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Division III
State of Washington
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No. 36165-9-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THOMAS SILVER, Appellant,

vs.

RUDEEN MANAGEMENT COMPANY, INC., Respondent.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES i
I. APPELLANT'S REPLY 2
II. CONCLUSION 7

TABLE OF AUTHORITIES

Cases

Goodeill v. Madison Real Estate, 191 Wn. App. 88 (2015) (review denied at 185 Wn.2d 1023 (2016)) 5
Seattle Professional Engineering Employees Ass'n v. Boeing Co., 991 P.2d 1126 (2000) 4

Statutes

RCW 4.16.080(2) 2, 4, 7
RCW 59.18 2
RCW 59.18.260 2
RCW 59.18.270 6
RCW 59.18.280 ..... 2, 3, 4, 5, 6

I. APPELLANT'S REPLY

This case is about a residential landlord "taking, detaining, or injuring personal property" in the form of action "for the specific recovery" of that personal property, which is precisely the type of action defined by statute to have a three-year statute of limitations. RCW 4.16.080(2).

Under Washington's Residential Landlord Tenant Act (RLTA), RCW 59.18, *et seq.*, rental deposit monies are collected by the landlord at the beginning of the tenancy and held in trust until the tenancy is terminated. RCW 59.18.260 - .280 Within 21 days[1] after the tenancy is terminated, the landlord must choose one of three possible options:

> (1) the landlord may retain the all of the deposit monies held in trust, provided that the landlord sends the former tenant a full and specific accounting that explains the reason for retaining the entire deposit;
>
> (2) the landlord may provide a partial refund, along with an accounting for all amounts retained; or
>
> (3) the landlord may refund the entire deposit from the trust account, in which case no accounting is required. *Id.*

Assuming that the landlord chooses one of the options within the statutorily required timeline, then regardless of which option the landlord

[1] The lease agreement between Mr. Silver and Rudeen specified a 14-day timeframe, consistent with RCW 59.18.280 prior to statutory amendments that were implemented on June 9, 2016, which expanded this timeframe to 21 days.

chooses, nothing in the RLTA precludes a landlord from demanding or bringing a subsequent action to recover damages from the former tenant. RCW 59.18.280(3). Contrary to the trial court's decision, the RLTA does not just require a timely statement, but also the "refund due" from the tenant's deposit trust account. (CP 121; RCW 59.18.280(1), (2)). A landlord is otherwise free to choose the third option indicated above, refunding the entire balance of the tenant's trust account, in which case no RCW 59.18.280 accounting would ever be required. *Id.*

The lower court's conclusion, relying on the Respondent's argument that there is no right to the tenant's security deposit trust monies until an action against the landlord is commenced, is both factually and legally inaccurate. In this case, the RLTA was abundantly clear that on the 15th day[2] following a tenant's move-out, the landlord was required to take one of the aforementioned actions with respect to the deposit. If for any reason an accounting of deposit trust monies that the landlord wanted to withhold could not be completed in the statutory timeframe, then the law required that tenant's deposit trust monies must be returned to the former tenant, and the landlord's claims for damage or offset could be resolved at a later date. In other words, the RLTA provides that if the statutory period passes

[2] Mr. Silver's tenancy was subject to a 14-day timeframe under RCW 59.18.280(1) prior to 2016 amendments extending this period to 21 days.

without an accounting, then any deposit trust monies belong in the possession of the former tenant. This is not a statutory penalty. It is a codified right of the tenant to reassume possession of his or her property. Return of the deposit money is a "legal obligation imposed in law that a [landlord] must pay a [tenant]." *Seattle Professional Engineering Employees Ass'n v. Boeing Co.*, 991 P.2d 1126, 139 Wash.2d 824 (2000).

The Respondent sets up another "straw man" in its claim that "[T]he appellant's theory is that any time a landlord includes an estimated charge in a deposit accounting, it would result in a violation of the [RLTA]," (Respondent's Brief, p. 7), but Mr. Silver espouses no such theory. In fact, if a landlord properly accounts for at least the full amount of the security deposit (*e.g.*, if outstanding rent, repairs, or other damages beyond normal "wear and tear" are calculated and exceed the amount of the security deposit) then amounts exceeding the security deposit can be calculated at a later date. Such amounts could be included in the deposit disposition statement as estimates, or not included at all.

In any event, the issues on appeal concern whether or not claims under RCW 59.18.280 are subject to a three-year statute of limitation as "an action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof," RCW 4.16.080(2), not whether Rudeen's estimated deposit dispositions constituted "full and specific

statements" provided within the RLTA's 14-day notice period. RCW 59.18.280(1).

The scenario of a fully accounted-for deposit was not present in Mr. Silver's deposit disposition statement and it is not what Mr. Silver pled on behalf of the putative class. (CP 1). Rather, in Mr. Silver's case, Rudeen's entire disposition statement was estimated; no deposit deductions were actually accounted for, and there is no evidence that Rudeen ever attempted to discern actual deposit deductions within the statutory timeframes. (*Id.*)

This is exactly the type of behavior that this Court addressed and found to be unlawful in *Goodeill v. Madison Real Estate*, 191 Wn. App. 88 (2015) (review denied at 185 Wn.2d 1023 (2016)). If an estimate is all that is required, then nothing would prevent the landlord from circumventing the notice and timing requirements of RCW 59.18.280 by sending out standardized "estimates," or even a boilerplate list, of possible charges to every tenant. While the landlord could take an indefinite amount of time to calculate a "full and specific" final deposit disposition statement, the tenant (who is the more vulnerable party) would be left is left to wonder when they might receive their refund, if ever. The enforcement mechanism of RCW 59.18.280 would be nothing but a farce.

In this case, the lower court and the Respondent are correct that Mr. Silver also sought statutory damages in the action against Rudeen. (CP 1 ¶

7.4). This is the statutory penalty that acts as a motivator for landlords to comply with the obligation to timely account for tenants' deposit trust monies. RCW 59.18.280(2). Once a landlord fails to satisfy the express statutory requirement of sending a "full and specific statement," or return the deposit in full, within the applicable time-frame, the landlord becomes subject to additional penalties. (*Id.*). Additional damages include an award of up to two times the amount of the deposit, yet no exemplary damages are awardable absent a showing that the former tenant's property was wrongfully withheld. (*Id.*).

A tenant's right to recover his or her monies held in trust occurs automatically, while a landlord is still compliant with the statute. The Respondent's argument that deposit trust monies are due back to a tenant only when there is a violation of RCW 59.18.280 is simply false. The RLTA specifically requires that tenants' deposit monies be held in trust for the benefit of the tenant. RCW 59.18.270. Tenants are entitled to the refund of their monies held in trust unless and until a landlord establishes a statutory right to convert them under RCW 59.18.280. When a tenant is compelled to institute an action for the recovery of trust monies that have been wrongfully taken or detained from them in violation of RCW 59.18.280, then such an action clearly presents "[a]n action for taking, detaining, or injuring personal property, including an action for the specific

recovery thereof," subject to a three-year statute of limitations under RCW 4.16.080(2).

II. CONCLUSION

Based upon the legal authorities and arguments presented herein and before, Mr. Silver respectfully requests that this Court reverse the decision of the Superior Court below and rule in favor of his claims or remand with instructions.

DATED this 11th day of March, 2019.

Respectfully submitted,

Brian G. Cameron, WSBA #44905
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the state of Washington that on the **11th day of March, 2019**, at Spokane, Washington, I caused to be served the foregoing document(s), and accompanying exhibits, on the following person(s) and/or entity(ies) in the manner indicated:

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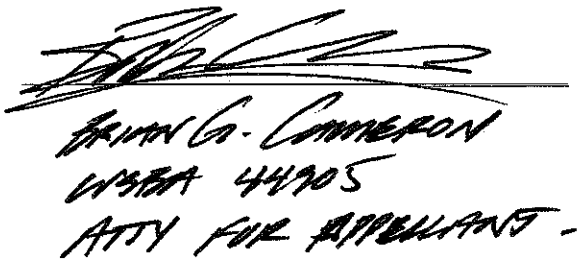

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