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Pro Se Plaintiffs

**IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF FLATHEAD**

**ERICK M. ENZ, KEELEE M. ENZ,
and LYN C. REHM,**
Plaintiffs,

v.

**ANTHONY RAE LUND, CANDICE
RAE LUND, and RAE LUND FAMILY
TRUST,**

Defendants.

CAUSE NO. DV-17-0161

**DAN WILSON
COMPLAINT**

Come now the Plaintiffs, ERICK M. ENZ, KEELEE M. ENZ, and LYN C. REHM,
and in support of their Complaint, they allege as follows:

PARTIES AND JURISDICTION

1. Plaintiffs are individuals who at all times relevant to the allegations set forth in this Complaint own the real property located at 960 Rogers Lake Road, Kila, Flathead County, Montana (henceforth "the Property"), which is legally described as follows:

Tract 2 of Certificate of Survey No. 17570 located in the Northeast Quarter of the Northeast Quarter (NE1/4NE1/4) of Section 29,

ORIGINAL

Township 27 North, Range 23 West, P.M.M., Flathead County, Montana.

2. Defendants leased the Property with an option to buy.

VENUE

3. Venue is proper in this judicial district since the Defendants reside in Flathead County, Montana, the real property which is the subject of this lawsuit is in Flathead County, Montana, and all acts and omissions relevant to this lawsuit occurred in Flathead County, Montana.

FACTS COMMON TO ALL CAUSES OF ACTION

4. On or about November 7, 2014, Plaintiffs contracted to lease the Property to Defendants under a "Lease Option Agreement" ("the Lease") (Exhibit 1).
5. The Lease included an option which Defendants could exercise to purchase the Property.
6. The Lease required Defendants to pay rent in the sum of \$1,500 per month on or before the fifth day of each month.
7. In addition to paying \$1,500 per month as rent, Defendants also were required to pay an additional \$1,000 per month, for a total monthly payment of \$2,500.
8. The additional \$1,000 was a required payment which would go towards the agreed upon purchase price of \$269,900 (two hundred sixty-nine thousand nine hundred dollars).
9. The Lease provided that once Defendants paid \$30,000 towards the agreed upon purchase price during the contract term, the Lease Option Agreement would

become a purchase agreement.

10. Defendants have not satisfied the condition precedent required to change the Lease Option Agreement into a purchase agreement.
11. Defendants have no legal or equitable interest in the Property.
12. All legal and equitable interest in the Property is in Plaintiffs.
13. Defendants are merely tenants under the Lease Option Agreement.
14. Defendants have repeatedly failed to timely pay their monthly rent of \$1,500.
15. Defendants failed to timely pay the rent due on August 5, 2016.
16. On August 18, 2016, Defendants were served with a Notice to Pay or Quit (Exhibit 2).
17. On August 20, 2016, Defendants made a partial payment of \$1,123.30 by money order made payable to Erick Enz and Nation Star Mortgage, Plaintiff's mortgage company.
18. Defendants failed to make full payment of the past due rent within three days after service of the Notice to Pay or Quit.
19. The Lease thus terminated at 12:01 A.M. on August 22, 2016.
20. On August 23, 2016, Defendants were served with a Notice of Eviction (Exhibit 3).
21. Defendants failed to surrender the Property on or before midnight on August 31, 2016, the deadline stated in the Notice of Eviction.
22. Defendants have continued in possession of the Property in violation of the Lease.

23. Defendants have made subsequent partial payments by money order made payable to Erick Enz and Nation Star Mortgage; the dates paid and the amounts of those payments are as follows:

- a. 9/19/2016 \$1,132.00
- b. 10/21/2016 \$1,173.30
- c. 11/24/2016 \$1,123.30
- d. 12/16/2016 \$1,123.30

24. Defendants have no right or justification for taking deductions from the contractual monthly rent payment of \$1,500.

COUNT I: ACTION FOR POSSESSION

25. After Defendants made their late July payment, they have failed to pay rent in full.

26. Defendants have made only partial rent payments.

27. Plaintiffs gave Defendants the required three-days statutory notice to pay or quit the premises.

28. Defendants failed to pay.

29. Plaintiffs terminated the Lease Option Agreement.

30. Plaintiffs gave Defendants notice of the termination of the Lease Option Agreement and notice of eviction.

31. Defendants have failed to surrender possession of the Property.

32. Plaintiffs are entitled to possession of the Property.

COUNT II: DECLARATORY JUDGMENT AND QUIET TITLE

33. Plaintiffs and Defendants are persons interested under the Lease Option Agreement.
34. Defendants are claiming an ownership interest in the Property.
35. Defendants' relationship with Plaintiffs is that of Defendants as Tenants and Plaintiffs as Landlords.
36. Pursuant to the Montana Uniform Declaratory Judgments Act, Plaintiffs request the Court to make a declaration of Plaintiffs' and Defendants' rights under the Lease Option Agreement.

NOW THEREFORE, Plaintiffs pray for relief to be awarded to them as follows:

1. Actual damages resulting from Defendants' failure to pay rent on time and in full (MCA § 70-24-422(5)), including past due rents and pre- and post-judgment interest thereon; and
2. Actual damages resulting for all of Defendants' other breaches of the Lease Option Agreement (MCA § 70-24-427(1)); and
3. Treble damages for Defendants' purposeful refusal to pay rent in full from and including August, 2016 (MCA § 70-24-422(5)); and
4. A Writ of Possession; and
5. An order declaring that Defendants' status under the Lease Option Agreement is that of Tenants only and quieting all legal and equitable right, title, and interest in the Property in Plaintiffs; and
6. An order declaring that Plaintiffs are entitled to keep all monies paid under the

Lease Option Agreement as liquidated damages; and

7. An order declaring that Defendants are not entitled to reimbursement for any "repairs, maintenance, or improvements," if any, made to the Property; and
8. All such other relief as the Court deems just and proper; and
9. An award of attorney fees and costs pursuant to MCA § 70-24-442(1); and
10. An award of attorney fees and costs pursuant to MCA § 27-8-311 and -313; and
11. An award of costs pursuant to MCA § 25-10-101.

Dated this 15th day of December, 2016.



Erick M. Enz, *Pro Se Plaintiff*



Keelee M. Enz, *Pro Se Plaintiff*



Lyn C. Rehm, *Pro Se Plaintiff*