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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

EQUITY RESIDENTIAL  
MANAGEMENT, L.L.C., a Delaware  
limited liability company,

Plaintiff,

v.

KRISTIE BARKER, an individual; and  
ANY AND ALL OTHER OCCUPANTS IN  
POSSESSION OF PREMISES LOCATED  
AT 301 MINOR AVENUE NORTH, Unit  
#618 SEATTLE, WASHINGTON 98109,

Ms. Barkers.

NO. 24-2-03107-3 SEA

ORDER GRANTING PLAINTIFF'S  
MOTION TO REVISE  
COMMISSIONER'S ORDER

THIS MATTER came before the Court on Plaintiff Equity Residential Management, LLC ("Equity") motion to revise King County Superior Court Commissioner Bradford Moore's entry of an order denying Equity's motion for default. The motion for revision was made pursuant to RCW 2.24.050.

The Court heard the matter without oral argument. The Court considered the motion, the records of the case, and the audio recording of the hearing.

Based upon the argument of counsel, the records in this case, and the evidence presented, the Court finds:

1 Background

2 1. A common law action of ejectment is an ordinary civil action; the responding party  
3 can bring counterclaims; both parties are entitled to full discovery before the judicial officer  
4 decides the right to possession; a 20-day civil summons must be used; there is no statutory  
5 show-cause procedure, and there is no right to any type of expedited trial.

6 2. Our courts have recognized and many legal commentators agree that the common law  
7 action of ejectment has little practical appeal when compared to a statutory action for  
8 unlawful detainer with its quick and simple eviction proceedings.<sup>1</sup> However, more landlord-  
9 tenant matters are filed in King County than can be reasonably handled by our dedicated  
10 King County Superior Court Commissioners. Statistics recorded by the Department of  
11 Judicial Administration show an unprecedented increase in the number of recent filings. No  
12 additional funding from the State or County has been provided to address the significant  
13 increase. As a result, an unlawful detainer action in King County can be time and cost  
14 prohibitive.  
15

16 3. Property owners in King County are beginning to reconsider the use of the common  
17 law action of ejectment to reduce the length of time to obtaining possession of their property.  
18

19 Dispute

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22 <sup>1</sup> An unlawful detainer action is designed to relieve a landlord of having to file an expensive  
23 and lengthy action of ejectment. *Hous. Auth. of City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d  
24 745 (1990) (quoting *Wilson v. Daniels*, 31 Wn.2d 633, 643–44, 198 P.2d 496 (1948)); *FPA Crescent*  
25 *Assocs., LLC v. Jamie's, LLC*, 190 Wn. App. 666, 675, 360 P.3d 934 (2015) (accord); *River Stone*  
*Holdings NW, LLC v. Lopez*, 199 Wn. App. 87, 92, 395 P.3d 1071 (2017) (the unlawful detainer  
statute was created to provide an efficient summary proceeding as an alternative to the common law  
action of ejectment); Washington Real Property Deskbook, § 9.3(2) (4th Edition 2010).



1 8. On 03/06/2024, Equity filed a Motion for Default. *See* Docket Sub. No. 5. In the  
2 Motion for Default, Equity argued Ms. Barker’s failure to appear, answer, or otherwise  
3 defend the action so Equity was entitled to default under CR 12 and CR 55. The motion was  
4 supported by the Declaration of David Lovas (describing Ms. Barker’s behaviors); the  
5 Declaration of Cliff Fletcher (attaching a copy of the lease agreement, 30-Day Notice to  
6 Quit, RRIO Certificate of Property Registration, and ledger of unpaid rent); and the  
7 Declaration of Brian M. Muchinsky (attaching a copy of the 30-Day Notice to Quit;  
8 declarations of service related to the 30-Day Notice to Quit; declaration of service related to  
9 the Summons, Complaint, and Order Setting Civil Case Schedule). *See* Docket Sub. Nos. 6,  
10 7, 8. The affidavit of service attached to the Declaration of Brian M. Muchinsky was  
11 executed by a professional process server and contains a sworn oath that Ms. Barker was  
12 personally served with the initial pleadings. *Id.* The motion was presented *ex parte* via the  
13 clerk per LCR 40.1(b)(2)(G) (“Motions for default orders and default judgments shall be  
14 presented to the Ex Parte and Probate Department, unless any defendant has appeared in the  
15 matter, in which case it shall be noted before the assigned judge, or if no judge has been  
16 assigned to the Respective Chief Judge in accordance with LCR 7 and LGR 29(h).”).

19 9. On 03/06/2024, King County Superior Court Commissioner Bradford Moore entered  
20 an order denying Equity’s Motion for Default based on Equity’s failure to show compliance  
21 with RCW 59.18.430 and “all the provisions” of the RLTA. Equity was directed to note the  
22 matter for a hearing in the Ex Parte Department or else resubmit the motion and order with  
23 proof of compliance.

25 10. On 03/07/2024, Equity filed a Note for Motion Docket. The Note was accompanied by

1 the Supplemental Declaration of Brian M. Muchinsky.

2 11. On 03/08/2024, Equity appeared through legal counsel for a hearing with  
3 Commissioner Moore. Ms. Barker was not provided notice of the hearing and did not appear  
4 for the hearing in keeping with court rules. During the hearing with Commissioner Moore,  
5 Equity acknowledged the RLTA applies to every residential landlord-tenant agreement  
6 insofar as landlords cannot contract around the duties and obligations imposed on landlords  
7 by the RLTA. *See* RCW 59.18.430; *see also, e.g., FPA Crescent Associates, LLC v. Jamie's,*  
8 *LLC*, 190 Wn. App. 666, 360 P.3d 934 (2015) (holding lease provision that allowed  
9 termination without notice did not relieve landlord of obligation to provide statutory notice  
10 under the unlawful detainer statute). Equity argued the validity of any given residential  
11 landlord-tenant agreement is separate and distinct from the statutory remedies providing for  
12 eviction proceedings in the RLTA. If the property owner is not seeking relief under the  
13 RLTA, Equity argued, then the property owner is not required to follow the process and  
14 procedures in the RLTA. Equity argued property owners always have a choice between  
15 ejectment (Chapter 7.28 RCW) and eviction (Chapter 59.12 RCW).  
16  
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18 12. On 03/14/2024, Commissioner Moore entered a second order denying Equity's  
19 Motion for Default. Commissioner Moore relied on RCW 59.18.430, which states: "**All**  
20 **provisions of this chapter shall apply to any lease** or periodic tenancy entered into on or  
21 subsequent to July 16, 1973." *See* Docket Sub. No. 12 (emphasis added). Commissioner  
22 Moore interpreted RCW 59.18.430 ("All provisions... apply to any lease...") to mean the  
23 RLTA must apply to all residential landlord-tenant agreements. As a result, Commissioner  
24 Moore concluded the notice provisions within the RLTA must apply to all residential  
25

1 landlord-tenant disputes:

2 The comprehensive amendments to Chapter 59.18 made in 2021 (as well  
3 as other years), and the language of RCW 59.18.430, lead to the  
4 conclusion that the Legislature intended that the protections to Ms.  
5 Barkers described throughout the 68 subparts of Chapter 59.18 apply to  
any attempt to remove a residential Ms. Barker from his/her rented  
property.

6 *Id.* As Equity had not adhered to the notice provisions, Commissioner Moore denied  
7 Equity's motion for default.

8 13. On 03/19/2024, Equity timely filed a Motion to Revise Commissioner's Order  
9 Denying Motion for Order of Default, Default Judgment and Issuance of Writ of Ejectment  
10 and a motion to shorten time for the Court to hear the motion for revision. *See* Docket Sub.  
11 Nos. 16 – 19. The Court denied the motion to shorten time because Equity had not yet filed  
12 proof of service of the Motion for Reconsideration on Ms. Barker. *See* Docket Sub. No. 24.

13 14. Ms. Barker has not filed any response.

14  
15 Analysis

16 1. First, the RTLA was enacted in derogation of common law, and it curtails the  
17 application of common law. *Terry*, supra, 114 Wn.2d at 563. The mandatory procedures  
18 within the RTLA include heightened notice provisions. *See Christensen v. Ellsworth*, 162  
19 Wn. 2d 365, 371, 173 P.3d 228 (2007) (holding the purpose of the notice is to provide the  
20 tenant with *at least* one opportunity to correct a breach before forfeiture of a lease under the  
21 accelerated restitution provisions of RCW 59.12.) (emphasis in original). Because the  
22 purpose of the RTLA is to provide expediated relief to property owners, property owners  
23 must strictly comply with all provisions of the RTLA, including the heightened notice  
24  
25

1 requirements, to reap the benefits of the RTLA. *Id.*, see also *Terry*, 114 Wn.2d at 563  
2 (explaining the landlord could have brought its case against the tenant as an ejectment action  
3 if the landlord did not want to provide the tenant with an opportunity to cure under the  
4 unlawful detainer statute). Unlike the RTLA, no “grand bargain” was negotiated by  
5 lawmakers in the common law action of ejectment. While Chapter 59.12 RCW and Chapter  
6 59.18 RCW cross-reference each other, the two chapters never reference Chapter 7.28 RCW  
7 or any other statute, cause of action, or legal process. *See, e.g.*, RCW 59.12.030; RCW  
8 59.12.040; RCW 59.12.120; RCW 59.18.420. The purpose of requiring landlords to comply  
9 with heightened notice provisions in the RTLA is not present in the common law action of  
10 ejectment where landlords must follow the court rules for civil procedure.  
11

12 2. Second, in *Petsch v. Willman*, 29 Wn.2d 136, 185 P.2d 992 (1947) our Supreme Court  
13 held an early version of the unlawful detainer statute did not supersede all existing common  
14 law on the ways and means of acquiring the right to possession. *Id.* As a result, a landlord  
15 does not have to use the summary remedy of unlawful detainer. *Id.* A property owner with  
16 the right to possession can elect to proceed under the ejectment and quiet title statute or  
17 under the unlawful detainer statute. *Id.* Further, our Supreme Court explained:  
18

19 The two statutes, ejectment and quiet title and unlawful detainer, are not to  
20 be construed as in *pari material* ... Ejectment is the common-law action,  
21 except as modified by statute; and unlawful detainer is a purely statutory  
22 and summary procedure, providing for shortened notice, immediate  
possession pending trial under certain conditions, and double damages.

23 *Id.* at 138. As a result, our Supreme Court held:

24 If he [the property owner] elects to proceed under the ejectment and quiet  
25 title statute to recover possession for a violation of the covenant to pay  
rent, he is not required, as a condition precedent, to have given the three-

1 day notice to pay rent or quit the premises required by Rem. Rev. Stat., §  
2 812, which is a condition precedent to such an action under the unlawful  
3 detainer statute.

4 In holding the notice provisions in the unlawful detainer statute did not apply to a  
5 common law action of ejectment, our Supreme Court referenced and approved of the holding  
6 in *State v. Superior Ct. of Washington In & For Spokane Cnty.*, 127 Wash. 37, 220 P. 5  
7 (1923) where an earlier Supreme Court held the notice provisions in the early version of the  
8 unlawful detainer statute only applied to actions for unlawful detainer:

9 This section is a part of the act on forcible entry and detainer, and by its  
10 terms is applicable only in cases where the forfeiture of a lease is declared  
11 by the judgment of a court entered in a forcible entry and detained action.

12 127 Wash. at 39. Decades after *Petsch* was published, in *Shoemaker v. Shaug*, 5 Wn. App.  
13 700, 490 P.2d 43 (1971) one of our appellate courts made a similar holding:

14 Had Shaug elected to obtain possession of the tavern premises pursuant to  
15 Washington's unlawful detainer statute, RCW 59.12, he would have been  
16 required to first give notice 'requiring in the Alternative the Performance  
17 of the covenant (the covenant not to assign) Or the Surrender of the  
18 property, RCW 59.12.030(4).

19 ...  
20 Since Shaug did not elect to pursue a summary remedy by claiming  
21 unlawful detainer, the relief against forfeiture provided by RCW  
22 59.12.190 is not available to Shoemaker.

23 *Id.* at 704-705 (internal quotations omitted). This similar holding was repeated in *Honan v.*  
24 *Ristorante Italia, Inc.*, 66 Wn. App. 262, 832 P.2d 89 (1992):

25 Had the Honans relied only on the notice of unlawful detainer posted and  
filed on December 8, pursuant to RCW 59.12, the court would have been  
correct in finding the Honans evicted their tenants without legal process.  
But, as the record indicates, the unlawful detainer was essentially an  
afterthought; R.I. had already been evicted by the action filed on  
November 30. RCW 7.28.250.



1 *Id.* at 270. The only conclusion that can be drawn from *Petsch* and related cases stand for the  
2 principle when a property owner proceeds under the ejectment and quiet title statute, the  
3 notice requirements and provisions of RCW 59.18 do not apply.

4 3. Finally, in the treatise *Law of Distressed Real Estate*, the author explains:

5 Ejectment as a remedy proves most useful in the situation where the  
6 person seeking eviction is unable to or has failed to abide by the strict  
7 statutory requirements of a summary statute. The remedy of ejectment  
8 may be pursued without the landlord's worrying about compliance with  
any of the terms or provisions of the summary remedy.

9 4 L. Distressed Real Est. s 48:34 (November 2023).

10 4. Equity has the right to pursue possession under the ejectment and quiet title statute  
11 without use of or consideration of the unlawful detainer statute.

12  
13 Based upon the above findings, It Is Ordered:

- 14 1. Equity's motion is GRANTED.  
15 2. The Order for Default is vacated.  
16 3. The Court will enter a separate order granting Plaintiff's Motion for Default,  
17 Default Judgment, and issuance of Writ of Ejectment.

18 Dated this 17<sup>th</sup> day of April, 2024.

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21 HONORABLE HILLARY MADSEN  
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Honorable Hillary Madsen  
Requested Hearing Date: Thursday, March 21, 2024  
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

EQUITY RESIDENTIAL MANAGEMENT,  
L.L.C., a Delaware limited liability company,

Plaintiff,

v.

KRISTIE BARKER, an individual; and ANY  
AND ALL OTHER OCCUPANTS IN  
POSSESSION OF PREMISES LOCATED  
AT 301 MINOR AVENUE NORTH, Unit  
#618 SEATTLE, WASHINGTON 98109,

Defendants.

NO. 24-2-03107-3 SEA

ORDER REVISING COMMISSIONER'S  
RULING AND GRANTING PLAINTIFF'S  
MOTION FOR ORDER OF DEFAULT,  
DEFAULT JUDGMENT, AND ISSUANCE  
OF WRIT OF EJECTMENT

(CLERK'S ACTION REQUIRED)

**JUDGMENT SUMMARY**

Judgment Creditor:	Equity Residential Management, L.L.C., a Delaware limited liability company
Attorney for Judgment Creditor:	Brian M. Muchinsky 10500 NE 8 <sup>th</sup> St., Ste. 930 Bellevue, WA 98004 (425) 289-5555
Judgment Debtor:	Kristie Barker
Judgment Principal:	\$8,853.59
<b>TOTAL JUDGMENT AMOUNT:</b>	<b>\$8,853.59</b>
Postjudgment Interest:	12% per annum

ORDER OF DEFAULT AND DEFAULT JUDGMENT AND  
MOTION FOR ISSUANCE OF WRIT OF EJECTMENT - 1

**ILLUMINATE LAW GROUP**  
10500 NE 8<sup>th</sup> Street, Suite 850  
Bellevue, WA 98004  
Tel (425) 289-5555  
Fax (888) 371-4133

1           THIS MATTER came before the Court on Plaintiff's Motion for Order of Default.  
2 The Court has considered Plaintiff's motion, with the declarations of David Lovas, Cliff  
3 Fletcher, and Brian Muchinsky in support thereof. It has also considered the Supplemental  
4 Declaration of Brian Muchinsky and the Commissioner's Order denying this relief dated  
5 March 14, 2024 ("Order"), the oral argument at an emergency hearing conducted on Friday,  
6 March 8, 2024 and on Plaintiff's Motion for Revision.  
7

8           Based on the foregoing and being otherwise fully advised in the premises, now,  
9 therefore, it is hereby ORDERED that the motion for revision is GRANTED. The Order is  
10 hereby VACATED and the Order of Default, Default Judgment, and Issuance of Writ of  
11 Restitution is hereby GRANTED.  
12

13           1.       Specifically, Defendants are adjudged to be in default in this action.

14           2.       Default judgment is hereby entered in the amount of \$8,853.59 for unpaid rent.  
15 Postjudgment interest shall accrue at 12% per annum.

16           3.       The Clerk of the Court is hereby directed to issue a Writ of Ejectment  
17 immediately forthwith, returnable ten days after its date of issuance, restoring to plaintiff  
18 possession of the property described as 301 MINOR AVENUE NORTH, Unit #618  
19 SEATTLE, WASHINGTON 98109; provided that if return is not possible within 20 days, the  
20 return on this writ shall be automatically extended for a period of 100 days. The writ shall also  
21 authorize the sheriff to break and enter as necessary.  
22

23           4.       The legal description of the Property on which the Leased Premises are located  
24 is:  
25

1 FAIRVIEW HOMESTEAD ASSN LESS POR FOR ALLEY PER  
2 DEED REC #20030813000580  
3 **Plat-Block: 3**  
4 **Plat Lot: 7 THRU 11**

5 APN: 246740-0101.

6 DONE IN OPEN COURT this 17<sup>th</sup> day of April, 2024.

7   
8 \_\_\_\_\_  
9 HONORABLE HILLARY MADSEN

10 Presented by:

11 ILLUMINATE LAW GROUP

12 /s/ Brian M. Muchinsky

13 Brian M. Muchinsky, WSBA #31860  
14 Tyler J. Roth, WSBA #54058  
15 Attorneys for Plaintiff

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ORDER OF DEFAULT AND DEFAULT JUDGMENT AND  
MOTION FOR ISSUANCE OF WRIT OF EJECTMENT - 3

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