NO. 92978-5

SUPREME COURT OF THE STATE OF WASHINGTON

STEPHEN FACISZEWSKI and VIRGINIA L. KLAMON,

Respondents,

v.

MICHAEL R. BROWN and JILL A. WAHLEITHNER,

Petitioners.

NORTHWEST JUSTICE PROJECT'S AMICUS CURIAE MEMORANDUM IN SUPPORT OF PENDING PETITION FOR REVIEW

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I. IDENTITY AND INTEREST OF AMICUS

Northwest Justice Project (NJP) is a publicly funded not for profit statewide law firm that provides free civil legal assistance to low-income Washington State residents. NJP's mission is to secure justice through high quality legal advocacy that promotes the long-term well-being of low-income individuals, families, and communities. Every year, NJP assists thousands of tenants statewide by providing legal advice, limited assistance, and legal representation. NJP respectfully submits this amicus curiae memorandum in support of the petition for review on the issue of whether tenants facing eviction in violation of Seattle's Just Cause Eviction Ordinance may assert the violation as a defense in an unlawful detainer action.

II. ARGUMENT

Discretionary review is appropriate because the lower court's decision, as upheld by the Court of Appeals, prohibits residential tenants from raising affirmative defenses in unlawful detainer suits—which is in conflict with other court decisions and is also a matter of public interest.[1]

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[1] RAP 13.4(b)(1),(2), and (4). *See also Faciszewski and Klamon v. Brown and Wahleithner,* 192 Wn. App. 441, 453, 367 P.3d 1085 (2016); *Munden v. Hazelrigg,* 105 Wn.2d 39, 45, 711 P.2d 295 (1985); *Foisy v Wyman,* 83 Wn.2d 22, 31-32, 515 P.2d 160 (1973); *Margola Associates v. City of Seattle,* 121 Wn.2d 625, 652, 854 P.2d 23 (1993), citing *Kennedy v. City of Seattle,* 94 Wn.2d 376, 384, 617 P.2d 713 (1980); *Pham v*

The Court of Appeals decision also makes it unclear whether unlawful detainer defendants who raise a material issue of fact are entitled to a trial—a right clearly provided by statute and case law.

A. The Court Should Accept Review Because an Important Public Interest is at Stake.

The Supreme Court should accept discretionary review of the Court of Appeals decision in the instant case because there is an important public interest at stake. The Court of Appeals decision wrongfully prohibited Petitioners Brown and Wahleithner (hereinafter "Tenants") from raising an available affirmative defense in an unlawful detainer action. The Court should accept review to provide instruction for lower courts on whether to permit affirmative defenses in unlawful detainer actions, especially when a municipal ordinance limits grounds for eviction.

Eviction defenses are an important public interest. The inability to raise all possible defenses to an eviction action may lead to a lack of due process for unlawful detainer defendants and potentially unwarranted evictions (defendants who may have had a viable defense but unable to raise it because of the Court of Appeals decision in this case). Eviction numbers are staggering; between 2009 and the end of 2013, in King

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Corbett, 187 Wn. App. 816, 351 P.3d 214 (2015); *Josephinium v. Khali*, 111 Wn. App. 617, 45 P.3d 627 (2002).

County alone, landlords filed 28,420 eviction cases against tenants.[2] Sometimes landlords are justified in evicting tenants but other times the evictions are unwarranted.[3] In addition, there are numerous terminated tenancies that may be unwarranted that never reach a court because tenants vacate after receipt of the termination notice because they are concerned that an eviction filing will prevent them from being admitted to rental housing in the future.

Preventing unwarranted evictions is in the public interest because "[e]victions often result in multiple severe consequences."[4] These consequences include homelessness, refusal of landlords to rent to those with recent eviction records, and disqualification from public housing.[5] For those who are able to find housing after eviction, they are frequently only able to find substandard or inadequate housing, housing in disadvantaged neighborhoods, and rental housing with less favorable rental terms.[6] Long-term, evictions can exacerbate future housing instability for low-income tenants, increase chances of job loss, disrupt children's education, and can have long-term psychological effects for

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[2] This is based on information provided by King County Superior Court.

[3] *Hundtofte v. Encarnacion,* 181 Wn.2d 1, 18, 330 P.2d 168 (2014).

[4] Greenberg, Gershenson, and Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, Harv. C.R.-C.L. L. Rev. 115, 117-18 (2016).

[5] *Id.* at 118.

[6] *Id.* at 118.

both children and adults.[7] Evictions impact not just the individuals evicted but society as well. Evictions can lead to increased demands on social services, shelters, and hospitals by those who become homeless.[8] There are other scenarios where laws permit tenants to sue for damages for violation of the law (such as unlawful discrimination).[9] Landlords may attempt to use the Court of Appeals decision to argue that tenants cannot use a violation of law as an affirmative defense in eviction actions because that law entitles them to sue for damages. For these reasons, it is in the public interest for the Supreme Court to accept discretionary review in the instant case.

B. Failure to Comply with the Just Cause Eviction Ordinance Can Be Raised as an Affirmative Defense to an Eviction Action.

Unlawful detainer actions are special statutory proceedings to determine the right to possession of rental property.[10] Residential unlawful detainer actions are governed by Washington's Residential Landlord Tenant Act of 1973 (RLTA).[11] The procedures for unlawful detainers are found in RCW chapter 59.12, *et seq.*, to the extent they are not supplanted

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[7] *Id.*

[8] *Id.*

[9] *Josephinium v. Khali*, 111 Wn. App. 617, 45 P.3d 627 (2002)

[10] *Phillips v. Hardwick*, 29 Wn. App. 382, 38586, 628 P.2d 506 (1981).

[11] *Housing Authority of City of Pasco and Franklin County v. Pleasant*, 126 Wn. App. 382, 391, 109 P.3d 422 (2005).

by those in the RLTA.[12] Show cause hearings are used to determine the issue of possession.[13] Counterclaims are generally prohibited in unlawful detainer actions except when the counterclaim, affirmative defense or setoff excuses a tenant's breach.[14]

The RLTA expressly permits unlawful detainer defendants to assert "any legal and equitable defense or set-off arising out of the tenancy,"[15] and well-established case law specifically permits unlawful detainer defendants to raise affirmative defenses as viable defenses to unlawful detainer actions.[16] Affirmative defenses present new facts and arguments that, if true, defeat the plaintiff's claim, even if all allegations in the complaint are true.[17]

In the instant case, Tenants were month-to-month tenants residing

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[12] *Id.*

[13] *Housing Authority of City of Pasco and Franklin County v. Pleasant,* 126 Wn. App. 382, 394, 109 P.3d 422 (2005).

[14] *Munden v. Hazelrigg,* 105 Wn.2d 39, 45, 711 P.2d 295 (1985), citing *Granat v. Keasler,* 99 Wn2d 564, 570, 663 P.2d 830 (1983) and *First Union Mgt., Inc. v. Slack,* 36 Wn. App 849, 854, 679 P.2d 936 (1984), *Young v. Riley,* 59 Wn.2d 50, 365 P.2d 769 (1961).

[15] RCW 59.18.380 and 59.18.400.

[16] See *Munden v. Hazelrigg,* 105 Wn.2d 39, 45, 711 P.2d 295 (1985); *Foisy v Wyman,* 83 Wn.2d 22, 31-32, 515 P.2d 160 (allowing the affirmative defense of breach of implied warranty of habitability); see also *Margola Associates v. City of Seattle,* 121 Wn.2d 625, 652, 854 P.2d 23 (1993), citing *Kennedy v. City of Seattle,* 94 Wn.2d 376, 384, 617 P.2d 713 (1980); *Pham v. Corbett,* 187 Wn. App. 816, 827, 351 P.3d 214 (2015); *Joesphinum v Kahli,* 111 Wn. App. 617, 45 P.3d 627 (2002).

[17] *Asplundh Tree Expert Company v. Washington State Department of Labor and Industries,* 145 Wn. App. 52, 61, 185 P.3d 646 (2008), citing Black's Law Dictionary 430 (7th ed. 1999).

in Seattle.[18] After a parking dispute, Respondents Faciszewski and Klamon (hereinafter "Landlords") demanded that Tenants park their car nearly a block away from the property.[19] Landlords threatened to terminate Tenants' tenancy if they failed to park in compliance with their demands.[20] Shortly thereafter, Landlords terminated Tenants' tenancy because they allegedly sought to use the property to house an immediate family member.[21] The RLTA allows landlords to terminate month to month tenancies without cause with proper notice,[22] but the Just Cause Eviction Ordinance restricts the ability of Seattle landlords to terminate month-to-month tenants.[23] Landlords would have been prohibited from terminating Tenants' tenancy and evicting Tenants if the stated grounds in their termination notice were untrue.[24]

At the show cause hearing, Tenants raised, as an affirmative defense, their belief that Landlords falsely claimed that they planned to use the dwelling for themselves or an immediate family member as a pretext to terminate Tenants' tenancy. Tenants presented evidence to

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[18] *Faciszewski and Klamon v. Brown and Wahleithner,* 192 Wn. App. 441, 443, 367 P.3d 1085 (2016).

[19] CP 189-90.

[20] CP 190, 214.

[21] CP 22.

[22] RCW 59.18.200.

[23] SMC 22.206.160(C) (SMC 22.206.160 attached as Appendix 1).

[24] See RCW 59.12.030 and SMC 22.206.160(C).

show that it was improbable that Landlords or their immediate family members planned to move in to the property at issue,[25] thus giving Tenants a viable affirmative defense to the unlawful detainer suit. The Commissioner determined that the Tenants' affirmative defense warranted a trial.[26] The Court of Appeals should have reversed the trial court's revision of the Commissioner's decision.

The Just Cause Eviction Ordinance permits a tenant to file a complaint if they believe the landlord is using the ordinance as a pretext for termination. In response to the complaint, the landlord is required to file a certification confirming the veracity of the reason for tenancy termination.[27] The Just Cause Eviction Ordinance allows tenants to sue their former landlord for damages if the stated grounds for termination prove to be false.[28] In its decision, the Court of Appeals states that a damages suit is the exclusive remedy when a landlord falsely certifies grounds for termination,[29] and that an affirmative defense of failure to comply with the Just Cause Evictions Ordinance can only be raised in an

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[25] CP 190, 214, 14, 15-17, 191-192, 228, 217-18, 225-26.

[26] *Faciszewski and Klamon v. Brown and Wahleithner,* 192 Wn. App. 441, 444, 367 P.3d 1085 (2016).

[27] SMC 22.206.260(C)(4).

[28] SMC 22.206.160(C)(7).

[29] *Faciszewski and Klamon v. Brown and Wahleithner,* 192 Wn. App. 441, 453, 367 P.3d 1085 (2016).

eviction if the landlord failed to provide the required certification.[30]

In the past, Washington Courts have determined that unlawful detainer defendants may use noncompliance with a Seattle ordinance as an affirmative defense to an eviction.[31] The filing of the certification by the landlord does not prevent a tenant from raising an affirmative defense under the Just Cause Eviction Ordinance. The trial court should have prevented Landlords from using the Ordinance as a pretext to terminate Tenants' tenancy and considered Tenants' affirmative defense that Landlords termination was without basis.

C. If Defendants Raise a Material Issue of Fact they are Entitled to a Trial.

It is well settled that when an unlawful detainer defendant raises an issue of material fact, the case must be set for trial.[32] Tenants' answer raised an issue of material fact by presenting evidence challenging

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[30] *Id.*

[31] *Margola Associates v. City of Seattle,* 121 Wn.2d 625, 652, 854 P.2d 23 (1993); *Kennedy v. City of Seattle,* 94 Wn.2d 376, 384, 617 P.2d 713 (1980) (In *Margola,* this court determined that failure to comply with Seattle's Rental Registration Ordinance creates an affirmative defense to the tenant and the tenant cannot be evicted unless the building has a rental housing registration. And in *Kennedy* a City ordinance prohibited moorage slip tenancy terminations except under certain limited circumstances. The case primarily resolved issues relating to the constitutionality of the ordinance, in its opinion, the Court discussed that the ordinance, if constitutional, represented a defense to the eviction. Although the specific City ordinance at issue was deemed unconstitutional, the case still stands for the proposition that failure to comply with a City ordinance can be used as an affirmative defense in an eviction action. *Margola* cited to *Kennedy* for this proposition).

[32] RCW 59.18.380. *See also Country Manor MHC, LLC v. Doe,* 176 Wn. App. 601, 308 P.3d 818 (2013). *Housing Authority of City of Pasco and Franklin County v. Pleasant,* 126 Wn. App. 382, 392, 109 P. 3d 422 (2005).

Landlords' stated basis for terminating the tenancy.[33] Tenants submitted their declarations challenging Landlords' claims and provided documentation that supported their contentions.[34] Although Landlords provided a certification confirming the grounds for tenancy termination,[35] Landlords did not provide any additional evidence supporting their claim, even though it would seem easy for them to obtain evidence (for example, a declaration or telephonic testimony from the person who planned to occupy the home who Landlords claim is an immediate family member). Landlords' case rested solely on allegations contained in their termination notice, complaint, and certification. Because the answer raised an issue of material fact, the issue should have been resolved at trial.[36] Although the commissioner's decision was revised and the revised decision was subsequently affirmed by the Court of Appeals, the commissioner determined that Tenants raised an issue of fact about '"subsequent questions at issue' as to who was going to live in the house"[37] warranting a

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[33] CP 190, 214, 14, 15-17, 191-192, 228, 217-18, 225-26.

[34] CP 191-2, 217-18, 225-6.

[35] *Faciszewski and Klamon v. Brown and Wahleithner,* 192 Wn. App. 441, 444, 367 P.3d 1085 (2016).

[36] *Housing Authority of City of Pasco and Franklin County v. Pleasant,* 126 Wn. App. 382, 392; 109 P. 3d 422 (2005), citing RCW 59.12.130; *Meadow Park Garden Associates v. Canley*, Wn. App. 371, 372; 773 P.2d 875 (1989).

[37] *Faciszewski and Klamon v. Brown and Wahleithner*, 192 Wn. App. 441, 444, 367 P.3d 1085 (2016).

trial.[38] In other words, the commissioner's decision was appropriate.

Tenants produced enough evidence to raise a material issue of fact and the matter should have been set over for trial. The trial court erred by entering judgment against Tenants with no further opportunity to prove Landlord's pretextual use of the Just Cause Eviction Ordinance to prevent eviction. The Court of Appeals decision adopted this error and publication now compounds the problem for thousands of tenants.

III. CONCLUSION

For the reasons stated above, discretionary review is appropriate as the lower court's decision is in conflict with previous court decisions, and the petition involves an issue of public interest that should be determined by the Supreme Court.

RESPECTFULLY SUBMITTED this 23rd day of May, 2016.

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[38] *Faciszewski and Klamon v. Brown and Wahleithner*, 192 Wn. App. 441, 444, 367 P.3d 1085 (2016).

APPENDIX 1

22.206.160 - Duties of owners

A. It shall be the duty of all owners, regardless of any lease provision or other agreement that purports to transfer the owner's responsibilities hereunder to an operator, manager, or tenant, to:

1. Remove all garbage, rubbish, and other debris from the premises;
2. Secure any building which became vacant against unauthorized entry as required by Section 22.206.200;
3. Exterminate insects, rodents and other pests which are a menace to public health, safety or welfare. Compliance with the Director's Rule governing the extermination of pests shall be deemed compliance with this subsection 22.206.160.A.3;
4. Remove from the building or the premises any article, substance or material imminently hazardous to the health, safety, or general welfare of the occupants or the public, or which may substantially contribute to or cause deterioration of the building to such an extent that it may become a threat to the health, safety, or general welfare of the occupants or the public;
5. Remove vegetation and debris as required by Section 10.52.030;
6. Lock or remove all doors and/or lids on furniture used for storage, appliances, and furnaces which are located outside an enclosed, locked building or structure;
7. Maintain the building and equipment in compliance with the minimum standards specified in Sections 22.206.010 through 22.206.140 and in a safe condition, except for maintenance duties specifically imposed in this Section 22.206.170 on the tenant of the building; provided that this subsection 22.206.160.A.7 shall not apply to owner-occupied dwelling units in which no rooms are rented to others;
8. Affix and maintain the street number to the building in a conspicuous place over or near the principal street entrance or entrances or in some other conspicuous place. This provision shall not be construed to require numbers on either appurtenant buildings or other buildings or structures where the Director finds that the numbering is not appropriate. Numbers shall be easily legible, in contrast with the surface upon which they are placed. Figures shall be no less than 2 inches high;
9. Maintain the building in compliance with the requirements of Section 3403.1 of the Seattle Building Code; [11]
10. Comply with any emergency order issued by the Seattle Department of Construction and Inspections; and
11. Furnish tenants with keys for the required locks on their respective housing units and building entrance doors.

B. It shall be the duty of all owners of buildings that contain rented housing units, regardless of any lease provision or other agreement that purports to transfer the owner's responsibilities hereunder to an operator, manager or tenant, to:

1. Maintain in a clean and sanitary condition the shared areas, including yards and courts, of any building containing two or more housing units;
2. Supply enough garbage cans or other approved containers of sufficient size to contain all garbage disposed of by such tenants;
3. Maintain heat in all occupied habitable rooms, baths and toilet rooms at an inside temperature, as measured at a point 3 feet above the floor and 2 feet from exterior walls, of at least 68 degrees Fahrenheit between the hours of 7 a.m. and 10:30 p.m. and 58 degrees Fahrenheit

between the hours of 10:30 p.m. and 7 a.m. from September 1 until June 30, when the owner is contractually obligated to provide heat;

4. Install smoke detectors on the ceiling or on the wall not less than 4 inches nor more than 12 inches from the ceiling at a point or points centrally located in a corridor or area in each housing unit and test smoke detectors when each housing unit becomes vacant;
5. Make all needed repairs or replace smoke detectors with operating detectors before a unit is reoccupied; and
6. Instruct tenants as to the purpose, operation and maintenance of the detectors.

C. Just cause eviction

1. Pursuant to provisions of the state Residential Landlord-Tenant Act (RCW 59.18.290), owners may not evict residential tenants without a court order, which can be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction (RCW 59.18.380). Owners of housing units shall not evict or attempt to evict any tenant, or otherwise terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause exists. Owners may not evict residential tenants from rental housing units if the units are not registered with the Seattle Department of Construction and Inspections as required by Section 22.214.040, regardless of whether just cause for eviction may exist. An owner is in compliance with this registration requirement if the rental housing unit is registered with the Seattle Department of Construction and Inspections before entry of a court order authorizing eviction or before a writ of restitution is granted. A court may grant a continuance in an eviction action in order to give the owner time to register the rental housing unit. The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this Section 22.206.160:
    a. The tenant fails to comply with a three day notice to pay rent or vacate pursuant to RCW 59.12.030(3); a ten day notice to comply or vacate pursuant to RCW 59.12.030(4); or a three day notice to vacate for waste, nuisance (including a drug-related activity nuisance pursuant to chapter RCW 7.43), or maintenance of an unlawful business or conduct pursuant to RCW 59.12.030(5);
    b. The tenant habitually fails to pay rent when due which causes the owner to notify the tenant in writing of late rent four or more times in a 12 month period;
    c. The tenant fails to comply with a ten day notice to comply or vacate that requires compliance with a material term of the rental agreement or that requires compliance with a material obligation under chapter 59.18 RCW;
    d. The tenant habitually fails to comply with the material terms of the rental agreement which causes the owner to serve a ten day notice to comply or vacate three or more times in a 12 month period;
    e. The owner seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building, and the owner has given the tenant at least 90 days' advance written notice of the date the tenant's possession is to end. The Director may reduce the time required to give notice to no less than 20 days if the Director determines that delaying occupancy will result in a personal hardship to the owner or to the owner's immediate family. Personal hardship may include but is not limited to hardship caused by illness or accident, unemployment, or job relocation. For the purposes of this

Section 22.206.160, "Immediate family" includes the owner's domestic partner registered pursuant to Section 1 of Ordinance 117244 or the owner's spouse, parents, grandparents, children, brothers and sisters of the owner, of the owner's spouse, or of the owner's domestic partner. There is a rebuttable presumption of a violation of this subsection 22.206.160.C.1.e if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice of termination or eviction using this subparagraph as the cause for eviction;

f. The owner elects to sell a single-family dwelling unit and gives the tenant at least 90 days' written notice prior to the date set for vacating, which date shall coincide with the end of the term of a rental agreement, or if the agreement is month to month, with the last day of a monthly period. The Director may reduce the time required to give notice to no less than 60 days if the Director determines that providing 90 days' notice will result in a personal hardship to the owner. Personal hardship may include but is not limited to hardship caused by illness or accident, unemployment, or job relocation. For the purposes of this Section 22.206.160, an owner "elects to sell" when the owner makes reasonable attempts to sell the dwelling within 30 days after the tenant has vacated, including, at a minimum, listing it for sale at a reasonable price with a realty agency or advertising it for sale at a reasonable price in a newspaper of general circulation. There shall be a rebuttable presumption that the owner did not intend to sell the unit if:

   1) Within 30 days after the tenant has vacated, the owner does not list the single-family dwelling unit for sale at a reasonable price with a realty agency or advertise it for sale at a reasonable price in a newspaper of general circulation, or

   2) Within 90 days after the date the tenant vacated or the date the property was listed for sale, whichever is later, the owner withdraws the rental unit from the market, rents the unit to someone other than the former tenant, or otherwise indicates that the owner does not intend to sell the unit;

g. The tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated;

h. The owner seeks to do substantial rehabilitation in the building; provided that, the owner must obtain a tenant relocation license if required by Chapter 22.210 and at least one permit necessary for the rehabilitation, other than a Master Use Permit, before terminating the tenancy;

i. The owner (i) elects to demolish the building, convert it to a cooperative, or convert it to a nonresidential use; provided that, the owner must obtain a tenant relocation license if required by Chapter 22.210 and a permit necessary to demolish or change the use before terminating any tenancy, or (ii) converts the building to a condominium provided the owner complies with the provisions of Sections 22.903.030 and 22.903.035;

j. The owner seeks to discontinue use of a housing unit unauthorized by Title 23 after receipt of a notice of violation. The owner is required to pay relocation assistance to the tenant(s) of each such unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:

   1) $2,000 for a tenant household with an income during the past 12 months at or below 50 percent of the County median income, or

2) Two months' rent for a tenant household with an income during the past 12 months above 50 percent of the County median income;

k. The owner seeks to reduce the number of individuals residing in a dwelling unit to comply with the maximum limit of individuals allowed to occupy one dwelling unit, as required by Title 23, and:

1) a) The number of such individuals was more than is lawful under the current version of Title 23 but was lawful under Title 23 or Title 24 on August 10, 1994;

b) That number has not increased with the knowledge or consent of the owner at any time after August 10, 1994; and

c) The owner is either unwilling or unable to obtain a permit to allow the unit with that number of residents.

2) The owner has served the tenants with a 30 day notice, informing the tenants that the number of tenants exceeds the legal limit and must be reduced to the legal limit,

3) After expiration of the 30 day notice, the owner has served the tenants with and the tenants have failed to comply with a ten day notice to comply with the limit on the number of occupants or vacate, and

4) If there is more than one rental agreement for the unit, the owner may choose which agreements to terminate; provided that, the owner may either terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants, or, at the owner's option, terminate only those agreements involving the minimum number of occupants necessary to comply with the legal limit;

l. 1) The owner seeks to reduce the number of individuals who reside in one dwelling unit to comply with the legal limit after receipt of a notice of violation of the Title 23 restriction on the number of individuals allowed to reside in a dwelling unit, and:

a) The owner has served the tenants with a 30 day notice, informing the tenants that the number of tenants exceeds the legal limit and must be reduced to the legal limit; provided that, no 30 day notice is required if the number of tenants was increased above the legal limit without the knowledge or consent of the owner;

b) After expiration of the 30 day notice required by subsection 22.206.160.1.1.a above, or at any time after receipt of the notice of violation if no 30 day notice is required pursuant to subsection 22.206.160.1.1.a, the owner has served the tenants with and the tenants have failed to comply with a ten day notice to comply with the maximum legal limit on the number of occupants or vacate; and

c) If there is more than one rental agreement for the unit, the owner may choose which agreements to terminate; provided that, the owner may either terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants, or, at the option of the owner, terminate only those agreements involving the minimum number of occupants necessary to comply with the legal limit.

2) For any violation of the maximum legal limit on the number of individuals allowed to reside in a unit that occurred with the knowledge or consent of the owner, the owner is required to pay relocation assistance to the tenant(s) of each such unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:

a) $2,000 for a tenant household with an income during the past 12 months at or

below 50 percent of the county median income, or

b) Two months' rent for a tenant household with an income during the past 12 months above 50 percent of the county median income;

m. The owner seeks to discontinue use of an accessory dwelling unit for which a permit has been obtained pursuant to Sections 23.44.041 and 23.45.545 after receipt of a notice of violation of the development standards provided in those sections. The owner is required to pay relocation assistance to the tenant household residing in such a unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:

1) $2,000 for a tenant household with an income during the past 12 months at or below 50 percent of the county median income, or

2) Two months' rent for a tenant household with an income during the past 12 months above 50 percent of the county median income;

n. An emergency order requiring that the housing unit be vacated and closed has been issued pursuant to Section 22.206.260 and the emergency conditions identified in the order have not been corrected;

o. The owner seeks to discontinue sharing with a tenant of the owner's own housing unit, i.e., the unit in which the owner resides, seeks to terminate the tenancy of a tenant of an accessory dwelling unit authorized pursuant to Sections 23.44.041 and 23.45.545 that is accessory to the housing unit in which the owner resides, or seeks to terminate the tenancy of a tenant in a single-family dwelling unit and the owner resides in an accessory dwelling unit on the same lot. This subsection 22.206.160.C.1.o does not apply if the owner has received a notice of violation of the development standards of Section 23.44.041. If the owner has received such a notice of violation, subsection 22.206.160.C.1.m applies;

p. A tenant, or with the consent of the tenant, the tenant's subtenant, sublessee, resident, or guest, has engaged in criminal activity on the premises, or on the property or public right-of-way abutting the premises, and the owner has specified in the notice of termination the crime alleged to have been committed and the general facts supporting the allegation, and has assured that the Seattle Department of Construction and Inspections has recorded receipt of a copy of the notice of termination. For purposes of this subsection 22.206.160.C.1.p, a person has "engaged in criminal activity" if he or she:

1) Engages in drug-related activity that would constitute a violation of chapters 69.41, 69.50, or 69.52 RCW, or

2) Engages in activity that is a crime under the laws of this state, but only if the activity substantially affects the health or safety of other tenants or the owner.

2. Any rental agreement provision which waives or purports to waive any right, benefit or entitlement created by this subsection 22.206.160.C.1.p shall be deemed void and of no lawful force or effect.

3. With any termination notices required by law, owners terminating any tenancy protected by this Section 22.206.160 shall advise the affected tenant or tenants in writing of the reasons for the termination and the facts in support of those reasons.

4. If a tenant who has received a notice of termination of tenancy claiming subsection 22.206.160.C.1.e, 22.206.160.C.1.f, or 22.206.160.C.1.m as the ground for termination believes that the owner does not intend to carry out the stated reason for eviction and makes a complaint to the Director, then the owner must, within ten days of being notified by the Director

of the complaint, complete and file with the Director a certification stating the owner's intent to carry out the stated reason for the eviction. The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground.

5. In any action commenced to evict or to otherwise terminate the tenancy of any tenant, it shall be a defense to the action that there was no just cause for such eviction or termination as provided in this Section 22.206.160.
6. It shall be a violation of this Section 22.206.160 for any owner to evict or attempt to evict any tenant or otherwise terminate or attempt to terminate the tenancy of any tenant using a notice which references subsections 22.206.160.C.1.e, 22.206.160.C.1.f, 22.206.160.C.1.h, 22.206.160.C.1.k, 22.206.160.C.1.l, or 22.206.160.C.1.m as grounds for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy.
7. An owner who evicts or attempts to evict a tenant or who terminates or attempts to terminate the tenancy of a tenant using a notice which references subsections 22.206.160.C.1.e, 22.206.160.C.1.f or 22.206.160.C.1.h as the ground for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy shall be liable to such tenant in a private right for action for damages up to $2,000, costs of suit, or arbitration and reasonable attorney's fees.

(Ord. 124919, § 78, 2015; Ord. 124862, § 1, 2015; Ord. 124738, § 1, 2015; Ord. 123564, § 3, 2011; Ord. 123546, § 4, 2011; Ord. 123141, § 1, 2009; Ord. 122728, § 1, 2008; Ord. 122397, § 2, 2007; Ord. 121408 § 1, 2004; Ord. 121276 § 19, 2003; Ord. 119617 § 1, 1999; Ord. 118441 § 2, 1996; Ord. 117942 § 2, 1995; Ord. 117570 § 2, 1995; Ord. 115877 § 1, 1991; Ord. 115671 § 17, 1991; Ord. 114834 § 2, 1989; Ord. 113545 § 5(part), 1987.)

Footnotes:
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***Editor's note**—The Seattle Building Code is adopted in Chapter 22.100 of this title.*