No. 102404-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

No. 83734-6-I

VIRGINIA CHIU and VINCENT LIEW,

Petitioners,

v.

BRIAN HOSKINS,

Respondent,

ANSWER TO PETITION FOR REVIEW BY RESPONDENT BRIAN HOSKINS

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I. INTRODUCTION

Petitioners Virginia Chiu and Vincent Liew ("Tenants") indisputably breached the terms of their lease with landlord Brian Hoskins by failing to maintain the yard associated with their residence. As demonstrated below, Tenants also received *more* of their security deposit back within 21 days of the end of the lease term than they were entitled to under the terms of the lease. However, in *Chiu v. Hoskins*, 534 P.3d 412 (Wash. Ct. App. Div. I 2023) the Court of Appeals partially reversed the trial court's ruling in Hoskins' favor.

Finding that Hoskins violated both the check-list requirement of RCW 59.18.260 and a provision in the Seattle Municipal Code which penalizes the attempted enforcement of newly prohibited lease terms, the Court of Appeals credited Tenants twice the amount of the security deposit paid. It also directed the trial court to make Tenants an award of attorney fees, which will at least partially offset any award of fees made to Hoskins on remand.

Nonetheless, Tenants insist they are entitled to many times the award directed by the Court of Appeals. Fortunately, Tenants legal theories are demonstrably incorrect.[1] Tenants fail to show any error in the decision by the Court of Appeals, and establish no proper basis for review under RAP 13.4(b)(1)-(3). This Court should therefore deny review. However, if the Court concludes that Tenants have identified an issue of substantial public interest that should be reviewed by this Court under RAP 13.4(b)(4), the Court should also grant review on the additional issues identified by Hoskins in the final section of this Answer.

II. RESPONSE TO PETITIONERS' STATEMENT OF THE CASE

The Court of Appeals' opinion provides a concise, accurate statement of the facts in this case.[2] Hoskins supplements it here only to note that in addition to a Security Deposit of $2,800, the Lease provided for a Utility Deposit of

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[1] *See* page 35 to Appendix D to Brief of Respondent with Appendices (signing statement by Mayor Edward Murrray to Council Bill 118817).
[2] *Chiu*, 534 P.3d at 416-17.

$250. **Ex. 1**. Up through the commencement of this action, all parties appear to have assumed that Tenants actually paid the $250 Utility Deposit, although in fact they did not.[3] This helps understand the parties' pre-trial discussions of the overall deposit refund, since those discussions start with a mistake of $250 in Tenants' favor.[4]

III. ARGUMENT WHY THIS COURT SHOULD NOT ACCEPT REVIEW

1. Hoskins complied with RCW 59.18.280, and Tenants' first issue fails to identify a proper basis for this Court to grant review.

Tenants first allege that the Court of Appeals erred, and created a conflict with Supreme Court precedent and an issue of substantial public concern, by concluding that Hoskins complied

[3] *See, e.g.,* VRP 85 at lines 15-22. *See also* CP 586 at lines 14-15.

[4] *See, e.g.,* CP 106 (based on the mistaken assumption that the total deposit amount outstanding at the time equaled $2,095 + $300 = $2,395, when in fact the total deposit outstanding at the time was $2,145). See also CP 586 at lines 19-22.

with RCW 59.18.280.[5] However, Tenants' arguments related to this issue fail.

A copy of RCW 59.18.280 in effect at the time of trial is attached to this Answer as Appendix A.[6] Subsection (1) of this former RCW 59.18.280 sets a 21-day deadline for certain landlord actions, where the deadline is triggered by "the termination of the rental agreement *and* vacation of the premises."[7] In this case, the Court of Appeals properly analyzed the start of this deadline:

> Tenants asked Hoskins, and Hoskins agreed, to extend the lease until the end of August. While Hoskins initially identified a tenant who was willing to move into the Property on August 24, 2019, the prospective tenant rescinded their lease with Hoskins due to (among other things) the condition of the apartment and yard. The 21-day period in RCW 59.18.280(1) thus commences on August 31, 2019.[8]

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[5] Petition for Review, at p. 10

[6] This version of RCW 59.16.280 became effective June 9, 2016, and remained so until June 9, 2022. This version will be referred to as "former RCW 59.18.280." Former RCW 59.18.280 was subsequently amended in 2022 and again in 2023. The current version will be referred to as "current RCW 59.18.280."

[7] Former RCW 59.18.280(1) (emphasis added).

[8] *Chiu v. Hoskins*, 534 P.3d at 421 n.8.

Although Tenants disagree with this conclusion, they simply ignore that *both* vacation of the premises *and* termination of the lease term are necessary to set the deadline running.[9] Since the contractual precondition for terminating the tenancy upon early vacation was not satisfied, Tenants are not entitled to have the deadline run from August 23, 2019.[10] Moreover, Tenants do not argue that the lower courts' resolution of the issue of when the deadline commenced in this case either conflicts with established precedent or is an issue of substantial public interest. If Tenants are requesting review of the determination of the deadline, their request clearly fails.

Given the preceding analysis, former RCW 59.18.280 required Hoskins to do two distinct things by September 21, 2019. The first was to "give a full and specific statement of the basis for retaining any of the deposit."[11] The second was to

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[9] Petition for Review, at p. 12 (first paragraph). *Compare* former RCW 59.18.280(1).

[10] *See, e.g.,* CP 587 at FOF/COL No. 9 (noting that "Hoskins agreed that if a new tenant would move in before the end of August, he would refund the plaintiff the remaining rent for August").

[11] Former RCW 59.18.280(1).

provide "payment of any refund due the tenant under the terms and conditions of the rental agreement."[12]

However, Tenants no longer deny that by September 21, 2019, Hoskins had provided an adequate explanation of his "basis for retaining any of the deposit."[13] He did so by a series of emails between September 6 and September 16, 2019.[14] Thus, Tenants' argument that Hoskins violated RCW 59.18.280 reduces to the claim that Hoskins did not provide the refund due by September 21, 2019.[15] Their "proof" of this claim rests on the undisputed fact that Hoskins made an additional refund on November 8, 2019 (CP 107, 109). But Tenants' reasoning from this fact is fatally flawed.

Tenants simply overlook that the statute expressly states that the amount of the refund that must be paid within the deadline is the amount "*due the tenant under the terms and conditions of the rental agreement*."[16] Here, the rental

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[12] Former RCW 59.18.280(1)
[13] See Petition for Review, at pp. 10-14 (raising no objection to the detail or sufficiency of Hoskins's explanation).
[14] *Chiu*, 534 P.3d at 421. *See also* Ex. 25, p. 1 and CP 106.
[15] Petition for Review, at p. 12.
[16] Former RCW 59.18.280(1) (emphasis added).

agreement required Tenants to pay for utilities, and provided for a "$250. . . deposit for final payment of utilities." **Ex. 1.** Toward the end of the lease, Tenants reiterated that the final utility bills was to be paid out the deposit. **Ex. 20** at p. 3. Moreover, they understood that the final utility bill might not come in for at least a month after they moved out. **Ex. 21**, and CP 106. Tenants have never even alleged that the final water, sewer, and garbage bill was or could have been available before September 21, 2019. Thus, they cannot dispute that *under the terms of the rental agreement, as of September 21, 2019, Hoskins was not obligated to return the $250 utility deposit*.[17]

Armed with these facts, it is straightforward to show that as of September 21, 2019, Hoskins had returned to the Tenants *more* than the " refund due . . . under the terms and conditions

[17] This argument is not affected by the anti-waiver language of RCW 59.18.230. By agreeing to a deposit out of which the final utilities bill would be paid, the parties did not waive any section or subsection of the RLTA, nor did Tenants agree to "forgo rights or remedies under this chapter." RCW 59.18.230(1)(a) and (2)(a). They simply specified what their rights were under the rental agreement, which agreement forms the basis for the application of former RCW 59.18.280. *See* former RCW 59.18.280(1) (tying refund due to "the terms and conditions of the rental agreement).

of the rental agreement." Precisely because Hoskins had delivered a timely and sufficient statement of his "bas[es] for retaining any of the deposit," he was not barred from "asserting any claim or raising any defense for retaining any of the deposit."[18] The trial court thus properly proceeded to resolve the parties' competing claims to the deposit on the merits. CP 584-595. The Court of Appeals remanded part of the trial court's decision on this issue—that relating to repair damages and lost-rent damages—for further consideration.[19] However, the following calculation shows that even leaving repair costs and lost-rent damages completely aside, Hoskins had refunded more than required by September 21, 2019.

- **Total deposit paid by Tenants:** **$2,800**.[20]
- Less refund dated August 5, 2019: -$655.[21]

[18] Former RCW 59.18.280(1) and (2). *See also Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 546, 484 P.3d 1251, 1256 (2021).
[19] *Chiu*, 534 P.3d at 422.
[20] CP 594 at FOF/COL 20
[21] *Id.*

- Less refund dated 9/20/19: -$346.13[22]
- Less allowed landscaping charges: -$1,300.[23]
- Less charges for electric and gas: -$97.22.[24]
- Less allowed cleaning charges: -$300.[25]
- **Less properly retained utility deposit: -$250**.[26]

  Balance: **-$148.35**.[27]

Thus, as of September 21, 2023, Hoskins had refunded $148.35 *more* than was due Tenants "under the terms and conditions of

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[22] *Id.* *See also* CP 107-109. Tenants filed their initial Complaint in this matter on or about November 22, 2019. CP 42-61.

[23] CP 593 at FOF/COL 19. *See also Chiu*, 534 P.3d at 422.

[24] CP 106. Tenants have never disputed the amount of utilities charges paid after the end of the lease term. *See also* CP 593 at FOF/COL 20, and Respondent's Brief, at p. 49.

[25] CP 593 at ln. 23. *See also* Hoskins' Motion for Reconsideration, at p. 4 and note 6 (showing why the Court of Appeals must be understood as implicitly affirming the award to Hoskins of $300 for cleaning).

[26] In his email to Tenants dated September 16, 2019, Hoskins stated that he was withholding $175, not $250, as the final utility deposit. CP 106. If one uses $175 in this calculation, the result is still that Hoskins had refunded more than was required, by the amount of $73.35.

[27] This balance in Hoskins' favor may go up on remand, but it cannot go down. *See Chiu*, 534 P.3d at 422.

the rental agreement."[28] The lower courts' resolution of this issue was not erroneous.

Nor does the Court of Appeals' explanation of this point conflict with *Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 484 P.3d 1251 (2021) or give rise to any issue of substantial public concern.[29] The Court of Appeals' reference to "the parties ongoing negotiations and resolution" by its terms encompasses the fact that the parties had contracted for a utility deposit, and that Tenants agreed that up to $250 could be withheld until payment of the final utility bill. This was a correct if laconic summary of the proper resolution of this issue.[30]

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[28] Former RCW 59.18.280(1). If one adopts the perspective of November 8, 2019—the date on which Hoskins made the final refund of $118 (CP 107)—the result remains the same: Hoskins refunded *more* than was due. In that case, the calculation is as follows: $2,800 total deposit - $655 refund on August 4, 2019 – $346.13 refund on September 20, 2019 - $118.00 refund on November 8, 2019 - $154 total utility charges - $1,300 landscaping charges - $300 cleaning charges = **-$73.13**. November 8, 2019, was approximately two weeks before Tenants filed their initial Complaint. CP 42-61.

[29] *Compare* Petition for Review, at p. 10 and pp. 12-13, and *Chiu*, 534 P.3d at 421 and n. 9.

[30] *Id.*

In addition, *Silver* focuses on the statute of limitations for a claim under RCW 59.18.280.[31] There is no statute of limitations issue here. *Silver* also discusses the legislative intent behind RCW 59.18.280, but makes no holding regarding how to resolve disputes about the amount of the refund "due . . . under . . . the rental agreement."[32] There is thus no conflict reviewable under RAP 13.4(b)(1).[33]

Finally, determining the "refund due the tenant under the terms and conditions of the rental agreement" is clearly a fact-specific undertaking. The demonstrably correct resolution of this matter here in favor of Hoskins does not create any issue of "substantial public interest" reviewable under RAP 13.4(b)(4). Hoskins submits that this conclusion is reinforced by the new RCW 59.18.280(4), which as of July 23,2023 states:

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[31] *See, e.g., Silver*, 197 Wn.2d at 538.
[32] Former RCW 59.18.280(1). *Compare Silver*, 197 Wn.2d at 549-50.
[33] Compare Petition for Review, at p. 10. The Court of Appeals' reference to *Goodeill v. Madison Real Estate,* 191 Wn. App. 88, 362 P.3d 302 (2015) does not create any conflict reviewable under RAP 13.4(b)(2), and Tenants do not even argue that it does. *Compare* Petition for Review (making no argument for review under RAP 13.4(b)(2)).

> **(4)** The requirements with respect to checklists and documentation that are set forth in RCW 59.18.260 and this section do not apply to situations in which part or all of a security deposit is withheld by the landlord for reasons unrelated to damages to the premises, fixtures, equipment, appliances, and furnishings, such as for rent or other charges owing.

Utility deposits are clearly "unrelated to damages to the premises."[34] Even assuming this revision to the statute does not apply retroactively, the issue at stake here will probably cease to arise no later than August 2026.[35]

For the above reasons, this Court should deny review of Tenants' first issue.

2. The Court of Appeals' treatment of Tenants' claims under SMC 7.24.060(A)(2) is reasonable, and not an issue of substantial public interest that should be resolved by this Court.

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[34] Current RCW 59.18.280(4).

[35] *See* current RCW 59.18.280(4). *See also Silver*, 197 Wn.2d at 538 (holding that "a tenant's action under RCW 59.18.280 . . . is subject to [a] three-year statute of limitations"). *See also Howell v. Spokane & Inland Empire Blood Bank*, 114 Wn.2d 42, 47, 785 P.2d 815, 818 (1990).

In the Brief of Respondent to the Court of Appeals, Hoskins "acknowledge[d] he included terms in the Rental Agreement calling for a security deposit and non-refundable move in fee exceeding the amounts allowed by SMC 7.24.035.A and B.4."[36] Hoskins therefore defended the trial court's decision not to make any award to Tenants under SMC 7.24.060(A)(2) on the basis that its use of the phrase "up to $3,000" gives a court discretion to award zero.[37] Since it is undisputed that Tenants suffered no actual damages, Hoskins thought (and still thinks) that the trial court's denial of an award under SMC 7.24.060(A)(2) can be defended as within the trial court's discretion.[38]

However, while affirming that no award is due to Tenants under SMC 7.24.060(A)(2), the Court of Appeals based its decision on different grounds. The Court of Appeals reasoned as follows:

> Unlike SMC 7.24.060(A)(1), which requires an award of statutory damages, SMC 7.24.060(A)(2)

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[36] Brief of Respondent, at p. 40.
[37] *Id.,* at pp. 40-41. A complete copy of SMC 7.24.060 is attached as Appendix B.
[38] *Id.*

> requires proof of actual damages and limits recovery of those damages to "up to $3,000." The trial court found that Tenants proved "no actual damages," and its finding is supported by substantial evidence. Thus, the trial court correctly denied recovery of both damages and attorney fees under SMC 7.24.060(A)(2).[39]

The Court of Appeals decision here is reasonable, and does not create a matter of substantial public interest that should be decided by this Court.[40] Crucially, SMC 7.24.060(A)(2) is silent on the question of whether the award of "up to $3,000" depends on actual damages or is instead a statutory penalty. Tenants' argument that this silence makes it clear that the Seattle City Council intended a statutory penalty is not supported by the plain terms of the ordinance (the ordinance is silent), nor is it supported by any case law cited by Tenants or discoverable by counsel for Hoskins.[41]

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[39] *Chiu*, 534 P.3d at 420 n.7.

[40] *Compare* RAP 13.4(b)(4).

[41] *Wright v. Lyft, Inc.,* 189 Wn.2d 718, 406 P.3d 1149 (2017), the case on which Tenants principally relied below, is readily distinguishable, since it interprets a statute, RCW 19.190.040, which refers to both a fixed sum "or actual damages, whichever is greater." *Id.* at 729. Because SMC 7.24.060(A)(2) does not contain a similar reference to a fixed sum (except as a limit) or actual damages, *Wright* is not

3. Tenants' third and fifth issues both fail to justify acceptance of review, for related reasons.

Tenants' third and fifth issues for review both attempt to criticize the Court of Appeals for something it did not do. This can be seen most clearly by first considering Tenant's fifth issue for review (Petition for Review, Section V.E).

In Section V.E. of their Petition, Tenants assert that the Court of Appeals decided "that even when a landlord commits multiple violations of SMC 7.24.060(A)(1) and (2), the landlord is only liable for one amount of statutory or actual damages."[42] However, the Court of Appeals actually held that there was only one violation of SMC 7.24.060A(1) since the unit of violation

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dispositive. *See also Perez-Farias v. Glob. Horizons, Inc.*, 175 Wn.2d 518, 533, 286 P.3d 46, 53–54 (2012) (analyzing only statutes including the "the "whichever is greater" language missing from SMC 7.24.060(A)(2).

[42] *See* Petition for Review, at p. 24 (emphasis added) *See also id.* at p. 9 (asserting that "the Court of Appeals held that a landlord is only liable for actual or statutory damages no matter how many violations the landlord commits").

under SMC 7.24.060(A)(1) is the "attempt[] to enforce [improper] provision**s**" in a lease.[43]

Conceivably, Tenants meant to argue that the Court of Appeals erred in finding that there was only one violation of SMC 7.24.060(A)(1) on the facts of this case, but this is not what Tenants say. This Court should not grant review of an issue that Tenants do not raise.

Even if this Court were tempted to consider *sua sponte* the proper unit of violation under SMC 7.24.060(A)(1), RAP 13.4(b) provides no support for granting review. Specifically, the Court of Appeals' decision that enforcing multiple improper provisions in a single lease supports a single penalty is required by the plain meaning of SMC 7.24.060(A)(1).[44] Moreover, this conclusion does <u>not</u> conflict with *Queen City Sav. & Loan Ass'n v.*

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[43] SMC 7.24.060(A)(1). *See also Chiu*, 534 P.3d at 419 (stating that "[a]s the plural 'provision*s*' shows, a landlord is liable for actual and statutory damages under SMC 7.24.060(A)(1) if the landlord enforces one or more unlawful provisions (plural) in a rental agreement") (emphasis in original). The Court of Appeals also correctly held that there was no violation of SMC 7.24.060(A)(2). 534 P.3d at 420 n.7.

[44] *See* SMC 7.24.060(A)(1), *and* Brief of Respondent, at pp. 61-64.

Mannhalt, 111 Wn.2d 503, 760 P.2d 350 (1988), or any other case cited by Tenants.

Queen City stands for the proposition that "a court may construe singular words in the plural and vice versa, unless such a construction would be repugnant to the context of the statute or inconsistent with the manifest intention of the Legislature."[45] Here, SMC 7.24.060A(1) uses the plural "provisions", so the direct application of *Queen City* to SMC 7.24.060A(1) is that the term "provisions" should be interpreted to also include the singular, as in "one or more provisions."[46] This is precisely what the Court of Appeals did here.[47] Non-existent conflicts do not support granting review.

Tenants' citation to *State v. Blake*, 197 Wn.2d 170, 205, 481 P.3d 521 (2021) for the proposition that "the statutory

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[45] *Queen City*, 111 Wn.2d at 508. *See also* Petition for Review, at p. 24.

[46] *See also State v. Marjama*, 14 Wn. App. 2d 803, 807, 473 P.3d 1246 (2020), *State v. Baggett*, 103 Wn. App. 564, 570, 13 P.3d 659, 662 (2000)*, and* Brief of Respondent to the Court of Appeals, at pp. 61-64 (arguing explicitly for the "one or more provisions" interpretation of SMC 7.24.060A(1)).

[47] *See Chiu,* 534 P.3d at 419.

scheme must be read as a whole" is equally pointless.[48] This is a correct proposition, but it does Tenants no good. SMC 7.24.060A(1) clearly defines the unit of violation—the actions to which a penalty may be affixed—as an "attempt to enforce" one or more improper provisions in a lease.[49] Nothing else in Chapter 7.24 SMC is at odds with this clear meaning. That in a different Chapter of the SMC (Chapter 22.206 SMC) the Seattle City Council chose to define the unit of violation for a *different* list of building owner infractions on a "per incident, rather than . . .per tenant, basis" does not support <u>any</u> inference that the City Council intended SMC 7.24.060A(1) to make each separate provision improperly included in a lease an independently punishable incident.[50] Indeed, to adopt Tenants reasoning here would require a substantial re-writing of both SMC 22.206.305 (the limited scope of which would be changed) and SMC 7.24.060A(1) (the precise language of which would be ignored). Tenants have failed to identify a proper basis for this Court to

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[48] Petition for Review, at p. 25. Tenant do not point out that they are citing to the dissent.
[49] *See Chiu,* 534 P.3d at 419. *See also* SMC 7.24.060A(1).
[50] *See* SMC 22.206.305, which refers to acts "prohibited by Section 22.206.180."

review the Court of Appeals' decision regarding the unit of violation under SMC 7.24.060A(1).

Like their fifth issue for review, Tenants' third issue for review (Petition for Review, Section C) also relies on the misconception that the Court of Appeals held that the "landlord *commit[ed] multiple violations* under the SMC."[51] Again, this is not what the Court of Appeals held. The Court of Appeals held that Hoskins violated SMC 7.24.060(A)(1) *once*, which single violation was based on *one* attempted enforcement of three prohibited provisions.[52]

Thus, the only formulation of Tenants' third issue that would actually relate to this case is whether Tenants should be able to recover separately for *both* the single violation of SMC 7.24.060A(1) *and* the single violation of RCW 59.18.260 where each violation relates to the same lease and lease period, and where each violation is *sufficiently supported* by the collection of a security deposit without providing a signed checklist.[53]

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[51] Petition for Review, at p. 17.
[52] *Chiu*, 534 P.3d at 419.
[53] The Court of Appeals emphasized that checklist violation by itself is sufficient to support the one violation of SMC 7.24.060A(1) it found. *See Chiu,* 534 P.3d at 418.

Tenants did not cite to any relevant authority in support of such a claim on appeal, nor do they do so now.[54] If the Seattle City Council had wanted to allow separate penalties for each improper lease provision that a landlord attempted to enforce, it could have done so, but it clearly chose not to do so.[55] Application of SMC 7.24.060A(1) as written to the facts here means that Tenants' recovery under that provision is necessarily also a recovery for the checklist violation. Allowing Tenants to recover under both SMC 7.24.060A and RCW 59.18.260 on the facts of this case would be a double recovery. There is no justification for such an outcome here, and no "substantial public interest" in granting Tenants a windfall.[56] The Court should refuse to grant review on this issue.

4. There is no constitutional question in this case.

Tenants' fourth issue for review (Petition for Review, Section V.D) is puzzling, but can be quickly disposed of.

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[54] *See Chiu*, 534 P.3d at 420 n.6.
[55] *See* SMC 7.24.060(A)(1).
[56] Recall that Tenants experienced no actual damages. *See Chiu*, 534 P.3d at 420 n.7 (noting that "[t]he trial court found that Tenants proved 'no actual damages,' and its finding is supported by substantial evidence").

Tenants assert a deprivation of their right to due process, citing to law which holds that "[t]he Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."[57] But Tenants offer zero evidence that the trial court judge was biased against them. Instead, they simply take issue with the trial judge's initial application, and then retraction, of the doctrine of accord and satisfaction.[58]

Unfortunately for Tenants, "[a]n adverse ruling, without more, does not support an inference of bias."[59] Moreover, Tenants identify no specific evidence or argument they sought to introduce, but were prevented from doing by a ruling of the judge. There is no basis for this Court's review here.

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[57] *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 1613, 64 L.Ed.2d 182, 188 (1980). *See also* Petition for Review, at p. 20 (also citing to *In re Dependency of A.N.G.*, 12 Wn. App. 2d 789, 459 P.3d 1099 (2020)).

[58] Petition for Review, at pp. 20-23.

[59] *See, e.g., Town of Skykomish v. Benz*, Nos. 72735-4-I, 73030-4-I, 2016 Wash. App. LEXIS 693, at *9 (Ct. App. Apr. 4, 2016) (unpublished but citable for its persuasive value under GR 14.1(a)). *See also Larson v. Palmateer*, 515 F.3d 1057, 1067 (9th Cir. 2008) (noting that "[i]n the absence of any evidence of some extrajudicial source of bias or partiality, neither adverse rulings nor impatient remarks are generally sufficient to overcome the presumption of judicial integrity").

IV. HOSKINS' CONDITIONAL ARGUMENT FOR REVIEW OF ADDITIONAL ISSUES IF THE COURT DETERMINES THIS CASE IS A MATTER OF SUBSTANTIAL PUBLIC INTEREST

For the reasons stated above, Hoskins asks that the Court deny review. This case does not conflict with any published Court of Appeals case or any prior decision by this Court.[60] Nor does the case raise any significant question of constitutional law.[61] However, if the Court decides to grant review on any of Tenants' issues on the grounds that they involve "issue[s] of substantial public importance that should be determined" by this Court, Hoskins asks that it also grant review of the following set of related issues:

- Whether SMC 7.24.060 is ambiguous;
- Whether SMC 7.24.060 is penal rather than remedial, and is therefore to be construed in favor of landlords;

[60] Compare RAP 13.4(b)(1) and (2).
[61] Compare RAP 13.4(b)(3).

- Whether the Court of Appeals erred by holding that Hoskins "attempt[ed] to enforce" an improperly large security deposit.

Whether SMC 7.24.060 is ambiguous, and whether it should be construed as a penal statue, are plainly issues of substantial public interest that should be resolved by this Court *if* it otherwise grants review.

The Court of Appeals found that Chapter 7.24 SMC is not ambiguous, and that it therefore did not need to resolve whether SMC 7.24.060 is penal or remedial.[62] Hoskins submits this was an erroneous decision (or connected set of decisions) on a matter of substantial public concern.

SMC 7.24.060 is ambiguous in at least two ways. First, as the Court of Appeals properly noted, SMC 7.24.060(A)(2) "does not define the critical phrase 'attempts to enforce.'"[63] The Court of Appeals erred by deciding it could determine an unambiguous "ordinary meaning" of the ordinance by resort to

[62] *See Chiu,* 534 P.3d at 418 n.1.

[63] *Chiu,* 534 P.3d at 418.

Webster's definitions of "attempt" and "enforce."[64] This was an error because the issue is not what it means to "attempt to enforce" *something in the abstract*, but rather what it means to "attempt[] to enforce . . . *a rental agreement*."[65] Although contract formation is arguably almost always an attempt to enforce *a promise*, forming and even performing a contract is not equivalent to attempting to enforce *a contract*.[66] Just as one would not say a lawyer "attempts to enforce" the terms of an engagement letter simply by accepting a fee deposit, a landlord does not attempt to enforce a lease simply by accepting a security deposit from a tenant. Thus, the Court of Appeals' resort to Websters did not establish a clear meaning of the phrase "attempt[] to enforce . . . a rental agreement."[67]

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[64] *Id.*
[65] SMC 7.24.060(A)(1).
[66] *See, e.g.* Restatement 2d of Contracts, § 1 (defining "contract" as "a promise or a set of promises for the breach of which the law gives a remedy"); *and Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 685 P.2d 1081 (1984) (treating contracts as one way of *enforcing promises,* and implicitly distinguishing between contract formation and *contract enforcement*).
[67] SMC 7.24.060(A)(1).

Second, when the Court of Appeals concluded that SMC 7.24.060(A)(2) requires proof of actual damages, it highlighted what is at least an additional *potential* ambiguity in SMC 7.24.060. SMC 7.24.060(A)(2) is silent as to whether the $3,000 limit it asserts is tied to actual damages, or is instead intended as a penalty. Nothing that Hoskins is aware of elsewhere in Chapter 7.24 SMC resolves this ambiguity.

Because SMC 7.24 SMC is ambiguous, the Court of Appeals erred by not considering whether it is a remedial or penal statute. Because it creates new rights of action (e.g., to sue based on allegedly excessive security deposits and non-refundable fees), SMC is in fact penal, and should be construed in favor of landlords.[68] For reasons explained in more detail in Respondent's Brief, it also follows that Hoskins should not be liable for "attempting to enforce" an excessive security deposit, since he refunded the excess amount as soon as the issue was brought to his attention.[69]

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[68] *See, e.g., Loeffelholz v. Univ. Washington,* 175 Wn.2d 264, 271, 285 P.3d 854, 857 (2012) (stating that "[a] statute is *not remedial* when it creates a new right of action").
[69] *See* Respondents' Brief, at pp. 7-18, and 22-32.

V. CONCLUSION

This Court should deny Petitioners' request for review. None of Petitioners' issues satisfy any of the provisions of RAP 13.4(b)(1) through (3). However, if the Court decides that Petitioners have raised issues of substantial public interest that should be determined by this Court, it should also extend review to the issues of whether SMC 7.24.060 is ambiguous, whether it is remedial or penal, and whether Hoskins is liable for attempting to enforce an excessive security deposit when he returned the excessive amount as soon as it was brought to his attention.

DATED this 21st day of November 2023.

I certify pursuant to RAP 18.17(b) that this Answer to the Petition for Review contains 4,998 words, and therefore complies with RAP 18.17(c)(10).

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CERTIFICATE OF SERVICE

I certify that on November 21, 2023, I served the foregoing Answer to Petition for Review to Ms. Erin Sperger, counsel for Petitioners, by means of using the Supreme Court's e-filing and e-service facility. I also emailed a PDF copy of the foregoing Answer to Petition for Review to counsel for Petitioners at her email address of:

erin@legalwellspring.com.

Dated this 21st day of November, 2023 at Tacoma, Washington.

By: s/David J. Corbett
David J. Corbett

APPENDIX A

FORMER RCW 59.18.280

59.18.280. MONEYS PAID AS DEPOSIT OR SECURITY FOR PERFORMANCE BY TENANT — STATEMENT AND NOTICE OF BASIS FOR RETENTION — REMEDIES FOR LANDLORD'S FAILURE TO MAKE REFUND. (EFFECTIVE UNTIL JUNE 9, 2022)

(1) Within twenty-one days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within twenty-one days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement.

(a) No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

(b) The landlord complies with this section if the required statement or payment, or both, are delivered to the tenant personally or deposited in the United States mail properly addressed to the tenant's last known address with first-class postage prepaid within the twenty-one days.

(2) If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he or she shall be liable to the tenant for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the twenty-one days or that the tenant abandoned the premises as

defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorneys' fee. **(3)** Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorneys' fees.

Rev. Code Wash. (ARCW) § 59.18.280

APPENDIX B

SMC 7.24.060

7.24.060 Private right of action

A. Landlord liability to tenant

1. If a landlord attempts to enforce provisions in a rental agreement that are contrary to the requirements of Sections 7.24.030, 7.24.035, 7.24.036, or 7.24.038, the landlord shall be liable to the tenant for: 1) any actual damages incurred by the tenant as a result of the landlord's attempted enforcement; 2) double the amount of any penalties imposed by the City; 3) double the amount of any security deposit unlawfully charged or withheld by the landlord; and 4) reasonable attorney fees and costs.

2. A landlord who includes provisions prohibited by subsection 7.24.030.B, Section 7.24.035, Section 7.24.036, or Section 7.24.038 in a new rental agreement, or in a renewal of an existing agreement, shall be liable to the tenant for up to $3,000 plus reasonable attorney fees and costs.

B. Remedies for tenants if landlord fails to comply

1. If a landlord fails to comply with the requirements of subsections 7.24.080.A, 7.24.080.B, or 7.24.080.C and such failure was not caused by the tenant, the tenant may terminate the rental agreement by written notice pursuant to law.

2. In addition to the remedy provided by subsection 7.24.060.B.1, if a landlord fails to comply with the

requirements of Section 7.24.080, the tenant may recover in a civil action from the landlord actual damages, attorney fees, and a penalty of up to $500. If a court determines that the landlord deliberately failed to comply with the requirements of Section 7.24.080, the penalty may be up to $1,000.

(Ord. 125334 , § 1, 2017; Ord. 125222 , § 6, 2016; Ord. 119171 , § 4, 1998; Ord. 116843 , § 6, 1993.)

DAVID CORBETT PLLC

November 21, 2023 - 7:18 AM

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