74360-1

74360-1

No. 74360-1-I
King County Superior Court Case No. 14-2-34463-5 SEA

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

---

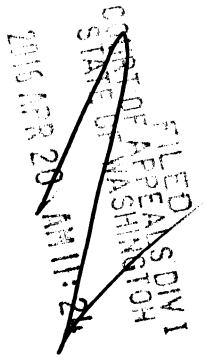
MICHELLE J. KINNUCAN,

Petitioner/Appellant,

v.

CITY OF SEATTLE,

Respondent/Appellee.




---

# APPELLANT'S OPENING BRIEF

---

Vanessa Soriano Power, WSBA No. 30777
Karl F. Oles, WSBA No. 16401
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Facsimile: (206) 386-7500

Attorneys for Appellant

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

**Cases**

**Statutes**

**Rules**



**Other Authorities**

## I. INTRODUCTION

Before the Court is a conflict between the Appellant, Michelle Kinnucan, and the City of Seattle (the "City") over the City's ongoing failure to provide administrative hearings required by state law. To protect low-income tenants like Ms. Kinnucan, the Legislature enacted RCW 59.18.440 in conjunction with the Growth Management Act. When cities require property owners to pay tenants for relocation assistance, cities are also required to provide for administrative hearings to resolve disputes between tenants and property owners "relating to relocation assistance or unlawful detainer actions during relocation." *See* RCW 59.18.440(5). Despite this clear mandate, the City only provides for hearings *before* a tenant relocation license is issued. But because the City does not permit property owners to relocate tenants until *after* a tenant relocation license is issued, the City fails to give effect to the plain language of the statute to provide for administrative hearings "*during* relocation."

By limiting administrative hearings to disputes that arise before a property owner receives a tenant relocation license, the City cuts off a tenant's right to an administrative hearing at the first moment the property owner can, in fact, terminate leases and force tenants to relocate. This is the same time at which low-income tenants are most vulnerable and in

need of a process to streamline resolution of disputes with property owners. Ms. Kinnucan was denied her request for an administrative hearing at that precise time.

Here, Ms. Kinnucan sought a writ of mandamus to compel the City to provide recourse via an administrative hearing during *actual* relocation – which as a matter of law can only occur after a tenant relocation license is issued. Her writ was denied on a CR 12(b)(6) motion to dismiss. Ms. Kinnucan's petition for a writ of mandamus, however, sets forth sufficient facts to state a claim. The trial court's order should be reversed with direction that a writ of mandamus be granted recognizing the statutory right of tenants to seek an administrative hearing during relocation.

## II. ASSIGNMENTS OF ERROR

**No. 1:** Whether the trial court erred in dismissing Ms. Kinnucan's petition for a writ of mandamus under CR 12(b)(6) where, accepting all facts alleged as true, the petition sets forth allegations sufficient to state a claim.

**No. 2:** Whether the trial court erred in dismissing Ms. Kinnucan's petition for a writ of mandamus because RCW 59.18.440(5) imposes on the City a duty to provide administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or

unlawful detainer actions "during relocation," not simply before a tenant relocation license is issued to the property owner.

**No. 3:** Whether the trial court erred in dismissing Ms. Kinnucan's petition for a writ of mandamus because Ms. Kinnucan has no plain, speedy, and adequate remedy as an alternative to a writ of mandate.

**No. 4:** Whether the trial court erred in dismissing Ms. Kinnucan's petition for a writ of mandamus because Ms. Kinnucan is a beneficially interested party under RCW 7.16.170.

## III. STATEMENT OF THE CASE

Ms. Kinnucan is a low-income tenant who lives in the City of Seattle. CP 97, 99, 100.[1] In August 2013, after Ms. Kinnucan had been leasing a unit in an apartment building in the City for four years, the building, as part of a larger complex, was sold. CP 95. The new property owners quickly terminated some leases without following required process, and as a result, the City issued a Tenant Relocation Assistance Ordinance Notice of Violation. CP 119. This is the initial context that gave rise to Ms. Kinnucan's dispute with the property owner.

From November 2013 through January 2014, Ms. Kinnucan received communications from the property owner indicating that the

[1] There is no dispute that Ms. Kinnucan is a "low-income tenant" as defined by RCW 59.18.440(2).

building would be rehabilitated. CP 96, 121-27. The communications indicated how long Ms. Kinnucan and the other residents of her building could stay in their apartments. *Id.* Ms. Kinnucan relied on these notices. CP 96. In February 2014, Ms. Kinnucan, on behalf of her building's tenants union, expressed concerns to the property owner about lead dust during demolition. CP 97, 131-32. Those concerns were borne out by testing by public health officials. CP 97, 134.

On April 3, 2014, the City issued a tenant relocation license to the property owner. CP 41, 62. The next day, April 4, 2014, Ms. Kinnucan received a notice to terminate her tenancy by April 30, 2014, six months earlier than previously indicated. CP 136. Ms. Kinnucan was the only tenant in her building subject to the accelerated termination date. CP 97. Ms. Kinnucan was then faced with the prospect of homelessness and already disabling health problems now further exacerbated by stress. *Id.*

On April 21, 2014, Ms. Kinnucan contacted the City to seek recourse. CP 98, 142-43. Ms. Kinnucan was proceeding *pro se*. CP 98. She sent an email to confirm that the Office of the Hearing Examiner was the appropriate agency to hear disputes "concerning the owner's authority to institute unlawful detainer actions 'during relocation.'" CP 98, 142-43. The City responded that the agency "has the authority to hear your complaint." *Id.* Accordingly, on May 22, 2014, Ms. Kinnucan filed an

appeal with the City seeking an administrative hearing. CP 98, 145-48. The City then refused to consider the appeal, contending that the hearing examiner lacked jurisdiction. CP 149.

Upon receiving the City's rejection of her appeal, Ms. Kinnucan again contacted the City's hearing examiner. CP 98-99, 151-52. On June 4, 2014, Ms. Kinnucan specifically explained that her appeal "relates to 'unlawful detainer actions during relocation.'" *Id.* On June 5, 2014, the City rejected the appeal as "untimely under SMC 22.210.150.C." CP 153-54. Ms. Kinnucan's additional efforts to seek an administrative hearing from the City were rebuffed. CP 99, 156-59. In a letter dated July 23, 2014, the City informed Ms. Kinnucan that "there is no route to an administrative hearing on any of the issues you have raised." *Id.*

Ms. Kinnucan then proceeded *pro se* and filed a lawsuit in an attempt to address matters, among others, that she sought to bring before the City in an administrative hearing. CP 99. Ms. Kinnucan was ultimately not forced to terminate her tenancy until October 2014. CP 100.

On December 29, 2014, Ms. Kinnucan filed an application for a peremptory writ of mandate against the City in King County Superior Court. CP 1-6. Ms. Kinnucan sought a writ of mandamus requiring the City to:

1. Adopt policies, procedures, or regulations that satisfy the legislative mandate in RCW 59.18.440(5); and

2. Provide administrative hearings to tenants consistent with the same legislative mandate.

CP 5, 6. On October 23, 2015, the trial court granted the City's motion to dismiss under CR 12(b)(6). CP 168-69. This appeal followed. CP 170.

## IV. ARGUMENT

### A. Standard of Review.

The issue before the Court is purely legal and thus reviewed *de novo*. *Cost Mgmt. Servs., Inc. v. City of Lakewood,* 178 Wn.2d 635, 648-49, 310 P.3d 804 (2013) (noting that "if the question raised is whether a statute prescribes a duty that will support issuance of a writ of mandamus, our review is de novo"); *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014) (trial court dismissal of action under CR 12(b)(6) reviewed *de novo*).

Dismissal under CR 12(b)(6) is "proper only if we conclude that 'the plaintiff cannot prove "any set of facts which would justify recovery."'" *Nissen v. Pierce County,* 183 Wn.2d 863, 872, 357 P.3d 45 (2015) (quoting *Kinney v. Cook,* 159 Wn.2d 837, 842, 154 P.3d 206 (2007)). "Motions to dismiss are granted 'only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.'" *Id.* (quoting *Hoffer v. State,*

110 Wn.2d 415, 420, 755 P.2d 781 (1988)). Here, presuming all factual allegations in Ms. Kinnucan's petition as true, it is plain that the petition withstands a CR 12(b)(6) motion to dismiss. *See Reid v. Pierce County,* 136 Wn.2d 195, 201, 961 P.2d 333 (1998) (when reviewing denial of CR 12(b)(6) motion, court presumes complaint's factual allegations are true).

### B. The Trial Court Erred in Dismissing the Petition for Issuance of a Writ Under CR 12(b)(6).

A party seeking a writ of mandamus must show that (1) the party subject to the writ has a clear duty to act; (2) the petitioner has no plain, speedy, and adequate remedy in the ordinary course of law; and (3) the petitioner is beneficially interested. RCW 7.16.160, .170. Although Ms. Kinnucan's petition sufficiently alleged all three, the trial court dismissed her petition under CR 12(b)(6). CP 168-69.

#### 1. RCW 59.18.440(5) Imposes a Duty to Act "During Relocation," Not Simply Before a Tenant Relocation License Is Issued.

RCW 59.18.440 was enacted in response to a "sharp increase in rental prices and a corresponding decrease in the number of rental units affordable to low-income tenants." *Garneau v. City of Seattle,* 147 F.3d 802, 804 (9th Cir. 1998) (upholding tenant relocation ordinance enacted under RCW 59.18.440 as constitutional). "In 1990, as part of the Growth Management Act, the Washington State Legislature adopted legislation enabling municipal governments to enact relocation assistance

provisions." *Id.* RCW 59.18.440(1) authorizes cities to require property owners to provide relocation assistance to low-income tenants upon, for example, demolition or substantial rehabilitation of the property.

To require property owners to provide relocation assistance, cities must comply with specific requirements. RCW 59.18.440(5) provides, in relevant part:

> A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. *Such policies, procedures, or regulations shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation*, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

(Emphasis added.) The operative term at issue in the statute is the period during which cities "shall" provide for administrative hearings, namely "during relocation."

In 1990, "the City of Seattle took advantage of the State's enabling legislation by promulgating the Tenant Relocation Assistance Ordinance ("TRAO"). *Garneau*, 147 F.3d at 804. The TRAO, codified at SMC 22.210, requires a property owner to obtain a tenant relocation license before the City will, for example, issue a permit for substantial rehabilitation of the property. SMC 22.210.050. Before a tenant

relocation license is issued, the property owner must give tenants notice of the planned development and pay applicable relocation assistance. SMC 22.210.060, .110, .120, .130. In the event of a dispute, SMC 22.210.150 outlines the City's process for administrative appeals under the TRAO, including, in relevant part:

> A. Either an owner or a tenant may request a hearing before the Hearing Examiner to appeal a determination concerning a tenant's eligibility for a relocation assistance payment, to resolve a dispute concerning the authority to institute unlawful detainer actions before issuance of the tenant relocation license required by Section 22.210.050, or to review a decision of the Director pursuant to subsection 22.210.136.C.
>
> . . . .
>
> C. A request for a hearing relating to authority to pursue unlawful detainer actions during the relocation period shall be filed prior to issuance of the tenant relocation license.
>
> . . . .
>
> F. All requests for a hearing or appeal shall be in writing and shall clearly state specific objections and the relief sought. The appellant is not required to pay the Hearing Examiner filing fee set forth in Section 3.02.125.

The City itself recognized the problem that RCW 59.18.440 seeks to address. In enacting the TRAO, the City made several findings, including:

> 3. Rents in Seattle have been increasing rapidly and vacancies in rental housing are at low levels, making it increasingly difficult for tenants,

especially those with low incomes, to locate affordable rental housing.

. . . .

6. Conditions in the current rental market have created a relocation crisis, because tenants, especially low-income tenants, do not have sufficient time to save money for relocation costs or to find comparable housing when they are evicted as a result of demolition, change of use, substantial rehabilitation or removal of use restrictions from their dwelling units.

SMC 22.210.020(3), (6). In other words, the City recognized that property owners were evicting low-income tenants to demolish, rehabilitate, or convert their properties for a wealthier clientele. The problem is, the TRAO falls short of its statutory mandate under RCW 59.18.440(5).

In enacting the TRAO, the City imposed arbitrary and improper limitations on both the procedural time period and substantive scope of a low-income tenant's right to an administrative hearing. *See* SMC 22.210.150(A) (limiting time at which tenant may request administrative hearing to "before issuance of the tenant relocation license"); SMC 22.210.150(C) (limiting time at which tenant may request administrative hearing to "prior to issuance of the tenant relocation license" and substantive scope to "authority to pursue unlawful detainer actions").[2]

[2] Since this case commenced, SMC 22.210.150 was amended on October 5, 2015, resulting in a change in subsection (A) to the time period within which a tenant may request a hearing from "during the 90 day period after

Contrary to the City's limitations, RCW 59.18.440(5) requires provision of administrative hearings in a broader context – substantively "relating to relocation assistance or unlawful detainer actions" and procedurally "during relocation." The City's reading of a non-existent limitation into the phrase "during relocation" thus fails to give full effect to the requirements of RCW 59.18.440(5).

The meaning of a statute is a question of law reviewed *de novo*. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). "The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* at 9-10. Here, the plain language of "during relocation" is clear. *See Webster's Third New International Dictionary* 703, 1919 (2002) (defining "during" as "throughout the continuance or course of" and "relocation" as "removal and establishment in a new place").

In construing RCW 59.18.440, the Court reads the statute as a whole; "'intent is not to be determined by a single sentence.'" *State ex rel. Royal v. Bd. of Yakima Cty. Comm'rs,* 123 Wn.2d 451, 459-60, 869 P.2d

---

service of the notice required by Section 22.210.120" to "before issuance of the tenant relocation license required by Section 22.210.050 or to review a decision of the Director pursuant to subsection 22.210.136.C."

56 (1994) (citation omitted). "[E]ffect should be given to all the language used," and "all of the provisions of the act must be considered in their relation to each other, and, if possible, harmonized to insure proper construction of each provision." *Id.*; *Tommy P. v. Bd. of Cty. Comm'rs,* 97 Wn.2d 385, 391, 645 P.2d 697 (1982). Further, because the statute is remedial in nature, it is to be construed liberally in accordance with the legislative purpose behind it. *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 34, 42 P.3d 1265 (2002) (citing *Gaglidari v. Denny's Rests., Inc.*, 117 Wn.2d 426, 450-51, 815 P.2d 1362 (1991)).

When an apartment building is demolished, rehabilitated, or converted, the tenants need to relocate, *to move*. This meaning is confirmed throughout the statute. For example, RCW 59.18.440(3) lists examples of "relocation expenses" including "*moving* costs and expenses" and advance payments "required for *moving* into a new residence." RCW 59.18.440(3) (emphases added). RCW 59.18.440(7) provides that people who "move" before the property owner applies for a permit are not entitled to the assistance authorized by the statute. Plainly, "relocation" means "moving." While no court has specifically addressed what constitutes "during relocation" or "relocation," a recent Division III case is informative and supports Ms. Kinnucan's position that "during relocation" means the time during which tenants are moving. *Segura v. Cabrera,* 179

Wn. App. 630, 637, 319 P.3d 98 (2014) (in case involving claim for relocation assistance under RCW 59.18.085(3), court noted that actual damages under statute are limited to reasonable *moving expenses*, noting (but not holding) as examples that out of pocket or financial damages incurred by relocation may include "wages lost during relocation, fuel costs, and equipment rental costs").

In sum, RCW 59.18.440(5) requires the City to provide for administrative hearings "during relocation." The City's restriction on the right to request a hearing to the time period *before* a tenant relocation license is issued defies both the plain language of the statute, which includes no such limitation, and the application of the law. Indeed, once an owner applies for a tenant relocation license, the City prohibits property owners from evicting tenants before issuance of the license except for good cause unrelated to matters covered by the TRAO. SMC 22.210.140.

In an apparent attempt to circumvent application here, the TRAO also includes a substantive limitation, which restricts hearings requests to those "relating to *authority* to pursue unlawful detainer actions during the relocation period." SMC 22.210.150(C) (emphasis added). Again, this is a limitation self-imposed by the City, which runs counter to the broader requirement under RCW 59.18.440(5) to provide for administrative

hearings to "resolve disputes . . . relating to . . . unlawful detainer actions," not simply the authority to pursue such an action.

For all these reasons, the City has a duty to provide for administrative hearings on specified issues "during relocation," not just before a tenant relocation license is issued.

### 2. Ms. Kinnucan Has No Other Plain, Speedy, and Adequate Remedy.

A writ of mandamus "'must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.'" *Wash. State Farm Bureau Fed'n v. Reed,* 154 Wn.2d 668, 672, 115 P.3d 301 (2005) (quoting RCW 7.16.170). Here, there is no other proceeding or forum that could provide the same relief as mandamus, namely an order directing the City to provide for administrative hearings.

RCW 59.18.440(5) is undoubtedly intended to give tenants a way to avoid other costly, risky, or arduous remedies. It does so by providing tenants the right to a specific remedy, an administrative hearing, in cities that require relocation assistance. The statute does not make provision of administrative hearings optional. Administrative hearings are mandated. *See* RCW 59.18.440(5) ("shall include provisions for administrative hearings to resolve disputes"); *Eugster v. City of Spokane,* 118 Wn. App. 383, 414, 76 P.3d 741 (2003) (noting that mandamus remedy "turns on

whether the duty the plaintiff seeks to enforce 'cannot be directly enforced' by any means other than mandamus" (citation omitted)).

No other remedy at law could provide the same plain, speedy, and adequate relief as the administrative hearing mandated "during relocation" under RCW 59.18.440(5). For example, damages cannot fully compensate a tenant who suffers an unnecessary eviction, and there is no other specific proceeding that a tenant could use to obtain the same relief. Nor is any other remedy similarly speedy. *See* RCW 59.18.440(5) (calling for decision within 30 days of request for administrative hearing); *Dress v. Wash. State Dep't of Corr.*, 168 Wn. App. 319, 338-39, 279 P.3d 875 (2012) (finding the argument that "a plain, speedy and adequate remedy 'merely requires that there be a process by which the plaintiff may seek redress for the allegedly unlawful action'" was a "relaxed standard" unsupported by law; further finding that the "existence of ***some*** process for redressing the petitioner's injuries" was insufficient because "[f]or a remedy to supplant a writ, it must be plain, ***speedy*** and adequate." (citation omitted; emphases in original)).

Here, where the determination of whether a plain, speedy, and adequate remedy exists turns on statutory interpretation, and "[i]n such instances, the question is one of law that we review de novo." *Cost Mgmt. Servs., Inc.*, 178 Wn.2d at 649 n.5. Although the Washington Supreme

Court found that if the "question raised is whether there existed an adequate remedy at law that precludes issuance of mandamus, we review the trial court's decision for abuse of discretion," that is not the case here. *Id.* at 649. While the trial court seemingly considered whether the test for a writ had been met in granting the City's motion to dismiss under CR 12(b)(6), the trial court made no express finding in its order or on the hearing transcript that any purported alternative remedy was plain, speedy, and adequate.[3]

Even if the trial court's statements at the hearing were deemed discretionary findings, they are subject to reversal. A trial court's discretionary decisions should be reversed if the superior court's discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker,* 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Here, the trial court suggested that

---

[3] The Order Granting the City's Motion to Dismiss states that the court "finds that the City has established facts sufficient to grant the City's Motion to Dismiss. The [c]ourt also find[s] that Ms. Kinnucan has not alleged facts sufficient to support issuance of either Writ of Mandate she seeks." CP 168-69.

The trial court stated during the hearing on the City's motion to dismiss:

> I do believe there is an alternative remedy, and that is to file a suit, a lawsuit. I mean, I realize it may be inconvenient. It might be expensive, especially for low-income folks, but there is still that option for people.

RP 24.

low-income tenants have recourse to superior court when they they are denied an administrative hearing. But in its own thought process, the trial court recognized that requiring low-income tenants to file a lawsuit in lieu of an administrative hearing would be "inconvenient" and "expensive, especially for low-income folks." RP 24. These constitute untenable grounds, in particular where the Legislature recognized the need for convenience in requiring a decision within 30 days (RCW 59.18.440(5)), and the City itself is sensitive to costs imposed on low-income tenants. *See* SMC 22.210.150(F) (appellant not required to pay hearing examiner filing fee). In light of these facts, Ms. Kinnucan has no plain, speedy, and adequate remedy other than the issuance of a writ of mandamus.

Further, although Ms. Kinnucan's opportunity for an administrative hearing passed without receiving the relief sought, this appeal is not moot. An appeal is technically moot if the court cannot provide the basic relief sought. *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984); *Eugster v. City of Spokane*, 110 Wn. App. 212, 228-29, 39 P.3d 380, *rev. denied,* 147 Wn.2d 1021 (2002). That is not the case here. If this Court reverses the trial court's order dismissing the petition, and directs that a writ of mandamus be granted, Ms. Kinnucan will receive the basic relief she seeks: recognition of the statutory right of low-income tenants to recourse via an administrative hearing during

*actual* relocation – both before and after a tenant relocation license is issued.

Even if this appeal were deemed moot, the Court may and should still decide the appeal. That is because this case involves matters of continuing and substantial public interest. *See Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994) (identifying factors considered in determining if case involves matters of public interest). In considering whether to decide a technically moot appeal, the Court considers three primary factors: (1) the public or private nature of the issue, (2) whether an authoritative determination is desirable for future guidance of public officers, and (3) whether the issue is likely to recur. *Eugster v. City of Spokane,* 115 Wn. App. 740, 751, 63 P.3d 841 (2003) (citing *Hart v. Dep't of Soc. & Health Servs.,* 111 Wn.2d 445, 448, 759 P.2d 1206 (1988)). All three weigh in Ms. Kinnucan's favor.

First, the issue is undeniably a public one. *See* CP 92-94 (statement of Executive Director of Low Income Housing Institute noting belief that City's "refusal to provide these administrative hearings is harmful to some significant number of tenants who are mistreated by their landlords."). Although the initial dispute arises between a tenant and her landlord, the dispute before the Court is whether the City, a public body, is statutorily required to provide an administrative hearing process as

recourse in this context. Second, an authoritative determination is desirable. The Court's determination of what time period constitutes "during relocation" under RCW 59.18.440 will inform all cities adopting tenant relocation ordinances on the scope of their obligations. Finally (and unfortunately), absent relief, this situation is likely to recur, whether between Ms. Kinnucan and the City directly or between other low-income tenants and the City, or even other cities in the State of Washington. For these reasons, even if the Court finds that this appeal is technically moot, review is still justified.

**3. Ms. Kinnucan Is a Beneficially Interested Party.**

Ms. Kinnucan also meets the standard for issuance of a writ of mandamus because she is "beneficially interested" in the action. "For purposes of standing under the mandamus statute, all that must be shown is that the party has an interest in the matter beyond that of other citizens." *Retired Pub. Emps. Council of Wash. v. Charles*, 148 Wn.2d 602, 620, 62 P.3d 470 (2003). Ms. Kinnucan satisfies this minimal requirement.

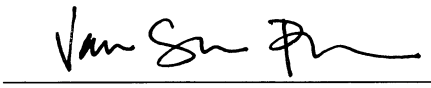
Ms. Kinnucan was and remains a "low-income tenant" as defined by RCW 59.18.440(2). CP 100. Further, Ms. Kinnucan met and continues to meet the definition of a "tenant" under SMC 22.210.030(N). *Id.* Ms. Kinnucan was specifically affected by the City's failure to provide for administrative hearings pursuant to RCW 59.18.440(5). She thus

meets the basic standard of a beneficially interested party. *Retired Pub. Emps. Council of Wash.*, 148 Wn.2d at 620 (finding standing where *potential* actuarial unsoundness, rather than *immediate* actuarial unsoundness, was sufficient and holding that "[t]he simplicity in this standard compels the conclusion that Retirees and Employees have an interest, beyond that of other citizens, in changes made to the retirement system").

## V. CONCLUSION

Ms. Kinnucan's case illustrates a tenant who was denied her right to an administrative hearing under RCW 59.18.440(5) because the City improperly restricted hearings to disputes arising *before* issuance of a tenant relocation license. There is no support for the City's position in the law. The trial court's order granting the City's motion to dismiss Ms. Kinnucan's petition for a writ of mandamus should be reversed: (a) with direction to the trial court to issue a writ requiring the City to provide for administrative hearings in full accordance with RCW 59.18.440(5); (b) granting recovery of fees and costs incurred in seeking the writ; and (c) for further proceedings on outstanding matters.

Respectfully submitted this 20th day of April, 2016.



Vanessa Soriano Power, WSBA No. 30777
Karl F. Oles, WSBA No. 16401
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Facsimile: (206) 386-7500

Attorneys for Appellant Michelle Kinnucan

**CERTIFICATE OF SERVICE**

I certify that I caused to be served a true and correct copy of the foregoing **Appellant's Opening Brief** on the following counsel of record in the manner specified below:

| | |
|---|---|
| Elizabeth E. Anderson,<br>Liza.anderson@Seattle.gov | via: Email/pdf |

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

DATED at Seattle, WA: April 20, 2016.

STOEL RIVES, LLP

Vanessa S. Power, WSBA No. 30777