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FILED
San Francisco County Superior Court

OCT 10 2018

CLERK OF THE COURT

By:  Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

KELLY CREPS & SHAMSI CREPS,
Plaintiffs,

Case No. CGC-17-558965

Vs.

STATEMENT OF DECISION

YUESEN YUEN,
Defendant.

This Court conducted a bench trial in this San Francisco Rent Ordinance, Owner Move-
In case. Testimony and evidence in the above-entitled Court Trial began on August 14, 2018.
The Court bifurcated the Trial and heard testimony and evidence on the liability phase of the
trial first.¹ At the conclusion of the liability phase of the Court Trial, the Court issued a
tentative ruling in favor of Defendant and thus stayed the damages portion of the trial.

¹ To accommodate Plaintiffs' damages expert's schedule, the court allowed Plaintiffs' economist Rick Devine to testify, out of order, in the initial liability phase of the trial.

1 The Causes of Action before the Court were for:

- 2 (1) Wrongful Eviction (Owner Move In) in Violation of San Francisco Rent
3 Ordinance Section 37.9;
4 (2) Tenant Harassment in Violation of San Francisco Rent Ordinance Section
5 37.10B; and
6
7 (3) Breach of the Covenant of Quiet Enjoyment- in tort and contract.
8

9 Upon careful consideration of the testimony and exhibits received into evidence, the
10 Court issues the following Statement of Decision, pursuant to Code of Civil Procedure Section
11 632 as follows: The Court finds in favor of Defendant Yuesen Yuen on all counts. The court
12 finds Plaintiffs, Kelly Creps and Shamsi Creps, have not met their burden of proof as to the
13 violations of the San Francisco Rent Ordinance Section 37.9 and 37.10B. Nor is there sufficient
14 evidence Defendant wrongfully disturbed or unlawfully terminated Kelly Creps and Shamsi
15 Creps' tenancy in violation of the Covenant of Quiet Enjoyment.
16

17 **I. FACTUAL BACKGROUND**
18

19 Defendant Yuesen Yuen ("Defendant") moved to San Francisco when she was 10 years
20 old. She bought the duplex at 236-238 Moultrie Street in San Francisco in 1988. She raised her
21 daughter in this house, she knows many of the long time neighbors and has a significant
22 attachment to the neighborhood.
23

24 Defendant's daughter left for college in 2001. In 2004, Defendant moved to Atlanta,
25 Georgia for work and, in December 2004, she rented 238 Moultrie to Plaintiffs Kelly and
26 Shampsi Creps ("Plaintiffs"). Plaintiffs rented 238 Moultrie subject to a written lease for an 18
27 month term. 238 Moultrie was a rent controlled unit subject to the San Francisco Rent Ordinance
28

1 ("SFRO"). Defendant's work commitments in Georgia lasted longer than she anticipated. In
2 2013, Defendant moved to Sacramento for work, and rented an apartment there until she retired
3 in 2015. Plaintiffs lived at 238 Moultrie for over 11 years. They too were attached to the
4 neighborhood and viewed 238 as their home. The Landlord Tenant relationship during those 11
5 years was essentially uneventful until Defendant retired in 2015.

7 The initial lease between Plaintiffs and Defendant was for \$2,100 per month. All parties
8 agreed that the original asking price for the lease for \$2,400 per month. The written lease stated
9 the agreed upon amount was ultimately settled at \$2,100 per month. Defendant testified she
10 agreed to reduce the rent with the understanding that Plaintiff, Mr. Creps, who was a handy
11 man, would be given a \$300 monthly credit for doing repair work to the property. Though
12 Defendant referred to this "understanding" in subsequent emails to Plaintiffs, the lease did not
13 mention this credit, and Plaintiffs disputed that this was their understanding. Plaintiff Kelly
14 Creps testified that he did do repairs at 238 Moultrie free of charge. In 2011, Defendant raised
15 the rent for the first time, by \$155.00 per month. In 2015, Defendant imposed a second increase,
16 to \$2,472.26 per month.²

19 Defendant retired in February 2015 and has not worked for compensation since that time.
20 Defendant had been a serious Buddhist for many years, and testified that after her retirement, she
21 wanted to devote her life to Buddhism and to becoming a Buddhist priest. She gave up her
22 studio in Sacramento, took some time to reflect and visit sacred Buddhist sites in Japan and then
23 went to Los Angeles where her daughter was living. She enrolled in a training program at the
24

26 ² Defendant paid the garbage and water utility bills. Plaintiffs paid for gas and electric. When
27 Defendant moved back into 238 Moultrie and took in roommates, she shared the utility bills with
28 the roommates.

1 Zen Center Los Angeles and got a small, approximately 120 square foot, room in the Zen Center
2 Los Angeles monastery housing. She was accepted into a 2-year master's degree program in
3 religious studies at the University of the West, in Southern California, where she earned a
4 scholarship, beginning in the Fall of 2015. She planned to, and did, earn her degree in December
5 2017. She testified that her time in Los Angeles was temporary. In 2015, she spent time and
6 received mail at her daughter's address. She did not receive mail at the Zen Center Los Angeles;
7 she had few belongings there and did not have storage in Los Angeles. During this time of post-
8 retirement transition in 2015, Defendant testified that as she pondered her religious goals and
9 studies, and her finances in retirement, she also contemplated what she should do with her
10 property on Moultrie. She stated she was not sure if she could afford to move back in or if she
11 needed to sell the property. To help make this decision, she had appraisers come to the Moultrie
12 home. After her downstairs tenant moved out of 236 Moultrie at the end of December 2015, she
13 did some repair work to that unit and brought in new tenants beginning February 2016. She
14 testified that it was then that she ultimately decided she could move back into her home at 238
15 Moultrie. On February 25, 2016, Defendant served Plaintiffs with a 60-Day Notice of
16 Termination of Tenancy, commonly known as an "Owner Move in Eviction." ("OMI")
17 (Plaintiffs' Exhibit 14.) In the notice, Defendant stated she was living with her daughter in Los
18 Angeles. The testimony in trial was that, at that time, Defendant spent time at her daughter's
19 apartment but more often she stayed at the Zen Center in Los Angeles. Defendant stated in the
20 OMI that she intended to move back in to 238 Moultrie.

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25 Plaintiffs vacated the 238 Moultrie property in April 2016. Thereafter, they watched the
26 property and spoke with neighbors to determine whether Defendant had indeed moved back in to
27 238 Moultrie. Defendant testified that as part of her retirement plan, in order to afford to live in
28

1 238 Moultrie and not be forced to sell, she would need to take in roommates. She testified that
2 she planned to continue her studies, and starting in May, she commuted to and from Los Angeles
3 to earn her degree.

4 Plaintiffs dispute the timing of Defendant's decision to move in and dispute her dominant
5 motive was to move in. They testified that Defendant told them in December 2015 that she
6 would move in and that her motive was not in good faith as she was living in Los Angeles and
7 did not fully move into 238 Moultrie for many months. Plaintiffs presented evidence that after
8 they were evicted, Defendant had roommates who collectively paid higher rent than Plaintiffs.
9

10 **II. LEGAL ISSUES**

11 12 A. Did Defendant Violate San Francisco Rent Ordinance Section 37.9 by Recovering 13 Possession of 238 Moultrie, in Good Faith, when she was Spending Time in Los Angeles 14 and Traveling Pursuing Education and Religious Pursuits? Was 238 Moultrie 15 Defendant's Principal Residence Following the Eviction of Plaintiffs?

16
17 Plaintiffs had the burden of proof in this liability phase:

18 "A party must persuade you, by the evidence presented in court, that what he or she is
19 required to prove is more likely to be true than not true. ... After weighing all of the evidence, if
20 you cannot decide that something is more likely true than not true, you must conclude that the
21 party did not prove it. You should consider all the evidence, no matter which party produced the
22 evidence..." (Judicial Council of California Civil Jury Instructions (2018) CACI No. 200)

23 24 **1. 238 Moultrie was Defendant's Primary Residence**

25 San Francisco Rent Ordinance section 37.9(a)(8)(i) (hereafter "SFRO") provides just
26 cause for landlord/owner move-in where:
27
28

1 “(8) the landlord seeks to recover possession in good faith, without ulterior reasons and with
2 honest intent;

3 (i) For the landlords use or occupancy as his or her principal residence for a period
4 of a least 36 continuous months...”

5 The Court heard considerable evidence regarding Defendant’s whereabouts after the
6 Plaintiffs moved out of 238 Moultrie in April 2016. Specifically, the Court finds Plaintiffs failed
7 to meet their burden of proof that 238 Moultrie was *not* Ms. Yuen’s principal place of residence.
8 Under the factors set forth in San Francisco Rent Board Rules and Regulations Section 12.14 (c),
9 the overwhelming evidence showed that 238 Moultrie *was* Ms. Yuen’s principal place of
10 residence. There was credible evidence that her honest intent was to reside in her home in good
11 faith, without ulterior reasons.
12
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14 San Francisco Rent Board Rules and Regulation section 12.14 (c) defines “principal
15 place of residence” in the context of an Owner Move-In eviction. In addition to stating that a
16 landlord can have only one principal place of residence, it defines this term to be “the permanent
17 or primary home of the party claiming that a unit has that status attached to it. It is a unit that the
18 party occupies for more than temporary or transitory purposes.” (*Ibid.*) Section 12.14(c) sets
19 forth the following nine factors which a fact-finder should consider in determining whether a
20 particular unit is a landlord’s “principal place of residence”:
21

22 “(1) the subject premises are listed as the party’s place of residence on
23 any motor vehicle registration, driver’s license, automobile insurance policy,
24 homeowner’s or renter’s insurance policy, and with the party’s current
25 employer or any public agency, including State and local taxing authorities;

26
27 (2) utilities are installed under the party’s name at the subject premises;
28

- 1 (3) the party's personal possessions have been moved into the subject
2 premises;
- 3 (4) a homeowner's tax exemption has been issued in the party's name for
4 the subject premises;
- 5 (5) the party's current voter registration is for the subject premises;
- 6 (6) a U.S. Postal Change of Address form has been filed requesting that
7 mail be forwarded to the subject premises;
- 8 (7) the subject premises are the place the party normally returns to as
9 his/her home, exclusive of military service, hospitalization, vacation, or travel
10 necessitated by employment;
- 11 (8) notice to move at another dwelling unit was given in order to move
12 into the subject premises; and
- 13 (9) the party sold or placed on the market for sale the home he/she
14 occupied prior to the subject premises." (*Ibid.*)

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18 The court finds that the evidence overwhelmingly established that 238 Moultrie is
19 Defendant's principal place of residence, and has been since May 2016 when she began moving
20 back into it.

21 The Court received into evidence Defendant's motor vehicle registration, driver's
22 license³, auto insurance policy; homeowner's policy; utility bills; homeowner's tax exemption;
23 and voter registration all showing Defendant's name at the Moultrie home. (Defendant's Exhibits
24

25
26
27 ³ The testimony and evidence at trial was that Defendant used the 236 and 238 addresses
28 interchangeably. All mail from both addresses came to one mail box and Defendant viewed
them as one and the same. The tenants and roommates testimony supported this position.

1 4, 17, 25, 28, 29, 81.) Defendant testified that she did not file a change of address form with the
2 post office, but instead she changed the address directly for her accounts (such as mortgage;
3 banking and insurance) online. The Court heard credible testimony from long time neighbors
4 Bret Stemme, Glenda Brewer and Mario Murguia, each of whom had specific recollections of
5 seeing Defendant move in during the summer of 2016 and begin fixing up her home. Even
6 Plaintiffs' witnesses, next door neighbors Alex Armenta and Eric Paulson, testified to seeing
7 Defendant in the summer of 2016 during an incident with a dog and saw her car parked in front
8 of their house. The Court heard further testimony from Defendant's close friend and former
9 sister in law, Teri James Day about Defendant moving back in and going shopping with
10 Defendant for furniture and household items. Dated receipts from the stores were admitted into
11 evidence and corroborated this testimony. (Defendant's Exhibit 15.) The Court heard detailed
12 testimony from Defendant's current and former roommates, each of whom testified to
13 Defendant's presence on the premises, including testimony of her belongings in the shower area;
14 her food in the kitchen and her furniture in the home.
15

16
17 The Court considered the testimony of Plaintiffs' witness Jason Stropko, a friend of
18 Plaintiff Kelly Creps, who testified that he went to the Moultrie home in December 2016 to
19 consider renting a room from Defendant. He testified the house was empty and unfurnished.
20 This testimony conflicts with photographs admitted into evidence and the testimony of
21 Defendants' roommates Melissa Meierdierks, Daniel Lee and later Nicole Miclat- all of whom
22 testified to the fact that Defendant had furnishings in the home at that time. Thus, this singular
23 testimony, in conflict with other credible testimony, is insufficient for the Court to find
24 Defendant was not residing in the home.
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1 The Court heard extensive testimony about Defendant's Buddhist faith, and her
2 endeavors to further her religious goals via education and travel to religious sites. (Defendant's
3 Exhibit 7.) The Court carefully considered the fact that Defendant *did* spend time each week in
4 Los Angeles at the Zen Center and at the University of the West pursuing her degree. The
5 testimony of Darla Fjeld and Tim Zamora of the Zen Center was consistent with Defendant's
6 testimony that she commuted to Los Angeles and could fulfill her obligations to the Zen Center
7 monastery housing and her University of the West class schedule by organizing her classes and
8 obligations within 1-2 days per week. (Defendant's Exhibit 12.) The Court finds this testimony
9 to be credible and consistent with Defendant's testimony and those of the roommates and
10 neighbors who testified to Defendant coming and going from Moultrie Street home. The Court
11 also considered Defendant's testimony that Los Angeles was not her permanent residence. She
12 did not receive mail at the Zen Center; her long term goals were not in Los Angeles. She never
13 took a homeowner's exemption there, never registered to vote there nor did she pay for any
14 utilities there. In short, there was no credible evidence any of the factors in section 12.14(c)
15 applied to this monastery housing.

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19 The Court finds an additional corroborating factor was Defendant's goal to become a
20 disciple of Zen teacher Elliston Roshi in Atlanta, not with the Abbott of the Zen Center in LA.⁴
21 Her testimony that she had no intention to stay in LA after she completed her degree in
22 December 2017, and that she organized her schedule to allow her to commute, is credible given
23 the evidence that her 120 square room at the Zen Center, with few personal belongings, was a
24 "temporary" and "transitory" place to stay, not a principle place of residence. Section 12.14(c)
25

26
27
28 ⁴ The evidence showed that Defendant would not need to move to Atlanta to study under the
Roshi there.

1 sets forth that a principal place of residence is not a unit that the party occupies for “temporary or
2 transitory purposes.” Moreover, section 12.14 (c)(7) allows for a landlord to be away for
3 vacation, which would include Defendant’s travels to religious sites and other vacation travel . In
4 sum, 238 was Defendant’s principal residence as defined by the SFRO.

5
6 **2. There was insufficient evidence Defendant had an ulterior motive and did not**
7 **act in good faith.**

8
9 The statutory scheme of the SFRO is meant to protect affordable housing and the
10 legislation has placed limitations on a landlord’s ability to terminate a tenancy, including the
11 requirement of good faith. (SFRO; See *Bullard v. San Francisco Residential Rent Stabilization*
12 *Bd.* (2003) 106 Cal. App. 4th 488, 492.) This good faith requirement is crucial to ensuring that
13 landlords do not evict tenants in order to undermine rent control protections that have been
14 upheld by California courts. (See *Rental Housing Ass’n of Northern Alameda County v. City of*
15 *Oakland* (2009) 171 Cal App 4th 741, 759; *Chacon v. Litke* (2010) 181 Cal App 4th 1234, 1249;
16 see also *Zimmerman v. Stotter* (1984) 160 Cal. App. 3d 1067.)

17
18 Defendant testified credibly that she wanted to earn her degree and she arranged her
19 schedule by commuting to and from LA to complete her Masters degree. She also testified that
20 because she was now retired and had limited income, she would need to take in roommates to
21 make ends meet. As discussed above, there was insufficient evidence that Defendant ever
22 intended for the Los Angeles Zen Center to be her principal residence.

23
24 The Court carefully considered Plaintiffs’ arguments that by Defendant having
25 roommates and/or not offering to have Plaintiffs as her roommates showed a lack of good faith.
26 No legal authority was provided for either of these arguments.
27
28

1 The Court considered Plaintiffs' exhibits in evidence of Ms. Yuen's emails referencing
2 the "minute amount of time when I go to SF" and her traveling "most of the time." (Plaintiffs'
3 Exhibits 18; 45.) The Court also considered the Defendant's declaration in the Sixty Day Notice
4 of Termination of Tenancy stating that she lived with her daughter (Plaintiff's Exhibit 14.) The
5 Court agrees with Plaintiffs that these statements were misleading- while the evidence showed
6 she spent time at her daughter's apartment, she also paid to stay at the Zen Center. The evidence
7 showed that she made statements in emails about spending time away from San Francisco and
8 not wanting some to know her whereabouts.

10 The Court carefully considered Plaintiffs' evidence, mindful of the standard set forth in
11 *Gibson v. Corbett* (1948) 87 Cal. App. 2d Supp. 926, 932: that a landlord "must establish that he
12 honestly intends to occupy the premises; that his own occupancy is his prime motive; that no
13 ulterior reason impels him to defeat or evade the purpose of the act; that he is not attempting to
14 make profit at the expense of a tenant." Further, "The phrase 'in good faith' is borrowed from
15 equity jurisprudence and should be interpreted accordingly: 'It simply means 'honestly; without
16 fraud, collusion, or deceit; really, actually without pretense.'" (*Bumgarner v. Orton* (1944) 63
17 Cal. App. 2d Supp. 841, 844)

20 Here, given all the evidence presented, Defendant presented credible corroborated
21 evidence that she honestly intended, and did move back into her home for her retirement.
22 Plaintiffs' evidence was insufficient to show lack of good faith, of bad faith or of an ulterior
23 motive by Ms. Yuen.

25 Moreover, what *is* clear is that the Zen Center was not Defendant's primary residence as
26 defined by the SFRO. Given the credible testimony of multiple witnesses, the photographs of the
27 home with Defendant's furniture and belongings from 2016, and the exhibits presented, the
28

1 evidence showed that Ms. Yuen's *did* move back into 238 Moultrie in May 2016 and her
2 dominant motive and intent was to treat what she viewed as her home as her Principal Place of
3 Residence under the San Francisco Rent Ordinance Rules. This is consistent with the evidence
4 Defendant has cared for and loves her home and neighborhood; as well as her desire to pursue
5 her Zen Buddhism studies and religious travel in her retirement, which is not prohibited by law.
6

7 Further, the SFRO does not prohibit a homeowner from taking in roommates to help pay
8 the mortgage and the evidence that Defendant had roommates, in light of all the evidence, was
9 insufficient to show bad faith or even a lack of good faith. Plaintiffs argue that the fact that
10 Defendant received higher rent from her roommates than from Plaintiffs when she moved back
11 into Moultrie is evidence she did not act in good faith under SFRO section 37.9B.
12

13 SFRO Section 37.9B provides: "Any rental unit which a tenant vacates after
14 receiving a notice to quit based on Section 37.9(a)(8), **and which is subsequently**
15 **no longer occupied as a principal residence by the landlord** [...] if offered for
16 rent during the five-year period following service of the notice to quit under
17 Section 37.9(a)(8), be rented in good faith at a rent not greater than that which
18 would have been the rent had the tenant who had been required to vacate
19 remained in continuous occupancy and the rental unit remained subject to this
20 Chapter 37." (San Francisco Rental Ordinance section 37.9(a)(8))(emphasis
21 added)
22

23
24 As noted above, the court finds Defendant *did* occupy Moultrie as her principal
25 residence, so this provision of the SFRO does not apply. Nonetheless, in an effort to carefully
26 consider Plaintiffs claims, the Court also notes the evidence showed the rents Defendant
27 currently gets from her two roommates, while collectively higher than what she charged
28

1 Plaintiffs, was still under market rate.⁵ Moreover, it is not significantly different from the rent
2 she ultimately charged the Plaintiffs, particularly in light of Plaintiff's admission that he did in
3 fact do work at the house, without charge – which is consistent with Defendant's explanation of
4 why she agreed to lower Plaintiffs' rent in the first place. Thus, the rent Defendant currently
5 receives from roommates is not sufficient evidence of a lack of good faith.
6

7 The Court also considered Plaintiffs' position that when Defendant gave notice to the Zen
8 Center two months after being served with this lawsuit,⁶ this was an admission that she knew
9 staying at the Zen Center was a violation of the SFRO. However, the timing was also consistent
10 with candid statements about her stress from litigation as well as with her preparations to
11 graduate in December 2017.
12

13 Defendant provided evidence of her vacation schedule and her commute schedule to and
14 from Los Angeles. (Plaintiffs' Exhibit 73, Special Interrogatory No. 10) From May 2016 to the
15 end of 2017, when she graduated from University of the West, the testimony and exhibits at trial
16 showed Defendant spent approximately 56% of her time in San Francisco, 24% of time in Los
17 Angeles while she attended classes, and the remaining 20% of time on vacation visiting sites
18 related to her Buddhist pursuits. SFRR section 12.14(c)(7) allows a fact finder to exclude
19 "vacation" time when determining the place to which a landlord normally returns. There is
20 nothing in the law that prevents Defendant from making her religious travels, or from taking
21 vacation.
22
23

24 ⁵ While Plaintiffs damages expert Richard Devine was allowed to be taken out of order, both
25 sides cited portions of his testimony in the liability phase of the trial. He opined that Defendant
26 charged the new roommates under fair market rental value.
27

28 ⁶ The court took judicial notice of the May 16, 2017 filing of this lawsuit and considered the
evidence she moved belongings out of the Zen Center in September 2017.

1 **3. By not offering 236 Moultrie to Plaintiffs, did Defendant fail to act in good**
2 **faith?**

3
4 The SFRO section 37.9(a)(8)(iv) requires a landlord, in an OMI situation, to offer a
5 comparable unit to a tenant if it is available. Moreover, this section states: “it shall be evidence
6 of a lack of good faith if a landlord times the service of the notice....to avoid offering a tenant a
7 replacement unit.” (*Ibid.*). As to 236 Moultrie, the Court carefully considered the close time
8 frame of the vacancy of 236 at the end of December 2015⁷ and the OMI notice in late February.
9 Defendant testified that when the tenants in 236 moved out, she spent the month of January 2016
10 doing repairs and re-rented the lower apartment beginning in February 2016. When Defendant
11 served Plaintiffs with the OMI Notice, 236 was already rented and was not available. There was
12 not sufficient credible evidence of bad faith or ulterior motive that Defendant timed the service
13 of the 60 Day Notice to avoid offering 236 as a replacement unit. There was testimony by
14 Plaintiffs that Defendant told them she wanted to move into 238 Moultrie in December.
15 Plaintiffs’ witness, the former tenant in 236 testified he was not aware of this allegation.
16 Defendant denied she made such a statement and there was no corroborating evidence she
17 planned to move in at that time. Nor was there sufficient evidence Defendant was avoiding
18 offering 236 to Plaintiffs had it been available.⁸

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22
23 ⁷ There was no evidence 236 and 238 were comparable units. Indeed, the testimony from
24 Plaintiffs and Defendant about the extensive work done over the years to 238, the natural light
25 and unique features of 238 was evidence these were not comparable units. (See also Defendant’s
26 Exhibit 64: Response to Special Interrogatory 46)

27 ⁸ Defendant argues post trial that this claim is barred by the Statute of Limitations. As set forth
28 below, the Court declines to reach this issue.

1
2 Also, the Court considered Plaintiffs claim that the dormer/attic where Plaintiffs slept and
3 where Defendant resided was not permitted for habitability and Defendant should thus be
4 precluded from staying there and renting the 2 other rooms to room mates. Plaintiffs have
5 provided the Court with no applicable authority for this position.
6

7 Finally, Plaintiffs cited as authority for examples of a landlord's bad faith, the California
8 Practice Guide Landlord Tenant, Chapter 9: *"if eviction is premised on the landlord's intent to*
9 *occupy the tenant's unit...the landlord should present evidence tending to show his or her...need*
10 *to reside in the building: eg. The intended occupant (landlord or immediate relative) is ill,*
11 *recently lost a job or has been transferred to a job location in close proximity to the building...."*
12 (emphasis added.)
13

14 Here, the evidence showed Defendant was recently retired and no longer earning a salary,
15 which is akin to losing a job. The Court finds the evidence of her new retirement status is
16 consistent with her honest desire to move in to her home as part of her retirement planning; this
17 credible testimony showed she neither lacked good faith nor acted in bad faith.
18

19 B. Did Defendant act in Bad Faith to Interfere with Plaintiffs' Quiet Use and Enjoyment of
20 238 Moultrie in Violation of SFRO Section 37.10?
21

22 San Francisco Rent Ordinance Section 37.10 provides in pertinent part:

23 " (a) No landlord, and no agent, contractor, subcontractor or employee of the
24 landlord shall do any of the following in bad faith:

25 (5)Influence or attempt to influence a tenant to vacate a rental housing unit
26 through fraud, intimidation or coercion;
27
28

1 (10) Interfere with a tenants right to quiet use and enjoyment of a rental
2 housing unit as that right is defined by California law;

3 (15) Other repeated acts or omissions of such significance as to substantially
4 interfere with
5 Or disturb the comfort, repose peace or quiet of any person lawfully entitled to
6 occupancy...”

7
8 As set forth in the analysis above, there was insufficient credible evidence of a lack of
9 good faith, and no credible evidence, by a preponderance of the evidence, of bad faith on behalf
10 of the Defendant. The Court noted above certain statements Defendant made about her
11 whereabouts were misleading; however, her testimony was consistent and credible that her
12 circumstances changed upon her retirement and she had made 238 her primary residence. Her
13 testimony and that of her neighbors, family and religious colleagues showed she was genuine
14 and devoted to her faith and studies; she loves her home and neighborhood and her primary
15 intent was to move back into the home she hoped to save for herself and her daughter. Given
16 Defendant’s current retirement circumstances, the rent differential between that charged
17 Plaintiffs and that which she earns now- living in her home, with roommates- is not sufficient
18 evidence of bad faith.
19
20

21
22 C. Did Defendant act in Bad Faith and Violate the Covenant of Quiet Enjoyment in Contract
23 or in Tort?

24
25 As set forth more fully above, the Court finds Defendant was credible and sincere that her
26 dominant motive was to move back to her home, in good faith, and pursue her religious path
27 from that home. The evidence from the people who know her best, including her daughter, her
28 fellow Buddhists, her sister-in-law, and her long time neighbors was consistent with Defendant’s

1 position. There was insufficient evidence of wrongful conduct or of bad faith by the landlord
2 Defendant. (See *Nativi v. Deutsche Bank Trust Co.* (2014) 223 Cal. App. 4th 261)

3 D. Issues Not Raised in Trial

4 Following trial, in a proposed Statement of Decision drafted by Plaintiffs, Plaintiffs
5 raised issues for the first time concerning evidence not objected to in trial and asked the court to
6 consider information about alleged statements made by Defendant they had not introduced at
7 trial. California Code of Civil Procedure Section 632 provides: “the court shall issue a
8 statement of decision explaining the factual and legal basis for its decision as to each of the
9 principal controverted **issues at trial...**” (emphasis added.) The request to consider matters
10 neither in evidence nor raised in trial in untimely.

11 Additionally, Defendant in her proposed Statement of Decision requested the Court rule
12 on the Statute of Limitations affirmative defense. Given the Court’s decision in favor of
13 Defendant and the fact that this issue was not raised during trial, the Court declines to consider
14 this in the Statement of Decision.

15 **DECISION**

16 It is this Court’s Decision to award Judgement in favor of Defendant Yuesen Yuen.

17
18
19 It is so ordered.

20
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22 Date: October 10, 2018

Kathleen A. Kelly

23 KATHLEEN KELLY

24 Judge of the Superior Court
25
26
27
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Superior Court of California
County of San Francisco

KELLY CREPS & SHAMSI CREPS,
Plaintiff,

Vs.

YUESEN YUEN,
Defendant.

Case Number: CGC-17-558965

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Johnny Sengmany, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 10, 2018, I served the attached STATEMENT OF DECISION, placing a copy thereof in a sealed envelope, address as follows:

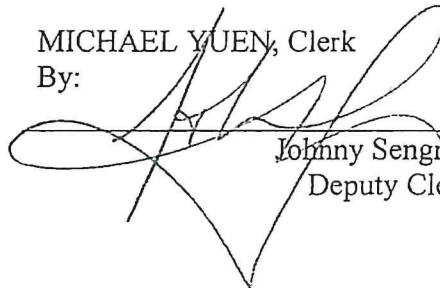
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I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: 10/10/18

MICHAEL YUEN, Clerk
By:


Johnny Sengmany
Deputy Clerk

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FILED
San Francisco County Superior Court
MAR 06 2019
CLERK OF THE COURT
By:  Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

KELLY CREPS & SHAMSI CREPS,
Plaintiff,
vs.
YUESEN YUEN, et al.
Defendants.


Case No.: CGC-17-558965
**JUDGMENT IN FAVOR OF
DEFENDANT YUESEN YUEN**

The court having presided over a court trial in this matter, and having filed its Statement of Decision in favor of defendant YUESEN YUEN on all causes of action on October 10, 2018 finds as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

That JUDGMENT IS ORDERED in favor of defendant YUESEN YUEN, and that plaintiffs KELLY CREPS and SHAMSI CREPS take nothing by way of their complaint. Issues concerning costs of suit and attorneys' fees are to be determined upon filing of Memorandum of Costs and noticed motion.

Dated: March 6, 2019


HON. KATHLEEN A. KELLY
JUDGE OF THE SUPERIOR COURT

Superior Court of California
County of San Francisco

KELLY CREPS & SHAMSI CREPS,

Plaintiffs,

vs.

YUESEN YUEN, ET AL.,

Defendant.

Case Number: CGC-17-558965

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Johnny Sengmany, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 6, 2019, I served the attached JUDGMENT IN FAVOR OF DEFENDANT YUESEN YUEN placing a copy thereof in a sealed envelope, address as follows:

CURTIS F DOWLING
DOWLING & MARQUEZ LLP
703 MARKET STREET, SUITE 1600
SAN FRANCISCO, CA 94115

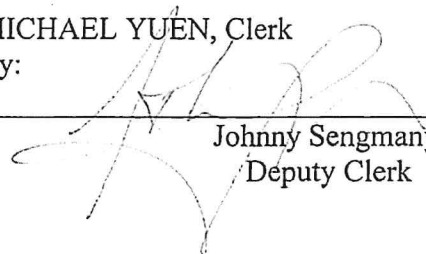
LAUREN STRAZZO;
TYSON REDENBARGER; AND
MARK HOOSHMAND
HOOSHMAND LAW GROUP
22 BATTERY STREET, SUITE 610
SAN FRANCISCO, CA 94111

And, I then placed the sealed envelope(s) in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102 on the dated indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: 3/6/19

MICHAEL YUEN, Clerk

By:


Johnny Sengmany
Deputy Clerk