

FILED  
Superior Court Of California  
County Of Los Angeles

SEP 19 2019

Sherri R. Carter, Executive Officer/Clerk  
By Claudia Esquivel, Deputy

APPELLATE DIVISION OF THE SUPERIOR COURT  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

LUIS SALINAS,

Plaintiff and Appellant,

v.

ANTONIO PEREZ and SONIA ENAMORADO,

Defendants and Respondents.

) BV 032943

) Central Trial Court

) No. 18STUD09530

) **OPINION**

INTRODUCTION

In this unlawful detainer action, defendants Antonio Perez and Sonia Enamorado successfully moved for judgment on the pleadings on the basis that the Los Angeles Rent Stabilization Ordinance (LARSO) (L.A. Mun. Code, § 151.00 et seq.)<sup>1</sup> does not permit a landlord to evict a tenant for exceeding occupancy limits under statutory housing law. On appeal, plaintiff Luis Salinas contends the trial court erred in granting defendants' motion because overcrowding of the apartment constituted a nuisance and an illegal use of the premises, which were permitted grounds for eviction under LARSO. We affirm.

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<sup>1</sup>All further statutory references are to the Los Angeles Municipal Code unless otherwise indicated.

1 BACKGROUND

2 Plaintiff's complaint was based on a 30-day notice to quit which notified defendants,  
3 "you are required within THIRTY (30) DAYS from the date of service on you of this notice to  
4 vacate and surrender possession of the premises. You are committing or permitting to exist a  
5 nuisance in the rental unit. You are using or permitting the rental unit to be used in violation of  
6 the Uniform Housing code section 503.2." The notice stated there were six persons (two adults  
7 and four children) residing in the unit and that the maximum permitted number of occupants  
8 was five based on the 243-square footage of the unit; that "overcrowding is a nuisance per se  
9 under Uniform Housing code section 401(4)"; and, as a result of the nuisance, the lease  
10 agreement was being terminated.

11 Defendants answered the complaint alleging, inter alia, that "[p]laintiff did not have a  
12 permitted cause for eviction" under LARSO. Defendants filed a motion for judgment on the  
13 pleadings, arguing that plaintiff was attempting to evict for over-occupancy and that a  
14 purported violation of Uniform Housing Code section 503.2 could not serve as a basis for  
15 eviction because statutory housing law was a law intended to apply only to landlords and not to  
16 tenants. Plaintiff opposed the motion for judgment on the pleadings, arguing the eviction was  
17 justified by section 151.09.A.3. based on a nuisance.

18 On November 1, 2018, the court granted the motion for judgment on the pleadings. The  
19 court found the violation of an occupancy limit contained in the Uniform Housing Code applied  
20 only to landlords and a purported violation by a tenant could not form the basis of an eviction.<sup>2</sup>

21 DISCUSSION

22 "The standard for granting a motion for judgment on the pleadings is essentially the  
23 same as that applicable to a general demurrer, that is, under the state of the pleadings, together  
24 with matters that may be judicially noticed, it appears that a party is entitled to judgment as a

25  
26 <sup>2</sup>Plaintiff filed his notice of appeal on November 2, 2018, well before judgment was entered on  
27 February 13, 2019. An appeal does not lie from an order granting a motion for judgment on the  
28 pleadings. (*Singhania v. Uttarwar* (2006) 136 Cal.App.4th 416, 425.) Nevertheless, we proceed to  
review the judgment, because we deem the prematurely filed notice of appeal to have been filed  
immediately after entry of judgment. (Cal. Rules of Court, rule 8.822(c)(2); *Lat v. Farmers New World  
Life Insurance Co.* (2018) 29 Cal.App.5th 191, 193, fn. 1.)

1 matter of law.’ [Citation.]” [Citation.] . . .’ [Citation.] We review de novo the judgment  
2 following the granting of a motion for judgment on the pleadings. [Citation.]” (*SP Investment*  
3 *Fund I LLC v. Cattell* (2017) 18 Cal.App.5th 898, 905.) We also exercise de novo review  
4 because the present case turns on an issue pertaining to statutory construction. (*Nguyen v.*  
5 *Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1543-1544.)

6 Code of Civil Procedure section 1161, subdivision 4, permits a landlord to recover  
7 possession in summary proceedings following service of a notice to quit based on the tenant  
8 committing a nuisance or using the premises for an illegal purpose. Section 151.09.A. limits  
9 substantive grounds upon which a landlord may bring an action to repossess a rent-controlled  
10 unit; hence, an eviction in Los Angeles is valid only if it complies with LARSO. (See  
11 *Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129, 148.)

12 Section 151.09.A states in relevant part: “A landlord may bring an action to recover  
13 possession of a rental unit only upon one of the following grounds. [¶] . . . [¶] 3. . . . The tenant  
14 is *committing or permitting to exist a nuisance in* or is causing damage to, *the rental unit* or to  
15 the unit’s appurtenances, or to the common areas of the complex containing the rental unit, or is  
16 creating an unreasonable interference with the comfort, safety, or enjoyment of any of the other  
17 residents of the rental complex or within a 1,000 foot radius extending from the boundary line  
18 of the rental complex. . . . [¶] 4. The tenant is using, or permitting a rental unit, the common  
19 areas of the rental complex containing the rental unit, or an area within a 1,000 foot radius from  
20 the boundary line of the rental complex *to be used for any illegal purpose. . . .*” (Italics added.)

21 Plaintiff’s argument is as follows: Health and Safety Code section 17922 adopted the  
22 Uniform Housing Code, which requires minimum square footage based on occupancy (U.  
23 Housing Code, § 503.2);<sup>3</sup> a violation of this rule constitutes a misdemeanor under Health and

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26 <sup>3</sup>“Dwelling units and congregate residences shall have at least one room that shall have not less  
27 than 120 square feet . . . of floor area. Other habitable rooms, except kitchens, shall have an area of not  
28 less than 70 square feet . . . . Where more than two persons occupy a room used for sleeping purposes,  
the required floor area shall be increased at the rate of 50 square feet . . . for each occupant in excess of  
two.” (U. Housing Code, § 503.2.)

1 Safety Code section 17995;<sup>4</sup> therefore defendants' over-occupancy qualifies as using the rental  
2 unit for an "illegal purpose" under section 151.09.A.4. Plaintiff further contends that Uniform  
3 Housing Code section 401,<sup>5</sup> defines a "nuisance" to include "[o]vercrowding a room with  
4 occupants," and therefore the over-occupancy supports an eviction as a nuisance under  
5 section 151.09.A.3.

6 Plaintiff cites *Haig v. Hogan* (1947) 82 Cal.App.2d 876 (*Haig*) in arguing that use of the  
7 property in violation the Uniform Housing Code is akin to use of the premises in violation of  
8 zoning laws and that the illegal activity in either case supports an eviction under LARSO. But  
9 *Haig* is inapposite. In *Haig*, the defendant tenant was using the premises (which had been  
10 zoned for single-family residences) to operate a hotel and boarding house in violation of the  
11 local zoning laws. The property was sold to the plaintiff, the defendant was given notice of the  
12 sale, and she failed to pay any rent to the plaintiff. A three-day notice to vacate the property  
13 was served and an unlawful detainer was commenced. (*Id.* at p. 877.) The only issues on  
14 appeal were whether the plaintiff was entitled "to maintain the unlawful detainer action without  
15 complying with the federal rent regulations," and whether holdover damages were supported by  
16 substantial evidence. (*Id.* at pp. 877-878.) In answering the first question, the court held that  
17 the federal rent control statute was inapplicable because the tenant was using the housing  
18 accommodations for an illegal purpose. (*Id.* at p. 877.) Thus, the issue decided in *Haig* did not

19 <sup>4</sup>"Any person who violates any of the provisions of this part, the building standards published in  
20 the State Building Standards Code relating to the provisions of this part, or any other rule or regulation  
21 promulgated pursuant to the provisions of this part is guilty of a misdemeanor, punishable by a fine not  
22 exceeding one thousand dollars (\$1,000) or by imprisonment not exceeding six months, or by both such  
fine and imprisonment." (Health & Saf. Code, § 17995.)

23 <sup>5</sup>"NUISANCE. The following shall be defined as nuisances: [¶] 1. Any public nuisance known  
24 at common law or in equity jurisprudence. [¶] 2. Any attractive nuisance that may prove detrimental to  
25 children whether in a building, on the premises of a building or on an unoccupied lot. This includes  
26 any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles;  
27 any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation  
28 that may prove a hazard for inquisitive minors. [¶] 3. Whatever is dangerous to human life or is  
detrimental to health, as determined by the health officer. [¶] 4. Overcrowding a room with occupants.  
[¶] 5. Insufficient ventilation or illumination. [¶] 6. Inadequate or unsanitary sewage or plumbing  
facilities. [¶] 7. Uncleanliness, as determined by the health officer. [¶] 8. Whatever renders air, food or  
drink unwholesome or detrimental to the health of human beings, as determined by the health officer."  
(U. Housing Code, § 401 [definitions].)

1 concern section 151.09.A.4., and the case *sub judice* does not involve the applicability of  
2 federal rent control regulations.

3 We initially note that although plaintiff's 30-day notice stated defendants' over-  
4 occupancy constituted a nuisance, it never stated it also amounted to illegal activity. Therefore,  
5 using the premises for illegal activity cannot form the basis for the eviction. (See *Baugh v.*  
6 *Consumers Associates, Limited* (1966) 241 Cal.App.2d 672, 674.) In any event, as we explain,  
7 the contention that the eviction complied with LARSO is without merit.

8 The State Housing Law (Health & Saf. Code, § 17922) requires the Department of  
9 Housing and Community Development to adopt statewide building standards that impose  
10 "substantially the same requirements" as those set forth in model codes, including the Uniform  
11 Housing Code. As stated *ante*, Uniform Housing Code, section 503.2, contains the maximum  
12 occupancy standard used to determine overcrowding. Pursuant to legislative mandate, the  
13 Department of Housing and Community Development adopted statewide building standards,  
14 which can be found in title 24 of the California Code of Regulations (also referred to as the  
15 California Building Code), based on the aforementioned model code. These regulations  
16 are "substantially the same requirements" as those contained in Uniform Housing Code  
17 section 503.2, minus the references to the number of the persons who may occupy a habitable  
18 room: Chapter 12 of the California Building Code provides, "Every dwelling unit shall have no  
19 fewer than one room that shall have not less than 120 square feet . . . of net floor area. Other  
20 habitable rooms shall have a net floor area of not less than 70 square feet . . . ." (California  
21 Building Code, § 1207.3.)<sup>6</sup>

22 As noted by defendants, in 2008, the Los Angeles City Council "specifically deviated  
23 from the language of the Uniform Housing Code through its adoption of Chapter 12 of the  
24 California Building Code, which noticeably does *not* include the language of the Uniform  
25 Housing Code setting forth the required floor area based upon occupancy." (See § 91.1200  
26 [providing that, with exceptions inapplicable to the issues herein, "Chapter 12 of the CBC is

27  
28 <sup>6</sup>Chapter 12 of the California Building Code can be found at <https://www.dgs.ca.gov/BSC/Codes>.

1 adopted by reference . . . .”].) This demonstrates the City Council did not intend to deem  
2 overcrowding or excessive occupancy, as defined by Uniform Housing Code section 503.4, to  
3 be illegal behavior or a nuisance supporting an eviction under section 151.09.A. Had the City  
4 Council intended floor area-based occupancy limits to constitute grounds for eviction under  
5 LARSO, it would have adopted the Uniform Housing Code rather than the California Building  
6 Code.

7 Moreover, plaintiff’s primary argument based on the Uniform Housing Code also fails  
8 because LARSO defines both “nuisance” and “illegal purpose” narrowly to exclude  
9 overoccupancy.

10 The ordinance expressly states the “[t]he term ‘illegal purpose’ as used in this  
11 subdivision includes, but is not limited to, violations of any of the provisions of Division 10,  
12 Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with  
13 Section 11400) of the California Health and Safety Code, and does not include the use of  
14 housing accommodations lacking a legal approved use or which have been cited for occupancy  
15 or other housing code violations.” (§ 151.09.A.4.)

16 The examples of illegal activity listed in the ordinance include drug activity but do not  
17 include, as defendants point out, the passive activity of living with additional occupants. Under  
18 the doctrine of ejusdem generis, the meaning of illegal purpose or activity is determined by  
19 reference to the list of items provided in the statute. (*Coastal Environmental Rights*  
20 *Foundation v. California Regional Water Quality Control Bd.* (2017) 12 Cal.App.5th 178,  
21 197.) The ordinance therefore clarifies that the City Council intended the activity of over-  
22 occupying, even if it amounted to a statutory code violation, would not be a use of the premises  
23 for an illegal purpose under the ordinance.

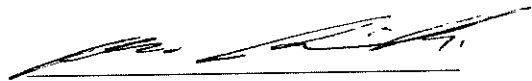
24 LARSO also contains its own definition of “nuisance” for purposes of eviction, “[t]he  
25 term ‘nuisance’ as used in this subdivision includes, but is not limited to, any gang-related  
26 crime, violent crime, unlawful weapon or ammunition crime or threat of violent crime, illegal  
27 drug activity, any documented activity commonly associated with illegal drug dealing, such as  
28 complaints of noise, steady traffic day and night to a particular unit, barricaded units,

1 drug activity, any documented activity commonly associated with illegal drug dealing, such as  
2 complaints of noise, steady traffic day and night to a particular unit, barricaded units,  
3 possession of weapons, or drug loitering as defined in Health and Safety Code Section 11532,  
4 or other drug related circumstances . . . .” (Italics added.) Again, applying the principle of  
5 ejusdem generis, we note the examples of “nuisance” listed in the ordinance include violent  
6 criminal activity involving weapons or drugs. Based on the specific examples set forth, we  
7 conclude the legislative body did not intend to include the passive activity of living with  
8 additional occupants in LARSO’s definition of nuisance.

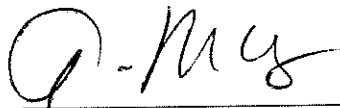
9 In sum, the trial court did not err in granting judgment on the pleadings because  
10 plaintiff’s notice to quit failed to identify a cognizable basis for eviction under LARSO.

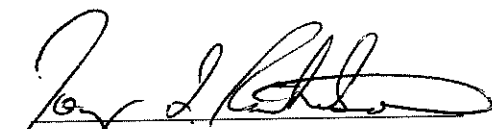
11 DISPOSITION

12 The judgment is affirmed. Defendants to recover costs on appeal.

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16 Ricciardulli, J.

17 We concur:

18   
19 P. McKay, P. J.

20   
21 Richardson, J.





**CERTIFICATE OF TRANSMITTAL**

*L.A. Superior Court Central*

*Appellate*

LUIS SALINAS									
VS.			BV032943						
ANTONIO PEREZ; SONIA ENAMORADO									

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A copy of the following:

- Order of this Date
- Memorandum Judgment
- Order Appointing Counsel
- Order Dismissing Appeal
- Notice Fixing Brief Dates
- Opinion
- Order Denying Rehearing/Certification
- Order RE Continuance
- Remittitur
- Notice Setting Cause for Hearing

has been transmitted to above named parties  and trial court appeal clerk.

Dated: SEP 19 2019

By C. Esquivel <sup>Judge</sup>, Deputy

