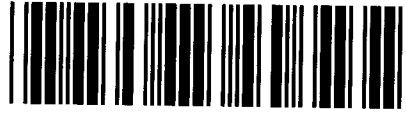




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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

COMPLAINT OF DOUG COTTERMAN §
AGAINST WOODHOLLOW §
APARTMENTS §

**WOODHOLLOW APARTMENTS' RESPONSE TO
COMMISSION STAFF'S SUPPLEMENTAL STATEMENT OF POSITION
AND PLEA TO THE JURISDICTION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Woodhollow Apartments, Respondent, and files this Response to Commission Staff's Supplemental Statement of Position and Plea to the Jurisdiction and would show unto the Court as follows:

SUMMARY OF RESPONSE

I.

The Court should not refer this matter to the State Office of Administrative Hearings for an evidentiary hearing because this matter involves purely legal questions. The threshold question is whether the Public Utility Commission has jurisdiction over this matter. In order to have jurisdiction over this matter, the Complainant must have standing. Under the Texas Water Code and/or Texas Administrative Code, only a tenant has a right to inspect the utility records of an apartment complex and, therefore, standing to file a complainant about a denial of such right. Such issue is resolved by statutory construction, which is a legal question for the Court. It is well settled law that words omitted from a statute must be presumed to have been excluded on purpose. Had the Legislature wanted to give a right to inspection to a previous tenant or non-tenant, then it would have done so in the statutes. But it did not. The Court may not read words or rights into the statutes. Because the Complainant is not a tenant and, therefore, lacks standing

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to complain, the Public Utility Commission must dismiss this action against Respondent for want of jurisdiction.

AUTHORITY AND ARGUMENT

II.

As a non-tenant, Complainant does not have standing complain about a denial of inspection rights. Statutory construction is a legal question. *See State v. Texas Parks and Wildlife Dept. v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). In construing statutes, the courts must ascertain the Legislature's intent as expressed by the language of the statute. *Id.* The court must use the definitions prescribed by the Legislature and contained in the statute. *Id.* The court must presume that the Legislature used every word of a statute for a purpose. *See Quick v. City of Austin*, 7 S.W.3d 109, 123 (Tex.1998). Similarly, the court must presume those words excluded from a statute were excluded on purpose. *Id.* When a statute's language is clear and unambiguous, it is inappropriate to use extrinsic aids to construe the language. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997). The court may not read into the statute words that are not there. *See Jones v. Del Anderson & Assocs.*, 539 S.W.2d 348, 350 (Tex. 1976). Moreover, the court may not question the wisdom of the statute, but rather apply it as written. *See Lee v. City of Houston*, 807 S.W.2d 190, 293 (Tex.1991).

III.

Here, this Court has no jurisdiction because the Complainant lacks standing as a non-tenant. There is no factual dispute between the parties whether Complainant presently occupies the premises as a tenant. He does not and, therefore, is not a tenant of Respondent. Whether the Complainant is a tenant as defined by the Texas Administrative Code and/or Texas Water Code is a pure question of law. Secondly, whether a previous tenant and/or non-tenant is included

in the definition of tenant under the Texas Administrative Code and/or Texas Water Code is also a pure question of law. There is no factual dispute that Complainant had unilaterally terminated his lease agreement and vacated his apartment unit at the time demanded to inspect the complex's utility bills. The termination is specified in the complaint itself to have taken place on August 29, 2014. It is further undisputed that Complainant did not occupy an apartment unit, including under any lease agreement, at Respondent at the time filed his complaints with the Public Utility Commission. Before determining whether Respondent complied with the Texas Administrative Code and/or Texas Water Code's requirement to make utility records available to a tenant for inspection, the Court must first determine by reading the statutory language whether as a non-tenant Complainant had a right under such statutes to inspect the records and file this complaint. Without those rights, Complainant lacks standing and this Court is without jurisdiction on any matter. Because the plain language of the Texas Administrative Code and/or Texas Water Code excludes previous tenants and non-tenants from the definition of tenant, Complainant has no standing and the Court must dismiss this matter.

WHEREFORE, PREMISES CONSIDERED, Respondent requests the Court deny the Commission Staff's request to refer this matter to the State Office of Administrative Hearings for an evidentiary hearing. Respondent further requests that the Court dismiss Doug Cotterman's complaint against Respondent. Respondent further requests all other and further relief to which Respondent may be entitled to at law or in equity.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2015, a true and correct copy of *Woodhollow Apartments' Response to Commission Staff's Supplemental Statement of Position and Plea to the Jurisdiction* was served all parties to this proceeding.



Carlisle A. Braun