

IN THE

**Court of Appeal of the State of California**

IN AND FOR THE

**THIRD APPELLATE DISTRICT**

GENERAL P. HAYMON,  
Plaintiff and Appellant,

v.

MICHAEL JOHNSON,  
Defendant and Respondent.

C090209

San Joaquin County

No. STKCVLUDR201811459

BY THE COURT:

Plaintiff's petition to transfer filed on August 16, 2019, is denied. The clerk of this court is directed to immediately return the record filed in this matter to the trial court clerk.



ROBIE, Acting P.J.

cc: See Mailing List

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FILED  
SUPERIOR COURT - STOCKTON

2019 JUL -3 AM 7:50

ROSA JUNQUEIRO CUNHA  
BY: [Signature] DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN  
APPELLATE DIVISION

MICHAEL JOHNSON,  
Plaintiff and Respondent,

Case No. CV-LUDRF-2018-11459

vs.

**OPINION**

GENERAL HAYMON,  
Defendant and Appellants.

Respondent and Plaintiff Michael Johnson ("Johnson") owns certain real property commonly known as 529 N. Monroe Street, Stockton, California (the "Property"). Appellant and Defendant General Haymon ("Haymon") rented a residential unit from Johnson for \$700 per month due on the first of each month (unit 8 on the Property). (Record Transcript ("RT") 63:19-23.) On October 18, 2018 the Court ordered judgment in favor of Johnson and against Haymon. Although the jury found that Johnson filed the lawsuit in retaliation for Haymon having exercised his right as a tenant, the jury also found that Haymon failed to make at least one rental payment as required by his lease and that the property was in habitable condition. (RT 208:14-210:10.)

On November 1, 2018, Haymon filed his notice of appeal of the judgment. On November 29, 2018, Haymon filed a Petition for an Extraordinary Writ for Stay of Execution of Judgment Pending Appeal. On November 30, 2018, this Court denied the request. On February 22, 2019, Haymon filed his opening brief. On March 22, 2019, Johnson filed respondent's

opening brief. Haymon filed his reply brief on April 10, 2019. On June 20, 2019, the Court heard oral argument. Johnson appeared by counsel and Haymon appeared *pro per*.

After careful consideration of the record on appeal and written and oral arguments presented by the parties, the Court finds as follows:

**I. Standard of Review.**

In an appeal from an unlawful detainer judgment, the appellate court reviews the trial court's findings of fact, whether express or \*15 implied, to determine whether they are supported by substantial evidence. (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1425, 123 Cal.Rptr.3d 816; *SFPP, L.P. v. Burlington Northern & Santa Fe Railway Co.* (2004) 121 Cal.App.4th 452, 462, 17 Cal.Rptr.3d 96.) To the extent the court below drew conclusions of law based upon its findings of fact, the appellate court reviews those conclusions of law de novo. (*Palm Property Investments, LLC v. Yadegar, supra*, at pp. 1425–1426, 123 Cal.Rptr.3d 816.)

(*Kruger v. Reyes* (2014) 232 Cal.App.4th Supp. 10, 14–15.)

**II. Default precludes assertion of retaliation.**

When a tenant is in default of the agreed rent, he is precluded from asserting the statutory defense of retaliatory eviction under Civil Code §1942.5(a), even if the tenant has complained of habitability defects. (Civ. Code, § 1942.5(a), (c); see *Western Land Office, Inc. v. Cervantes* (1985) 175 Cal. App. 3d 724, 733.) Here, Haymon claims Johnson retaliated against him because he asserted a claim of breach of the warranty of habitability and because he exercised his alleged right to “repair and deduct”, (Civ. Code, §1942(a)). Yet, after a two day jury trial, the jury found the property habitable and Haymon to be in default of his rental agreement. Substantial evidence supports this finding; Haymon provided almost no information to support his claims that there was debris and trash let alone the substantial effect of it on the habitability of the premises (i.e., the type, amount, etc.). Furthermore, it is undisputed that Haymon failed to pay \$85 of his August rental payment. (RT 64:11–17; RT 82:15–21.) As such Haymon is precluded from asserting retaliatory eviction as a defense.

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1 **III. Right to Jury Trial.**

2 Haymon claims that the trial court disregarded the jury's findings because the judgment  
3 stated that it followed a court trial. However, on November 14, 2018, Johnson filed a Notice of  
4 Errata in Judgment, wherein he requested that the trial court correct the clerical error to read that  
5 the judgment followed a jury trial. There is no doubt that Haymon had a right to a jury trial on  
6 the factual issues raised by his retaliation defense, and that he received one. (*Dep't of Transp. V.*  
7 *Kerrigan* (1984) 153 Cal. App. 3d Supp. 41, 46; *Western Land Office, Inc.*, 175 Cal. App. 3d at  
8 p. 731.) No prejudice occurred.

9 Accordingly, IT IS HEREBY ORDERED that the judgment be AFFIRMED.

10  
11 Date: July 2, 2019

12 George Abdallah  
13 GEORGE J. ABDALLAH, JR., Presiding Judge  
Superior Court Appellate Department

14 Joining in Opinion:

15 Hon. Ronald Northup  
16 Judge of the Superior Court Appellate Department

17 Hon. William D. Johnson  
Judge of the Superior Court Appellate Department