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DIVISION ONE

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NO. 69798-6-I

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

LINCOLN WARREN LEE II and CARLENE TUDOR LEE,

Appellants,

v.

DOHENY HOMES, LLC, et al.,

Respondents.

RESPONDENTS' BRIEF

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I. INTRODUCTION

Respondents Doheny Homes, LLC, Brian Doheny and Trina Doheny (collectively, “the Dohenys”) respectfully request this Court affirm the trial court’s ruling that Appellants Lincoln and Carlene Tudor Lee (“the Lees”) are liable to the Dohenys under RCW 59.18 et seq. for breach of a lease agreement regarding a townhome located at 21257 34th Avenue West, Issaquah, Washington (“the townhome” or “subject townhome”).¹

As stated more fully below, the trial court correctly held that the Lees violated the terms of their lease agreement with the Dohenys by abandoning the subject townhome prior to the end of the lease term without proper notice. The trial court properly concluded, among other things, that the Lees did not act reasonably in notifying the Dohenys of a heating issue at the townhome because the method used was significantly

¹ The Lees claim that it was error to hold Co-Appellant Carlene Tudor Lee (“Mrs. Lee”) liable because she was “not a party to the lease and was not married to Mr. Lee at the time the alleged breach occurred.” App.’s Br. at 8. But, the evidence establishes that Mrs. Lee clearly benefited from the lease agreement when she lived at the townhome with Mr. Lee, and cannot now claim that she is entitled to the benefits without the obligations. Furthermore, Mrs. Lee attached herself to the counterclaims against the Dohenys at trial, and on her own volition became a party to this litigation. Where an action is taken to benefit the marital community, the property of the community can be reached. *deElche v. Jacobsen*, 95 Wn.2d 237, 239-40, 622 P.2d 835 (1980). Finally, the Lees undertook the abandonment together and the abandonment was clearly a “community errand.” *Id.* at 240.

different than the past practice of communication between the parties. The trial court determined that the Lees' means of notification was "clearly for the purpose of meeting the minimal standards set out by law" rather than to remedy any sort of risk of harm that would result to the occupants of the townhome.

Additionally, the trial court correctly held that the Lees acted in bad faith by unreasonably denying the Dohenys access to the townhome to investigate the heating issue and to commence repairs. The Lees admitted to changing the locks and to not answering the door when Mr. Doheny arrived at the townhome to inspect the heating issue. This occurred on the same day the Dohenys received the request for repairs. The trial court therefore properly concluded that the Lees unreasonably denied the Dohenys access to the townhome for the purpose of making repairs in violation of RCW 59.18.060 that the Dohenys' ability to inspect the need for repairing the heating issue was delayed by circumstances beyond their control under RCW 59.18.070 and that the Dohenys acted in good faith under RCW 58.18.020 by responding to the heating issue within a reasonable time once they became aware of the situation.

The trial court also correctly held that the Lees acted in bad faith by entering into a lease agreement to live in at a different townhome in Issaquah ("the Issaquah townhome") prior to the termination of their lease

agreement with the Dohenys, prior to the heating issue at the subject townhome and prior to notifying the Dohenys that the townhome needed repairs.² In addition, it was significant to the trial court that the Lees initiated the lease agreement to reside at the Issaquah townhome while continuing to interact with the Dohenys concerning the repair of the heating issue at the subject townhome. This caused the trial court concern as it suggested there was a “design and intention”³ of the part of the Lees to break their lease agreement with the Dohenys and move out of the subject townhome.

As noted by the trial court, it is not the intent of RCW 59.18 et seq. to address or deal with situations like this where the evidence suggested a design to break a lease agreement. This Court should affirm the trial court’s ruling.

II. RESPONSE TO ASSIGNMENTS OF ERROR

A. No Assignments of Error

The Dohenys assign no error to the trial court’s Findings of Fact and Conclusions of Law, or the Judgment that was stipulated between the parties.

² The trial court stated that this was evidence of the Lees’ intent to move of out of the subject townhome prior to having any legal basis to do so. Clerk’s Papers (“CP”) at 131; Conclusions of Law (“COL”) ¶ 27.

³ *Id.*; COL ¶ 29.

B. Issues Pertaining to Appellants' Assignments of Error

1. Whether this Court should affirm the trial court's ruling that the Lees are liable to the Dohenys under RCW 59.18 et seq. for breach of their lease agreement when substantial evidence in the record supports the Findings of Fact and Conclusions of Law, and the stipulated Judgment;⁴

2. Whether this Court should affirm the trial court's calculation of damages when the Lees raise this objection for the first time on appeal and when the trial court plainly took the Dohenys' failure to mitigate into consideration;

3. Whether this Court should affirm the trial court's determination that the Lees are not entitled to an award of their deposit when the evidence establishes that the Dohenys mailed a statement of deposit within fourteen (14) days of learning of the Lees' abandonment of the subject townhome and when the Lees admitted that they failed to leave a forwarding address, which is a verity on appeal; and

4. Whether this Court should award the Dohenys their attorney's fees on appeal pursuant to RAP 18.1 when the lease agreement provides for an award.

⁴ The Lees assign error to all but one of the trial court's Conclusions of Law. Appellants' Brief ("App.'s Br.") at 8.

III. RESTATEMENT OF THE CASE

A. Background

Appellant Lincoln Lee (“Mr. Lee”) and Respondent Trina Doheny (“Mrs. Doheny”) share a long personal history. In 1995, they parented a child together. Report of Proceedings (“RP”) at 195-96. Mrs. Doheny later married Brian Doheny (“Mr. Doheny”). RP at 4. The Dohenys live at 4145 Peregrine Point Way S.E., in Sammamish, Washington. *Id.*

B. The Lease Agreement

In 2006, in an effort to allow Mr. Lee to live close to his son, the Dohenys agreed to purchase the subject townhome, which is just down the street from their residence, upon the agreement that Mr. Lee would rent the townhome from the Dohenys until his son with Mrs. Doheny turned 18. RP at 41-42. Mr. Lee agreed to this arrangement, and entered into a lease agreement with the Dohenys in August 2006. Clerk’s Papers (“CP”) at 125, 149-152; Findings of Fact (“FOF”) ¶ 8. The lease agreement was scheduled to expire on July 31, 2014. *Id.*; FOF ¶ 9.

In August 2009, Mr. Lee became engaged to Co-Appellant, Carlene Tudor Lee (“Mrs. Lee”). RP at 258; CP at 126; FOF ¶ 12. Mrs. Lee subsequently moved into the subject townhome on or about January

2010.⁵ RP at 309. Also in January 2010, the Lees asked the Dohenys to be relieved of the obligation because they wanted to move into a larger home. RP at 55-57, 257-258; CP at 126; FOF ¶ 14. The Dohenys agreed to allow the Lees to move out if they found a subletter. RP at 55-57. This never transpired. *Id.*

C. The Lees Signed a Lease To Live In a New Townhome While They Were Still Under Their Lease Obligation With the Dohenys

On December 21, 2010, Mrs. Lee contacted Columbia Homes, LLC to inquire about a different townhome for rent in Issaquah, Washington (“the Issaquah townhome”). RP at 302; CP at 126, 197; FOF ¶ 15. Just five days later, on December 26, 2010, the Lees signed a lease agreement to reside at the Issaquah townhome while they remained under their lease obligation with the Dohenys. RP at 260, 264; CP at 126, 153; FOF ¶¶ 18-19. The Lees allege they awoke in the subject townhome that same morning to find that their heating system had stopped working, and rather than contacting the Dohenys to report the heating issue, the Lees decided to rent the Issaquah townhome. RP at 259.

The day after the Lees signed the lease agreement for the Issaquah townhome, on December 27, 2010, they sent a letter to the Dohenys via

⁵ Mrs. Lee moved in to the townhome without seeking the prior consent of the Dohenys in accordance with the lease agreement. CP at 126; FOF ¶ 13.

certified mail entitled, "Notice Requesting Repairs." RP at 157, 260; CP at 126; FOF ¶¶ 20-21. Mrs. Doheny received the letter at her office a day later on December 28, 2010.⁶ RP at 60; CP at 127; FOF ¶ 27.

D. The Dohenys Acted In Good Faith and Attempted To Commence Remedial Action

On the same day that Mrs. Doheny received the "Notice Requesting Repairs," Mr. Doheny attempted to inspect the heating system at the subject townhome. RP at 60-61, 63, 142; CP at 127; FOF ¶ 28. He walked over to the townhome but found that the locks had been changed. RP at 142; CP at 127; FOF ¶ 28. Mr. Doheny returned to the townhome the next day to inspect the property, but no one answered the door. RP at 143-144; CP at 127; FOF ¶ 29. Mrs. Lee's son was there at the time and heard Mr. Doheny knock on the door. RP at 269, 373, 445; CP at 127; FOF ¶ 29. The Dohenys then attempted to contact the Lees via telephone and text message on both December 28 and 29, but did not receive a response. CP at 126-127; FOF ¶ 30; RP at 61-64, 143-44. Mr. Doheny finally received a response and gained access to the subject townhome on the evening of December 29, 2010. CP at 126; FOF ¶ 31.

⁶ The lease agreement provided that notices were to be sent to the Dohenys' home residence. CP at 151; RP at 53. Even then, however, the evidence presented at trial demonstrated that the Lees had never sent the Dohenys a letter or notice in the past when repairs needed to be undertaken as the Lees lived across the street from the Dohenys. RP at 151, 269.

After Mr. Doheny left the townhome on the evening of December 29, 2010, the Lees drafted a Notice to Vacate. RP at 274. CP at 128; FOF ¶ 32. The Lees sent this notice to the Dohenys via certified mail the following day on December 30, 2010, but the Dohenys never received it. RP at 144; CP at 128, 158; FOF ¶¶ 33-35. In the meantime, and not knowing that the Lees had already signed a lease to live in the Issaquah townhome three days earlier on December 26, 2010, the Dohenys made an appointment with Brennan Heating to inspect the heating system on January 4, 2011, which was the first available appointment after the holidays. RP at 161, 168; CP at 128; FOF ¶ 36. Mr. Doheny sent a text message to Mr. Lee informing him of this appointment, but received no response. RP at 276; CP at 128; FOF ¶¶ 37-38.

The Lees abandoned the subject townhome on December 31, 2010. RP at 282; CP at 128; FOF ¶ 40. They did not leave a forwarding address. CP at 128. The Dohenys did not learn of the Lees' abandonment of the townhome until January 4, 2011, when Mr. Doheny entered the property to allow Brennan Heating to inspect the heating system.⁷ RP at 168-170; CP at 128; FOF ¶ 41. Fourteen days later, on January 18, 2011, the

⁷ Mr. Doheny received a spare key to the new lock from Mr. Lee during his inspection of the subject townhome on the night of December 29, 2010. RP at 168-69.

Dohenys mailed the statement of deposit to Mr. Lee's work address since the Lees failed to leave a forwarding address. RP at 78; CP at 128, 325; FOF ¶ 44.

E. The Trial Court Concluded That the Lees Breached the Terms of their Lease Agreement With the Dohenys

In its oral ruling on November 9, 2012, the trial court concluded that the Dohenys acted in good faith and within a reasonable time to respond to the Notice Requesting Repairs, and that the Lees had acted in bad faith when they: (1) signed a lease to reside at the Issaquah townhome before terminating their lease agreement with the Dohenys, before the heating issue arose and before notifying the Dohenys of the heating issue; (2) sent the Notice Requesting Repairs to the Dohenys in a manner not designed to provide the Dohenys with notice as it was not the customary method of past communications between the parties when repairs needed to be undertaken; and (3) failed to communicate with the Dohenys regarding the heating issue at the townhome so that they could enter the property to inspect the heating system. RP at 439-48. The Dohenys submitted proposed Findings of Fact and Conclusions of Law, which were noted for presentation on December 18, 2012. CP at 124-32. The Lees then asked the trial court for additional time to review the Findings of Fact and Conclusions of Law prior to the trial court's consideration. CP at

124-132. The presentation was therefore delayed to December 27, 2012. CP at 146. Ultimately, the Lees did submit any exceptions or objections to the trial court's Findings of Fact and Conclusions of Law.

F. The Lees Stipulated to the Judgment

On December 27, 2012, the trial court signed the Findings of Fact and Conclusions of Law. CP at 138-46. It also granted the Dohenys' Motion for Fees and Costs. CP at 133-34. The parties subsequently filed a stipulated Judgment, awarding the Dohenys \$58,724.44, which included \$16,000 in damages, \$40,000 in attorney fees and \$2,724.44 in statutory costs. Judgment UB# 108. The trial court signed the stipulated Judgment on March 2, 2013. *Id.*

IV. ARGUMENT

A. Restatement of Standards of Review

This Court reviews a trial court's findings of fact for substantial evidence. *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011), *review denied*, 173 Wn.2d 1019 (2012). Substantial evidence exists if the record contains sufficient evidence to persuade a fair-minded, rational person of the finding's truth. *Id.* at 55. The party challenging a finding bears the burden of showing that it is not supported by the record. *Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 243, 23 P.3d 520 (2001). Unchallenged findings are verities on appeal, and

challenged findings are also binding on appeal if they are supported by substantial evidence. *Id.* at 238, 243.

The appellate court must defer to the trial court's determinations with regard to the persuasiveness of the evidence, the credibility of the witnesses, and conflicting testimony. *Snyder v. Haynes*, 152 Wn. App. 774, 779, 217 P.3d 787 (2009). Therefore, an appellate court should not disturb a trial court's finding of fact if substantial evidence supports the finding, even if there is conflicting evidence on the issue. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). In turn, an appellate court will review conclusions of law "to determine whether factual findings that are supported by substantial evidence in turn support the conclusions." *Fahey*, 164 Wn. App. at 55.

B. Substantial Evidence Supports the Trial Court's Ruling

1. The Dohenys Made a Good Faith Effort To Commence Remedial Action Within 24 Hours

The Lees claim that their abandonment of the subject townhome "was lawful because Respondents failed to commence remedial action within 24 hours." App.'s Br. at 22. They further claim that "Respondents did not even show up to the Property until after the 24-hour window to commence remedial action had expired, a fact that the trial court does not dispute." App.'s Br. at 23.

But the Lees' claims are incorrect, and the trial court did not rule as such. In fact, the trial court found that the Dohenys attempted to inspect the subject townhome the same day they received the Notice Requesting Repairs. CP at 127; FOF ¶ 28; see also RP at 160, 142. The trial court found that, "Mr. Doheny attempted to inspect the heat that same day but was prevented from accessing the property because the locks had been changed without the prior knowledge or consent of the Dohenys." *Id.* Substantial evidence supports this finding of fact as the Dohenys both testified that Mr. Doheny went to the townhome on December 28, 2010, and Mr. Lee confirmed in his testimony that he changed the locks. RP at 60, 142, 254, 281.

The trial court further found that, "[o]n December 29, 2010, Mr. Doheny attempted to inspect the heat again, but Ms. Lee's son did not answer the door to let him inside the property." CP at 127; FOF ¶ 29. The Dohenys testified to this fact, and Mrs. Lee's son confirmed this fact during his testimony. RP at 61, 143, 373, 445. Thus, substantial evidence supports the trial court's ruling that the Dohenys did, in fact, commence remedial action within 24 hours. These findings further support the trial court's conclusion of law that the Dohenys "responded to the Notice Requesting Repairs within a reasonable time." CP at 129; COL ¶ 10.

2. **RCW 59.18.070 Includes An Exception for Circumstances Beyond a Landlord's Control**

RCW 59.18.070 provides that:

[A] landlord shall commence remedial action after receipt of . . . notice by the tenant as soon as possible but not later than the following time periods, except where ***circumstances are beyond the landlord's control:***

(1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life.

(Emphasis added.) The statute further states: “In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. **If completion is delayed due to circumstances beyond the landlord's control . . . the landlord shall remedy the defective condition as soon as possible.**” RCW 59.18.070. (Emphasis added.)

Contrary to the Lees' claim that, “Respondents did not even show up to the Property until after the 24-hour window to commence remedial action had expired,” App.'s Br. at 23, the trial court correctly found, and the evidence established, that the Dohenys attempted to commence remedial action on the same day they received the Notice Requesting Repairs, or December 28, 2010. RP at 60-61, 63, 142-144; CP at 127; FOF ¶¶ 27, 28. Specifically, the trial court found that, “Mr. Doheny attempted to inspect the heat that same day but was prevented from

accessing the property because the locks had been changed without the prior knowledge or consent of the Dohenys.” RP at 143, 254, 281; CP at 127; FOF ¶ 28.

The trial court further found that Mr. Doheny attempted to inspect the heat again the next day on December 29, 2010, but was prevented from entering the townhome because the locks had been changed and no one answered the door, despite the fact that Mrs. Lee’s son testified he was home at the time and heard Mr. Doheny knocking on the door. RP at 269, 373, 445; CP at 127; FOF ¶ 29. Again, substantial evidence supports these findings because the Dohenys testified to these facts at trial and the Lees confirmed them.⁸

Based on the foregoing, the trial court concluded that “[t]he Dohenys made a good faith effort to respond to the heating issue at the property once they became aware of the situation.” CP at 129; COL ¶ 9. It further concluded that “[t]he Dohenys responded to the Notice Requesting Repairs within a reasonable time,” CP at 129; COL ¶ 10, and that “Mr. Doheny made a good faith effort to access the property and

⁸ Despite the Lees’ claim that the trial court’s ruling regarding the change of locks “is in direct contradiction of the testimony of two witnesses,” App.’s Br. at 32, the trial court is charged with determining the credibility of witnesses and weighing conflicting evidence. *Snyder*, 152 Wn. App. at 779; *Merriman*, 168 Wn.2d at 631.

inspect the heating issue within a reasonable time.” CP at 130; COL ¶ 11. Finally, the trial court concluded that “[t]he Dohenys’ ability to inspect the heating issue was delayed by circumstances beyond their control under RCW 59.18.070.” CP at 130; COL ¶ 13. The trial court’s Findings of Fact support these conclusions, and this Court should affirm.

3. The Good Faith Standard Found In RCW 59.18.020 Applies To RCW 59.18.070

The Lees claim that the trial court improperly imbued RCW 59.18.070 with standards of good faith and reasonableness. App.’s Br. at 34. They claim that “such Conclusions of Law have no basis in the 59.18.070 itself, as these are not the standards to which landlords and tenants are held under the RLTA.” *Id.* at 34-35.

But, as stated by the trial court in its Conclusions of Law, RCW 59.19.020 explicitly requires that “[e]very duty under [the Landlord Tenant Act] and every act which must be performed as a condition precedent to the exercise of a right or remedy under [the Landlord Tenant Act] **imposes an obligation of good faith** in its performance or enforcement.” (Emphasis added.) As such, the trial court’s consideration of the parties’ relative good faith was proper.

4. The Repair Timeline Is Immaterial Since the Lees Abandoned Immediately After Inspection

Though the Lees make much of the fact that the heating system in the subject townhome was not repaired until January 11, 2011, the actual timeline of the repair is immaterial. The Lees had abandoned the townhome by December 31, 2010, and were not living there when the heat was repaired on January 11, 2011. RP at 282. In fact, the Lees had already been out of the subject townhome for four days when the Dohenys discovered their abandonment on January 4, 2011, to let Brennan Heating inside to inspect the heating issue. RP at 161, 168.

Thus, the trial court properly concluded that the Dohenys repaired the heating issue in good faith and within a reasonable time despite the fact that the Lees had abandoned the subject townhome in violation of RCW 59.18.310 and breached the terms of their lease agreement with the Dohenys. CP at 130; COL ¶ 20.

C. The Lees Have Waived Their Right To Challenge the Entry of Judgment

In their assignments of error, the Lees list the trial court's entry of its Judgment. App.'s Br. at 8. But the Lees stipulated to the Judgment prior to its entry by the trial court. Judgment UB# 108. In addition, the Lees improperly raise this issue for the first time on appeal. RAP 2.5(a).

D. The Trial Court Properly Awarded Damages to the Dohenys

1. The Lees Improperly Object To the Amount of Damages for the First Time on Appeal

The Lees claim that the trial court awarded the Dohenys “the very damages [it] failed to mitigate.” App.’s Br. at 38. However, the Lees raise this issue for the first time on appeal, and this Court should therefore decline to consider it. RAP 2.5(a).

The Lees had several opportunities, and failed, to raise this issue at the trial court. First, on November 9, 2012, at the presentation of the trial court’s oral ruling, the Lees failed to object to the award of damages. RP at 436-49. The Lees had a second opportunity to object when they moved the trial court to delay its consideration the Dohenys’ proposed Findings of Fact and Conclusions of Law. More importantly, the Lees did not raise any exceptions or objections to the Findings of Fact and Conclusions of Law before the trial court signed them on December 27, 2012. And, in fact, the Lees signed a stipulated Judgment for the amount of the damages entered by the trial court on March 4, 2013. Judgment UB# 108.

2. The Trial Court Considered the Dohenys’ Failure To Mitigate In Calculating Damages

The Lees incorrectly claim that the trial court “awarded Respondents damages for the full lease term.” App.’s Br. at 41. But the trial court clearly considered the Dohenys’ failure to mitigate in

calculating the amount of damages. RP at 447-448; CP at 132; COL ¶¶ 34-36.

The trial court concluded that the Dohenys “did not make a reasonable effort to mitigate their damages and re-rent the property.” CP at 125; COL ¶ 25. In its oral ruling, the trial court stated: “I would find that [the Dohenys] response to the defendants vacating the premises, that the plaintiffs in this case did not make what I would consider a reasonable attempt to rent or lease the condominium vacated by the defendants.” RP at 446. It further stated:

So in terms of damages, my thinking is this. The plaintiffs did not make a reasonable effort to obtain new tenants to mitigate damages. The manner of advertising was not reasonable initially, the pricing was not adjusted . . . and so that in crafting a decision in this particular case I do find in favor of the plaintiffs in this particular case. But my belief is that . . . the damages in this case would be payment of the full amount of rent for a period that would indicate four months of rent. And for the remaining amount of time left under the lease it would be the difference between the current lease and the lease that existed initially, which I understand is a \$200 per month difference.

RP at 447-48.

The Dohenys received damages in the amount of four full months of rent for the time in which they advertised the vacancy at the subject townhome but were unable to find a tenant, plus \$200 for each remaining month of the lease term to account for the difference between the rent

under the Lees' lease agreement with the Dohenys and the new lease agreement. RP at 447-48; CP at 132; COL ¶¶ 34-36. The amount of damages awarded also take into account the Dohenys' failure to mitigate damages in the first four months following the Lees' abandonment. RP at 447-48. Thus, although the Lees raise this issue for the first time on appeal, if this Court considers the same, it should affirm the trial court's calculation of damages.

E. The Trial Court Properly Denied the Lees' Claim For Deposit

1. The Evidence Establishes That the Dohenys Mailed the Statement of Deposit Within Fourteen (14) Days of Learning About the Lees' Abandonment In Accordance With RCW 59.18 et seq.

The Lees allege that the trial court should have awarded them their deposit. App.'s Br. at 42-43. They claim that the Dohenys failed to mail the statement of deposit within the required fourteen (14) days under RCW 59.18 et seq. App.'s Br. at 42. Specifically, the Lees claim that the Dohenys "knew or should have known on or before January 3, 2011 that the [Lees] had vacated the property." App.'s Br. at 39. Therefore, they argue, the Dohenys mailed the statement of deposit "a full 18 days after the notice of termination was delivered to [the Dohenys]." App.'s Br. at 43. The evidence presented at trial, however, demonstrates that the Dohenys learned of the Lees' abandonment on January 4, 2011, and

mailed the statement of deposit fourteen (14) days later on January 18, 2011. RP at 170; CP at 128; FOF ¶ 44.

Furthermore, the Lees do not challenge Finding of Fact No. 41, which states that, “Mr. Doheny noticed the Lees had vacated the property on January 4, 2011, when he arrived at the property to let Brennan Heating inside to inspect the heating issue.” CP at 128; FOF ¶ 41. Therefore, this fact is a verity on appeal. *Standing Rock*, 106 Wn. App. at 238, 243. The trial court also found that the Dohenys “never received the Notice of Intent to Vacate,” CP at 128; FOF ¶ 35, a fact for which there is sufficient evidence because the Dohenys testified that they did not receive the notice and the Lees did not provide any admissible evidence that the notice was received by the Dohenys. RP at 144-45.

This Court should therefore the trial court’s decision not to award the Lees their deposit.

2. The Lees Stipulated That They Failed to Leave a Forwarding Address

Additionally, the Lees do not challenge Finding of Fact No. 40, which states that the Lees “did not leave a forwarding address.” CP at 128; FOF ¶ 40. RCW 59.18.280, which requires delivery of the statement of deposit, includes exceptions if the landlord can show “that circumstances beyond the landlord’s control prevented the landlord from

providing the statement within the fourteen days or that the tenant abandoned the premises as defined in RCW 59.18.310.”

Even if the Dohenys had not mailed the statement of deposit to the Lees within fourteen (14) days, which they did when they mailed the statement to Mr. Lee’s work address on January 18, 2011, the Lees do not challenge the fact that they did not leave a forwarding address, a circumstance preventing the Dohenys from providing the statement within the allotted time. In addition, the Lees abandoned the subject townhome under RCW 59.18.310. CP at 129-130; COL ¶¶ 4, 5, 20. Thus, the trial court properly concluded that the Lees complied with RCW 59.18.280. CP at 131; COL ¶ 24. This Court should therefore affirm.

F. The Dohenys Are Entitled to Attorney Fees on Appeal

Finally, the Dohenys request attorney fees on appeal under RAP 18.1. A contract that provides for attorney fees at trial also supports such an award on appeal. *Atlas Supply, Inc. v. Realm, Inc.*, 170 Wn. App. 234, 241, 287 P .3d 606 (2012). Here, the lease agreement contained a provision stating the following: “In any legal action to enforce the terms hereof or relating to the premises, regardless of the outcome, the Owner or agent shall be entitled to all costs incurred in connection with such action, including a reasonable attorney’s fee.” CP at 151. Because this Court

should affirm in favor of the Dohenys, they are entitled to their attorney's fees on appeal.

V. CONCLUSION

The trial court correctly held that the Lees breached the terms of the lease agreement with the Dohenys. The evidence presented at trial demonstrates that the Dohenys acted in good faith and reasonably responded to the Lees' request for repairs not knowing that the Lees had already signed a new lease agreement to live at the Issaquah townhome. In addition, the Lees abandoned the subject townhome, failed to give proper notice and unreasonably denied the Dohenys access to the townhome for the purpose of making repairs in violation of RCW 59.18.060. As such, the trial court properly entered Judgment in favor of the Dohenys and awarded them attorney's fees and damages, minus four months' rent for their failure to mitigate during that period.

This Court should therefore affirm the trial court's ruling and award the Dohenys their attorney's fees associated with this appeal.

RESPECTFULLY SUBMITTED this 18th day of February, 2014.

BETTS, PATTERSON & MINES, P.S.

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CERTIFICATE OF SERVICE

I, Cynthia Daniel, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts Patterson & Mines, One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on February 18, 2014, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

• **Respondent’s Brief**

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

DATED this 18th day of February, 2014.

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