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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,

RESPONDENT HOSKINS' RESPONSE TO TENANT LAW CENTER'S AMICUS CURIAE MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION

The Tenant Law Center's ("TLC's") Amicus Curiae Memorandum does not support Petitioners' arguments for acceptance of review. There are two reasons for this. First, the TLC seeks review of an issue <u>not</u> presented in the petition for review or the answer. Second, the TLC fails to show that RAP 13.4(b) supports granting review of its issue. Thus, even if the Court grants review to some or all of the issues raised by Petitioners Virginia Chiu and Vincent Liew ("Tenants"), it should not expand the scope of review to include the issue proposed by the TLC.

II. STATEMENT OF RELEVANT FACTS

In an unchallenged finding of fact, the King County Superior Court found that because Respondent Brian Hoskins "lived in California, all of the communications between the plaintiffs and Hoskins were done by email." CP 585-586, at FOF 6. *See also, e.g.,* CP 157-166. The parties' <u>mutual</u> reliance on email continued without problem or objection through both Hoskins' use of email to convey the information required by former RCW 59.18.280, and Tenants use of email to respond to

the information Hoskins provided.[1] *See, e.g.* Ex. 25; CP 292-298. There is no dispute that Tenants received Hoskins emailed

[1] Former RCW 59.18.280, effective from June 9, 2016, to June 8, 2022, provided in pertinent part as follows:

> **(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.

The relevant parts of this statute were amended effective July 23, 2023, to increase the supporting documentation the landlord must provide the tenant to justify retaining part of the deposit. This change does not substantially affect the issue raised by the TLC.

statements of his basis for retaining part of their security deposit his case no later than September 16, 2019. CP 140 at ¶ 12, CP 298.

In both the trial court and the Court of Appeals, Tenants argued that Hoskins violated RCW 59.18.280 by—among other things—using email to transmit the required statement. CP 127 lns. 8-9; *and* Brief of Appellant [sic] at pp. 44-45. However, both lower courts rejected this argument, with the Court of Appeals addressing it as follows:

> On September 6, 2019, six days after the lease expired, Hoskins sent an e-mail to Tenants with an initial explanation of repairs and dollar amounts. Following this, on September 16, 2019, Hoskins sent Tenants an itemized accounting of the security deposit indicating a total refund of $346.13.
> . . .
> While the deposit statement was not delivered personally to Tenants or sent by United States mail, RCW 59.18.280(1) does not mandate either method of delivery. To the contrary, subsection (b) provides two ways to "give" the required security deposit statement that are sufficient to establish compliance with RCW 59.18.280(1) but does not exclude or prohibit other, equally effective, ways to give the statement, including e-mail.[2]

[2] *Chiu v. Hoskins*, 534 P.3d 412, 421 (Wash. Ct. App. 2023)

In their Petition for Review, Tenants seek review of the Court of Appeals' holding that Hoskins provided a timely refund of the security deposit.[3] However, Tenants' Petition neither challenges nor seeks review of the Court of Appeals' holding that "RCW 59.18.280(1) . . . does not exclude or prohibit other, equally effective, ways to give the statement, including e-mail."[4] For his part, in his Answer to the Petition for Review, Hoskins asks that this Court deny review. If the Court does grant review to Petitioners, Hoskins asks that the Court review issues related to whether SMC 7.24.060 is ambiguous.[5] But Hoskins does not even conditionally request the Court to review any issue related to RCW 59.18.280. [6]

Nonetheless, in its Amicus Curiae Memorandum in Support of the Petition for Review, the TLC frames the issue for which it seeks review as follows:

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[3] Petition for Review, at p. 1 (Issue "A"), and pp. 10-14 (seeking review of whether deposit refund was timely).
[4] *Chiu*, 534 P.3d at 421. When quoting extensively from the former RCW 59.18.280 in support of their argument for review of the timeliness of the deposit return, Tenants omit RCW 59.18.280(1)(b) without even using ellipses.
[5] *See* Answer to Petition for Review, at pp. 22-23.
[6] *Id.*

> Under RCW 59.18.280, may a landlord use email to return a tenant's deposit, and/or provide notification of the disposition of the tenant's deposit when the plain language of the statute allows notification only by hand-delivery, or first class mail?[7]

III. ARGUMENT WHY THIS COURT SHOULD NOT GRANT REVIEW OF THE ISSUE RAISED BY THE TLC.

1. This Court does not normally grant review to issues not raised by Petitioners or Respondents.

RAP 13.7(b) states in part that "the Supreme Court will review only the questions raised in . . . the petition for review and the answer, unless the Supreme Court orders otherwise upon the granting of the motion or petition."[8] It follows from this general rule that a prospective amicus typically may not raise issues not

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[7] Amicus Memorandum, at p. 5. Hoskins does not immediately understand how email could be used "to return a tenant's deposit," but in any event the facts of this case do not pose that issue. *See* CP 140 at ¶ 13, and CP 306-307 (Tenants' evidence showing deposit refund checks were mailed, not emailed).

[8] RAP 13.7(b). *See also State v. Barker*, 143 Wn.2d 915, 919, 25 P.3d 423, 425 (2001) (noting that "[t]his court will ordinarily not review issues not presented in the petition for review or the answer").

raised by the petitioner or respondent in their initial presentations to this Court.[9]

Here, Tenants raised the issue of whether email delivery of the statement required by RCW 59.18.280 can be sufficient in the Court of Appeals, and the Court of Appeals rejected their arguments.[10] However, in their Petition for Review to this Court, Tenants do not raise the issue of whether RCW 59.18.280 allows e-mail delivery of the required statement.[11] Nor does Hoskins seek review of this issue in his Answer to Petition for Review. However, the potential sufficiency of email delivery of the statement required by RCW 59.18.280 is the only issue the TLC addresses in its Amicus Memorandum.[12] The TLC fails to make any argument for an exception from the general rule stated by RAP 13.7(b) and the authorities cited above in footnotes 8 and 9.

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[9] *See, e.g., Mains Farm Homeowners Ass'n v. Worthington*, 121 Wn.2d 810, 827, 854 P.2d 1072, 1080 (1993) (noting that "[w]e do not consider issues raised first and only by amicus"); *and Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 59-60, 586 P.2d 870, 877 (1978) (stating that "we ordinarily do not consider arguments raised only by amicus curiae").
[10] *See, e.g., Chiu*, 534 P.3d at 421.
[11] *See* Petition for Review, at pp. 10-14.
[12] Amicus Memorandum, at p. 5.

Accordingly, this Court should deny review of the issue proposed by the TLC.

2. **Even if this Court sets aside RAP 13.7's general rule, RAP 13.4(b) does not support granting review of the TLC's issue.**

RAP 13.4(b) states as follows:

> **Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only:
> **(1)** If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> **(2)** If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> **(3)** If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> **(4)** If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The TLC's Amicus Memorandum neither cites to RAP 13.4(b), nor makes any argument that the issue it propounds fits within the considerations specified by that rule. Instead, the TLC simply

argues that the Court of Appeals erred, and invites this Court to correct the alleged error.[13]

Even if this Court were an error-correcting court, the TLC has failed to identify any error in the Court of Appeals' decision on this point. The TLC's principal argument implicitly depends on inserting the word "**only**" into the text of RCW 59.18.280(1)(b), as follows:

> **(b)** The landlord complies with this section **[only]** 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.[14]

But of course, "[i]t is a well-established principle of statutory interpretation that [this Court] may not add words to an unambiguous statute when the legislature has chosen not to

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[13] *See, e.g.,* Amicus Memorandum, at p. 10 (asserting that "[t]his Court has the opportunity to correct the Court of Appeals' erroneous conclusion").

[14] Former RCW 59.18.280(1)(b) (material in brackets added). *Cf.* Amicus Memorandum, at pp. 5-6 ("asserting that "[t]he statute at issue, RCW 59.18.280, is plain on its face and *only permits two methods* by which a landlord can provide a tenant with notice of the disposition of their deposit") (emphasis added).

include that language."[15] Since the TLC properly acknowledges that the statutory language at issue here is not ambiguous, its plain meaning argument fails.[16]

Finally, the TLC's argument is not supported by its reference to RCW 59.18.055.[17] That statute provides an alternative to personal service that landlords may use when commencing an unlawful detainer action.[18] That the legislature

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[15] *State v. Dennis*, 191 Wn.2d 169, 173, 421 P.3d 944, 947 (2018).

[16] *See, e.g.,* Amicus Memorandum, at pp. 6-8 (repeatedly asserting and relying on the argument that RCW 59.18.280 is unambiguous). *Cf.* Appellants' Brief, at p. 44 (treating the relevant provision as ambiguous and making an *expressio unius* argument); *and* Respondent's Brief, at pp. 52-53 and note 85 (criticizing Tenants' *expressio unius* argument).

[17] *See, e.g.,* Amicus Memorandum, at pp. 8-9.

[18] RCW 59.18.055 states in part as follows:

> **(1)** When the landlord, after the exercise of due diligence, is unable to personally serve the summons on the tenant, the landlord may use the alternative means of service as follows:
> **(a)** The summons and complaint shall be posted in a conspicuous place on the premises unlawfully held, not less than nine days from the return date stated in the summons; and
> **(b)** Copies of the summons and complaint shall be deposited in the mail, postage prepaid, by both regular mail and certified mail directed to the tenant's or tenants' last known address not less

chose to *relax* the requirement for personal service for unlawful detainer actions is no support at all for the TLC's belief that the legislature must have intended to *restrict* the possible ways in which a landlord could provide tenants with the deposit information required by RCW 59.18.280.

V. CONCLUSION

Amicus TLC may well believe that a change in the law that would increase landlords' costs and give incumbent tenants a tactical litigation advantage would be good public policy. But it has failed to identify any law that would give this Court the authority to make the change for which the TLC advocates. Nor has the TLC even established that the Court should address the issue at all. The TLC's issue was not raised in either the Petition for Review or the Answer thereto, and the TLC makes no effort to argue either that exceptional circumstances apply that would exempt it from RAP 13.7, or that its issue satisfies any of the considerations specified in RAP 13.4(b). Accordingly, this Court should deny review of the issue proposed by the TLC.

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than nine days from the return date stated in the summons.

DATED this 20th day of December 2023.

I certify pursuant to RAP 18.17(b) that this Response to the Amicus Memorandum contains 2,040 words, and therefore complies with RAP 18.17(c)(9).

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CERTIFICATE OF SERVICE

I certify that on December 20, 2023, I served the foregoing Response to Amicus Curiae Memorandum of the Tenant Law Center to Ms. Erin Sperger, counsel for Petitioners, and to Ms. Elizabeth Powell, counsel for Amicus TLC, by means of using the Supreme Court's e-filing and e-service facility. I also emailed a PDF copy of the foregoing Response to the following email addresses:

erin@legalwellspring.com.
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Dated this 20th day of December, 2023 at Kailua, Hawaii.

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

DAVID CORBETT PLLC

December 20, 2023 - 10:39 AM

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