Food Stores* (1st Dist. 1952) 113 Cal.App.2d 873, 878-879. The general rule regarding waiver is stated in *EDC Associates, Ltd. v. Gutierrez* (1984) 153 Cal.App.3d 167, 200 Cal.Rptr. 333:

> It is a general rule that the right of a lessor to declare a forfeiture of the lease arising from some breach by the lessee is waived when the lessor, with knowledge of the breach, accepts the rent specified in the lease." Citing, *Bedford Investment Co. v. Folb* (1947) 79 Cal.App.2d 363, 366.

In *EDC Associates, Ltd.,* supra., the Court stated that "while waiver is a question of intent, the cases have required some positive evidence of rejection on the landlord's part or a specific reservation of rights in the lease to overcome the presumption that tender and acceptance of rent creates." *Id*., at 170, emphasis added.

The *EDC Associates* Court further determined that lack of waiver could be found if both of the following factors existed: (1) the lease between the parties contained an express provision against waiver of a landlord's right to assert a forfeiture for the acceptance of rent after knowledge of the breach; and, (2) where the where the landlord had given notice that its acceptance of rent after the breach had become known was not to be construed as a waiver of his right to assert a forfeiture of the lease. *Id*. at 170. Thus, a landlord cannot rely solely on an express provision in the lease against waiver of a landlord's right to declare forfeiture of the lease without the additional step of notifying a tenant that the acceptance of tendered rent will not constitute a waiver.

The *EDC Associates* Court held that the landlord had waived his right to declare a forfeiture of the lease because the evidence introduced at trial showed that the tenant had mailed the rent after the three day notice at issue had expired and that the landlord had failed to introduce any evidence that he had either "refused tender, returned the money orders, or failed to negotiate them." *Id*. The court stated that "The landlord had the obligation of going forward with the evidence in order to prove that the money orders were not negotiated or that it took other action to ensure that there was no waiver." *Id*.

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Although the breach at issue in *EDC Associates*, *Ltd.,* supra., involved the failure to pay rent within three days after service of a notice, in reaching its conclusion, the *EDC Associates* court based its decision on the ruling in *Karbeling v. Brothwell*, (1966) 244 Cal. App. 2d 333, a case which involved a failure to perform a covenant against assigning or subletting the leased premises. The lease at issue in *Karbeling*, contained an anti-waiver provision similar to the one at issue in case at bar. *Id.* at 334-335. The *Karbeling* court found that landlord had not waived his right to declare forfeiture of the lease because, in addition to relying on the anti-waiver provision in the lease, the Plaintiff had reserved his right by taking further action to notify Defendant in writing that acceptance of said rent would not constitute a waiver. *Id*. at 342.

In this case, the evidence will show that Plaintiff had knowledge since approximately 2012 that the Defendants were maintaining at least three dogs in their unit. The Defendants have since then been allowed to keep their dogs in the unit and Plaintiff continued accepting their rent. The evidence will also show that by his own admission, Plaintiff had knowledge of the dogs involved in the instant unlawful detainer since at least 2012, before the Notice to Perform or Quit was served and still continued accepting the Defendants rent payments. (*See*, Exhibit 1 to Plaintiff's Complaint) The disputed rental agreement contains an "anti-waiver" provision, however unlike in *Karbeling*, Plaintiff did not take any other action to notify the Defendants that acceptance of their rent over the past three years did not constitute a waiver of his right to declare a forfeiture of their tenancy.

C. IN THE ALTERNATIVE, PLAINTIFF IS ESTOPPED FROM ENFORCING THE NO-PET PROVISION OF THE AGREEMENT

The Court of Appeal in *Wells Fargo Bank v. Bank of America NT & SA* (1995) 32 Cal.App.4th 424, set forth the elements that must ordinarily be proved to establish estoppel:

> "(1) the party estopped must know the facts; (2) the party estopped must engage in conduct intended to be acted upon by the party asserting estoppel; (3) the party asserting estoppel must be ignorant of the true state of facts; and (4) injury must result from reliance on the other's conduct." *Id*. at 437-438. (See also, *Hair v. State of California* (1991) 2 Cal. App. 4th 321, 2 Cal. Rptr. 2d 871, and *Cole v. City of Los Angeles* (1986) 187 Cal.App.3d 1369, 232 Cal.Rptr. 624.)

Even if the Court finds that an anti-waiver provision precludes the Defendants from raising the defense of waiver, it does not preclude a defense based upon estoppel if the "conduct of a lessor following execution of a lease leading the lessee to believe compliance with a particular covenant will not be enforced, and reliance upon this belief by the lessee with consequent performance by him of other covenants of the lease, estops the lessor to declare a forfeiture of the lease on account of a breach of the particular covenant." *Salton Community Services v. Southard* (1967) 256 Cal.App.2d 526, 531.

In *Salton*, the Court also stated that "although the elements essential to the defense of equitable estoppel differ from those essential to the defense of waiver, the circumstances in a given case may support both defenses." *Id.* at 532. Here, the Defendants waiver argument is not predicated solely on continued acceptance of rent over the past 3 years by their landlord as a basis for Plaintiff's waiver. Rather, they are relying on Plaintiff's actual and constructive knowledge of the alleged breach coupled with Plaintiff's failure to uniformly enforce a no-pet policy.

The evidence will show that Plaintiff had full knowledge and even acknowledged in writing that the Defendants had at least three dogs in their unit for many years and was also aware of his right to enforce the no-pet provision of the lease, but failed to do so. The Defendants reasonably relied on Plaintiff's failure to enforce a no-pet policy against them and other tenants (including the manager of the building), when they observed other tenants on the premises with pets, specifically dogs, and formed the belief that dogs were not prohibited on the premises. Based on that belief the Defendants continued to maintain their three dogs on the premises believing that Plaintiff would have no objection based on their past years of experience. Based on the foregoing, Plaintiff should be estopped from enforcing the no-pet provision of the lease because his inaction led the Defendants to reasonably believe that there was no covenant prohibiting pets on the premises and now faces the loss of their home of 20 years because of their reliance on Plaintiff's inaction.

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IV. CONCLUSION

For the foregoing reasons, the present Unlawful Detainer action against the Defendants should be decided in their favor and Plaintiff should take nothing from this action.

Dated: July 25, 2015

INNER CITY LAW CENTER

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