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**IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

ROBERT A. HILL,

Plaintiff/Respondent,

v.

MICHAEL EUGENE HUDDLESTON,

Defendant/Appellant.

PETITION FOR REVIEW

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Adam Paczkowski, WSBA #49902
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I. IDENTITY OF PETITIONER

Appellant Michael Huddleston seeks review of the opinion and order described in Section II.

II. COURT OF APPEALS DECISION

The Court of Appeals issued its unpublished decision on November 7, 2023. Appx. at 1. The court denied Mr. Huddleston's motion for reconsideration on December 4, 2023. Appx. at 20.

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err by affirming the decision below on the basis that the notice to evict Mr. Huddleston was adequately specific as required by RCW 59.18.650(6)(b), in conflict with a decision of Division 3 of the Court of Appeals in *Kiemele & Hagood v. Daniels*?
2. Did the Court of Appeals err by affirming the lower court's *sua sponte* decision to apply the law of nuisance to the plaintiff's claim, in spite of the fact that the

complaint failed to state these facts in support of its claim, all in violation of RCW 59.12.070?

IV. STATEMENT OF THE CASE

This case concerns the tenancy of Michael Huddleston, who rented a dwelling unit from his landlord, Robert Hill. Mr. Huddleston moved into the subject property in October of 2018, entering into an oral rental agreement with his landlord where the only condition of the rental agreement was the payment of $1200 a month in rent. CP 58.

The landlord, seeking to evict Mr. Huddleson, served him with a 20-day notice to terminate his tenancy on September 29, 2021. CP 8. The notice referred to an affidavit of the landlord, attached to the notice, which stated the following factual information for the basis of the termination:

> 3. There have been a number of incidents in it has been reported that Mike Huddleston has driven erratically at night, endangering nearby residents. These incidents have caused continuous fear to the nearby residents and has endangered their safety and the safety of their personal property.
>
> 4. Law enforcement has been called to the residence a number of times in connection with domestic violence matters.
>
> 5. Mike and Sara Huddleston have engaged in subletting property without my permission and consent.
>
> 6. Mike and Sara Huddleston have allowed or have agreed to allow storage of some 60 to 80 inoperable vehicles, without my permission and consent.

CP 6.

The landlord then filed an unlawful detainer action seeking to retake possession of the dwelling unit. CP 12-15 & 1-4. The complaint restated some, but not all, of the allegations in the notice. Paragraph 3.4 of the complaint stated:

> 3.4 The Notice Terminating Tenancy was issued pursuant to Governor Inslee's Bridge Proclamation 21-09 and HB 1236, Section 2, Paragraph 1, based on Defendants reckless and erratic driving in the neighborhood, endangering nearby residents, as well as a number of calls to the residence by local law enforcement for incidents involving domestic violence matters, all as stated in the Affidavit of Landlord, affixed to the Notice Terminating Tenancy.

Mr. Huddleston filed an answer disputing the adequacy of the notice and the allegations contained in the complaint. CP 49-57. Mr. Huddleston raised two affirmative defenses to the unlawful detainer action; 1) that the plaintiff's notice failed to conform with any notice available under the RLTA in RCW 59.18.650; and 2) that the plaintiff's notice failed to allege specific facts as required under RCW 59.18.650(6)(b). *Id*. Mr. Huddleston contemporaneously filed a declaration in support of answer. CP 59-59.

The trial court held a show cause hearing on March 18, 2022. CP 60. At that hearing, no testimony was taken and the court heard argument from counsel for both parties. *Id*. The Plaintiff's declaration attached to the motion for an order to show cause—the evidentiary basis of his motion—failed to allege the cars were a nuisance and did not even mention the cars in any fashion, other than by referencing the notice. CP 18. The declaration instead referred to reckless driving and allegations of domestic violence, all as stated in the notice. *Id.*

As noted above, the landlord did not make any allegations either in the complaint or the declaration in support of the motion to show cause regarding cars on the property.

Following argument, the trial court issued a written ruling granting the plaintiff's requested writ of restitution. CP 61-62. The ruling denied Huddleston's defenses and found, *sua sponte*, that the allegation of the inoperable cars constituted nuisance. *Id.*

Mr. Huddleston appealed, and the Court of Appeals affirmed. Mr. Huddleston filed a motion for reconsideration timely, which the court denied on December 4, 2023.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court should grant review under RAP 13.4(b)(2) and (b)(4) because the lower court's ruling is in direct conflict with its decision in the Division 3 case of *Kiemle and Hagood v. Daniels*. 26 Wn.App.2d 199, 528 P.3d 834 (2023). Additionally, the court's decision concerns a relatively new statute with broad public importance: how specific must notices

to evict renters be to permit them to prepare a defense to eviction? Because the Court of Appeal's decision in this case undermines that protection and conflicts with a previous ruling in Division 3, this Court should accept review.

A. This case presents an issue of substantial public interest because of the right of tenants to receive representation and just cause for their eviction

The Legislature has invested significant time and attention to the plight of low-income renters in the past several years. Beginning with substantial reform to the eviction process in 2019 and 2020, the legislature next responded to the COVID-19 pandemic with a suite of tenant protections designed to protect renters from the inception of a tenancy until its termination. *See* Laws 2019 c. 356; Laws 2020 c. 315; Laws 2021 c. 115; Laws 2021 c. 212. The legislature even went so far as to require the appointment of counsel for indigent renters facing eviction, recognizing the importance of retaining a tenancy when a tenant has defenses to eviction. *See Payton v. Nelson,* 525 P.3d 244 (2023). The volume of new statutory

protections for renters and rules governing eviction are more sweeping in their scope than any changes since the inception of the Residential Landlord Tenant Act 50 years ago.

At the core of these new tenant protections was a monumental shift in the basis for which a landlord could properly terminate a tenancy. Before 2021, a landlord merely had to serve a notice 20 days before the end of the tenancy to end that tenancy. The landlord did not have to give any reason and the tenant rarely had any way to defend against a termination that was retaliatory or discriminatory. The legislature ended this practice with the new requirements that a landlord may only terminate a tenancy for one of 16 enumerated reasons. RCW 59.18.650. A landlord must also state their cause for eviction with specificity in the notice terminating the tenancy. RCW 59.18.650(6)(b).

Just cause eviction is now a core tenant protection. But, if the tenant must guess at the facts alleged by the landlord to support their eviction, then it is no protection at all.

Recognizing this, the legislature codified specificity requirements for all notices under RCW 59.18.650(6)(b). A landlord is required to state the reasons for eviction, with specificity, and with all of the facts known to the landlord at the time of issuing the notice. *Id.* If they do not, then they cannot evict the tenant. *Tacoma Rescue Mission v. Stewart*, 155 Wn.App. 250, 228 P.3d 1289 (2010).

Whether the landlord provided specific notice in this case is the dispute that this Court should review. As argued below, the court's decision in this case is at odds with a decision of Division 3. Division 2's ruling misapplies the specificity requirement in a manner that permits the trial court to ignore obvious deficiencies in a notice to terminate and seize upon one allegation. The court's ruling encourages landlords to file nonspecific notices with multitudes of allegations, with the hope that at least one allegation is sufficient to permit eviction. Because these notices are invalid from the start they should be insufficient for the unlawful detainer action to proceed.

This Court should clarify and direct lower courts that the legislature intended specificity when it said so, and that notices that lack specificity are inadequate to confer unlawful detainer jurisdiction on the proceedings.

B. The court's acceptance of a notice lacking dates and times of generic allegations is at odds with the legislature's requirement of specificity and conflicts with the decision of the Court of Appeals in *Kiemle and Hagood v. Daniels*

The Court erred by not dismissing an unlawful detainer predicated on a notice that lacked specificity in violation of RCW 59.18.650(6)(b). Passed in 2021, the legislature's updates to the Residential Landlord Tenant Act were sweeping and intended to protect residential tenancies from unnecessary termination. *See* Laws 2021, ch. 212, preamble.

RCW 59.18.650(6)(b) states that a notice must:

> Identify the facts and circumstances known and available to the landlord at the time of the issuance of the notice that support the cause or causes with enough specificity so as to enable the tenant to respond and prepare a defense to any incidents alleged. The landlord may present additional facts and circumstances regarding the allegations within the notice if such evidence was unknown or

unavailable at the time of the issuance of the notice.

The newly required specificity language found in RCW 59.18.650(6)(b) requires a construction that must favor the tenant. Notices that fail to substantially comply with this requirement are invalid and the trial court may not proceed with an unlawful detainer action on such a notice. *Tacoma Rescue Mission v. Stewart*, 155 Wn.App. at 255.

The inclusion of specificity requires more than general allegations as the landlord here did. The specificity requirement requires the landlord to support the "cause or causes" with enough specificity to allow the tenant to prepare a defense. RCW 59.18.650(6)(b). By including "cause or causes", the legislature clearly intended to require specificity on all counts.

The Court's decision ignores these requirements and should be reviewed because the Landlord failed to include dates or times. Referencing *Kiemle and Hagood v. Daniels*, the court relied on Division 3's determination that the names of

individuals in that case would not be necessary. The court here misread and misapplied Daniels.

The Court in *Daniels* found that further information in the notice was not needed in that case because the notices were exhaustive as to the defendant's alleged housekeeping violations. The Court in *Daniels* went on to say: "To be sure, in some cases, identifying victims is logically necessary to afford a tenant a meaningful ability to rebut allegations, such as where the tenant's purportedly violative conduct is alleged threats, harassment, or violence directed at specific people." *Kiemle & Hagood v. Daniels,* 26 Wn. App.2d 199, 217, 528 P.3d 834 (2023). The court in *Daniels* recognized that identification would logically be related to providing a defense to eviction. Finally, there is no support in the *Daniels* case for the court's position here that, at the very least, the alleged dates of the violations were unnecessary to make the notice specific. Appx at 14 (holding that specificity in one unrelated allegation cures deficiencies in the others).

This conclusion is further supported by the court's holding in *Tacoma Rescue Mission v. Stewart*. 155 Wn. App. 250, 228 P.3d 1289 (2010). In *Tacoma Rescue Mission*, the court considered a lease that required specificity in termination notices with nearly identical language to RCW 59.18.650(6)(b). The lease in that case required notices of termination to "state the reasons for such termination with enough specificity to enable the resident to understand the grounds for termination." *Tacoma Rescue Mission,* 155 Wn. App. at 255. The court concluded there that a notice that did not identify victims or dates and times was inadequate to provide the required level of specificity. *Tacoma Rescue Mission,* 155 Wn. App. at 257.

There is no difference between the lack of specificity in this case and *Tacoma Rescue Mission*, yet the court reached different conclusions about the adequacy of the notice in these two cases. In fact, Hill provided far less notice than the landlord in *Tacoma Rescue Mission.* More information was needed in this case, and the court ignored the reasoning in *Daniels* to

reach its conclusion. The court held that notices need not be "exhaustive" and that Huddleston "asks too much" for a notice that gives dates and times. Appx. at 13. Yet, this is precisely what the legislature was concerned about when a tenant didn't have notice of the specific allegations against them. Hill's allegations about erratic driving and domestic violence are entirely general and the court erred by determining that the landlord met the requirements of specificity.

The dispute is broader than just what one landlord needed to prove to evict one tenant. The legislature, at the same time it created the specificity protection, gave indigent tenants a right to representation by appointed counsel. If the court permits inadequate and nonspecific notices, it deprives tenants of the right to meaningful representation by requiring their lawyers to guess at the reasons the landlord intends to evict them.

C. The court's post hoc reasoning about Mr. Huddleston's defense and the adequacy of the notice undermined the purpose of the notice statute.

The court determined the adequacy of the notice of issue by considering the quality of Mr. Huddleston's defense. Appx. at 13. A post hoc determination that the notice was adequate based on the quality of the defense of the tenant puts the cart before the horse and fails the legislature's mandate to require specificity.

The legislature did not envision notices that hide the ball. This is evident from the fact that the statute impliedly prohibits a landlord from introducing at the hearing evidence which was known to him when the notice was issued, but not stated in the notice. The statute requires the notice to "[i]dentify the facts and circumstances known and available to the landlord at the time of the issuance of the notice". RCW 59.18.650(6)(b). The landlord must give the tenant all the facts so that the tenant can present a defense, or he cannot later rely on those facts.

Regardless, Huddleston was evicted because the landlord failed to provide a specific notice and failed to alert Huddleston that nuisance was the heart of his claim. The landlord's failure occurred because he did not raise the nuisance issue in any way, and only referred to the allegations in the prefiling notice, rather than in the motion for an order to show cause and the complaint. A tenant should not have to guess which of the allegations buried in a notice will come back to haunt them, when the landlord does not later raise those issues in their complaint or affidavit upon which they ask the court to determine the tenant is in unlawful detainer. The legislature's mandate for specificity in unlawful detainer notices should have put to rest trial by ambush in unlawful detainer proceedings.

D. The court's holding that the Plaintiff adequately stated his factual bases for relief on the issue of the inoperable cars fails to apply RCW 59.12.070, which requires the facts to be pled in the complaint.

Any unlawful detainer plaintiff must plead the facts upon which they intend to rely in their complaint. RCW 59.12.070 states: "The plaintiff in his or her complaint, which shall be in

writing, must set forth the facts on which he or she seeks to recover …."

Hill's complaint failed to state that it intended to recover possession based on the issue of the inoperable cars. Moreover, the complaint did state that Hill intended to recover possession because Hill issued a notice "based on Defendants [sic] reckless and erratic driving in the neighborhood, endangering nearby residents, as well as a number of calls to the residence by local law enforcement for incidents involving domestic violence matters, all as stated in the Affidavit of Landlord, affixed to the Notice Terminating Tenancy." CP 3. Hill's exclusion of the issue of the inoperable cars fails to comply with RCW 59.12.070. Hill cannot simply bootstrap each and every fact identified in the notice, either, because Hill pled some facts to the exclusion of others in the complaint. If RCW 59.12.070 is to have any meaning and give unlawful detainer defendants notice of which issues are contested, Hill's Complaint must be found deficient.

Although the court noted that Huddleston did not object to the complaint, Huddleston's appeal makes this point repeatedly: Hill should not have been allowed to rely upon the nuisance issue because he failed to raise it in the unlawful detainer action. The Superior Court judge's ruling, *sua sponte*, that a county nuisance ordinance applied had been argued by no party and unfairly deprived Huddleston of the ability to argue that the issue of nuisance was not pled in the complaint.

In some unlawful detainers, landlord notices state far more factual issues that they intend to proceed under or legally are allowed to proceed under. *See Daniels*, 26 Wn.App.2d at 217. The court's opinion would require tenants to defend against any conceivable allegation linked in any way to the complaint, even if only tangentially, or risk being surprised at the hearing by an issue not stated specifically in the complaint. This sets an impossible precedent for unlawful detainer defense and should be reconsidered.

VI. CONCLUSION

For the foregoing reasons, the Court of Appeals' decision is in conflict with another decision in Division 3 and this case presents a matter of substantial public interest and this Court should grant review of that decision.

CERTIFICATE OF COMPLIANCE

This document contains 2726 words exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, this certificate of compliance, the certificate of service, signature blocks, and pictorial images.

Dated this 28th day of December, 2023

NORTHWEST JUSTICE PROJECT

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on January 2, 2024 I caused the foregoing document to be filed with the Court of Appeals, Division II, of the State of Washington and to be served on all participants via the Washington State Appellate Courts' Portal.

DATED this 2nd day of January, 2024.

NORTHWEST JUSTICE PROJECT

/s/ Scott Crain
Scott Crain, WSBA#37224

APPENDIX

P. 1-19	Opinion in *Hill v. Huddleston*
P. **20**	Order Denying Reconsideration

Filed
Washington State
Court of Appeals
Division Two

November 7, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ROBERT A. HILL, a married man, his sole as his sole and separate property, Respondent, v. MICHAEL EUGENE HUDDLESTON and SARAH HUDDLESTON, husband and wife, and the marital community thereof composed, and ALL OTHER UNKNOWN OCCUPANTS, Appellants.	No. 56811-0-II UNPUBLISHED OPINION

PRICE, J. — This is a case about a residential eviction. Robert Hill issued a 20-day notice terminating tenancy to Michael and Sarah Huddleston (the Huddlestons). Hill made several allegations, including that Michael Huddleston (Huddleston) drove erratically late at night, law enforcement was repeatedly called to the residence in connection with domestic violence matters, and 60 to 80 inoperable cars were on the property without Hill's permission.

After Hill filed an unlawful detainer complaint and moved to show cause for a writ of restitution, Huddleston answered.[1] Huddleston contested the factual allegations made in the complaint, raised two affirmative defenses, and asked for dismissal. After a show cause hearing, the superior court determined Huddleston's use of the property constituted a nuisance and issued a writ of restitution.

---

[1] We refer to Huddleston as the party to the original lawsuit and appeal because Michael Huddleston was clearly involved in the proceedings. It is unclear from our record what participation, if any, Sarah Huddleston had in the proceedings.

Huddleston appeals. Huddleston makes numerous arguments but essentially contends that Hill's notice terminating the tenancy was deficient and Hill failed to plead sufficient facts to be entitled to the writ on the basis of a nuisance. Huddleston also requests attorney fees and costs.

We reject Huddleston's arguments and affirm.

FACTS

I. BACKGROUND

The Huddlestons began renting a home from Hill in October 2018 for $1,200 a month. There was no written rental agreement between the parties.

About three years later, Hill alleged problems with the tenancy. He issued a 20-day notice terminating the tenancy in September 2021. The notice alleged a "significant and immediate risk to the health, safety and property of other tenants on the premises" and cited several different legal authorities, specifically "RCW 43.06.220(l)(h), RCW 59.18 and Governor Inslee's Bridge Proclamation." Clerk's Papers (CP) at 5. Hill also attached his sworn affidavit to the notice, which alleged:

> 3. There have been a number of incidents in it has been reported that Mike Huddleston has driven erratically at night, endangering nearby residents. These incidents have caused continuous fear to the nearby residents and has endangered their safety and the safety of their personal property.
>
> 4. Law enforcement has been called to the residence a number of times in connection with domestic violence matters.
>
> . . . .
>
> 6. Mike and Sara Huddleston have allowed or have agreed to allow storage of some 60 to 80 inoperable vehicles, without my permission and consent.

CP at 6.

Less than two months later, Hill filed a complaint for unlawful detainer alleging that Huddleston had not vacated the premises after being served with the 20-day notice. Hill's unlawful detainer complaint pleaded that the 20-day notice terminating the tenancy was

> based on Defendants reckless and erratic driving in the neighborhood, endangering nearby residents, as well as a number of calls to the residence by local law enforcement for incidents involving domestic violence matters . . . .

CP at 3. The 20-day notice and affidavit were attached to the complaint, but the complaint did not repeat the allegation of 60 to 80 inoperable cars contained in the notice.

With the filing of his complaint, Hill moved for an order to show cause as to why a writ of restitution should not immediately be issued. Hill's declaration attached to his show cause motion repeated the allegations of domestic violence and Huddleston driving erratically through the neighborhood. But, like his unlawful detainer complaint, the declaration omitted the allegation of the 60 to 80 inoperable vehicles on the property. Once again, however, a copy of the 20-day notice and affidavit containing that allegation was attached to the show cause motion.

Huddleston, appearing through an attorney, answered the complaint and filed a motion to dismiss. Huddleston's answer denied the complaint's allegations of erratic driving and domestic violence. Huddleston filed his own declaration, which stated in relevant part,

> 3. I do not know where the allegations regarding reckless driving in the neighborhood in Mr. Hill's affidavit are coming from. I do not drive erratically or in a reckless way.
>
> 4. I do not know where the "domestic violence" allegations of Mr. Hill come from. I have not been arrested since 2018.

CP at 59. Huddleston's answer also raised two affirmative defenses. First, Huddleston alleged that Hill's 20-day notice failed to comply with any of the reasons specified in RCW 59.18.650—

the statute that prohibits the termination of a tenancy unless there is cause to do so as defined in the statute. And second, Huddleston alleged that the 20-day notice failed to make allegations with enough specificity to enable him to respond and prepare a defense to the incidents alleged as required by RCW 59.18.650(6)(b).

II. SHOW CAUSE HEARING

The case proceeded to a show cause hearing.[2] At the hearing, the superior court heard argument from the parties, including allegations about the junk cars. Hill argued that there was a "junk yard of derelict cars and automobile hulls to the tune of 50, 60, 70, I don't know the precise number." Verbatim Rep. of Proc. (VRP) at 5. Hill also argued that Huddleston had failed to refute his allegations. Hill contended there needed to be some specific and articulable allegations of fact rebutting his allegations of erratic driving and domestic violence. Hill also emphasized that the presence of junk cars was inconsistent with a residential neighborhood and Huddleston had failed to contest those allegations as well.

Huddleston's response focused on his two affirmative defenses. First, he argued that Hill's notice failed to comply with any bases for 20-day notices allowed under RCW 59.18.650. Huddleston further contended that the other authorities cited in Hill's 20-day notice, including the governor's Bridge Proclamation, did not allow for any new types of notices to be issued, but merely gave tenants protections from eviction based on the failure to pay rent.

[2] Huddleston, his counsel, and Hill's counsel were present for the show cause hearing.

Second, Huddleston contended that Hill's 20-day notice failed to comply with RCW 59.18.650(6)(b)'s requirement to allege specific facts in sufficient detail to permit Huddleston to respond. With respect to the erratic driving and domestic violence allegations, Huddleston argued that there were no details about precisely when or where the incidents occurred. And with respect to Hill's allegation of inoperable vehicles, Huddleston also argued the details were lacking and, in addition, he did not know that having inoperable cars on the property was "un-allowed activity" because there was no evidence that the inoperable cars were prohibited by the terms of a rental agreement.[3] VRP at 12.

Huddleston requested that the superior court not issue the writ of restitution and dismiss Hill's unlawful detainer complaint. However, in the event that the superior court did not dismiss, Huddleston requested that the superior court set the matter for trial due to the existence of material issues of fact. Absent from Huddleston's argument was any mention of the failure of the complaint to plead nuisance or the issue of inoperable cars.

In rebuttal, Hill argued that Huddleston's response was essentially a concession of the existence of the junk cars:

> [N]othing is said about the junk yard that surrounds and is part of the . . . residential premises the house now occupies. And from that, I'm thinking that even the -- even Counsel's Answer is to say that the junk yard still continues. I don't know the number of automobiles. I suspect that they come and go and there's no definite number, but it's being used as a junk yard.

VRP at 14. Hill concluded by arguing that the things about which he was complaining were "factors and matters that are within the ordinary compass of the [c]ourt to say that these are

[3] The only known term of the unwritten lease was the payment of $1,200 per month in rent.

unacceptable nuisances." VRP at 17. Hill also stated that they had been served with notice from the county that there would be a daily assessment of a fine if the junkyard was not repaired or removed.

The superior court indicated that it would review the statute again and issue its decision.

III. Superior Court's Orders and Huddlestons' Appeal

Later that day, the superior court issued its decision granting Hill a writ of restitution based on the existence of a nuisance. The superior court's order, entitled Order on Show Cause for Writ of Restitution, stated,

> 1. The Defendant was properly served a 20 day "Notice Terminating Tenancy" on September 29, 2021.
>
> 2. The affidavit of landlord in support of the notice terminating tenancy listed several nuisance violations: erratic driving at night endangering nearby residents, incidents of domestic violence resulting in law enforcement response, and the presence of 60 to 80 inoperable vehicles.
>
> 3. Pursuant to RCW 59.18.650(2)(c) at least a 3-day notice is required for eviction based on waste or nuisance.
>
> 4. Pacific County Board of Health Ordinance 9 Section 1(1.6) defines Public Nuisance to include: "To cause, permit, or allow the presence in the open, as opposed to an enclosed building, of any abandoned or discarded objects or equipment, such as automobiles . . . ."
>
> 5. The Defendant Michael Huddleston filed a declaration in which he defies several of the above allegations but makes no response to the presence of 60 to 80 inoperable cars on the property.
>
> 6. There is no right to cure a nuisance to avoid an eviction in Washington State. See Burgess v. Crossan, 189 Wn. App. 97, 358 P.3d 416 (2015).

CP at 61-62 (alteration in original).

In a separate order issued several days later, the superior court repeated its earlier conclusions but added that there was "no issue of material fact" requiring a trial. CP at 64. In that same order, the superior court again granted Hill's request for a writ of restitution and directed the sheriff to deliver possession of the property to Hill. Five days after the second order, the superior court issued the writ of restitution, commanding the sheriff to deliver possession of the property.

Huddleston appeals.

ANALYSIS

Huddleston makes numerous arguments in his appeal, including: (1) Hill's 20-day notice failed to conform to any lawful basis upon which to terminate the tenancy, (2) Hill's notice failed to state sufficient facts to allow Huddleston to adequately prepare a defense, (3) the superior court erred in issuing the writ of restitution based on nuisance because Hill failed to plead nuisance as a basis for bringing the unlawful detainer action, and (4) the superior court erred by not setting the matter for trial because there were genuine issues of material fact and Hill did not prove the existence of a nuisance. Boiled down, Huddleston essentially argues that Hill's 20-day notice and pleadings were deficient, the superior court erred by relying on nuisance, and genuine issues of material fact necessitated a trial. We address each argument in turn.

I. The Unlawful Detainer Process

The unlawful detainer action governed by chapters 59.12 and 59.18 RCW allows for a summary proceeding that provides an expedited means for landlords and tenants to resolve competing claims to possession of leased property. *Randy Reynolds & Assocs., Inc. v. Harmon,* 193 Wn.2d 143, 156, 437 P.3d 677 (2019). The unlawful detainer statute was created to provide an efficient summary proceeding as an alternative to the common law action of ejectment. *River*

Stone Holdings NW, LLC v. Lopez, 199 Wn. App. 87, 92, 395 P.3d 1071 (2017). Chapters 59.12 and 59.18 RCW are strictly construed in favor of the tenant. *Randy Reynolds & Assocs.*, 193 Wn.2d at 156.

Before initiating an unlawful detainer action, a residential landlord must first issue a written notice terminating the tenancy that generally must be served consistent with RCW 59.12.040. *See* RCW 59.18.650(1), (2), (6)(a). A landlord may file an action for unlawful detainer if the tenant remains in possession of the premises in violation of the terms of the landlord's notice. *See Randy Reynolds & Assocs.*, 193 Wn.2d at 156. An unlawful detainer complaint must "set forth the facts on which he or she seeks to recover, and describe the premises with reasonable certainty . . . ." RCW 59.12.070. To physically evict the tenant, "a landlord may apply for a writ of restitution at the same time as commencing the action or at any time thereafter." *Randy Reynolds & Assocs.*, 193 Wn.2d at 157.

At or after the filing of a complaint for unlawful detainer, the plaintiff may request an order for the defendant to show cause why the court should not issue a writ of restitution. RCW 59.18.370. "Show cause hearings are summary proceedings to determine the issue of possession pending a lawsuit," not a final determination of the parties' rights. *Carlstrom v. Hanline*, 98 Wn. App. 780, 788, 990 P.2d 986 (2000).

At the hearing, the court is to determine the merits of the complaint and answer. RCW 59.18.380. The plaintiff bears the burden of proving the right of possession by a preponderance of the evidence. *Hous. Auth. v. Pleasant*, 126 Wn. App. 382, 392, 109 P.3d 422 (2005). If it appears that the plaintiff has the right to be restored possession of the property, the court enters an order directing the issuance of a writ of restitution. RCW 59.18.380. The opportunity for

immediate temporary relief makes the show cause process similar in some respects to a preliminary injunction proceeding. *See Faciszewski v. Brown*, 187 Wn.2d 308, 315 n.4, 386 P.3d 711 (2016).

II. TERMINATION NOTICE

Huddleston argues that Hill's notice was deficient for two related reasons. First, Huddleston argues that Hill's notice failed to conform to any lawful basis upon which to terminate the tenancy under RCW 59.18.650. And second, Huddleston argues that Hill's notice failed to state sufficient facts to allow him to adequately prepare a defense in violation of RCW 59.18.650(6)(b). We disagree.

A. LEGAL PRINCIPLES

A challenge to the adequacy of notice is a mixed question of law and fact and is reviewed de novo. *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 215, 528 P.3d 834 (2023). Washington courts require landlords to strictly comply with timing and manner requirements of notice. *Id.* However, substantial compliance is sufficient when it comes to form and content of notice. *Id.* (discussing the notice requirements of RCW 59.18.650). Although substantial compliance with notice is sufficient, notice must still be "sufficiently particular and certain so as not to deceive or mislead." *IBF, LLC v. Heuft*, 141 Wn. App. 624, 632, 174 P.3d 95 (2007).

RCW 59.18.650 was recently enacted by the legislature in 2021. *See* LAWS OF 2021, ch. 212, § 2. Under the statute, generally, landlords are not permitted to evict a tenant, refuse to continue a tenancy, or end a periodic tenancy unless one of the causes in RCW 59.18.650(2) applies. RCW 59.18.650(1)(a); *Howard v. Pinkerton*, 26 Wn. App. 2d 670, 676, 528 P.3d 396 (2023). The statute provides a list of situations in which the landlord has cause to evict a tenant. *See* RCW 59.18.650; *Howard*, 26 Wn. App. 2d at 676. One of these situations permits a three-day

notice and others require a 20-day notice. RCW 59.18.650(2)(c), (i), (p). For example, a landlord may terminate a tenancy with a three-day notice when

> [t]he tenant continues in possession after having received at least *three days' advance written notice* to quit after he or she commits or permits waste or nuisance upon the premises, unlawful activity that affects the use and enjoyment of the premises, or other substantial or repeated and unreasonable interference with the use and enjoyment of the premises by the landlord or neighbors of the tenant[.]

RCW 59.18.650(2)(c) (emphasis added). But there are two specific situations when a landlord must provide at least 20-days' notice, including:

> (i) The tenant continues in possession after an owner or lessor, with whom the tenant shares the dwelling unit or access to a common kitchen or bathroom area, has served at least *20 days' advance written notice* to vacate prior to the end of the rental term or, if a periodic tenancy, the end of the rental period;
>
> . . . .
>
> (p) The tenant continues in possession after having received at least *20 days' advance written notice* to vacate prior to the end of the rental period or rental agreement if the tenant has made unwanted sexual advances or other acts of sexual harassment directed at the property owner, property manager, property employee, or another tenant based on the person's race, gender, or other protected status in violation of any covenant or term in the lease.

RCW 59.18.650(2) (emphasis added).

Another requirement found in RCW 59.18.650 relates to specificity of the landlord's notice. It requires the notice to

> [i]dentify the facts and circumstances known and available to the landlord at the time of the issuance of the notice that support the cause or causes *with enough specificity* so as to enable the tenant to respond and prepare a defense to any incidents alleged.

RCW 59.18.650(6)(b) (emphasis added).

B. APPLICATION

Huddleston's first argument is that Hill's 20-day notice was defective because it failed to conform with either of the statute's two situations listed above that require 20-day notice under RCW 59.18.650(2).

Huddleston's next argument is that the notice failed to allege facts with sufficient specificity under RCW 59.18.650(6)(b) to allow Huddleston to adequately prepare a defense. Huddleston complains that Hill's allegations in the affidavit attached to the notice failed to identify enough details about the alleged erratic driving, domestic violence, and 60 to 80 inoperable cars. Both of Huddleston's arguments are unpersuasive.

With respect to Huddleston's first argument, Huddleston is correct that neither of the two bases in RCW 59.18.650(2) related to 20-day notices—situations of shared kitchen or bathroom facilities and sexual harassment—appear to be relevant here.

But even so, the allegations of nuisance found persuasive by the superior court certainly met the requirements for a three-day notice as set forth above. RCW 59.18.650(2)(c). Given that Hill was alleging a nuisance, he was only obligated to provide three days of notice—providing 20 days of notice does not invalidate the notice, it only provides Huddleston additional days of notice.

It is true that Hill did not specifically use the word "nuisance" or identify RCW 59.18.650(2)(c) in the notice. But the 20-day notice cited to RCW 59.18, in part, as the legal basis to authorize the tenancy's termination. And the 20-day notice also stated that the Huddlestons' tenancy "constitute[d] a significant and immediate risk to the health, safety and property of other tenants on the premises that have been created or allowed" by the Huddlestons. CP at 5.

Additionally, Hill's affidavit clearly specified nuisance-type issues[4] by listing erratic driving, domestic violence, and the storage of 60 to 80 inoperable cars on the property. Combined, these gave Huddleston sufficient notice that a nuisance was being alleged and RCW 59.18.650(2)(c) was implicated. As such, the notice was sufficiently particular so as not to deceive or mislead the Huddlestons that their tenancy was being ended for the alleged existence of a nuisance. *See Heuft*, 141 Wn. App. at 632. Accordingly, Hill's notice substantially complied with the requirements of RCW 59.18.650(2)(c) despite offering 20 days of notice, more than the required minimum of three days' notice.

Similarly unpersuasive is Huddleston's argument that the notice was not specifically detailed enough to meet RCW 59.18.650(6)(b). Again, RCW 59.18.650(6)(b) requires any notice under subsection (2) of the statute to "[i]dentify the facts and circumstances known and available to the landlord . . . that support the cause or causes *with enough specificity* so as to enable the tenant to respond and prepare a defense to any incidents alleged."

Huddleston argues that the factual allegations were too vague to enable him to respond and prepare a defense. To the erratic driving allegations, Huddleston argues the notice did not identify the dates and times of the alleged incidents or the people who observed the alleged activity. To the domestic violence allegations, Huddleston claims the notice failed to identify the specific acts, the perpetrator and victim, who observed the alleged acts, or which law enforcement officers

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[4] Black's Law Dictionary defines "nuisance" as "[a] condition, activity, or situation . . . that interferes with the use or enjoyment of property; esp., a nontransitory condition or persistent activity that either injures the physical condition of adjacent land or interferes with its use or with the enjoyment of easements on the land or of public highways." BLACK'S LAW DICTIONARY 1283-84 (11th ed. 2019).

investigated the alleged acts of domestic violence. Finally, to the junk-cars allegation, Huddleston claims the notice failed to allege how the 60 to 80 inoperable cars had any relevance, show how the 60 to 80 inoperable cars violated the rental agreement, identify where the vehicles were stored, or show how Huddleston controlled the vehicles.

Huddleston asks too much. Although RCW 59.18.650(6)(b) requires specificity, it does not require an exhaustive catalogue of minute details. The tenant must have enough facts to be able to effectively rebut the allegations, but more than that is not required. *See, e.g.*, *Kiemle*, 26 Wn. App. 2d at 215 (interpreting RCW 59.18.650(6)(b) and rejecting the need for identification in landlord's notice of individuals whose rights were being interfered with in a case involving nuisance because the "critical question . . . is whether the landlord's notice provided enough facts to allow [the tenant] to 'effectively rebut the conclusion reached' " by the landlord (quoting *Hous. Auth. v. Pyrtle*, 167 Ga. App. 181, 182, 306 S.E.2d 9 (Ga. Ct. App. 1983))).

Huddleston's claim that he was unable to respond and prepare a defense to the incidents alleged in Hill's affidavit is unconvincing. Based on the unique circumstances of this case, Hill's affidavit provided enough factual specificity for Huddleston to understand the general allegations against him and prepare a defense as shown by his actual capable defense. For example, Huddleston was able to assess the allegations and prepare his own declaration denying the erratic driving allegation and questioning the domestic violence allegations. In addition to answering the unlawful detainer complaint, Huddleston also raised two affirmative defenses and moved to dismiss the complaint. Huddleston's factual response to the unlawful detainer complaint's allegations of erratic driving and domestic violence, even if weak, demonstrates that he was able to prepare a defense to the allegations.

Moreover, even if Hill's 20-day notice was short of a desired level of detail about the incidents of reckless driving and domestic violence, the allegation of 60 to 80 inoperable cars suffered no ambiguity. Surely such an uncommon allegation was sufficiently detailed for Huddleston to understand it and prepare a defense, if he had any. And, as it happened, it was this specific allegation of junk vehicles and the nuisance created thereby—not the erratic driving and domestic violence—that served as the exclusive basis for the relief granted by the superior court.

In short, the information supplied to Huddleston in the affidavit gave Huddleston "enough facts" to allow him to " 'effectively rebut the conclusion reached' " by Hill. *See Kiemle*, 26 Wn. App. 2d at 215 (quoting *Pyrtle*, 167 Ga. App. at 182). There was no violation of the specificity requirement of RCW 59.18.650(6)(b).[5]

We hold that Hill's 20-day notice was lawful because it both substantially complied with RCW 59.18.650(2)(c) and provided sufficient facts to allow Huddleston to respond to and prepare a defense under RCW 59.18.650(6)(b).

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[5] Huddleston also relies on a federal case interpreting a federal statute related to Department of Housing and Urban Development owned projects, *Swords to Plowshares v. Smith*, 294 F. Supp. 2d 1067 (N.D. Cal. 2002) for his expansive interpretation of our statute's specificity requirement. But Huddleston offers no persuasive reason why we should adopt a federal court's interpretation of a federal statute for our own statute. *See Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481, 491, 325 P.3d 193 (2014) ("Federal cases are not binding on this court, which is 'free to adopt those theories and rationale which best further the purposes and mandates of our state statute[s].' " (quoting *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 361-62, 753 P.2d 517 (1988))).

III. Nuisance

Huddleston next argues that the superior court erred in (1) relying on nuisance as the basis to issue the writ of restitution and (2) finding that there were no issues of material fact requiring a trial. We disagree.

A. Failure To Plead

Huddleston argues that the superior court erred in relying on nuisance as the basis to issue the writ of restitution because Hill failed to plead or argue nuisance as a basis for bringing the unlawful detainer action.

Washington's liberal notice pleading rules are intended to enable " 'the full airing of claims having a legal basis.' " *State v. LG Elecs., Inc.*, 186 Wn.2d 169, 183, 375 P.3d 1035 (2016) (quoting *Berge v. Gorton*, 88 Wn.2d 756, 759, 567 P.2d 187 (1977)), *cert. denied*, 580 U.S. 1052 (2017). Pursuant to CR 8(a), a complaint for relief must "contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled." The complaint must "apprise the defendant of the nature of the plaintiff's claims and the legal grounds upon which the claims rest." *Molloy v. City of Bellevue,* 71 Wn. App. 382, 385, 859 P.2d 613 (1993), *review denied,* 123 Wn.2d 1024 (1994). " 'A pleading is insufficient when it does not give the opposing party fair notice of what the claim is and the ground upon which it rests.' " *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 23, 974 P.2d 847 (1999) (quoting *Lewis v. Bell,* 45 Wn. App. 192, 197, 724 P.2d 425 (1986)).

Huddleston's argument that the trial court erred by relying on nuisance when Hill did not plead nuisance in his complaint is unconvincing. Although, the word "nuisance" does not appear

in Hill's unlawful detainer complaint, the 20-day notice and affidavit were attached to the complaint. And, as previously discussed, the notice and affidavit clearly alleged a nuisance, especially with the allegation of 60 to 80 inoperable cars in a residential tenancy.

Moreover, Huddleston's understanding that nuisance was an active issue in the case can be readily seen by his arguments at the show cause hearing. After Hill made his initial arguments to the superior court about Huddleston's alleged improper use of the property, including that the collection of junk cars was inconsistent with a residential neighborhood, Huddleston did not raise any concerns about deficiencies of the complaint—either the failure to specifically plead nuisance or the absence of allegations, in the body of the complaint, about the junk cars. Instead, Huddleston responded substantively, arguing that the details about the junk cars were lacking and he did not know that having junk cars was "un-allowed activity" because there was no rental agreement that actually prohibited the vehicles. VRP at 12.

Given our liberal notice pleading rules, it is apparent that Hill's complaint gave Huddleston " 'fair notice' " that Hill was alleging nuisance. *Dewey,* 95 Wn. App. at 23 (quoting *Lewis,* 45 Wn. App. at 197). Therefore, the superior court did not err in relying on nuisance as the basis to issue the writ of restitution.

B. FAILURE TO ORDER A TRIAL

Finally, Huddleston argues that the superior court erred in not setting the matter for trial because there were genuine issues of material fact and Hill did not prove the existence of a nuisance. Huddleston claims that Hill's failure to include in the body of his complaint and his declaration attached to his show cause order the alleged existence of the junk cars results in Hill

failing to meet his evidentiary burden. Huddleston further claims that he disputed two issues, erratic driving and domestic violence, and thus, a trial should have been held.

The superior court's decision to strike a trial date in an unlawful detainer action is reviewed for an abuse of discretion. *Tedford v. Guy*, 13 Wn. App. 2d 1, 16, 462 P.3d 869 (2020) (Division Two decision).[6] Regardless of whether the superior court issues a writ of restitution at the show cause hearing, "if material factual issues exist, the court is required to enter an order directing the parties to proceed to trial on the complaint and answer." *Randy Reynolds & Assocs.*, 193 Wn.2d at 157. "When a court grants a writ of restitution entitling the landlord to immediate possession of the property, that right is entirely distinct from the final resolution of the material issues of fact disputed by the parties." *Webster v. Litz*, 18 Wn. App. 2d 248, 256, 491 P.3d 171 (2021). But similar to the summary judgment context, if there are no issues of material fact regarding possession or any defenses raised by the defendant, the court need not set the matter for trial. *Tedford*, 13 Wn. App. 2d at 16-17.

Huddleston's claim that the matter should have been set for a trial is unconvincing. Neither of the two issues he cites—erratic driving and domestic violence—were material to the superior court's decision, which was limited to the determination that there was a nuisance related to junk cars. As for the basis actually used by the superior court, the junk cars, Huddleston failed to create

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[6] In *Kiemle*, Division Three recently indicated a disagreement with *Tedford* and suggested that the appropriate standard in this context should be de novo review. 26 Wn. App. 2d at 218-219. Decisions from other divisions of this court are not binding on any other division or panel. *Sound Inpatient Physicians, Inc. v. City of Tacoma*, 21 Wn. App. 2d 590, 600, 507 P.3d 886, *review denied*, 200 Wn.2d 1003 (2022). Because neither party has briefed the issues related to a discrepancy between two panels of this court and the specific standard of review does not appear to be dispositive in this case, we follow *Tedford* and do not further address this issue.

the need for a trial. As Hill argued at the show cause hearing, nothing in our record shows that Huddleston contested the allegation concerning the 60 to 80 inoperable cars on the property.[7] Consequently, there was no issue of fact about the allegation concerning the 60 to 80 inoperable vehicles that would have necessitated a trial.

Thus, we hold that the superior court did not abuse its discretion by not setting the matter for trial.

IV. Attorney Fees

Huddleston requests an award of reasonable attorney fees and costs on appeal. Huddleston is not the prevailing party in this appeal. Therefore, we reject Huddleston's requests for attorney fees and costs.

CONCLUSION

We affirm.

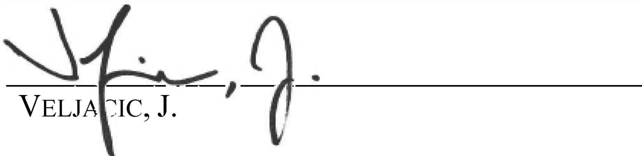
[7] Moreover, at the show cause hearing, Huddleston did not make any argument that Hill failed to meet his evidentiary burden because the complaint and declaration did not include the junk-cars allegation. But importantly, even though neither the text of the complaint nor the declaration attached to Hill's show cause motion referenced the junk cars, Hill's affidavit from the initial notice was attached to both the complaint and the show cause motion. As discussed above, this affidavit *did include* sworn factual statements related to the junk-cars allegation. This affidavit, combined with Huddleston's failure to factually contest these allegations at the show cause hearing, is sufficient to satisfy Hill's evidentiary burden.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

PRICE, J.

We concur:

GLASGOW, C.J.



VELJACIC, J.

Filed
Washington State
Court of Appeals
Division Two

December 4, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ROBERT A. HILL, a married man, his sole as his sole and separate property, Respondent, v. MICHAEL EUGENE HUDDLESTON and SARAH HUDDLESTON, husband and wife, and the marital community thereof composed, and ALL OTHER UNKNOWN OCCUPANTS, Appellants.	No. 56811-0-II ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH

Appellant moves for reconsideration of the opinion filed November 10, 2023, in the above entitled matter. Appellant also moves, in the alternative, for publication in part of the opinion. Upon consideration, the Court denies both motions. Accordingly, it is

SO ORDERED.

PANEL: Jj: GLASGOW, VELJACIC, PRICE

FOR THE COURT:

PRICE, J.

NORTHWEST JUSTICE PROJECT

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