

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DOMINIC DINISH and PRINCILLA
10 JOHNSON-DINISH,

11 Plaintiffs,

12 v.

13 ELAN REAL ESTATE
14 GROUP/BRYSON SQUARE APTS.,

15 Defendant.

CASE NO. C16-0565-JCC

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

16 This matter comes before the Court on Defendant Bryson Square Apartments's
17 ("Bryson") motion for summary judgment (Dkt. No. 17). Having thoroughly considered the
18 parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby
19 GRANTS the motion for the reasons explained herein.

20 **I. BACKGROUND**

21 On July 2, 2013, Plaintiffs Dominic Dinish and Princilla Johnson-Dinish entered into a
22 written, residential landlord-tenant lease contract for unit R104 at Bryson Square Apartments in
23 Kent, Washington. (Dkt. No. 20-1 at 2-24.) Defendant has submitted evidence showing that
24 there were complaints and issues relating to Plaintiffs' tenancy from early on. (Dkt. No. 19-1.)
25 On July 24, 2013, Plaintiffs were served with a 10-day notice to comply or vacate because they
26 had extended their personal garden into the common areas and had personal items and boxes on

1 their patio and outside their front door. (Dkt. No. 20-1 at 30.) Plaintiffs did not comply with the
2 request and on August 21, 2013, Bryson referred the Dinish tenant file to legal counsel to pursue
3 a court eviction for failure to comply with the 10-day notice. (Dkt. No. 18-1 at 2–4.) The same
4 day, Bryson’s counsel served Plaintiffs with a notice of the unlawful detainer action. (*Id.*)

5 On September 19, 2013, Bryson obtained a judgment against Plaintiffs and the court
6 issued a Writ of Restitution against them. (*Id.*) Following the issuance of the writ, Plaintiffs
7 complied with the initial 10-day notice and removed the plants from the common area and the
8 items from the patio. (Dkt. No. 17 at 3.)

9 Plaintiffs’ lease was set to expire on June 29, 2014. (Dkt. No. 20-1 at 32.) Bryson decided
10 not to renew the lease and on June 3, 2014, Bryson gave Plaintiffs a 20-day notice to terminate
11 tenancy, effective the day their lease was scheduled to end. (*Id.*) Plaintiffs did not vacate the
12 premises and on July 1, 2014, Bryson’s legal counsel served Plaintiffs with an eviction
13 summons, complaint, and affidavit of service of notice to vacate premises. (Dkt. No. 18-1 at 12–
14 15.)

15 Prior to their eviction proceeding, Plaintiffs filed a complaint with the Washington State
16 Human Rights Commission (“Commission”) alleging they were subjected to discriminatory
17 terms and conditions, and a discriminatory lease termination based on race. (Dkt. No. 20-1 at 34–
18 42). For the hearing in front of the Commission, Bryson submitted the following evidence:

19 1. A tenant roster of the property as of July 31, 2014, identifying the race or national
20 origin of each household. (Dkt. No. 21 at 45–55.) Of the 186 occupied units, 6 were
21 African (3.2%); 44 were African-American (23.6%); 58 were Caucasian (31.2%); 23
22 were Asian (12.4%); 23 were Hispanic (12.4%); 10 were Indian (5.4%); 3 were Arabic
23 (1.6%); 4 were Russian (2.2%); 8 were houses of multiple races including African-
24 American (4.3%); and 7 were households of multiple races not including African-
25 American (3.8%). (*Id.*) Plaintiffs are African-American, and almost one-third of the
26 occupied units at Bryson Apartments included at least one African-American tenant. (*Id.*)

1 2. Between January 1, 2013 and May 24, 2014, Bryson issued similar 10-day notices—
2 not including Plaintiffs—for inappropriate items on the patio to three Caucasian
3 households, seven Hispanic households, three Asian households, two African-American
4 households, two Indian households, and one African household. (*Id.* at 57–86.)

5 3. Bryson issued 20-day termination of tenancy notices between January 2011 and
6 November 2013 to one Caucasian household, two Indian households, and three African-
7 American households. (*Id.* at 88–92.)

8 The Commission determined that the preponderance of the evidence did not support a
9 finding that Plaintiffs were subjected to discriminatory terms and conditions or lease termination
10 based on race. (Dkt. No. 20-1 at 34–42.) Specifically, the Commission concluded that

11 The investigation did not establish that Complainants met the
12 tenancy qualifications; Complainants were late paying rent one
13 month, received comply or vacate notices for failure to follow the
14 rules, failed to timely comply with two such notices, engaged in
15 behaviors that interfered with the neighbors’ peaceful enjoyment,
16 and interfered with Respondent’s ability to conduct repairs in
17 Complainants’ unit The investigation did not establish that
18 these rental terms and conditions were different from those applied
19 to non-protected class persons; Respondent served comply or
20 vacate notices, and termination of tenancy notices on tenants of a
21 variety of races, not only on African-American tenants.

18 (*Id.* at 42.) The Commission recommended a finding of No Reasonable Cause to find
19 discrimination based on race be entered. (*Id.*)

20 On August 8, 2014, the King County Superior Court heard the unlawful detainer action.
21 (Dkt. No. 18-1 at 16–51.) Plaintiffs were represented by counsel at the hearing. (*Id.*) Plaintiffs
22 alleged the affirmative defense that their eviction was retaliatory and discriminatory based on
23 their race. (*Id.* at 22–23.) The court held the eviction was not retaliatory or discriminatory based
24 on race and issued a writ of restitution requiring Plaintiffs vacate the property. (Dkt. No. 18-1 at
25 16–51.) Plaintiffs did so on August 20, 2014. (Dkt. No. 17 at 4.)
26

1 Plaintiffs, *pro se*, filed suit in the Western District of Washington on April 19, 2016,
2 alleging violations of the Fair Housing Act (FHA), 42 U.S.C. § 3600, *et seq.*, and requesting
3 damages in the amount of \$400,000 to \$1,000,000. (Dkt. No. 3.) Plaintiffs also allege a violation
4 of the Seventh Amendment to the United States Constitution. (*Id.*)

5 Bryson filed a motion for summary judgment arguing that Plaintiffs cannot establish a
6 prima facie case of race discrimination under the Fair Housing Act because they have not
7 provided evidence to show that (1) Bryson engaged in discriminatory conduct, or (2) Plaintiffs
8 have suffered a distinct and palpable injury. (Dkt. No. 17 at 7.) Because Plaintiffs have failed to
9 present any evidence to support their claims, the Court agrees.

10 **II. DISCUSSION**

11 **A. Summary Judgment Standard**

12 The Court shall grant summary judgment if the moving party “shows that there is no
13 genuine dispute as to any material fact and that the [moving party] is entitled to judgment as a
14 matter of law.” Fed. R. Civ. P. 56(a). In making such a determination, the Court views the facts
15 and justifiable inferences to be drawn therefrom in the light most favorable to the nonmoving
16 party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 255 (1986). Once a motion for summary
17 judgment is properly made and supported, the opposing party “must come forward with ‘specific
18 facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio*
19 *Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Material facts are those that
20 may affect the outcome of the case, and a dispute about a material fact is genuine if there is
21 sufficient evidence for a reasonable jury to return a verdict for the non-moving party. *Anderson*,
22 477 U.S. at 248–49. Conclusory, non-specific statements in affidavits are not sufficient, and
23 “missing facts” will not be “presumed.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89
24 (1990). Ultimately, summary judgment is appropriate against a party who “fails to make a
25 showing sufficient to establish the existence of an element essential to that party’s case, and on
26 which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317,

1 324 (1986).

2 **B. Analysis**

3 1. Fair Housing Act

4 Under § 804(b) of the Fair Housing Act, it is unlawful “to discriminate against any
5 person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of
6 services or facilities in connection therewith, because of race.” 42 U.S.C. § 3604(b). Similarly,
7 under Washington law, “[i]t is an unfair practice for any person, whether acting for himself,
8 herself, or another because of . . . race . . . to discriminate in the sale or rental, or to otherwise
9 make unavailable or deny a dwelling, to any person; or to a person residing in or intending to
10 reside in that dwelling after it is sold, rented, or made available; or to any person associated with
11 the person buying or renting.” Wash. Rev. Code § 49.60.220(1)(f).

12 Section 818 of the Fair Housing Act additionally provides that “[i]t shall be unlawful to
13 coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . any
14 right granted by section . . . 804 . . . of this title.” 42 U.S.C. § 3617. In Washington State, “It is
15 an unlawful practice to coerce, intimidate, threaten, or interfere with any person in the exercise
16 or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or
17 her having aided or encouraged any other person in the exercise or enjoyment of, rights
18 regarding real estate transactions secured by RCW 49.60.030, 49.60.040, and 49.60.222 through
19 49.60.224.” Wash. Rev. Code § 49.60.2235.

20 A plaintiff may make a prima facie case of intentional discrimination under the Fair
21 Housing Act by showing that (1) the plaintiff’s rights are protected under the Fair Housing Act;
22 and (2) as a result of the defendant’s discriminatory conduct, the plaintiff has suffered a distinct
23 and palpable injury. *Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999). Bryson agrees that
24 Plaintiffs’ rights are protected under the Act. (Dkt. No. 17 at 8.) Bryson argues that Plaintiffs
25 have not shown that “they were denied any conditions, services or facilities in connection with
26 their housing,” or that they were “coerced, intimidated, or threatened, because of their race.”

1 (Dkt. No. 17 at 8.) In support of this argument, Bryson submits the same evidence it submitted in
2 its hearing in front of the Commission. (*Id.* at 8–9.) Included in this evidence are complaints
3 regarding Plaintiffs from multiple other residents and the apartment manager. (Dkt. No. 19-1 at
4 2–34.)

5 In response, Plaintiffs have submitted no evidence to support their claims that Bryson
6 discriminated against them other than their initial allegations that they suffered discrimination.
7 (*See* Dkt. No. 3; Dkt. No. 27.) Although Plaintiffs’ opposition to Bryson’s motion for summary
8 judgment is at times unclear, courts will construe *pro se* pleadings liberally. *See Haines v.*
9 *Kerner*, 404 U.S. 519, 520 (1972) (pro se plaintiffs are ultimately held “to less stringent
10 standards than formal pleadings drafted by lawyers”); *Eldridge v. Block*, 832 F.2d 1132, 1137
11 (9th Cir. 1987) (“The Supreme Court has instructed the federal courts to liberally construe the
12 ‘inartful pleading’ of pro se litigants.”) (citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)).
13 Therefore, the Court interprets Plaintiffs’ response as making two arguments. First, Plaintiffs
14 argue that the evidence submitted by Bryson pertains to the eviction proceedings in King County
15 Superior Court in August 2014, whereas Plaintiffs maintain the violation complained of in this
16 action centers on the writ of restitution Bryson obtained in September 2013. (Dkt. No. 27 at 1.)
17 Plaintiffs argue that Bryson obtained that writ without properly serving them with the 2013
18 eviction summons and complaint, in violation of Revised Code of Washington § 59.12.040. (*Id.*)
19 Under § 59.12.040, a tenant unlawfully residing in a premises must be provided notice prior to
20 eviction. Second, Plaintiffs argue that in 2015 the judgment issuing the writ of restitution was
21 vacated because Bryson admitted it made a mistake. (Dkt. No. 27 at 1.)

22 Addressing the first argument, although its relevance to Plaintiffs’ claims is questionable,
23 Plaintiffs present no evidence to support their contention. Bryson, on the other hand, submitted
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1 proof of service of the eviction summons and complaint.¹ (Dkt. No. 18-1 at 2–51.) Bryson also
2 submits evidence showing that Plaintiffs failed to answer the eviction summons and complaint
3 and the court issued an order of default judgment directing the issuance of the writ of restitution.
4 (*Id.* at 53–60.) As to Plaintiffs’ claim that the 2013 eviction was vacated in 2015 because Bryson
5 admitted it made a mistake, they again fail to present any evidence to support this or explain how
6 it is relevant to the discrimination claims. (Dkt. No. 27 at 1.) Bryson contends that Plaintiffs
7 requested the 2013 judgment of default be vacated, to which Bryson agreed because the premises
8 had been returned to Bryson via the 2014 eviction. (Dkt. No. 28 at 3.)

9 1. Seventh Amendment

10 Plaintiffs maintain that Bryson violated their Seventh Amendment rights. (Dkt. No. 3;
11 Dkt. No. 27.) Construing Plaintiffs’ pleadings liberally, the Court struggles to understand why
12 Plaintiffs made this allegation. Under the Seventh Amendment, “In suits at common law, where
13 the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,
14 and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than
15 according to the rules of the common law.” U.S. Const. Amend. VII. Plaintiffs have presented no
16 evidence from which a reasonable juror could conclude that Bryson impeded Plaintiffs’ right to a
17 jury trial.

18 **III. CONCLUSION**

19 As expressed in an earlier order, “[t]he Court recognizes that Plaintiffs feel they have
20 suffered significant damage and acknowledges their distress.” (Dkt. No. 16.) However, even
21 viewed in the light most favorable to the non-moving party, Plaintiffs have presented no
22 evidence to support their claims for discrimination under the Fair Housing Act.

23 For the foregoing reasons, Defendant’s motion for summary judgment (Dkt. No. 17) is
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25 ¹ “Proof of any service under this section may be made by the affidavit of the person
26 making the same in like manner and with like effect as the proof of service of summons in civil
actions.” Wash. Rev. Code § 59.12.040.

1 GRANTED. The Court DISMISSES all of Plaintiffs' claims with prejudice.

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3 DATED this 9th day of November 2016.

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A handwritten signature in black ink, reading "John C. Coughenour", is written above a horizontal line. The signature is cursive and includes a checkmark at the end.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

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