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Supreme Court No. 102789-3
COA No. 84549-7-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MAGGIE PROPERTIES, LLC,

Respondent,

v.

BERNARD NOLAN,

Petitioner.

ON APPEAL FROM KING COUNTY SUPERIOR COURT

Honorable Judith Ramseyer

PETITION FOR REVIEW

Edmund Witter, WSBA No. 52339
Yuan Ting, WSBA No. 52897
Christina Jaccard, WSBA No. 55592
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I. INTRODUCTION

The Residential Landlord Tenant Act ("RLTA") prohibits landlords from evicting tenants without a reason enumerated in the just cause statute and requires that pre-eviction notices issued to tenants identify the facts and circumstances that support the cause for eviction with enough specificity to enable the tenant to respond and prepare a defense to any incidents alleged. RCW 59.18.650(1)(a), (6)(b). A notice that is insufficiently specific cannot be cured by a landlord's later disclosures in an unlawful detainer action, and an insufficiently specific notice cannot support an unlawful detainer action and requires dismissal. *Byrkett v. Gardner*, 35 Wash. 668, 674-75, 77 P. 1048 (1904).

In this case, Petitioner Bernard Nolan received a notice from Respondent Maggie Properties, LLC ("the Landlord") demanding that he vacate his home of 18 years within 3 days based on the allegation that he sent abusive and harassing text messages to his landlord. When Mr. Nolan did not vacate, the Landlord filed this unlawful detainer action against him and

obtained a judgment and order for restitution of the property. The Court of Appeals affirmed, finding, among other things, that the notice was adequately specific even though it failed to identify the specific text messages at issue or provide a description of their content and did not identify when the messages were sent or the specific person to whom they were directed as required by *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 228 P.3d 1289 (2010), and *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 528 P.3d 834 (2023). Even though Washington courts have consistently applied an objective standard when evaluating the sufficiency of the content of a notice and have held that a defective pre-eviction notice requires reversal without inquiring into prejudice, *see, e.g., Sherwood Auburn LLC v. Pinzon*, 24 Wn. App. 2d 664, 521 P.3d 212 (2022), *review denied*, 526 P.3d 848 (Wash. 2023), the Court of Appeals concluded the notice was adequately specific in part because Mr. Nolan did not show that he was confused about which texts were at issue and testified

at a show cause hearing about his mental health disabilities and the context surrounding the messages.

The Court of Appeals' decision conflicts with *Stewart*, *Daniels*, and *Pinzon* and sets an extremely low standard for specificity that deprives tenants of one of the RLTA's vital protections. Without a meaningful specificity requirement, landlords can coerce tenants into vacating their homes without a valid reason in contravention of the protection the legislature intended in RCW 59.18.650. Further, by shifting the burden to a tenant to show a subjective lack of understanding of the allegations in a notice, the Court of Appeals' decision alleviates landlords of their long-held burden to prove compliance with the statutory prerequisites to filing an unlawful detainer suit and places tenants in the untenable position of choosing between arguing that a notice lacked specificity or defending against the unlawful detainer action on other grounds. This Court should accept review under RAP 13.4(b)(2) and (4) to resolve the

conflict between Court of Appeals' decisions and weigh in on issues of substantial public concern.

II. IDENTITY OF PETITIONER

Petitioner Bernard Nolan asks this Court to accept review of the portion of the Court of Appeals decision terminating review designated in Part III of this petition.

III. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(2) and (4), Mr. Nolan seeks review of Section II.A of the Court of Appeals decision in *Maggie Properties, LLC v. Nolan*, No. 84549-7-I, filed on December 4, 2023. The Court of Appeals denied Mr. Nolan's motion for reconsideration on January 11, 2024. A copy of the decision is in the Appendix at pages A-1 through A-20, and a copy of the order denying Petitioner's motion for reconsideration is in the Appendix at page A-21.

IV. ISSUES PRESENTED FOR REVIEW

A. RCW 59.18.650(6)(b) requires a pre-eviction notice to identify the facts and circumstances known and available to the landlord at the time of the issuance of the notice that support the cause for eviction with enough specificity to enable the tenant to respond and prepare a defense to any incidents alleged. Where a pre-eviction notice alleges a tenant has engaged in harassment, are dates, times, locations, and the identities of the tenant's alleged victims necessary to satisfy the specificity requirement and afford the tenant an adequate opportunity to respond? (Yes.)

B. Is the question of whether a pre-eviction notice meets the specificity requirement of RCW 59.18.650(6)(b) an objective rather than subjective inquiry such that whether the tenant subsequently contests the notice's allegations at a show cause hearing is immaterial to whether the landlord's notice is statutorily sufficient? (Yes.)

V. STATEMENT OF THE CASE

This is an appeal from the trial court's order authorizing the eviction of Mr. Nolan, the Landlord's tenant of 18 years. CP 128-139; VRP 36. The Landlord predicated this unlawful detainer case on a 3-day tenancy termination notice that stated, in relevant part:

FACTS AND CIRCUMSTANCES

Tenant Bernard Nolan has substantially and unreasonably interfered with the enjoyment of the premises by the landlord and neighboring tenants located at 1728 NE 145th Street, Shoreline, WA 98155. Mr. Nolan's conduct and behavior has caused neighboring tenants to terminate their leases to avoid Mr. Nolan and for fear of their own safety.

His behavior has included:

- posting multiple threatening and harassing notes on neighboring tenants' doors
- without any factual bases, accusing neighbors of illegal behavior
- repeatedly making rude accusations and aggressive comments to other tenants causing them to fear for their safety
- putting a mattress in front of another tenants' front door in an effort to obstruct their ingress and egress
- repeatedly sending lengthy harassing, abusive, and threatening text messages to landlord, which include hate speech, despite requests to cease such communications

CP 15-16.

At the show cause hearing on the Landlord's motion for a writ of restitution, Mr. Nolan argued that the matter must be dismissed pursuant to RCW 59.18.650(6)(b) because none of the five incidents identified in the notice were described with enough specificity so as to enable him to prepare a defense. VRP 5-10;

RCW 59.18.650(6)(b) (requiring all written eviction notices 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"). The trial court agreed with Mr. Nolan as to the first four incidents referenced in the notice and ruled that those incidents would not be considered as a basis for an eviction. VRP 12; CP 132. However, over Mr. Nolan's objection, the court concluded that the final allegation—that Mr. Nolan had substantially and unreasonably interfered with the landlord's and neighbors' enjoyment of the premises by "repeatedly sending lengthy harassing, abusive, and threatening text messages to landlord, which included hate speech, despite requests to cease such communications"—was sufficiently specific and permitted the Landlord to proceed with respect to that sole allegation. VRP 12; CP 132-143.

After an evidentiary hearing, the commissioner ultimately ruled in favor of the Landlord and granted the request for a writ of restitution. CP 130-136. The commissioner's order was upheld by a judge upon Mr. Nolan's motion for revision. CP 137-139. Mr. Nolan subsequently appealed both the commissioner's order after the show cause hearing and the judge's order on revision. CP 128-138. Among other things, Nr. Nolan assigned error to the trial court allowing the Landlord to proceed despite the notice's lack of specificity. *See* App.'s Op. Br. at 4-6. He requested the Court of Appeals remand for dismissal due to the deficiency of the notice. *Id*. at 4. His argument pointed out that Washington's specificity requirement is nearly identical to that laid out in federal law for evictions from certain subsidized housing, which courts interpret to require landlords to include dates, times, locations, and the identities of the tenant's alleged victims in the notice. *Id*. at 26; *Stewart*, 155 Wn. App. at 255. Because the Landlord's notice failed to disclose any of this information with regard to the text messages it alleged

interfered with others' use and enjoyment of the premises, Mr. Nolan argued that the notice failed to meet the statutorily required level of specificity. App.'s Op. Br. at 30-33.

The Court of Appeals Division I affirmed the trial court's decision and rejected Mr. Nolan's argument that the notice was deficient. *See Maggie Properties, LLC v. Nolan*, 84549-7-I, 2023 WL 8369932, at *4 (Wash. Ct. App. Dec. 4, 2023) (unpublished opinion). The court reasoned that because *Stewart* did not address or interpret RCW 59.18.650(6)(b), the holding regarding the minimum information necessary in a notice was not binding. *Id* at *3. The Court also took into account that the record did not include evidence that Mr. Nolan had been confused or unfamiliar with the context of the text messages referenced in the notice. *Id*. at *4. Pursuant to RAP 13.4(b)(2) and (b)(4), Mr. Nolan now

seeks review of the Court of Appeals' decision regarding specificity.[1]

VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED

A. Review should be granted under RAP 13.4(b)(2) because the Court of Appeals' decision conflicts with *Stewart*, *Daniels*, and *Pinzon*.

The Court of Appeals erred in eschewing the applicability of cases interpreting federal specificity requirements and in relying on the inference that Mr. Nolan was not confused by the notice as evidence of the notice's sufficiency. As a result, the court incorrectly found that a one-sentence notice allegation that failed to inform Mr. Nolan of crucial information including the date and time alleged incidents occurred, the identity of the alleged victim, and the content of the specific text messages it referenced complied with the specificity requirement laid out in RCW 59.18.650(6)(b).

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[1] Mr. Nolan raised four additional assignments of error below but does not seek review of the portion of the Court of Appeals' decision addressing those issues.

i. The Court of Appeals' conclusion that a pre-eviction notice need not specify the dates, times, and locations of alleged incidents nor identify the victims and/or witnesses conflicts with the holding in Stewart.

RCW 59.18.650(6)(b) states that all written notices required under subsection (2) of the statute must "[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). As the Court of Appeals Division II pointed out in *Daniels*, RCW 59.18.650's language is comparable to the federal requirement for termination notices served on residents of subsidized housing and caselaw interpreting the federal requirement is thus instructive as to how to interpret the Washington statute. 26 Wn. App. 2d at 215 (citing 24 C.F.R. § 247.4(a)(2)). The federal regulations mandate that eviction notices "*state the reasons for the landlord's action with*

enough specificity so as to enable the tenant to prepare a defense." 24 C.F.R. § 247.4(a)(2) (emphasis added).

Stewart involved an inadequately specific termination notice served on a tenant in subsidized housing. 155 Wn. App. at 257. The tenant's lease reflected the federal regulation and required that the termination notice "state the reasons for such termination with enough specificity to enable the resident to understand the grounds for termination." *Id*. at 255. Again, this is virtually identical to the Washington statute's language, which requires a level of specificity that would enable the tenant to "respond and prepare a defense." RCW 59.18.650(6)(b). Understanding the grounds for termination is essential to responding and preparing a defense.

Importantly, the lease in *Stewart* did not, as the Court of Appeals decision misstates, "expressly require[] the notice include 'dates, times, locations, and the tenant's alleged victims so that the tenant can prepare a rebuttal to the landlord's accusations.'" *Nolan*, 2023 WL 8369932, at *3. Rather, in

interpreting the lease's specificity requirement, the *Stewart* court stated:

> In such circumstances, a landlord must generally provide a termination notice that includes dates, times, locations, and the tenant's alleged victims so that the tenant can prepare a rebuttal to the landlord's accusations. *See Swords to Plowshares v. Smith*, 294 F. Supp. 2d 1067, 1068 n. 1, 1072–73 (N.D.Cal.2002); *Cuyahoga Metro. Hous. Auth. v. Younger*, 93 Ohio App.3d 819, 820–22, 825–26, 639 N.E.2d 1253 (1994); *Hous. Auth. of the County of King v. Saylors*, 19 Wash. App. 871, 872–74, 578 P.2d 76 (1978).

Stewart, 155 Wn. App. at 255–56. The court determined that the termination notice must include the above-listed facts not because the lease expressly required them, but because courts interpreting the same federal specificity requirement agreed that such facts are essential to a tenant being able to prepare a defense. *Id*; *see also, e.g.*, *Swords To Plowshares v. Smith*, 294 F. Supp. 2d 1067, 1073 (N.D. Cal. 2002) (notice alleging in part that "[y]ou have exerted physical violence upon another tenant by pushing him against a kitchen table and then proceeded to further threaten said tenant with bodily harm" was insufficiently specific

because it “fail[ed]to identify the alleged victim or the date and time, such details being necessary for Defendant to be put on notice of the complained of conduct”); *Hous. Auth. of King Cnty. v. Saylors*, 19 Wn. App. 871, 874, 578 P.2d 76 (1978) (holding that vague and conclusory one-sentence allegation in the notice was inadequate as it failed to set forth a factual statement of the alleged incident).

Because the Court of Appeals in this case misapprehended the origin of the standard for when a notice is adequately specific laid out in *Stewart*, it incorrectly concluded that *Stewart* was “facially distinguishable.” *Nolan*, 84549-7-I at 3. The court erred in failing to recognize that the statute at issue in this case (RCW 59.18.650(6)(b)) and the provision interpreted in *Stewart* lay out the same requirement for the specificity of termination notices. The court’s decision conflicts with *Stewart*’s holding that the landlord must include dates, time, locations, and identities of the tenant’s alleged victims in order to afford the tenant a meaningful opportunity to respond.

Had the Court of Appeals correctly applied the specificity standard articulated in *Stewart*, it could not have reasonably concluded that the notice in this case was adequate under RCW 59.18.650(6)(b). The one-sentence allegation that the tenant's behavior included "repeatedly sending lengthy harassing, abusive, and threatening text messages to the landlord, which included hate speech, despite requests to cease such communications" did not include the times and dates that the messages were allegedly sent. CP 16. It did not even include a time range in which Mr. Nolan, who had resided at the premises for 18 years, RP 14, was alleged to have engaged in the behavior. The landlord also did not attach any copies of the text messages to the notice itself, which would have given Mr. Nolan the opportunity to prepare a defense in advance of his hearing as to why the specific text messages did not rise to the level of interference alleged by the landlord.

The notice held to be inadequately specific in *Stewart* contained four paragraphs of allegations, including "some level

of detail" of specific events. 155 Wn. App. at 255. However, because it only "vaguely alluded" to Mr. Stewart threatening to "knock the crap" out of one neighbor and to assault other neighbors without providing the identities of the neighbors, the court found it failed to state specific grounds for termination with enough specificity to enable him to prepare a defense. *Id*. at 257. Compared to the *Stewart* notice, the notice in this case was much briefer and less substantive, containing no quotes or descriptions of the content of the message claimed to be offensive. It similarly did not include dates, times, or identities. Thus, the notice was inadequate.

ii. The Court of Appeals disregarded the holding in Daniels that a notice must identify specific victims when harassment is alleged.

Although the Court of Appeals decision acknowledged that *Daniels* is the sole case directly interpreting RCW 59.18.650(6)(b), it failed to apply *Daniels*' full holding. *Nolan*, 84549-7-I, at *2-3. Unlike the notice in the instant case, the

notice in *Daniels* was "quite lengthy," recited the allegations contained in six previous notices, and made it "abundantly clear" that the landlord sought to evict the tenant "because she failed to keep her apartment clean and sanitary, as documented in by various inspections of her property and repeated notices to cure." 26 Wn. App. 2d at 215-216. Because the notice alleged general unsanitary conditions with no discretely identifiable victim, the notice's lack of any identified victim did not render it inadequately specific. *Id.* at 217. However, importantly, the *Daniels* court was clear that "in some cases identifying victims is logically necessary to afford a tenant a meaningful opportunity to rebut allegations, such as where the tenant's purportedly violative conduct is alleged *threats, harassment, or violence directed at specific people*." *Id.* (emphasis added).

In the instant case, the notice explicitly alleged that Mr. Nolan had sent text messages that were "harassing" and "threatening." However, it did not identify an individual victim of Mr. Nolan's purported behavior. It stated only that the texts

were directed at the "landlord." The landlord in this case is a company, not an individual, and the notice did not state which employee or representative of the company with whom Mr. Nolan had communicated during his 18-year tenancy was the alleged victim. According to the holding in *Daniels*, this failure to clearly identify the victims of Mr. Nolan's alleged behavior renders the notice deficient.

iii. The Court of Appeals improperly considered Mr. Nolan's inferred subjective understanding of the notice as evidence of its sufficiency.

To avail itself of the favorable provisions of summary unlawful detainer proceedings, a landlord must meet the conditions precedent for bringing an unlawful detainer action, including service of a proper notice. *Hous. Auth. of City of Everett v. Terry*, 114 Wn.2d 558, 564, 789 P.2d 745 (1990) (describing compliance with statutory notice requirements as "'a jurisdictional condition precent'" to bringing a cause of action for unlawful detainer") (*quoting Sowers v. Lewis*, 49 Wn.2d 891,

894, 307 P.2d 1064 (1957)). That is, where a statute requires a certain type of notice before a tenant may be evicted, that notice is foundational to the unlawful detainer action. *See Pinzon*, 24 Wn. App. 2d at 680 (noting that "[w]hen a notice is deficient, the landlord cannot prove a cause of action for unlawful detainer" because "until the notice requirements are met, the tenant cannot be said to be unlawfully detaining the premises").

The actions of the landlord or tenant with respect to the notice are not determinative of the sufficiency of a notice; compliance is an objective inquiry. In *Pinzon*, the Court of Appeals rejected the trial court's reasoning that two concurrently served notices that provided the tenant with conflicting deadlines for when to vacate the premises could not have been confusing to the tenant because the tenant did not actually vacate the premises. 24 Wn. App. 2d at 669. Instead, the court looked only within the four corners of the notices themselves to determine whether, read together, they were objectively "misleading and contradictory" and thus were not sufficient to comply with the

required statutory period to vacate or cure. *Id*. at 679. No inquiry was made or required into the tenant's subjective understanding of the notice, as compliance can be determined from the text of the notice itself. *See generally id*. Indeed, no Washington court considering the sufficiency of a notice in an unlawful detainer action has considered the tenant's conduct as evidence that the notice was adequate. *See*, *e.g., Daniels*, 26 Wn. App. 2d at 216 (evaluating whether the notice complied with RCW 59.18.650(6)(b) by considering only the sufficiency of the text of the notice); *Metcalfe v. Heslop*, 161 Wash. 106, 107, 296 P. 151 (1931) (holding that the notice that failed to describe the property, state the amount of rent due, or specify a vacate date in the case of continued failure to pay rent was "insufficient in form" without inquiring into whether the tenant was prejudiced by the insufficiencies); *Byrkett*, 35 Wash. at 674-75 (holding that the notice failed to specify with sufficient particularity the lease covenants the tenant purportedly failed to perform without inquiring into actual prejudice).

Notwithstanding the unprecedented nature of such an inquiry, the Court of Appeals reasoned that because there was "nothing in the record evincing confusion about which texts were at issue" and Mr. Nolan prepared a "cogent response," the notice was sufficiently specific. This creates the troubling standard that tenant attorneys, when provided with a notice that does not "[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), should not attempt to develop any defenses at all, giving the landlord a greater chance of winning their case, even though the landlord clearly violated the requirements of the statute. Moreover, it overlooks that the statute places the burden on the landlord to serve an adequate notice, and the tenant's reactions or subjective understanding of the notice are irrelevant to whether the notice suffices to trigger the status of unlawful detainer. The Court of Appeals' opinion thus turns an obligation of the landlord into a potential weapon against tenants, in violation of the basic principle that unlawful detainer statutes

"are strictly construed in favor of the tenant." *Negash v. Sawyer*, 131 Wn. App. 822, 826, 129 P.3d 824 (2006).

B. Review should be granted under RAP 13.4(b)(4) because the Court of Appeals' decision guts a vital protection for tenants and affects over a third of Washington households.

This Court has not yet interpreted the requirements of RCW 59.18.650 and should take this opportunity to address these issues of substantial public importance.

As it stands, the Court of Appeals' decision sets an extremely low bar for specificity and thus deprives tenants of an important protection at a critical stage in the eviction process. A pre-eviction notice demanding that a tenant vacate their home by a specified time or demanding that the tenant either vacate or come into compliance with their lease within a specified time is the first step in the eviction process and forms the basis for a tenant being in unlawful detainer. *See* RCW 59.12.030 (setting forth the bases for liability for unlawful detainer, which involve holding over after the expiration of the period in a notice); RCW

59.18.650(2) (requiring that a landlord also have one of the enumerated just cause grounds for eviction, each of which involves the tenant having held over after the expiration of the time period identified in a notice). A notice must adequately inform a tenant of the landlord's allegations so that the tenant can decide how to respond as that choice is highly consequential. In the case of a notice to vacate, the tenant must be able to decide whether to vacate or whether to remain and dispute the landlord's allegations but risk an eviction on their record. In the case of a comply or vacate notice, the tenant must be sufficiently apprised of any purported lease violations so that they understand what is necessary to come into compliance with the lease. An inadequately specific comply or vacate notice deprives a tenant of the statutorily required opportunity to cure and leaves the tenant without the ability to make an informed choice whether to vacate or remain. *See Byrkett*, 35 Wash. at 674 ("The lessee is given by the statute the alternative of complying with the conditions and covenants of the lease or quitting the premises,

and in order to give him the opportunity to exercise his right of choice the notice must specify with particularity the conditions and covenants which he has failed to keep or perform.”). Although residential tenants have a right to counsel in unlawful detainer actions, RCW 59.18.640, that right arises at the time a lawsuit is commenced, and tenants generally do not have access to legal advice at the time they receive a pre-eviction notice. Ultimately, without a meaningful specificity requirement, a tenant faced with a notice vaguely accusing the tenant of having violated their lease or otherwise having done something to warrant eviction and threatening court action if they do not vacate may be coerced to leave their home even though the landlord lacks a valid reason for eviction.

Further, by shifting the burden to a tenant to show a subjective lack of understanding of the allegations in a notice, the Court of Appeals’ decision places tenants who remain in their homes and are subject to unlawful detainer proceedings in the untenable position of choosing between raising a specificity

defense or contesting the landlord's allegations. Disincentivizing tenants from raising all possible defenses in an unlawful detainer action increases the risk of erroneous evictions and the harm that flows therefrom. *See* Seattle Women's Commission and the Housing Justice Project of the King County Bar Association, Losing Home: The Human Cost of Evictions in Seattle (Sept. 2018) at 60-61, *available at* https://www.seattle.gov/documents/Departments/SeattleWomensCommission/LosingHome_9-18-18.pdf (reporting that most evicted respondents in Seattle became homeless, with 37.5% completely unsheltered, 25% living in a shelter or transitional housing, and 25% staying with family or friends); Ericka Petersen, *Building A House for Gideon: The Right to Counsel in Evictions*, 16 Stan. J. Civ. Rts. & Civ. Liberties 63, 68–69 (2020) (explaining that homelessness or inadequate housing increases an individual's risk of chronic illness, infectious disease, physical and sexual assaults, and even death); Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity*

Among Low-Income and Minority Tenants, 24 Geo. J. on Poverty L. & Pol'y 59, 60 (2016) (noting that is nearly impossible for a tenant with a publicly-available eviction record to obtain safe, decent, and affordable housing in the future).

By requiring tenants to show confusion or prejudice, the Court of Appeals' decision also alleviates landlords of their long-held burden to prove compliance with the statutory prerequisites to filing suit. Unlawful detainer actions derogate from the common law and provide landlords with a speedy alternative to a lengthy ejectment action, but in order "[t]o take advantage of an unlawful detainer action and reap the benefits of the summary proceeding," a landlord must prove compliance with strict statutory requirements. *FPA Crescent Assocs., LLC v. Jamie's, LLC*, 190 Wn. App. 666, 675, 360 P.3d 934 (2015). Shifting the burden to tenants to show subjective confusion opens the door for landlords to remove tenants from their homes on short timelines with expedited procedures without proving

compliance with RCW 59.18.650(6)(b), altering the balance the legislature struck in enacting the unlawful detainer statutes.

Especially given that over one-third of Washington households are renters, Washington courts' interpretation of RCW 59.18.650 and the respective burdens of the parties widely affects Washingtonians, and the public has a strong interest in this Court's preservation of the specificity requirement. *See* United States Census Bureau, Washington QuickFacts from the U.S. Census Bureau, *available at* https://www.census.gov/quickfacts/WA. This Court should grant review under RAP 13.4(b)(4).

VII. CONCLUSION

For the foregoing reasons, this Court should accept review of the Court of Appeals' decision in this case and reverse.

This document contains 4,393 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 12th day of February, 2024.

Respectfully submitted,

*/s/ Ashleen O'Brien*________________

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APPENDIX

Court of Appeals' decision	A1 – A20
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FILED
12/4/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MAGGIE PROPERTIES, LLC, a Washington Limited Liability Company, Respondent, v. BERNARD NOLAN, Appellant, ALL OTHER OCCUPANTS, Defendants	No. 84549-7-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Maggie Properties LLC (Maggie Properties or landlord) filed an unlawful detainer action to evict Bernard Nolan from his apartment, alleging he sent harassing and abusive text messages to the property manager. The trial court granted the unlawful detainer, issued a writ of restitution, and denied a motion for revision. Nolan appeals, claiming that notice for the unlawful detainer was deficient, that his (admittedly) inappropriate texts did not rise to the level of interference with the landlord's use of the apartment, as required by the statute, and that his landlord failed to accommodate his disability. Finding no error, we affirm.

I. BACKGROUND

Nolan was a tenant in Maggie Properties' residential building in Shoreline for 18 years. Nolan regularly corresponded via text message with the family who managed the building, including with the mother, and later the daughter, Janice Piper. As will be described in more detail below, between June and August 2022, Nolan's text messages to Piper became antagonistic after the two had a dispute over some repairs he believed should be made at the apartment.

On July 18, 2022, the landlord filed a complaint with the superior court for unlawful detainer, asking for a writ of restitution under RCW 59.18.650(2)(c). At the subsequent show cause hearing, Piper provided unrebutted testimony that she found many of the text messages Nolan sent during that summer to be harassing, abusive and/or caused her to fear Nolan, including texts using racially-charged language, profanity, and threats of harm.

In the hearing, when counsel asked Piper why she felt personally threatened, she answered:

> It was the language that was used, the abusive language, um, calling me the C word; telling me that my mother should have aborted all three of us children. Uh, telling me that I have to stop lurking -— creeping around the building. To the extent that *I didn't feel I could go up and do my necessary duties at the building for my other tenants without being fearful of Mr. Nolan.*

(emphasis added).

In response, Nolan admitted to sending each and every such message, i.e., those that Piper testified she found harassing or abusive, even after she asked him to stop. Nolan defended the text messages as "a retaliatory last resort to back off." He further testified he sent his messages "in anger and frustration." Otherwise, he

testified his medication and health "possibly" affected his behavior, but never explained how.

The trial court granted the writ, and denied Nolan's subsequent motion for revision. The court also did not grant Nolan's request, in the alternative, for a trial. Nolan timely appeals.

II. ANALYSIS

By way of background, an unlawful detainer action is "a statutorily created proceeding that provides an expedited method of resolving the right to possession of property." Christensen v. Ellsworth, 162 Wn.2d 365, 370-371, 173 P.3d 228 (2007).

"The procedures set forth in the generalized unlawful detainer statutes, chapter 59.12 RCW, 'apply to the extent they are not supplanted by those found in the Residential Landlord-Tenant Act [(RLTA)].'" Randy Reynolds & Assocs., Inc. v. Harmon, 193 Wn.2d 143, 156, 437 P.3d 677 (2019) (quoting Hous. Auth. of City of Pasco & Franklin County v. Pleasant, 126 Wn. App. 382, 390, 109 P.3d 422 (2005)). The RLTA applies to disputes, as here, involving a residential lease. Carlstrom v. Hanline, 98 Wn. App. 780, 786, 990 P.2d 986 (2000). Because "[c]hapters 59.12 and 59.18 RCW are statutes in derogation of the common law," they "are strictly construed in favor of the tenant." Harmon, 193 Wn.2d at 156.

A landlord has cause to evict a tenant if, among other grounds, the "tenant continues in possession after having received at least three days' advance written notice to quit after [the tenant] commits . . . 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). "A tenant cannot hold over in the premises after the termination of the rental agreement." Harmon, 193 Wn.2d at 156 (citing RCW 59.18.290). If the tenant has not complied with the eviction, the landlord may serve the tenant a summons and complaint. Id. (citing RCW 59.18.365). The landlord may apply for a writ of restitution "at the same time as commencing the action or at any time thereafter." Id. at 157.

"To obtain a writ, a landlord must apply for an order for a show cause hearing . . . and serve that order on the tenant. A show cause hearing is a 'summary proceeding[ ] to determine the issue of possession pending a lawsuit' and is not the final determination of rights in an unlawful detainer action." Id. (alteration in original) (citation omitted) (quoting Hanline, 98 Wn. App. at 788, RCW 59.18.370). This opportunity for immediate temporary relief makes the show cause process similar to a preliminary injunction proceeding. Faciszewski v. Brown, 187 Wn.2d 308, 315 n.4, 386 P.3d 711 (2016).

"At the show cause hearing, the court will determine if the landlord is entitled to a writ of restitution before a trial on the complaint and answer." Harmon, 193 Wn.2d at 157 (citing RCW 59.18.380). At the hearing, the "court shall examine the parties and witnesses orally to ascertain the merits" of the case. RCW 59.18.380. "If a writ of restitution is issued at the RCW 59.18.380 show cause hearing, the landlord can deliver the writ to the sheriff, who will serve it on the tenant." Harmon, 193 Wn.2d at 158 (citing RCW 59.18.390(1)).

"Whether or not the 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." Id. at 157 (emphasis added).

A. Notice for eviction

We conclude that Nolan had sufficient notice to respond and prepare a defense, thereby satisfying RCW 59.18.650(6)(b).

1. Law

When a landlord provides a tenant a notice of unlawful detainer,

> [A]ll written notices . . . must (a) be served in a manner consistent with RCW 59.12.040;[1] and (b) 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.

RCW 59.18.650(6)(b).

At the time of this opinion, it appears that only one case specifically has discussed RCW 59.18.650(6)(b). In Daniels, at issue was whether the landlord's notice to a tenant provided enough facts for the tenant to "effectively rebut the conclusion reached" by the landlord. Kiemle & Hagood Co. v. Daniels, 26 Wn. App. 2d 199, 215, 528 P.3d 834 (2023) (citing Hous. Auth. Of DeKalb County v. Pyrtle, 167 Ga. App. 181, 182, 306 S.E.2d 9 (1983)). The court concluded that the notice was sufficient because it included and referred to prior notices the property manager sent to the tenant regarding lease violations. Id. at 217. Thus, such

[1] To be compliant with RCW 59.12.040, the landlord must, among other things, provide proof of service by delivering a copy of the relevant notices to the tenant. RCW 59.12.040. Maggie Properties affixed a copy of its notice to terminate to Nolan's door, as well as sending the same by certified mail. Nolan does not contest that condition (a) was met and, thus, we will not discuss service further.

notice was enough to give the tenant "a sufficient opportunity to defend against [the] allegations." Id.

"A challenge to the adequacy of notice presents a mixed question of law and fact, which we review de novo." Hall v. Feigenbaum, 178 Wn. App. 811, 819, 319 P.3d 61 (2014).

2. Discussion

The landlord's notice stated, "Your tenancy is being terminated in accordance with RCW 59.18.650(2)(c), which provides a month-to-month tenancy may be terminated upon 3 days' notice where . . . substantial or repeated and unreasonable interference with the use and enjoyment of the premises by . . . the landlord." The notice attached an explanation of the "facts and circumstances" of that interference, specifically citing his "conduct and behavior" of "repeatedly sending lengthy harassing, abusive, and threatening text messages to landlord, which include hate speech, despite requests to cease such communications."[2]

Nolan argues that the notice was insufficient because it lacked specificity under RCW 59.18.650(6)(b). According to Nolan, the notice was a "list of alleged behaviors, none of which contained names of witnesses, dates, or other specific facts." Nolan relies on Tacoma Rescue Mission v. Stewart, 155 Wn. App. 250, 288 P.3d 1289 (2010), for the claim that "names, dates," etc. are required in the notice.

[2] The notice included four additional allegations of interference. The trial court ruled that the first four facts and circumstances were not sufficiently specific to provide adequate notice, but ruled that the reference to Nolan's texts met the specificity requirements. Maggie Properties did not cross appeal, and we will not consider further whether the other listed grounds were sufficiently specific.

In Stewart, decided about a decade before the RCW at issue here was enacted, Stewart, the tenant, appealed his eviction from federally subsidized public housing. Id. at 251. Stewart argued that the trial court erred because Tacoma Rescue Mission (TRM) gave inadequate notice *under the terms of the lease*. Id. Similar to the statute here in question, Stewart's lease required TRM to "state the reasons for such termination with enough specificity to enable the resident to understand the grounds for termination." Id. at 255. However, the lease also expressly required the notice to include "dates, times, locations, and the tenant's alleged victims so that the tenant can prepare a rebuttal to the landlord's accusations." Id. Nolan argues such details should be required here.

Stewart is facially distinguishable. The dispute in Stewart was about the specific terms of a lease. Id. at 257. The dispute in the present case is over the meaning of the statute. Stewart did not address and did not create binding requirements of notice under RCW 59.18.650(6)(b), which again requires only "enough specificity as to enable the tenant to respond and prepare a defense to any incidents alleged." Daniels, 26 Wn. App. 2d at 217.

Here, Nolan admitted he texted Piper, whose family had owned and managed the building as long as Nolan had resided there. He admitted to sending her many texts that included racially charged language, profanity, and possible threats, despite her requests to stop, which will be reviewed in more detail below. There is nothing in the record evincing confusion about which texts were at issue. If there had been any doubt, Nolan simply could have reviewed the text messages he wrote and sent from his own phone, which included dates, times, and other

information he claims is required.

Nolan also was able to, and did, prepare a cogent response, including, in part, that the inappropriate text messages were due to the state of his mental health in the summer of 2022, which he supported with a declaration from a social worker who attempted to connect him with proper medical treatment.

In short, the notice sufficiently identified the recipient (the landlord) and content of the offending text messages, which Nolan admitted sending, were well-documented and available to him. And, because he was able to attempt to explain the context of those texts at the show cause hearing, we conclude Maggie Properties gave Nolan sufficient notice under RCW 59.18.650(6)(b).

B. Repeated and unreasonable interference

1. Substantial evidence

We conclude that there was substantial evidence that Nolan's text messages to the property manager amounted to substantial or repeated and unreasonable interference with the landlord's use and enjoyment of the property.

a. Additional factual background

At the show cause hearing, Piper testified that during the summer of 2022, Nolan sent her continuous text messages over a period of several days, which were "consistently harassing and abusive . . . when I asked him to stop . . . they continued. Often they would continue day and night for up to two days straight." The trial court admitted the text messages.

More specifically, Piper testified as to at least three types of text messages she found offensive. First, she testified Nolan sent text messages that were

physically threatening. For example, her counsel asked, “At some point did Mr. Nolan reference that a friend of his, Todd, wanted to kill you?” Piper answered, “Yes, he did.” Piper was referring to the following text message, “TODD well I dunno he’d like to kill you for so many abuses.”

Second, Piper expressed concern over the racially charged nature of Nolan’s texts. She testified, “He blames his Chinese doctors for all his health issues.” She further testified:

> I told him that it disturbed me because I have several Asian family members and loved ones . . . he continued his texts with that abusive language . . . we have a repair person who is Hispanic . . . and he said he didn’t want the Mexican guy in his place.

Finally, Piper testified about several defamatory and profane statements Nolan made, including:

- Stating it was “too late cunt. I’ll be dragging it out with eviction like all your other pissed off tenants.”
- Calling her family “assholes…pull the plug on your ugly racist mom….she would have been better aborting you all.”
- Calling her family “abusive, evil monsters.”
- Calling Piper a “pig” and “shitheads, fuck you all.”

In short, Piper testified that she felt personally threatened by the nature of the texts, explaining, “I didn’t feel I could go up and do my necessary duties at the building for my other tenants without being fearful of Mr. Nolan.”

For his part, when examined by his counsel, again, Nolan did not deny he sent each of these texts. Instead, he testified he was “withdrawn” and “hostile” because of estrangement from his own family members and because he had

recently been released from jail. Further, Nolan testified to knowing that Piper asked him to "stop sending her harassing text messages" more than once. He characterized his messages to Piper "as a retaliatory last resort to back off . . . in anger and frustration."

As to the threat that "Todd" would "like to kill you for so many abuses," Nolan testified as follows:

> Q: You were – you were letting Ms. Piper know that your brother-in-law –
> A: I have an ally.
> Q: Would like to kill her. Is that correct?
> A: No. Just that I have an ally and he's angry. That's a figure of speech.
> Q: So, it says he'd like to kill you? Is that correct?
> A: No. Uh, it's a figure of speech. Like he'll kill ya. I mean, that's about it.

Finally, despite his counsel's repeated efforts, Nolan did not explain how his medications or health conditions affected his behavior. And, he provided no evidence to contradict Piper's stated fear or her claim she could not complete her duties as property manager.

b. Standard of review

"'On appeal, this court reviews the superior court's ruling, not the commissioner's.'" Tedford v. Guy, 13 Wn. App. 2d 1, 12, 462 P.3d 869 (2020) (quoting Maldonado v. Maldonado, 197 Wn. App. 779, 789, 391 P.3d 546 (2017)). "Thus, here we review the superior court's order adopting the commissioner's rulings, findings of fact, and conclusions of law." Id.

"A trial court's findings of fact will not be overturned on appeal if it is supported by substantial evidence." Leda v. Whisnand, 150 Wn. App. 69, 85 n. 6,

207 P.3d 468 (in an unlawful detainer action, considering whether the trial court's "finding of fact" on an element of a writ was erroneous); MH2 Co. v Hwang, 104 Wn. App 680, 685, 16 P.3d 1272 (2001) (in an unlawful detainer action, holding "On appeal, the trial court's findings of fact must support its conclusions of law; the findings must be supported by substantial evidence").

"Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true." Pham v. Corbett, 187 Wn. App. 816, 825, 351 P.3d 214 (2015) (quoting Hegwine v. Longview Fibre Co., Inc., 132 Wn. App. 546, 555-56, 132 P.3d 789 (2006)). Unchallenged findings of fact are verities on appeal. Id.

c. Discussion

In its order granting the writ of restitution, the court found "by a preponderance of the evidence that the text messages . . . constitute[d] . . . or substantial repeated and unreasonable interference . . ." In particular, the court found Piper's reaction to the text messages "reasonable."

Nolan contends that (1) Maggie Properties "failed to provide any evidence that the landlord had not been able to use or enjoy the property . . . because of [Nolan's] texts." Nolan further argues (2) that granting the writ "based on the subjective fears of the property manager" was error. We conclude neither argument is persuasive.

First, it is simply untrue that there is no evidence the landlord could not use and enjoy the property because of Nolan's threats. Piper testified she "didn't feel like [she] could . . . do [her] necessary duties at the building for my other tenants

without being fearful of Mr. Nolan," and Nolan provided no contravening evidence and did not even cross-examine her on this statement.

Second, we review, not only whether Piper subjectively experienced fear,[3] but ultimately whether the commissioner reasonably concluded, based on the available evidence, that Nolan was in violation of RCW 59.18.650(2)(c) by repeatedly and unreasonably interfering with the property manager's use.

Here, consistent with RCW 59.18.650(2)(c), the commissioner based its decision on the 88 pages of text messages between Piper and Nolan attached to the parties' briefing, and the sworn testimony of both. Piper testified to the contents of the text messages, including threats, profanity, and other offensive content. Piper testified to asking Nolan to "stop sending these harassing texts" multiple times, and expressed that, based on all of the correspondence she received from him, that she felt afraid to enter the property. She testified that this fear, caused by Nolan's messages, prevented her from completing her duties as property manager. In contrast, Nolan offered no evidence to contradict the events as Piper described them, or to contest whether she felt afraid to enter the property. He admitted to sending the text messages. And, Nolan effectively admitted the texts were inappropriate, when acknowledging he would never say it verbally to her.

The totality of these facts are such that they could persuade a reasonable

[3] It is not error to consider under RCW 59.18.650(2)(c) whether the landlord or property manager subjectively experienced fear. The statute asks whether Nolan engaged in "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). One way to ascertain whether such conduct occurred is to determine whether the landlord or property manager subjectively experienced fear.

person that Nolan interfered with the use and enjoyment of the property because Piper reasonably was afraid to enter the property due to Nolan's text messages toward her. A "fair-minded and rational person" could conclude that such text messages, at a minimum, would cause a fatal rift in any relationship, including the relationship between a landlord and a tenant. Pham, 187 Wn. App. at 825.

Thus, the court did not err in finding that the text messages caused a repeated and substantial interference with the landlord's ability to enter and use the property. Therefore, we conclude that granting the writ based on this evidence was not an abuse of discretion.[4]

2. Failure to grant Nolan a trial

We conclude that Nolan's statements do not otherwise create a genuine issue of material fact warranting a trial, and thus, the trial court did not err in not granting a trial.

a. Standard of review

As part of the unlawful detainer process, a landlord may seek relief such as a termination of a tenant's lease at a show cause hearing regardless of whether

[4] Nolan also argues that this court should analyze this matter as similar to a nuisance cause of action. Specifically, he cites to authority from other state courts, which construe claims of common law nuisance and unreasonable interference to be synonymous. In turn, Nolan avers this court should impose the higher burden of proof required in nuisance claims. This argument is unpersuasive, first, because RCW 59.12.180 states that "the provisions of the laws of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter," including the preponderance of the evidence standard. Nolan also cites to no binding authority that should compel this panel to apply a different standard. "When a party provides no citation to support an argument, this court will assume that counsel, after diligent search, has found none. State v. Loos, 14 Wn. App. 2d 748, 758, 473 P.3d 1229 (2020).

the court grants a writ of restitution. Webster v. Litz, 18 Wn. App. 2d 248, 254, 491 P.3d 171 (2021). However, if issues of material fact exist, the matter must proceed to trial in the "usual manner." Id. (quoting Meadow Park Garden Assocs. v. Canley, 54 Wn. App. 371, 374, 773 P.2d 875 (1989)).

For example, in Webster, a case addressing unlawful detainer, this court concluded there was a genuine issue of material fact warranting trial when the landlord argued the tenant was using methamphetamine on the premises, and the tenant testified they did not. Id. at 255. "Because a question of fact existed about the use and presence of methamphetamine on the premises, a trial was required before the court could grant the Websters' request for 'other relief.'" Id. at 255-256 and id. at 253-254 (holding, we must look at the specific requirements of RCW 59.18.380 that if there is "a substantial issue of material fact" as to the right of possession, the court shall enter an order directing the parties to proceed to trial. (quoting RCW 59.18.380)); see also Wash. State Ass'n of Counties v. State, 199 Wn. 2d 1, 13, 502 P.3d 825 (2022).

Stated otherwise, even if a landlord obtains preliminary success through a writ of restitution, trial on the right of possession must be ordered if the tenant raises genuine issues of material fact pertaining to a defense or set-off. RCW 59.18.380. "This is nearly the identical language that governs summary judgment." Daniels, 26 Wn. App. 2d at 218 (citing CR 56(c)). And of course, we review summary judgment orders de novo. Id. at 218; see also Staples v. Allstate Ins. Co., 176 Wn.2d 404, 410, 295 P.3d 201 (2013). "Thus, it appears something close to de novo review should apply, at least when a tenant denies the landlord's

grounds for eviction or raises an affirmative defense." Id. at 218-219. "A tenant's legal defense might be a claim that the landlord's basis for eviction is untrue." Id. at n.5.

Finally, a court may resolve a question of reasonableness "as a matter of law where reasonable minds could come to only one conclusion." Lakey v. Puget Sound Energy, Inc., 176 Wn.2d 909, 924, 296 P.3d 860 (2013).

b. Discussion

The only specific attempt Nolan makes to create a genuine issue of material fact is by claiming he used "kill" as a "figure of speech." Otherwise, Nolan only generically claims that "there was at least a material dispute as to whether his behavior rose to the level of repeatedly or substantially and unreasonably interfering with the landlord's use of the property."

As to the specific argument, we hold that reasonable minds can only reach one conclusion, given the context of the text exchanges; namely, that Nolan's threat that an ally wants to kill her is a threat of some kind. Nolan had used that term in the context of an ongoing conflict with Piper, where (again) he insulted, harassed and abused her and her family verbally. No reasonable juror could conclude that he did not interfere with the use and enjoyment of the property. In that charged context, no reasonable juror would conclude that the statement "my ally wants to kill you" is not a physical threat of some kind.

In response, for the first time in this appeal, Nolan argues, without citing any authority of such a requirement, that "there was never any evidence that [he] even attempted to harm anyone." Assuming he means "physical harm," there is no

authority, and we decline to create any, that a landlord must wait for a tenant to attempt to physically harmed them before terminating the tenancy. DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.").

Finally, as to the second generic argument, we hold that it is insufficient to simply claim without any reference to the record, as here, that the court effectively just got it wrong. Welch v. Brand Insulations, Inc., 27 Wn. App. 2d 110, 115, 531 P.3d 265 (2023) ("If the moving party satisfies its burden, then the burden shifts to the nonmoving party to 'set forth specific facts evidencing a genuine issue of material fact for trial.'") (quoting Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995)).

Because Nolan cites to nothing in the record creating a genuine issue of material fact as to the events which led to the landlord seeking eviction or the tenant's defenses, the trial court did not err by declining to grant a trial. Id. at 117 (summary judgment is appropriate "'if, from all the evidence, a reasonable person could reach only one conclusion.'") (quoting Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998)).

C. Reasonable accommodation

We conclude that the court did not err in denying his reasonable accommodation claim because Nolan did not demonstrate multiple elements of the claim, as required under law.

1. Law

"Both federal and state law prohibit landlords from discriminating against disabled tenants, including the failure to reasonably accommodate a tenant's disability." Daniels, 26 Wn. App. 2d at 221 (citing 42 U.S.C. § 3604(f)(2), (3)(B) (the Fair Housing Act ("FHA")); RCW 49.60.222(1)(f), (2)(b)). As a defense to eviction, a tenant may claim a landlord failed to accommodate their disability. Id.

"To make out a claim of discrimination based on failure to reasonably accommodate, a plaintiff must demonstrate that (1) he suffers from a handicap as defined by the FHAA; (2) defendants knew or reasonably should have known of the plaintiff's handicap; (3) accommodation of the handicap 'may be necessary' to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4) defendants refused to make such accommodation." Giebeler v. M & B Assocs., 343 F.3d 1143, 1147 (9th Cir. 2003); see also, Daniels, 26 Wn. App. 2d at 221-222. The FHA only requires accommodations that are "reasonable." Daniels, 26 Wn. App. 2d at 222 (quoting Giebeler, 343 F.3d at 1148).

2. Discussion

At the show cause hearing, Nolan testified to receiving social security disability benefits based on his "depression related to fibromyalgia, and chronic fatigue syndrome" as well as "spinal stenosis which includes occipital pain syndrome, which is a headache condition." He testified that he had bouts of depression for forty years. He described frustration with the condition of the apartment and concern that it affected or exacerbated an eye condition. He also texted the property managers about his eye symptoms generally. From this

testimony, Nolan argues that the trial court erred because it denied his reasonable accommodation claim, or affirmative defense, when it granted the writ of restitution.

Arguably, Nolan meets the first two elements of the test from Giebeler. Namely that he suffers from a "handicap" and the landlord knew or reasonably should have known about it. Giebeler, 343 F.3d at 1147. However, neither in the show cause hearing nor in the briefing, did Nolan connect his health conditions to a reasonable accommodation that the landlord could provide. At the hearing, he discussed how his conditions impaired his life and that he received benefits and treatment for those conditions. Despite his counsel's repeated attempts, Nolan did not explain how any of his conditions could manifest as causing him to send repeated, threatening, and offensive correspondence.

In other words, the issue is whether there is a causal link between the landlord's alleged failure to accommodate and Nolan's disabilities. Id. at 1155. Giebeler is an instructive contrast. There, the court found a causal link between Giebeler being unemployed due to his disability, leaving him "insufficient income to qualify for the apartment." Id. The landlord denied his proposed accommodation of having his mother pay for the apartment, thus, preventing him from his equal opportunity to enjoy a dwelling he otherwise would have. Id. at 1155-1156.

Here, Nolan did not explain how the text messages he sent to the property management were related to his conditions. On the contrary, Nolan testified, unrebutted, that he sent the text messages to Piper "out of anger and frustration." He did not affirmatively blame his behavior on his diagnosed depression or his

physical pain. Nothing in the record, including Nolan's own testimony, supports the claim that his behavior was a result of his "heavy medication," as suggested in his briefing. Thus, Nolan does not meet the third element.[5]

As to the fourth element (the landlord's refusal to make a necessary accommodation), we are able only to assess the accommodation that Nolan requested. In the hearing, Nolan requested more time to connect with crisis care professionals. Otherwise, Nolan did not explain how the landlord should have accommodated any of his conditions and there is no record of Nolan making a request for the landlord to deny prior to the hearing. Nor did Nolan provide Maggie Properties enough information to show he should have received an accommodation as in Giebeler. Thus, Nolan also does not meet the fourth element.

We further note that, on this record, it would not have been a "reasonable" accommodation, or part of a reasonable accommodation, to require a landlord to continue to rent to a tenant who sends continual profane and threatening text messages after being asked to stop. Nolan requested more time to seek help. However, it is not reasonable to let Nolan stay indefinitely and to allow him to continue to send harassing and correspondence, which indisputably caused the property manager to be afraid to enter the property.

[5] Nolan would have presented a stronger case if he had testified the symptoms of his disability clearly manifested as uncontrollable utterances. For example, if he established that, and warned the landlord, he was prone to sending such outbursts, he may have been able to show a connection between this behavior and a proposed accommodation of accepting such messages without consequence. But again, he made clear in his testimony that his texts were simply retaliatory.

Finally, in his briefing, Nolan characterizes the problem with trial court's order simply as an issue of whether a landlord may evict a tenant because they send "heated texts" while experiencing a mental health crisis. We review Nolan's statements in the hearing and in his correspondence rather than how the briefing characterized his state of mind at that time. Nolan himself did not testify that he sent the texts due to his mental state, but only in "anger" and in "retaliation." There is nothing in the record that supports the predicate of Nolan's argument, namely, that the landlord evicted him due to a *specific incident* of a mental health crisis. That choice was not before the landlord. Thus, this argument also does not support Nolan's reasonable accommodation claim as a matter of law.

III. CONCLUSION

We affirm the trial court's decisions to grant Maggie Properties a writ of restitution, to not order a trial, and to deny Nolan's reasonable accommodation claim.

Díaz, J.

WE CONCUR:

Feldman, J.

Mann, J.

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Division I
State of Washington

IN THE COUTR OF APPEALS OF THE STATE OF WASHINGTON

MAGGIE PROPERTIES, LLC, a Washington Limited Liability Company, Respondent, v. BERNARD NOLAN, Appellant, ALL OTHER OCCUPANTS, Defendants.	No. 84549-7-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Bernard Nolan, filed a motion for reconsideration of the opinion filed on December 4, 2023 in the above case. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Díaz, J.

Judge

PDF **RCW 59.18.650**

Eviction of tenant, refusal to continue tenancy, end of periodic tenancy—Cause—Notice—Penalties.

(1)(a) A landlord may not evict a tenant, refuse to continue a tenancy, or end a periodic tenancy except for the causes enumerated in subsection (2) of this section and as otherwise provided in this subsection.

(b) If a landlord and tenant enter into a rental agreement that provides for the tenancy to continue for an indefinite period on a month-to-month or periodic basis after the agreement expires, the landlord may not end the tenancy except for the causes enumerated in subsection (2) of this section; however, a landlord may end such a tenancy at the end of the initial period of the rental agreement without cause only if:

(i) At the inception of the tenancy, the landlord and tenant entered into a rental agreement between six and 12 months; and

(ii) The landlord has provided the tenant before the end of the initial lease period at least 60 days' advance written notice ending the tenancy, served in a manner consistent with RCW **59.12.040**.

(c) If a landlord and tenant enter into a rental agreement for a specified period in which the tenancy by the terms of the rental agreement does not continue for an indefinite period on a month-to-month or periodic basis after the end of the specified period, the landlord may end such a tenancy without cause upon expiration of the specified period only if:

(i) At the inception of the tenancy, the landlord and tenant entered into a rental agreement of 12 months or more for a specified period, or the landlord and tenant have continuously and without interruption entered into successive rental agreements of six months or more for a specified period since the inception of the tenancy;

(ii) The landlord has provided the tenant before the end of the specified period at least 60 days' advance written notice that the tenancy will be deemed expired at the end of such specified period, served in a manner consistent with RCW **59.12.040**; and

(iii) The tenancy has not been for an indefinite period on a month-to-month or periodic basis at any point since the inception of the tenancy. However, for any tenancy of an indefinite period in existence as of May 10, 2021, if the landlord and tenant enter into a rental agreement between May 10, 2021, and three months following the expiration of the governor's proclamation 20-19.6 or any extensions thereof, the landlord may exercise rights under this subsection (1)(c) as if the rental agreement was entered into at the inception of the tenancy provided that the rental agreement is otherwise in accordance with this subsection (1)(c).

(d) For all other tenancies of a specified period not covered under (b) or (c) of this subsection, and for tenancies of an indefinite period on a month-to-month or periodic basis, a landlord may not end the tenancy except for the causes enumerated in subsection (2) of this section. Upon the end date of the tenancy of a specified period, the tenancy becomes a month-to-month tenancy.

(e) Nothing prohibits a landlord and tenant from entering into subsequent lease agreements that are in compliance with the requirements in subsection (2) of this section.

(f) A tenant may end a tenancy for a specified time by providing notice in writing not less than 20 days prior to the ending date of the specified time.

(2) The following reasons listed in this subsection constitute cause pursuant to subsection (1) of this section:

(a) The tenant continues in possession in person or by subtenant after a default in the payment of rent, and after written notice requiring, in the alternative, the payment of the rent or the surrender of the detained premises has remained uncomplied with for the period set forth in RCW **59.12.030**(3) for tenants subject to this chapter. The written notice may be served at any time after the rent becomes due;

(b) The tenant continues in possession after substantial breach of a material program requirement of subsidized housing, material term subscribed to by the tenant within the lease or rental agreement, or a tenant obligation imposed by law, other than one for monetary damages, and after the landlord has served written notice specifying the acts or omissions constituting the breach and requiring, in the alternative, that the breach be remedied or the rental agreement will end, and the breach has not been adequately remedied by the date specified in the notice, which date must be at least 10 days after service of the notice;

(c) The 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;

(d) The tenant continues in possession after the landlord of a dwelling unit in good faith seeks possession so that the owner or his or her immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available to house the owner or his or her immediate family in the same building, and the owner has provided at least 90 days' advance written notice of the date the tenant's possession is to end. There is a rebuttable presumption that the owner did not act in good faith if the owner or immediate family fails to occupy the unit as a principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice to vacate using this subsection (2)(d) as the cause for the lease ending;

(e) The tenant continues in possession after the owner elects to sell a single-family residence and the landlord has provided at least 90 days' advance written notice of the date the tenant's possession is to end. For the purposes of this subsection (2)(e), 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 by listing it on the real estate multiple listing service. There shall be a rebuttable presumption that the owner did not intend to sell the unit if:

(i) 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 by listing it on the real estate multiple listing service; or

(ii) 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, the landlord rents the unit to someone other than the former tenant, or the landlord otherwise indicates that the owner does not intend to sell the unit;

(f) The tenant continues in possession of the premises after the landlord serves the tenant with advance written notice pursuant to RCW **59.18.200**(2)(c);

(g) The tenant continues in possession after the owner elects to withdraw the premises to pursue a conversion pursuant to RCW **64.34.440** or **64.90.655**;

(h) The tenant continues in possession, after the landlord has provided at least 30 days' advance written notice to vacate that: (i) The premises has been certified or condemned as uninhabitable by a local agency charged with the authority to issue such an order; and (ii) continued habitation of the premises would subject the landlord to civil or criminal penalties. However, if the terms of the local agency's order do not allow the landlord to provide at least 30 days' advance written notice, the landlord must provide as much advance written notice as is possible and still comply with the order;

(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;

(j) The tenant continues in possession of a dwelling unit in transitional housing after having received at least 30 days' advance written notice to vacate in advance of the expiration of the transitional housing program, the tenant has aged out of the transitional housing program, or the tenant has completed an educational or training or service program and is no longer eligible to participate in the

transitional housing program. Nothing in this subsection (2)(j) prohibits the ending of a tenancy in transitional housing for any of the other causes specified in this subsection;

(k) The tenant continues in possession of a dwelling unit after the expiration of a rental agreement without signing a proposed new rental agreement proffered by the landlord; provided, that the landlord proffered the proposed new rental agreement at least 30 days prior to the expiration of the current rental agreement and that any new terms and conditions of the proposed new rental agreement are reasonable. This subsection (2)(k) does not apply to tenants whose tenancies are or have become periodic;

(l) The tenant continues in possession after having received at least 30 days' advance written notice to vacate due to intentional, knowing, and material misrepresentations or omissions made on the tenant's application at the inception of the tenancy that, had these misrepresentations or omissions not been made, would have resulted in the landlord requesting additional information or taking an adverse action;

(m) The tenant continues in possession after having received at least 60 days' advance written notice to vacate for other good cause prior to the end of the period or rental agreement and such cause constitutes a legitimate economic or business reason not covered or related to a basis for ending the lease as enumerated under this subsection (2). When the landlord relies on this basis for ending the tenancy, the court may stay any writ of restitution for up to 60 additional days for good cause shown, including difficulty procuring alternative housing. The court must condition such a stay upon the tenant's continued payment of rent during the stay period. Upon granting such a stay, the court must award court costs and fees as allowed under this chapter;

(n)(i) The tenant continues in possession after having received at least 60 days' written notice to vacate prior to the end of the period or rental agreement and the tenant has committed four or more of the following violations, other than ones for monetary damages, within the preceding 12-month period, the tenant has remedied or cured the violation, and the landlord has provided the tenant a written warning notice at the time of each violation: A substantial breach of a material program requirement of subsidized housing, a substantial breach of a material term subscribed to by the tenant within the lease or rental agreement, or a substantial breach of a tenant obligation imposed by law;

(ii) Each written warning notice must:

(A) Specify the violation;

(B) Provide the tenant an opportunity to cure the violation;

(C) State that the landlord may choose to end the tenancy at the end of the rental term if there are four violations within a 12-month period preceding the end of the term; and

(D) State that correcting the fourth or subsequent violation is not a defense to the ending of the lease under this subsection;

(iii) The 60-day notice to vacate must:

(A) State that the rental agreement will end upon the specified ending date for the rental term or upon a designated date not less than 60 days after the delivery of the notice, whichever is later;

(B) Specify the reason for ending the lease and supporting facts; and

(C) Be served to the tenant concurrent with or after the fourth or subsequent written warning notice;

(iv) The notice under this subsection must include all notices supporting the basis of ending the lease;

(v) Any notices asserted under this subsection must pertain to four or more separate incidents or occurrences; and

(vi) This subsection (2)(n) does not absolve a landlord from demonstrating by admissible evidence that the four or more violations constituted breaches under (b) of this subsection at the time of the violation had the tenant not remedied or cured the violation;

(o) The tenant continues in possession after having received at least 60 days' advance written notice to vacate prior to the end of the rental period or rental agreement if the tenant is required to register as a sex offender during the tenancy, or failed to disclose a requirement to register as a sex

offender when required in the rental application or otherwise known to the property owner at the beginning of the tenancy;

(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.

(3) When a tenant has permanently vacated due to voluntary or involuntary events, other than by the ending of the tenancy by the landlord, a landlord must serve a notice to any remaining occupants who had coresided with the tenant at least six months prior to and up to the time the tenant permanently vacated, requiring the occupants to either apply to become a party to the rental agreement or vacate within 30 days of service of such notice. In processing any application from a remaining occupant under this subsection, the landlord may require the occupant to meet the same screening, background, and financial criteria as would any other prospective tenant to continue the tenancy. If the occupant fails to apply within 30 days of receipt of the notice in this subsection, or the application is denied for failure to meet the criteria, the landlord may commence an unlawful detainer action under this chapter. If an occupant becomes a party to the tenancy pursuant to this subsection, a landlord may not end the tenancy except as provided under subsection (2) of this section. This subsection does not apply to tenants residing in subsidized housing.

(4) A landlord who removes a tenant or causes a tenant to be removed from a dwelling in any way in violation of this section is liable to the tenant for wrongful eviction, and the tenant prevailing in such an action is entitled to the greater of their economic and noneconomic damages or three times the monthly rent of the dwelling at issue, and reasonable attorneys' fees and court costs.

(5) Nothing in subsection (2)(d), (e), or (f) of this section permits a landlord to end a tenancy for a specified period before the completion of the term unless the landlord and the tenant mutually consent, in writing, to ending the tenancy early and the tenant is afforded at least 60 days to vacate.

(6) All written notices required under subsection (2) of this section must:

(a) Be served in a manner consistent with RCW **59.12.040**; and

(b) 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.

[**2021 c 212 § 2**.]

NOTES:

Effective date—2021 c 212: See note following RCW **59.18.030**.

KING COUNTY BAR ASSOCIATION

February 12, 2024 - 3:29 PM

Filing Petition for Review

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Appellate Court Case Title:	Maggie Properties, LLC, Respondent v. Bernard Nolan, Appellant (845497)

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