

California Eviction Defense: Protecting Low-Income Tenants 2017

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Template for Motion for Summary Judgment
Memorandum of Points and Authorities for
Unlawful Detainer Action Based on
Non-Payment of Housing Authority Portion

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO – LIMITED JURISDICTION

LANDLORD,

Plaintiff,

vs.

TENANT,

Defendants.

Case No. CUD-#####

**DEFENDANT’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Date:
Time:
Dept.:

I. INTRODUCTION

Defendant TENANT moves for summary against Plaintiff LANDLORD. Plaintiff cannot prove its prima facie case in unlawful detainer because Plaintiff's notice is defective in that it includes a portion of rent for which a public housing authority is responsible. There is no issue of material fact and therefore, Defendant is entitled to a judgment in his favor.

II. STATEMENT OF FACTS

Defendant TENANT has been a tenant at ADDRESS for XX years. Complaint at ¶ 3, 6; Declaration of Defendant TENANT ("Dec. TENANT") at ¶ #.

Defendant TENANT has received and is currently receiving, housing assistance through the HOUSING AUTHORITY’S Tenant-Based Assistance Housing Choice Voucher Program ("Section 8 Program"). [Include exhibits such as Residential Lease Agreement and Section 8

Contract] Under the Section 8 Program, the HOUSING AUTHORITY is responsible for paying a portion of the monthly rent for the premises directly to Plaintiff. [EXHIBITS].

The total contract rent for the subject premises at the outset of the tenancy was, and still is, \$\$\$. Complaint at ¶ 6(a); Exhibit # (Residential Lease Agreement and HAP Contract). Under the terms of the original HAP Contract Defendant was responsible for rent of \$\$\$ per month, while the HOUSING AUTHORITY was responsible for the remaining \$\$\$ payment to Plaintiff. Exhibit # (Residential Lease Agreement and HAP Contract). On DATE, the HOUSING AUTHORITY sent Defendant a contract amendment that states that the HOUSING AUTHORITY Assistance Payment would be adjusted to \$\$\$ per month and Defendant 's Tenant Rent was adjusted to \$\$\$ per month. Exhibit # (Section 8 Contract Amendment of DATE); Declaration of Defendant, ¶#.

LEGAL ARGUMENT

A. Summary Judgment in Unlawful Detainer Action is Appropriate When the Action Has No Merit.

Under California Code of Civil Procedure Section 437c, a party may move for summary judgment on the basis that the action has “no merit.” C.C.P. § 437c(a). “A cause of action has no merit if . . . [o]ne or more elements of the cause of action cannot be established.” C.C.P. § 437c(o). Once the defendant has met his burden of showing that “one or more elements of the cause of action . . . cannot be established,” the burden then shifts to the plaintiff to show that a triable issue of material fact exists for that cause of action. C.C.P. § 437c(p)(2). To meet his burden, “all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action.” Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 853.

Code of Civil Procedure Section 1170.7 provides that a motion for summary judgment can be made after the answer is filed, upon five days notice, and shall be decided on the same basis as a motion under Section 437c. Under Section 437c, a summary judgment motion “shall be granted if all the papers submitted show that there is no triable issue of material fact and that the moving party is entitled to a judgment as a matter of law.” C.C.P. § 437c(e). Here, Defendant is entitled to summary judgment because Plaintiff is unlawfully attempting to evict

Defendant for non-payment of the HOUSING AUTHORITY's portion.

B. Plaintiff May Not Evict Defendant for Nonpayment of HOUSING AUTHORITY Portion of Rent.

The federal regulations governing termination of tenancy under the Section 8 Housing Choice Voucher Program make clear that an owner may not evict a tenant for nonpayment of the portion of the rent for which a public housing authority is responsible. Specifically, 24 C.F.R. 982.310 provides:

(b) Nonpayment by PHA: Not grounds for termination of tenancy. (Emphasis in the original).

(1) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA.

(2) The PHA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease the owner may not terminate the tenancy of the family for nonpayment of the PHA housing assistance payment.

24 C.F.R. 982.310; see Defendant's Request for Judicial Notice, Exhibit #.

Defendant TENANT has received and is currently receiving, housing assistance through the HOUSING AUTHORITY's Tenant-Based Assistance Housing Choice Voucher Program, under which the HOUSING AUTHORITY is responsible for paying a portion of the monthly rent for the premises directly to Plaintiff. [cite to Exhibits].

[APPLY TO FACTS OF SPECIFIC CASE]

III. CONCLUSION

For the reasons stated above, Defendant respectfully requests that the Court enter summary judgment for Defendant.

Respectfully Submitted,

DATED:

NAME
Attorneys for Defendant TENANT

NOTES