

Supreme Court No. 88036-I

Court of Appeals No. 66428-1-I

SUPREME COURT OF THE STATE OF WASHINGTON

Aaron Hundtofte et al.,

Plaintiffs,

v.

Ignacio Encarnación et al.,

Defendants/Petitioners,

v.

King County Superior Court Office of Judicial Administration,

Intervenor/Respondent.

BRIEF OF *AMICUS CURIAE* TENANTS UNION OF WASHINGTON
STATE

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SEA_DOCS:1100636.4

 ORIGINAL

FILED
2013 MAY 24 A 10:17
BY RONALD R. CARPENTER
CLERK
SUPERIOR COURT
STATE OF WASHINGTON

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I. Identity and Interest of Amici

The Tenants Union of Washington State (“Tenants Union”) is a non-profit organization dedicated to creating housing justice through empowerment-based education, outreach, leadership development, organizing, and advocacy. Its work focuses on improving tenants’ living conditions and challenging unjust housing policies and practices.

The Tenants Union submits this amicus brief because this case has a direct, immediate, and severe impact on Tenants Union’s members and the clients we serve. The appellate court’s holding perpetuates a policy creating a distinct chilling effect on tenants asserting their rights under Washington’s Residential Landlord-Tenant Act (“RLTA”)¹ and other laws protecting tenants from unsafe or discriminatory practices. Moreover, the court’s decision denies innocent tenants named in eviction actions any opportunity to redact their records even under compelling circumstances, thereby putting tenants sued for unlawful detainer—a disproportionate number of whom are minority or female—at risk of becoming homeless.

II. Statement of the Case

Mr. Encarnación and Ms. Farías have capably addressed the key issues with the lower court’s opinion in their Petition for Review and

¹ For the Court’s reference, a copy of selected provisions from the RLTA is attached as an appendix hereto.

supplemental briefing, and the Tenants Union adopts their arguments and statement of the case herein.

The Tenants Union writes separately to encourage the Court to consider the very real impact this case has on access to justice for innocent tenants and the direct link between a blemished record and homelessness, and find that these concerns can in some cases outweigh the public interest in openness. Because a thorough, case-by-case determination can effectively protect both the interests asserted by the tenant and the public's interest in open administration of justice, the Tenants Union respectfully suggests the Court adopt the framework proposed herein for trial courts deciding motions to redact indices for unlawful detainer actions.

A. The impact on a tenant sued for unlawful detainer is severe.

The moment a landlord files an unlawful detainer action against a tenant, the tenant's record is marred; any future background check for this individual will show that she was sued for eviction, and her rental application will likely be rejected, regardless of the case's outcome.² Tenants who are nevertheless able to secure housing will often only succeed after several attempts, meaning additional application and screening fees, and will face restrictive terms.³ These tenants are also

² Declaration of Jonathan Grant ("Grant Decl.") at ¶ 12.

³ *Id.* at ¶ 13.
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often forced to find housing that is substandard.⁴ Their lives are significantly disrupted, and their often-limited financial resources are depleted in the process. Unfortunately, some tenants face even more serious consequences. A tenant who is unable to find housing may be relegated to temporary housing, emergency shelter, or even the street.⁵

B. The consequences of an eviction record incentivize moving out and undermine the policies behind the RLTA.

Because of the consequences of being named in an unlawful detainer action, Tenants Union counselors frequently inform their clients—people who are innocent of any wrongdoing—that it is in their best interests to refrain from asserting their rights under the RLTA or other laws and instead simply move out of problematic living situations.⁶ This means that tenants do not complain if retaliated or discriminated against, do not object when landlords evict them without proper notice, and have no recourse if landlords do not maintain livable or safe housing conditions.

III. Argument

A. The balance of interests weighs in favor of redaction.

Because the parties have fully briefed the other factors in the *Ishikawa* and GR 15 analyses, Tenants Union focuses on the important

⁴ *Id.* at ¶ 15.

⁵ *Id.*

⁶ *Id.* at ¶¶ 18, 26-27.

interests in protecting innocent tenants, enforcing public policies expressed in the RLTA and elsewhere, preventing homelessness, and avoiding a disparate impact on women and minorities.

1. Protecting the rights of innocent tenants under the RLTA is an important interest supporting redaction.

The Tenants Union regularly counsels clients who, though innocent of any wrongdoing, are penalized because of landlords' refusal to rent to anyone who has been named in an unlawful detainer action. The following are illustrative examples of actual Tenants Union clients:⁷

- A tenant living in Bellevue signed a lease with his landlord. A disabled senior citizen with considerable health problems, he was relieved to have found a stable place to call home. After just a few months, however, a bank foreclosed on the home he was renting and served him with an eviction lawsuit, even though he had met all of his obligations under his lease. With an eviction on his record, no one would rent to him. He ended up living in a nursing home rather than returning to self-sufficiency.
- A tenant from Tacoma had water leaking from a light fixture in her apartment, and her landlord refused to repair it. When the tenant insisted the leak be fixed, her landlord claimed her lease was void and sued to evict her. She was fully paid up in rent, and when the judge saw her signed copy of the lease, he dismissed the case. With the dismissed eviction record in the court file, the tenant was denied housing five times, and when she was accepted, she was forced to pay an extra \$680 security deposit because she was a "risk."
- A Section 8 tenant went all the way through the eviction process because a Housing Authority mistakenly withheld its portion of the rent due to an administrative error. The Housing

⁷ *Id.* at ¶¶ 19-25. There are many more common situations in which innocent tenants are forced to succumb to their landlords. *See id.* at ¶ 17.

Authority paid the full amount it owed and her tenancy was reinstated, but the unlawful detainer remains on her record.

- An Issaquah tenant's home was foreclosed by the bank. She moved out as required, but after she vacated the bank filed for eviction anyway. As has become common in the current market, the bank simply filed the action but did not pursue it. The court dismissed the eviction for lack of prosecution. With the dismissed eviction on her record, the tenant was denied housing time and time again, and was homeless for three years, sleeping on couches in unsafe environments and in hotels while she was also battling thyroid cancer. The tenant appealed to the screening company OnSite to clear her record based on the fact that she was never actually evicted; in denying her request, the company told her they "hear this story every day."
- A young Seattle woman who was a first-time renter signed a lease to share a single family house with roommates. When the living environment became unsafe her landlord allowed her off the lease, and she vacated on good terms. A year later, the landlord evicted the remaining roommates. The landlord's attorney included the young woman in the eviction lawsuit because her name was erroneously still listed on the lease. The woman asked the landlord to vacate the Writ of Restitution, and, regretting his mistake, the landlord actually did file to vacate the Writ just under her name. However, because tenant screening services typically only list the existence of an eviction filing rather than its outcome, the record still hampers the woman's ability to secure housing.
- A physically disabled tenant with two children in Whatcom County started a month-to-month rental agreement, with the landlord agreeing to make certain repairs prior to the move-in date. When the tenant moved in, it was apparent the landlord had reneged: repairs were needed to the defective refrigerator, exposed electrical outlet in what was to be the children's room, and defective plumbing. The tenant wrote a letter requesting the repairs, and the landlord responded with a 20-day notice to vacate, in violation of RLTA's prohibition against retaliation. When the tenant mailed the landlord a copy of the retaliation law with his full rent check, the landlord refused the check and served an unfiled Summons and Complaint. After consulting

with Tenants Union counselors, the tenant decided to vacate and protect his record rather than assert his defenses.

Reported cases contain many other examples of wrongfully filed unlawful detainer actions.⁸ Absent a means to redact their names from the party name indices, each of these tenants will continue to suffer serious harm as a result of these improper eviction actions.

Because of the severe impact on these tenants, ranging from outright rejection of their applications to additional fees and other restrictive conditions,⁹ Tenants Union counselors, despite their mission to improve housing conditions in this state, are in the untenable position of being forced to advise innocent clients *not to* enforce their rights, but instead to either accept the landlord's unlawful behavior or move out.¹⁰

⁸ See, e.g., *Foisy v. Wyman*, 83 Wn.2d 22, 28, 32; 515 P.2d 160 (1973) (recognizing, in unlawful detainer action, that inhabitability of premises may discharge tenant's duty to pay rent: "A disadvantaged tenant should not be placed in a position of agreeing to live in an uninhabitable premises."); *Hous. Auth. v. Newbigging*, 105 Wn. App. 178, 187 (2001) (tenant prevailed in unlawful detainer action based upon her "compelling" defense that she cured breach that was basis for action by paying landlord full amount of rent, late fees, and attorney fees owed and landlord accepted payment); *Port of Longview v. Int'l Materials, Ltd.*, 96 Wn. App. 431, 442; 979 P.2d 917 (1999) (landlord barred from bringing eviction suit in retaliation for tenant's critical public remarks); *Hous. Auth. of King County v. Saylor*, 19 Wn. App. 871, 874-75 (1978) (unlawful detainer action reversed where public housing authority failed to provide tenant constitutionally adequate notice and due process prior to commencing action); *Tipton v. Roberts et ux.*, 48 Wn. 391 (1908) (where tenant made repairs then paid landlord the amount of rent due less the cost of the repairs, landlord's retention of check constituted acceptance by the landlord and barred unlawful detainer action).

⁹ Grant Decl. at ¶ 13-14.

¹⁰ *Id.* at ¶ 18.

Rather than unwittingly propagate a commercial system that suppresses valid tenant complaints, the courts should be an arena in which an innocent tenant can stand up against a landlord who is breaking the law. There is therefore a significant interest in granting innocent tenants the option to seek redaction of their full names from the SCOMIS index.

2. The state has a significant interest in removing barriers to justice and enforcing the RLTA.

The impact of the lower court's decision goes beyond the individual tenants who cannot obtain housing because of their eviction records. Because the mere threat of a negative tenant screening report discourages tenants with meritorious defenses from asserting their rights in an unlawful detainer action, a blanket prohibition against redacting a tenant's name from the court indices hinders enforcement of the RLTA, subverting the public policies behind the Act.

The RLTA demonstrates the state's significant interest in adequate and safe housing for all its residents. In enacting the Act, the legislature found "that some tenants live in residences that are substandard and dangerous to their health and safety" and granted tenants the right to demand repair of any condition which "substantially endangers or impairs the health or safety of a tenant."¹¹ The types of deficiencies contemplated under this provision include structural problems, exposure of the

¹¹ RCW 59.18.115.

occupants to weather, plumbing and sanitation defects, lack of hot water, heating or ventilation issues, inadequate exits that raise the risk of injury to tenants, and conditions that increase the risk of fire.¹² The statute also states, “the landlord shall not take or threaten to take reprisals or retaliatory action against the tenants because of any good faith and lawful complaints . . . or . . . assertions or enforcement by the tenant of his or her rights and remedies under this chapter.”¹³ These provisions all represent the legislature’s intent to ensure that no tenant is forced to live in squalor or face retaliation from an unethical landlord.

While Washington tenants have a breadth of tenant protections under state law, the sad reality is that the threat a filed unlawful detainer action poses to a tenant’s future housing prospects prevents many of them from defending themselves. A system that allows tenants with valid defenses to nevertheless suffer severe consequences from an unlawful detainer action renders the protections in the RLTA illusory. As a result, not only the individual tenants, but the entire system set in place to ensure healthy and safe housing in the state suffers.

¹² *Id.*

¹³ RCW 59.18.240. Under RCW 49.60.030, tenants also have the right to be free from discrimination in obtaining housing. A tenant who was unlawfully evicted because of race or sexual orientation, for instance, is entitled to assert this defense in an unlawful detainer action. *See* RCW 59.18.400.

3. There are ample statutory bases for finding a compelling interest in this case.

The lower court erred in finding no statutory support for housing as a compelling interest. The legislatures of this state and of the federal government have reiterated numerous times the essential nature of housing and the high priority access to housing holds in this state and this nation.

a. The legislature has expressed an interest in preventing misleading information in screening reports from hindering access to housing.

In finding insufficient interest to justify redaction, the appellate court wrote, “no statute currently provides protection for the interest asserted by Encarnación and Fariás.”¹⁴ This statement is incorrect. In fact, the Washington legislature in 2012 expressed its concern over the unfair impact that tenant screening reports can have on tenants:

The legislature finds that residential landlords frequently use tenant screening reports in evaluating and selecting tenants for their rental properties. **These tenant screening reports purchased from tenant screening companies may contain misleading, incomplete, or inaccurate information, such as information relating to eviction or other court records.** It is challenging for tenants to dispute errors until after they apply for housing and are turned down, at which point lodging disputes are seldom worthwhile.¹⁵

It also asserted that it is “the policy of the state for prospective tenants to be informed of their rights to dispute information they feel is

¹⁴ *Hundtofte v. Encarnación*, 169 Wn. App. 498, 517, 280 P.3d 513 (2012).

¹⁵ Laws of 2012, ch. 41, § 1 (emphasis added).

inaccurate in order to help prevent denials of housing based upon incorrect information.”¹⁶

While the RLTA did not address redacting tenant names from the SCOMIS indexing system, it reflected a clear legislative concern for the adverse impact of “**misleading, incomplete or inaccurate information relating to eviction**” on tenants and the need to “**prevent denials of housing based on incorrect information.**” The presence of an unlawful detainer on a tenant’s record can paint the tenant in a false light, misleading prospective landlords into believing the tenant must have been at fault. This incorrect assumption then serves as a basis for denying that tenant housing opportunities. The appellate court’s ruling therefore runs contrary to established state policy.

b. The state and federal legislatures have stated that access to housing is a compelling interest.

The ruling that there is not a compelling interest to override the presumption of openness also ignores strong public policy in favor of access to housing. The Washington legislature has reaffirmed the importance of access to housing on many occasions since 1939 when it passed the Housing Authorities Law and the Housing Cooperation Law (declaring public interest in eradicating the shortage of safe, sanitary, and

¹⁶ Laws of 1991 ch. 194, § 1.

affordable housing for low-income residents).¹⁷ For instance, in the 1983 act establishing authority for local jurisdictions to create public housing authorities, the legislature proclaimed,

It is declared to be the public policy of the state and a recognized governmental function to assist in making affordable and decent housing available throughout the state and by so doing to contribute to the general welfare. Decent housing for the people of our state is a most important public concern.¹⁸

Similarly, in the Housing Policy Act of 2005, the legislature found that “Housing is of vital statewide importance to the health, safety, and welfare of the residents of the state”; that “[r]educing homelessness and moving individuals and families toward stable, affordable housing is of vital statewide importance”; and that “[r]esidents must have a choice of housing opportunities within the community where they choose to live.”¹⁹

Congress has also declared in the United States Housing Act that access to safe, affordable housing is a national priority, stating, “our Nation should promote the goal of providing decent and affordable housing for all citizens”²⁰ The Supreme Court recognized that a specific purpose of this law is “to provide a decent home and a suitable

¹⁷ See RCW 35.82.010 and 35.83.010.

¹⁸ RCW 43.180.010.

¹⁹ RCW 43.185B.005.

²⁰ 42 U.S.C. 1437.

living environment for every American family that lacks the financial means of providing such a home without governmental aid.”²¹

In light of these clear policy statements, the lower court erred in holding there is no statutory basis for a compelling interest in access to housing or in tenants’ protection from false, incomplete, or misleading information in screening reports.

4. Preventing homelessness is a compelling interest.

The appellate court’s finding of no compelling interest also overlooks the direct link between access to housing and preventing homelessness. In 2012, there were 8,830 homeless persons living in King County alone.²² Solid Ground, an organization which provides housing counseling and homelessness services, serves this population and has collected statistics demonstrating this direct link.²³

The creation of a permanent eviction record made publicly available on the SCOMIS database is one of the primary reasons why many of Solid Ground’s clients are denied housing and their homelessness

²¹ *Thorpe v. Hous. Auth. of City of Durham*, 393 U.S. 268, 281, 89 S. Ct. 518, 525-26, 21 L. Ed. 2d 474 (1969) (internal citations and quotations omitted).

²² Seattle/King County Coalition on Homelessness, Summary of the 2012 Unsheltered Homeless Count in Selected Areas of King County, http://www.homelessinfo.org/what_we_do/one_night_count/2012_results.php.

²³ The Executive Director of Tenants Union previously worked for several years as a counselor at Solid Ground. Grant Decl. at ¶ 5.

is perpetuated.²⁴ For Solid Ground's JourneyHome program, a housing assistance program for homeless families with children in King County, a 2008 survey showed that a staggering 89% of clients reported having an eviction on their record.²⁵ In the Family Shelter program, which provides emergency shelter for families with children, almost a third of clients had evictions on their records.²⁶

Tenants Union clients with unjust evictions listed in the court index have also experienced numerous obstacles directly related to those records, including loss of employment, medical problems, being forced to return to an abusive relationship, and frequently homelessness.²⁷ Without stable housing, some former tenants lose their employment, while others experience deteriorating health.²⁸ Homeless individuals face reduced life expectancy, rape and sexual abuse, vulnerability to being the target of crime, and death.²⁹ Those that escape living on the streets may be forced to rent substandard housing infested with toxic mold, leaking roofs, and

²⁴ *Id.* at ¶ 11.

²⁵ *Id.* at ¶ 11, n.1.

²⁶ *Id.* at ¶ 11, n. 2.

²⁷ *Id.* at ¶ 28.

²⁸ *Id.*

²⁹ *Id.* See also National Homelessness Organization, Hate, Violence, and Death on Main Street USA 2008: A Report on Hate Crimes and Violence Against People Experiencing Homelessness 2008 (August 2009) at 19, http://www.nationalhomeless.org/publications/hatecrimes/hate_report_2008.pdf.

deficient heating and utility services.³⁰ Some families have had to separate from the family member with the eviction record to qualify for housing, and some children who are homeless or living in substandard housing struggle to keep up with school work or stop attending school altogether.³¹

The negative effects of an eviction record are far more than financial. Innocent tenants who are unjustly removed from their homes and are rejected from future housing opportunities are at risk of becoming homeless. The Court should not permit reluctance to modify a court index to overpower the interest in the health and safety of these individuals.

5. The disparate impact of unfair eviction actions on vulnerable communities heightens the importance of the interest in housing access.

A blanket prohibition against redacting the court's indices even in the most compelling circumstances harms innocent tenants and dissuades those with meritorious defenses from asserting their rights. It also disproportionately impacts minorities, people in poverty, families with children, and other vulnerable members of society. Available research indicates that the consequences of unlawful detainer actions disproportionately affect marginalized populations. A 2010 study in King County found, "Across 72 zip codes in King County a significant

³⁰ *Id.* at ¶ 29.

³¹ *Id.*

correlation exists between a tenant's race, as identified in the 2000 U.S. Census, and [unlawful detainer] filing rates."³² The results are the same across the country.³³

In King County, the result of this disparity is clear. In a 2008 survey of clients of Solid Ground's JourneyHome program—89% of whom had evictions on their records—53% were African-American, 85% were women, and 14% were Latin American.³⁴ Its Family Shelter program clients—a third of whom had eviction records—were 35.4% African-American, 5.2% Latin American, and 58% women.³⁵ In its 2012

³² Gehri, Leah M., John Lee, Logan Micheel, and Damian Rainey, *Tenant Screening Practices: Evidence of Disparate Impact in King County, Washington*, University of Washington, study conducted by UW Bothell Graduate Students for Columbia Legal Services (2010) (copy on file with Tenants Union).

³³ In a Milwaukee study, researchers found women from black neighborhoods were evicted at alarmingly high rates. Mathew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIOLOGY, 88 (2012). The study concluded that women from predominantly black neighborhoods are disproportionately represented in court eviction records compared to their numbers in the general population, and that these women "experienced the mark and the material hardship of eviction." *Id.* at 121. In a New Haven, Connecticut, study, researchers found that "those who are evicted are typically poor, women and minorities." Michael D. Gottesman, "End Game: Understanding the Bitter End of Evictions" (2007), *Yale Law School Student Scholarship Papers*, Paper 48, at 41. Another study aggregating available data from across the country found that low-income and minority tenants are evicted at disproportionately higher rates. Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUS. POL'Y DEBATE 461 (2003). Another study found that in the Michigan area, "women who had experienced recent or ongoing domestic violence were far more likely to face eviction than other women." ACLU Women's Rights Project, *Domestic Violence and Homelessness Fact Sheet*, <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>.

³⁴ Grant Decl. at ¶ 9.

³⁵ *Id.* at ¶ 10.
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homelessness survey, the Seattle/King County Coalition on Homelessness found that 17% of homeless adults in shelter and transitional housing reported having experienced domestic violence.³⁶ Of the individuals in either emergency shelters or transitional housing (*i.e.*, not on the street), 3,127 were members of families with children—or 50% of those present.³⁷

A categorical ban on redaction in all cases needlessly perpetuates cycles of discrimination and poverty. The courts should be an arena that protects the rights of these disempowered groups, not a venue they must avoid to protect their ability to find housing.

6. The Department’s technical argument does not reflect an interest that outweighs the critical public importance of housing.

In its Supplemental Brief, the Department of Judicial Administration (“Department”) states it does not argue the *Ishikawa* factors here or object to the redaction on that basis; instead, it indicates it is incapable of redacting the index because such an alteration would make the record “irretrievable” and would therefore destroy it.³⁸ In other words, the Department has thrown up its hands in the face of a technological hurdle, and would rather permit a mark to remain on the records of

³⁶ Seattle/King County Coalition on Homelessness, *supra* note 22.

³⁷ *Id.*

³⁸ Supplemental Brief of King County Department of Judicial Administration at 3-4.

innocent tenants, jeopardizing their access to housing, than adapt its electronic system. The Department's argument is a red herring—as technology changes, procedures must adapt—and distracts from the serious ramifications of its position. This Court should not permit this insistence on form over function, especially when only the index is at stake, and the actual court file is not altered in any way.

B. Courts can protect innocent tenants without creating a blanket rule because not all tenants are similarly situated.

The Court of Appeals indicated that the circumstances in this case “cannot reasonably be distinguished from those of any other defendant in an unlawful detainer action who is not ultimately evicted.”³⁹ In fact, as the facts of this case and the other cases described above indicate, the actual circumstances arising in unlawful detainer actions vary dramatically, and in certain instances innocent tenants should have the opportunity to redact their names from court indices.

The Tenants Union suggests that the Supreme Court take this opportunity to articulate clear standards for how the case-by-case analysis should proceed. The concerns raised by the parties and the court below can be satisfied if (1) the burden of showing redaction is proper remains on the tenant; (2) interested parties are notified and given the opportunity

³⁹ *Hundtofte*, 169 Wn. App. at 516.

to oppose redaction; and (3) the court evaluates the evidence in light of its duty to protect court records and ensure open administration of justice.

1. Courts should decide redaction motions on a case-by-case basis, with the burden on the tenant.

The Supreme Court in *Ishikawa*, as well as the Court of Appeals in this case, appropriately stated that requests to restrict access to court records and information must be decided on a case-by-case basis.⁴⁰ Any tenant-defendant in an unlawful detainer action seeking to substitute her initials for her full name in the SCOMIS case summary records should be required to demonstrate by a preponderance of the evidence that there are compelling reasons for redaction, such as that she had a meritorious defense. In addition, the tenant must prove that the unlawful detainer record at issue is actually causing her harm or that such harm is imminent. Many tenants will not be able to meet this significant burden; however, redaction should be available for those who can.

2. Notice of a tenant's motion to redact should be given to landlords and other interested parties.

The Court of Appeals was concerned that the factual inquiry at the trial court level was not sufficiently robust, as no other parties appeared to contest the assertions of the tenants regarding their innocence.⁴¹ Because

⁴⁰ *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716; *Hundtofte*, 169 Wn. App. at 511.

⁴¹ *Hundtofte*, 169 Wn. App. at 516.

the adversary system elicits the truth most often when multiple versions of events are presented, it is appropriate to notify the plaintiff-landlord and any other interested parties of the motion to redact the SCOMIS index. If parties with opposing interests are permitted to weigh in, the court's concern about hearing from the other side should be satisfied.

3. The Court has its own interest in ensuring the open administration of justice.

Even if other parties do not weigh in, the fact that a motion to redact is “unopposed” should not bar the court from granting the privacy protection requested. Washington courts have the independent duty and obligation to protect the open administration of justice and the integrity of the judicial branch.⁴² It is incumbent on the court hearing such a motion to independently probe the facts and circumstances, by requiring sufficient (and substantial) evidence from the tenants to justify the relief sought. The trial court will be able to evaluate the credibility of the witnesses, examine any documentary evidence, and review the entire court file. It will therefore be well-positioned to determine if redacting the SCOMIS index, while preserving the underlying court file, is the least restrictive means of protecting the tenant's interest in access to housing.

Contrary to the Court of Appeals' warning, the trial court's careful analysis of the *Ishikawa* factors as they applied to Mr. Encarnación and

⁴² *State v. Duckett*, 141 Wn. App. 797, 804, 173 P.3d 948 (2007).

Ms. Farías do not lead to a blanket rule permitting redaction for all tenants whose unlawful detainers are dismissed. The trial court specifically found that the tenants “were not culpable and did nothing improper to cause their removal from the property,” and that they “raised a meritorious defense.”⁴³ Presumably such a ruling would only provide a precedent if the same findings were found in a future case. However, ironically, in an attempt to avoid allowing redaction for a class of individuals, the Court of Appeals created a blanket rule *precluding* redaction for these individuals, regardless of their circumstances, thus perpetuating the unjust and unfair tarring of tenants who should not have been named in unlawful detainer actions. The Supreme Court now has the opportunity to remove this blanket rule, and allow courts to balance the interests and do justice in individual cases.

IV. Conclusion

Compelling interests in protecting innocent tenants, preventing homelessness, and promoting access to justice and legislative policies enshrined in the RLTA can outweigh the interest in full access to court records. The Court should allow this balancing on a case-by-case basis, to prevent injustice and to further compelling public policies hamstrung by the decision below.

⁴³ *Hundtofte*, 169 Wn. App. at 516.

DATED this 14th day of May, 2013.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Brief of *Amicus Curiae* Tenants Union of Washington State by electronic mail on the 14th day of May, 2013, to the following counsel of record at the following addresses:

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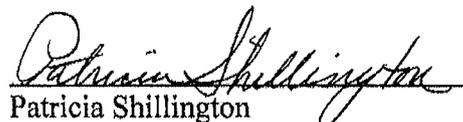
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A handwritten signature in cursive script, reading "Patricia Shillington", written over a horizontal line.

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APPENDIX

RCW 59.18.030
Definitions.

As used in this chapter:

(1) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of RCW 9A.72.085 by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW 59.18.060 that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(2) "Distressed home" has the same meaning as in RCW 61.34.020.

(3) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(4) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(5) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes.

(6) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(7) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

(8) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

(9) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

(10) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(11) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(12) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(13) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(14) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

(15) "Prospective landlord" means a landlord or a person who advertises, solicits, offers, or otherwise holds a dwelling unit out as available for rent.

(16) "Prospective tenant" means a tenant or a person who has applied for residential housing that is governed under this chapter.

(17) "Qualified inspector" means a United States department of housing and urban development certified inspector; a Washington state licensed home inspector; an American society of home inspectors certified inspector; a private inspector certified by the national association of housing and redevelopment officials, the American association of code enforcement, or other comparable professional association as approved by the local municipality; a municipal code enforcement officer; a Washington licensed structural engineer; or a Washington licensed architect.

(18) "Reasonable attorneys' fees," where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(19) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(20) A "single-family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(21) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(22) "Tenant screening" means using a consumer report or other information about a prospective tenant in deciding whether to make or accept an offer for residential rental property to or from a prospective tenant.

(23) "Tenant screening report" means a consumer report as defined in RCW 19.182.010 and any other information collected by a tenant screening service.

[2012 c 41 § 2; 2011 c 132 § 1. Prior: 2010 c 148 § 1; 2008 c 278 § 12; 1998 c 276 § 1; 1973 1st ex.s. c 207 § 3.]

Notes:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding -- 2012 c 41: See note following RCW 59.18.257.

*** CHANGE IN 2013 *** (SEE 1647-S.SL) ***

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition endangers or impairs the health or safety of the tenant;

(2) Maintain the structural components including, but not limited to, the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components, in reasonably good repair so as to be usable;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single-family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him or her in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weathertight condition;

(9) Except in the case of a single-family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 43.44.110. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW 43.44.110(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

(i) Whether the smoke detection device is hard-wired or battery operated;

(ii) Whether the building has a fire sprinkler system;

(iii) Whether the building has a fire alarm system;

(iv) Whether the building has a smoking policy, and what that policy is;

(v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;

(vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants;
and

(vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed;

(12) Provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. Landlords may obtain the information from the department's web site or, if requested by the landlord, the department must mail the information to the landlord in a printed format. When developing or changing the information, the department of health must include representatives of landlords in the development process. The information must be provided by the landlord to new tenants at the time the lease or rental agreement is signed;

(13) The landlord and his or her agents and employees are immune from civil liability for failure to comply with subsection (12) of this section except where the landlord and his or her agents and employees knowingly and intentionally do not comply with subsection (12) of this section; and

(14) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes in writing, which must be either (a) delivered personally to the tenant or (b) mailed to the tenant and conspicuously posted on the premises. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent. Regardless of such designation, any owner who resides outside the state and who violates a provision of this chapter is deemed to have submitted himself or herself to the jurisdiction of the courts of this state and personal service of any process may be made on the owner outside the state with the same force and effect as personal service within the state. Any summons or process served out-of-state must contain the same information and be served in the same manner as personal service of summons or process served within the state, except the summons or process must require the party to appear and answer within sixty days after such personal service out of the state. In an action for a violation of this chapter that is filed under chapter 12.40 RCW, service of the notice of claim outside the state must contain the same information and be served in the same manner as required under chapter 12.40 RCW, except the date on which the party is required to appear must not be less than sixty days from the date of service of the notice of claim.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his or her family, invitee, or other person acting under his or her control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

[2011 c 132 § 2; 2005 c 465 § 2; 2002 c 259 § 1; 1991 c 154 § 2; 1973 1st ex.s. c 207 § 6.]

Notes:

Finding -- 2005 c 465: "The legislature finds that residents of the state face preventable exposures to mold in their homes, apartments, and schools. Exposure to mold, and the toxins they produce, have been found to have adverse health effects, including loss of memory and impairment of the ability to think coherently and function in a job, and may cause fatigue, nausea, and headaches.

As steps can be taken by landlords and tenants to minimize exposure to indoor mold, and as the reduction of exposure to mold in buildings could reduce the rising number of mold-related claims submitted to insurance companies and increase the availability of coverage, the legislature supports providing tenants and landlords with information designed to minimize the public's exposure to mold." [2005 c 465 § 1.]

RCW 59.18.070

Landlord — Failure to perform duties — Notice from tenant — Contents — Time limits for landlord's remedial action.

If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him or her by law, deliver written notice to the person designated in RCW 59.18.060(14), or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. The landlord shall commence remedial action after receipt of such 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;

(2) Not more than seventy-two hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and

(3) Not more than ten days in all other cases.

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, including the unavailability of financing, the landlord shall remedy the defective condition as soon as possible.

[2010 c 8 § 19018; 1989 c 342 § 4; 1973 1st ex.s. c 207 § 7.]

RCW 59.18.080

Payment of rent condition to exercising remedies — Exceptions.

The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded him or her under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing.

[2010 c 8 § 19019; 1973 1st ex.s. c 207 § 8.]

(1) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the appropriate governmental agency requires that the tenant vacate the premises, the tenant also shall recover:

(a) The entire amount of any deposit prepaid by the tenant; and

(b) All prepaid rent.

(3)(a) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling will be condemned or will be unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord, who knew or should have known of the existence of these conditions, shall be required to pay relocation assistance to the displaced tenants except that:

(i) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and directly results from conditions caused by a tenant's or any third party's illegal conduct without the landlord's prior knowledge;

(ii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and results from conditions arising from a natural disaster such as, but not exclusively, an earthquake, tsunami, wind storm, or hurricane; and

(iii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which a condemnation affects one or more dwelling units and the tenant's displacement is a direct result of the acquisition of the property by eminent domain.

(b) Relocation assistance provided to displaced tenants under this subsection shall be the greater amount of two thousand dollars per dwelling unit or three times the monthly rent. In addition to relocation assistance, the landlord shall be required to pay to the displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.

(c) The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent to displaced tenants within seven days of the governmental agency sending notice of the condemnation, eviction, or displacement order to the landlord. The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent either by making individual payments by certified check to displaced tenants or by providing a certified check to the governmental agency ordering condemnation, eviction, or displacement, for distribution to the displaced tenants. If the landlord fails to complete payment of relocation assistance within the period required under this subsection, the city, town, county, or municipal corporation may advance the cost of the relocation assistance payments to the displaced tenants.

(d) During the period from the date that a governmental agency responsible for the enforcement of a building, housing, or other appropriate code first notifies the landlord of conditions that violate applicable codes, statutes, ordinances, or regulations to the time that relocation assistance payments are paid to eligible tenants, or the conditions leading to the notification are corrected, the landlord may not:

(i) Evict, harass, or intimidate tenants into vacating their units for the purpose of avoiding or diminishing application of this section;

(ii) Reduce services to any tenant; or

(iii) Materially increase or change the obligations of any tenant, including but not limited to any rent increase.

(e) Displaced tenants shall be entitled to recover any relocation assistance, prepaid deposits, and prepaid rent required by (b) of this subsection. In addition, displaced tenants shall be entitled to recover any actual damages sustained by them as a result of the condemnation, eviction, or displacement that exceed the amount of relocation assistance that is payable. In any action brought by displaced tenants to recover any payments or damages required or authorized by this subsection (3)(e) or (c) of this subsection that are not paid by the landlord or advanced by the city, town, county, or municipal corporation, the displaced tenants shall also be entitled to recover their costs of suit or arbitration and reasonable attorneys' fees.

(f) If, after sixty days from the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants, a landlord has failed to repay the amount of relocation assistance advanced by the city, town,

county, or municipal corporation under (c) of this subsection, then the city, town, county, or municipal corporation shall assess civil penalties in the amount of fifty dollars per day for each tenant to whom the city, town, county, or municipal corporation has advanced a relocation assistance payment.

(g) In addition to the penalties set forth in (f) of this subsection, interest will accrue on the amount of relocation assistance paid by the city, town, county, or municipal corporation for which the property owner has not reimbursed the city, town, county, or municipal corporation. The rate of interest shall be the maximum legal rate of interest permitted under RCW 19.52.020, commencing thirty days after the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants.

(h) If the city, town, county, or municipal corporation must initiate legal action in order to recover the amount of relocation assistance payments that it has advanced to low-income tenants, including any interest and penalties under (f) and (g) of this subsection, the city, town, county, or municipal corporation shall be entitled to attorneys' fees and costs arising from its legal action.

(4) The governmental agency that has notified the landlord that a dwelling will be condemned or will be unlawful to occupy shall notify the displaced tenants that they may be entitled to relocation assistance under this section.

(5) No payment received by a displaced tenant under this section may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW.

(6)(a) A person whose living arrangements are exempted from this chapter under RCW 59.18.040(3) and who has resided in or occupied one or more dwelling units within a hotel, motel, or other place of transient lodging for thirty or more consecutive days with the knowledge and consent of the owner of the hotel, motel, or other place of transient lodging, or any manager, clerk, or other agent representing the owner, is deemed to be a tenant for the purposes of this section and is entitled to receive relocation assistance under the circumstances described in subsection (2) or (3) of this section except that all relocation assistance and other payments shall be made directly to the displaced tenants.

(b) An interruption in occupancy primarily intended to avoid the application of this section does not affect the application of this section.

(c) An occupancy agreement, whether oral or written, in which the provisions of this section are waived is deemed against public policy and is unenforceable.

[2009 c 165 § 1; 2005 c 364 § 2; 1989 c 342 § 13.]

Notes:

Purpose -- 2005 c 364: "The people of the state of Washington deserve decent, safe, and sanitary housing. Certain tenants in the state of Washington have remained in rental housing that does not meet the state's minimum standards for health and safety because they cannot afford to pay the costs of relocation in advance of occupying new, safe, and habitable housing. In egregious cases, authorities have been forced to condemn property when landlords have failed to remedy building code or health code violations after repeated notice, and, as a result, families with limited financial resources have been displaced and left with nowhere to go.

The purpose of this act is to establish a process by which displaced tenants would receive funds for relocation from landlords who fail to provide safe and sanitary housing after due notice of building code or health code violations. It is also the purpose of this act to provide enforcement mechanisms to cities, towns, counties, or municipal corporations including the ability to advance relocation funds to tenants who are displaced as a result of a landlord's failure to remedy building code or health code violations and later to collect the full amounts of these relocation funds, along with interest and penalties, from landlords." [2005 c 364 § 1.]

Construction -- 2005 c 364: "The powers and authority conferred by this act are in addition and supplemental to powers or authority conferred by any other law or authority, and nothing contained herein shall be construed to preempt any local ordinance requiring

relocation assistance to tenants displaced by a landlord's failure to remedy building code or health code violations." [2005 c 364 § 4.]

RCW 59.18.090

Landlord's failure to remedy defective condition — Tenant's choice of actions.

If, after receipt of written notice, and expiration of the applicable period of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

(1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he or she shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280;

(2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or

(3) Pursue other remedies available under this chapter.

[2010 c 8 § 19020; 1973 1st ex.s. c 207 § 9.]

RCW 59.18.100

Landlord's failure to carry out duties — Repairs effected by tenant — Procedure — Deduction of cost from rent — Limitations.

(1) If, at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his or her designated agent by first-class mail or in person a good faith estimate by the tenant of the cost to perform the repairs necessary to correct the defective condition if the repair is to be done by licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, the cost if the repair is to be done by responsible persons capable of performing such repairs. Such estimate may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070. The remedy provided in this section shall not be available for a landlord's failure to carry out the duties in RCW 59.18.060 (9) and (14). If the tenant utilizes this section for repairs pursuant to RCW 59.18.060(6), the tenant shall promptly provide the landlord with a key to any new or replaced locks. The amount the tenant may deduct from the rent may vary from the estimate, but cannot exceed the two-month limit as described in subsection (2) of this section.

(2) If the landlord fails to commence remedial action of the defective condition within the applicable time period after receipt of notice and the estimate from the tenant, the tenant may contract with a licensed or registered person, or with a responsible person capable of performing the repair if no license or registration is required, to make the repair. Upon the completion of the repair and an opportunity for inspection by the landlord or his or her designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing two month's rental of the tenant's unit per repair. When the landlord must commence to remedy the defective condition within ten days as provided in RCW 59.18.070 (3), the tenant cannot contract for repairs for ten days after notice or two days after the landlord receives the estimate, whichever is later. The total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing two month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within the applicable time period, and if the cost of repair does not exceed one month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, and if the tenant has given notice under RCW 59.18.070, although no estimate shall be necessary under this subsection, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent. Repairs under this subsection are limited to defects within the leased premises. The cost per repair shall not exceed one month's rent of the unit and the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one month's rent of the unit.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the workers' compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of *RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself or herself in return for cash payment or a reasonable reduction in rent. Any such agreement does not alter the landlord's obligations under this chapter.

[2011 c 132 § 5; 2010 c 8 § 19021; 1989 c 342 § 5; 1987 c 185 § 35; 1973 1st ex.s. c 207 § 10.]

Notes:

***Reviser's note:** RCW 60.04.010 and 60.04.040 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Intent -- Severability -- 1987 c 185: See notes following RCW 51.12.130.

(1) The legislature finds that some tenants live in residences that are substandard and dangerous to their health and safety and that the repair and deduct remedies of RCW 59.18.100 may not be adequate to remedy substandard and dangerous conditions. Therefore, an extraordinary remedy is necessary if the conditions substantially endanger or impair the health and safety of the tenant.

(2)(a) If a landlord fails to fulfill any substantial obligation imposed by RCW 59.18.060 that substantially endangers or impairs the health or safety of a tenant, including (i) structural members that are of insufficient size or strength to carry imposed loads with safety, (ii) exposure of the occupants to the weather, (iii) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (iv) lack of water, including hot water, (v) heating or ventilation systems that are not functional or are hazardous, (vi) defective, hazardous, or missing electrical wiring or electrical service, (vii) defective or inadequate exits that increase the risk of injury to occupants, and (viii) conditions that increase the risk of fire, the tenant shall give notice in writing to the landlord, specifying the conditions, acts, omissions, or violations. Such notice shall be sent to the landlord or to the person or place where rent is normally paid.

(b) If after receipt of the notice described in (a) of this subsection the landlord fails to remedy the condition or conditions within a reasonable amount of time under RCW 59.18.070, the tenant may request that the local government provide for an inspection of the premises with regard to the specific condition or conditions that exist as provided in (a) of this subsection. The local government shall have the appropriate government official, or may designate a public or disinterested private person or company capable of conducting the inspection and making the certification, conduct an inspection of the specific condition or conditions listed by the tenant, and shall not inspect nor be liable for any other condition or conditions of the premises. The purpose of this inspection is to verify, to the best of the inspector's ability, whether the tenant's listed condition or conditions exist and substantially endanger the tenant's health or safety under (a) of this subsection; the inspection is for the purposes of this private civil remedy, and therefore shall not be related to any other governmental function such as enforcement of any code, ordinance, or state law.

(c) The local government or its designee, after receiving the request from the tenant to conduct an inspection under this section, shall conduct the inspection and make any certification within a reasonable amount of time not more than five days from the date of receipt of the request. The local government or its designee may enter the premises at any reasonable time to do the inspection, provided that he or she first shall display proper credentials and request entry. The local government or its designee shall whenever practicable, taking into consideration the imminence of any threat to the tenant's health or safety, give the landlord at least twenty-four hours notice of the date and time of inspection and provide the landlord with an opportunity to be present at the time of the inspection. The landlord shall have no power or authority to prohibit entry for the inspection.

(d) The local government or its designee shall certify whether the condition or the conditions specified by the tenant do exist and do make the premises substantially unfit for human habitation or can be a substantial risk to the health and safety of the tenant as described in (a) of this subsection. The certification shall be provided to the tenant, and a copy shall be included by the tenant with the notice sent to the landlord under subsection (3) of this section. The certification may be appealed to the local board of appeals, but the appeal shall not delay or preclude the tenant from proceeding with the escrow under this section.

(e) The tenant shall not be entitled to deposit rent in escrow pursuant to this section unless the tenant first makes a good faith determination that he or she is unable to repair the conditions described in the certification issued pursuant to subsection (2)(d) of this section through use of the repair remedies authorized by RCW 59.18.100.

(f) If the local government or its designee certifies that the condition or conditions specified by the tenant exist, the tenant shall then either pay the periodic rent due to the landlord or deposit all periodic rent then called for in the rental agreement and all rent thereafter called for in the rental agreement into an escrow account maintained by a person authorized by law to set up and maintain escrow accounts, including escrow companies under chapter 18.44 RCW, financial institutions, or attorneys, or with the clerk of the court of the district or superior court where the property is located. These depositories are hereinafter referred to as "escrow." The tenant shall notify the landlord in writing of the deposit by mailing the notice postage prepaid by first-class mail or by delivering the notice to the landlord promptly but not more than twenty-four hours after the deposit.

(g) This section, when elected as a remedy by the tenant by sending the notice under subsection (3) of this section, shall be the exclusive remedy available to the tenant regarding defects described in the certification under subsection (2)(d) of this section: PROVIDED, That the tenant may simultaneously commence or pursue an action in an appropriate court, or at arbitration if so agreed, to determine past, present, or future diminution in rental value of the premises due to any defective conditions.

(3) The notice to the landlord of the rent escrow under this section shall be a sworn statement by the tenant in substantially the following form:

preclude the tenant from proceeding with the escrow under this section.

(e) The tenant shall not be entitled to deposit rent in escrow pursuant to this section unless the tenant first makes a good faith determination that he or she is unable to repair the conditions described in the certification issued pursuant to subsection (2)(d) of this section through use of the repair remedies authorized by RCW 59.18.100.

(f) If the local government or its designee certifies that the condition or conditions specified by the tenant exist, the tenant shall then either pay the periodic rent due to the landlord or deposit all periodic rent then called for in the rental agreement and all rent thereafter called for in the rental agreement into an escrow account maintained by a person authorized by law to set up and maintain escrow accounts, including escrow companies under chapter 18.44 RCW, financial institutions, or attorneys, or with the clerk of the court of the district or superior court where the property is located. These depositories are hereinafter referred to as "escrow." The tenant shall notify the landlord in writing of the deposit by mailing the notice postage prepaid by first-class mail or by delivering the notice to the landlord promptly but not more than twenty-four hours after the deposit.

(g) This section, when elected as a remedy by the tenant by sending the notice under subsection (3) of this section, shall be the exclusive remedy available to the tenant regarding defects described in the certification under subsection (2)(d) of this section: PROVIDED, That the tenant may simultaneously commence or pursue an action in an appropriate court, or at arbitration if so agreed, to determine past, present, or future diminution in rental value of the premises due to any defective conditions.

(3) The notice to the landlord of the rent escrow under this section shall be a sworn statement by the tenant in substantially the following form:

NOTICE TO LANDLORD OF RENT ESCROW

Name of tenant:

Name of landlord:

Name and address of escrow:

Date of deposit of rent into escrow:

Amount of rent deposited into escrow:

The following condition has been certified by a local building official to substantially endanger, impair, or affect the health or safety of a tenant:

That written notice of the conditions needing repair was provided to the landlord on . . . , and . . . days have elapsed and the repairs have not been made.

.....
(Sworn Signature)

(4) The escrow shall place all rent deposited in a separate rent escrow account in the name of the escrow in a bank or savings and loan association domiciled in this state. The escrow shall keep in a separate docket an account of each deposit, with the name and address of the

tenant, and the name and address of the landlord and of the agent, if any.

(5)(a) A landlord who receives notice that the rent due has been deposited with an escrow pursuant to subsection (2) of this section may:

(i) Apply to the escrow for release of the funds after the local government certifies that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly repaired. The escrow shall release the funds to the landlord less any escrow costs for which the tenant is entitled to reimbursement pursuant to this section, immediately upon written receipt of the local government certification that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly completed.

(ii) File an action with the court and apply to the court for release of the rent on the grounds that the tenant did not comply with the notice requirement of subsection (2) or (3) of this section. Proceedings under this subsection shall be governed by the time, service, and filing requirements of RCW 59.18.370 regarding show cause hearings.

(iii) File an action with the court and apply to the court for release of the rent on the grounds that there was no violation of any obligation imposed upon the landlord or that the condition has been remedied.

(iv) This action may be filed in any court having jurisdiction, including small claims court. If the tenant has vacated the premises or if the landlord has failed to commence an action with the court for release of the funds within sixty days after rent is deposited in escrow, the tenant may file an action to determine how and when any rent deposited in escrow shall be released or disbursed. The landlord shall not commence an unlawful detainer action for nonpayment of rent by serving or filing a summons and complaint if the tenant initially pays the rent called for in the rental agreement that is due into escrow as provided for under this section on or before the date rent is due or on or before the expiration of a three-day notice to pay rent or vacate and continues to pay the rent into escrow as the rent becomes due or prior to the expiration of a three-day notice to pay rent or vacate; provided that the landlord shall not be barred from commencing an unlawful detainer action for nonpayment of rent if the amount of rent that is paid into escrow is less than the amount of rent agreed upon in the rental agreement between the parties.

(b) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, although any counterclaim shall be dismissed without prejudice if the court or arbitrator determines that the tenant failed to follow the notice requirements contained in this section. Any counterclaim can only claim diminished rental value related to conditions specified by the tenant in the notice required under subsection (3) of this section. This limitation on the tenant's right to counterclaim shall not affect the tenant's right to bring his or her own separate action. A trial shall be held within sixty days of the date of filing of the landlord's or tenant's complaint.

(c) The tenant shall be entitled to reimbursement for any escrow costs or fees incurred for setting up or maintaining an escrow account pursuant to this section, unless the tenant did not comply with the notice requirements of subsection (2) or (3) of this section. Any escrow fees that are incurred for which the tenant is entitled to reimbursement shall be deducted from the rent deposited in escrow and remitted to the tenant at such time as any rent is released to the landlord. The prevailing party in any court action or arbitration brought under this section may also be awarded its costs and reasonable attorneys' fees.

(d) If a court determines a diminished rental value of the premises, the tenant may pay the rent due based on the diminished value of the premises into escrow until the landlord makes the necessary repairs.

(6)(a) If a landlord brings an action for the release of rent deposited, the court may, upon application of the landlord, release part of the rent on deposit for payment of the debt service on the premises, the insurance premiums for the premises, utility services, and repairs to the rental unit.

(b) In determining whether to release rent for the payments described in (a) of this subsection, the court shall consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the cost of operating those units, and the costs which may be required to remedy the condition contained in the notice. The court shall also consider whether the expenses are due or have already been paid, whether the landlord has other financial resources, or whether the landlord or tenant will suffer irreparable damage. The court may request the landlord to provide additional security, such as a bond, prior to authorizing release of any of the funds in escrow.

RCW 59.18.240

Reprisals or retaliatory actions by landlord — Prohibited.

So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant; or

(2) Assertions or enforcement by the tenant of his or her rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

- (a) Eviction of the tenant;
- (b) Increasing the rent required of the tenant;
- (c) Reduction of services to the tenant; and
- (d) Increasing the obligations of the tenant.

[2010 c 8 § 19025; 1983 c 264 § 9; 1973 1st ex.s. c 207 § 24.]

RCW 59.18.250

Reprisals or retaliatory actions by landlord — Presumptions — Rebuttal — Costs.

Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if at the time the landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant: PROVIDED FURTHER, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his or her claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his or her costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his or her claim he or she shall be entitled to recover his or her costs of suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them.

[2010 c 8 § 19026; 1983 c 264 § 10; 1973 1st ex.s. c 207 § 25.]

(1) It shall be unlawful for a landlord to require a fee or deposit from a prospective tenant for the privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit may be retained, immediately upon payment of the fee or deposit.

(3)(a) If the prospective tenant does occupy the dwelling unit, then the landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged.

(b) A fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(c) A portion of the fee or deposit may not be withheld if the dwelling unit fails a tenant-based rental assistance program inspection by a qualified inspector as defined in RCW 59.18.030. If the inspection does not occur within ten days from the date of collection of the fee or deposit or a longer period of time that the landlord and tenant may agree upon, the landlord may notify the tenant that the dwelling unit will no longer be held. The landlord shall promptly return the fee or deposit to the prospective tenant after the landlord is notified that the dwelling unit failed the inspection or the landlord has notified the tenant that the dwelling unit will no longer be held. The landlord complies with this section by promptly depositing the fee or deposit in the United States mail properly addressed with first-class postage prepaid.

(4) In any action brought for a violation of this section, a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed two times the fee or deposit. The prevailing party may also recover court costs and a reasonable attorneys' fee.

[2011 c 132 § 12; 1991 c 194 § 2.]

Notes:

Findings -- 1991 c 194: "The legislature finds that tenant application fees often have the effect of excluding low-income people from applying for housing because many low-income people cannot afford these fees in addition to the rent and other deposits which may be required. The legislature further finds that application fees are frequently not returned to unsuccessful applicants for housing, which creates a hardship on low-income people. The legislature therefore finds and declares that it is the policy of the state that certain tenant application fees should be prohibited and guidelines should be established for the imposition of other tenant application fees.

The legislature also finds that it is important to both landlords and tenants that consumer information concerning prospective tenants is accurate. Many tenants are unaware of their rights under federal fair credit reporting laws to dispute information that may be inaccurate. The legislature therefore finds and declares that it is the policy of the state for prospective tenants to be informed of their rights to dispute information they feel is inaccurate in order to help prevent denials of housing based upon incorrect information." [1991 c 194 § 1.]

RCW 59.18.257

Screening of prospective tenants — Notice to prospective tenant — Costs — Adverse action notice — Violation — Work group.

(1)(a) Prior to obtaining any information about a prospective tenant, the prospective landlord shall first notify the prospective tenant in writing, or by posting, of the following:

(i) What types of information will be accessed to conduct the tenant screening;

(ii) What criteria may result in denial of the application; and

(iii) If a consumer report is used, the name and address of the consumer reporting agency and the prospective tenant's rights to obtain a free copy of the consumer report in the event of a denial or other adverse action, and to dispute the accuracy of information appearing in the consumer report.

(b)(i) The landlord may charge a prospective tenant for costs incurred in obtaining a tenant screening report only if the prospective landlord provides the information as required in (a) of this subsection.

(ii) If a prospective landlord conducts his or her own screening of tenants, the prospective landlord may charge his or her actual costs in obtaining the background information only if the prospective landlord provides the information as required in (a) of this subsection. The amount charged may not exceed the customary costs charged by a screening service in the general area. The prospective landlord's actual costs include costs incurred for long distance phone calls and for time spent calling landlords, employers, and financial institutions.

(c) If a prospective landlord takes an adverse action, the prospective landlord shall provide a written notice of the adverse action to the prospective tenant that states the reasons for the adverse action. The adverse action notice must contain the following information in a substantially similar format, including additional information as may be required under chapter 19.182 RCW:

"ADVERSE ACTION NOTICE

Name

Address

City/State/Zip Code

This notice is to inform you that your application has been:

..... Rejected

..... Approved with conditions:

..... Residency requires an increased deposit

..... Residency requires a qualified guarantor

..... Residency requires last month's rent

..... Residency requires an increased monthly rent of \$.....

..... Other:

Adverse action on your application was based on the following:

..... Information contained in a consumer report (The prospective landlord must include the name, address, and phone number of the consumer reporting agency that furnished the consumer report that contributed to the adverse action.)

..... The consumer credit report did not contain sufficient information

..... Information received from previous rental history or reference

..... Information received in a criminal record

..... Information received in a civil record

..... Information received from an employment verification

Dated this day of, 20....

Agent/Owner Signature"

(2) Any landlord or prospective landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and reasonable attorneys' fees.

(3) A stakeholder work group comprised of landlords, tenant advocates, and representatives of consumer reporting and tenant screening companies shall convene for the purposes of addressing the issues of tenant screening including, but not limited to: A tenant's cost of obtaining a tenant screening report; the portability of tenant screening reports; criteria used to evaluate a prospective tenant's background, including which court records may or may not be considered; and the regulation of tenant screening services. Specific recommendations on these issues are due to the legislature by December 1, 2012.

(4) This section does not limit a prospective tenant's rights or the duties of a screening service as otherwise provided in chapter 19.182 RCW.

[2012 c 41 § 3; 1991 c 194 § 3.]

Notes:

Finding -- 2012 c 41: "The legislature finds that residential landlords frequently use tenant screening reports in evaluating and selecting tenants for their rental properties. These tenant screening reports purchased from tenant screening companies may contain misleading, incomplete, or inaccurate information, such as information relating to eviction or other court records. It is challenging for tenants to dispute errors until after they apply for housing and are turned down, at which point lodging disputes are seldom worthwhile. The costs of tenant screening reports are paid by applicants. Therefore, applicants who apply for housing with multiple housing providers pay repeated screening fees for successive reports containing essentially the same information." [2012 c 41 § 1.]

Findings -- 1991 c 194: See note following RCW 59.18.253.

RCW 59.18.400

Forcible entry or detainer or unlawful detainer actions — Writ of restitution — Answer of defendant.

On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy. If the complaint alleges that the tenancy should be terminated because the defendant tenant, subtenant, sublessee, or resident engaged in drug-related activity, or allowed any other person to engage in drug-related activity at the rental premises with his or her knowledge or consent, no set-off shall be allowed as a defense to the complaint.

[1988 c 150 § 4; 1973 1st ex.s. c 207 § 41.]

Notes:

Legislative findings -- Severability -- 1988 c 150: See notes following RCW 59.18.130.

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May 14, 2013, 4:40 pm
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SUPREME COURT OF THE STATE OF WASHINGTON

AARON HUNDTOFTE, et al.

Plaintiffs,

v.

IGNACIO ENCARNACION, et al.,

Defendants/Petitioners.

v.

KING COUNTY SUPERIOR COURT
OFFICE OF JUDICIAL ADMINISTRATION,

Intervenor/Respondent.

NO. 66428-I

DECLARATION OF JONATHAN
GRANT

JONATHAN GRANT states and declares as follows:

1. I am over 18 years of age and competent to testify to the matters stated herein. I make this declaration based on my own personal knowledge.

Background

2. I am the Executive Director of the Tenants Union of Washington State ("TU"), located at 5425 Rainier Avenue S. Suite B, Seattle, WA 98118. I have been with the Tenants Union since 2010.

1 3. Founded in 1977, the Tenants Union creates housing justice through
2 empowerment-based education, outreach, leadership development, organizing, and advocacy.
3 Our work improves tenant living conditions and challenges unjust housing policies and practices.
4 We embrace the values of equality, hope, tenant leadership, dignity, direct action, civic courage,
5 racial and economic justice, and self-determination in our work.

6 4. The TU provides counseling and education services to residential tenants
7 throughout Washington, both through a statewide Tenants' Rights Hotline and through walk-in
8 consultations. These services help tenants learn their rights, avoid and resolve housing problems,
9 and prevent housing loss. In 2012, our Tenants' Rights education services provide direct
10 assistance to over 1600 tenants in Washington State, and over 400,000 tenants visit our
11 comprehensive website to learn about their rights as tenants.

12 5. Before joining the Tenants Union, I was a tenant counselor with Solid Ground
13 from 2006 until 2010. Solid Ground works to end homelessness, hunger, inequality and other
14 barriers to build strong communities. During my tenure at Solid Ground, I served in the Housing
15 Department. The Housing Department is comprised of multiple programs to address barriers to
16 housing and exiting homelessness through a variety of means such as tenant counseling, rental
17 assistance, case management services, and shelters.

18 6. For over 7 years, I have regularly provided these counseling services directly. I
19 have personally counseled over 3,000 Washington tenants and rental applicants. Now, I actively
20 participate in the training and supervision of staff and volunteers who provide these counseling
21 services.

22 7. In my capacity as a housing counselor and as a supervisor, I have made two major
23 observations relevant to this case. First, I observed the disproportionate impact of homelessness
24

1 and eviction on people of color and women. Second, I observed the negative impact of an
2 eviction filing on people of color.

3 **Disproportionate Impact**

4 8. While at Solid Ground, I conducted an analysis to compare our 2007-2008
5 housing and homeless program data to county demographic data. This data quantitatively
6 confirmed that evictions and homelessness disproportionately impact woman and people of color
7 in Solid Ground's programs.

8 9. According to the 2000 Census, the population for King County was 75.7% white,
9 5.4% African American, 5.5% Latino, and 13.6% other ethnicities, but these groups were not
10 proportionately represented in Solid Ground's housing and homelessness programs. Rather, a
11 disproportionate number of women and people of color accessed our King County homeless
12 prevention and shelter services. For example, in our Journey Home program, African Americans
13 constituted 53% of the population served by this program even though they only make up 5.4%
14 of the population.¹ The same disproportionality existed for Latinos and women—14% of the
15 clients served were Latino and 85% were women.

16 10. This same disproportionate demographic trend was evidenced in our Family
17 Shelter program. Shelter participants were 35.4% African-American, 5.2% were Latino, 32.3%
18 were white, 27.1% were of other ethnicities and 58% of the clients in that same time period were
19 women.²

20 **Negative Impact of Eviction Filings**

21 11. Some of the tenants the TU counsels, and those I counseled at Solid Ground, have

22 ¹ This program provides long-term case management, transitional housing, and permanent housing search assistance
23 for homeless families with children.

24 ² Solid Ground's Family Shelter provides both short-term (up to 4 weeks) and long-term (up to 3 months)
emergency shelter for families with children under the age of 18. The primary program goal is to help families find
more permanent housing, or improve their chances of doing so while in the program.

1 had an eviction filed against them. For example, 89% of Solid Ground's Journey Home clients
2 reported having an eviction on their record, as did nearly a third of Family Shelter participants. I
3 believe eviction records are one of the primary reasons why many of Solid Ground's clients are
4 denied housing and their homelessness is perpetuated.

5 12. Many of the tenants I have counseled fear having an eviction filed against them.
6 This fear is well founded. In my experience, many residential housing providers commonly
7 reject an otherwise qualified applicant who was sued for unlawful detainer, regardless of the
8 reason the suit was filed or the outcome of the action.

9 13. Even those housing providers who do not automatically disqualify applicants
10 based on an unlawful detainer filing still treat those applicants less favorably in the rental
11 admissions process. Landlords often require higher deposits or co-signers or other restrictive
12 terms. Many tenants end up spending hundreds of dollars on rental applications because they are
13 repeatedly denied housing due to an unlawful detainer filing.

14 14. Some landlords will take the circumstances or outcome of an unlawful detainer
15 suit into account before denying an applicant, or will reconsider an application that was
16 previously denied due to an unlawful detainer record. But this is uncommon, especially given
17 low rental vacancy rates. In fact, we have heard of cases where the landlord won't lease up with
18 a tenant precisely because they prevailed in court against a previous landlord, viewing the tenant
19 as "litigious" or otherwise a troublemaker.

20 15. The TU speaks to many tenants marked with an unlawful detainer court record
21 who are relegated to temporary housing, emergency shelters, chronic homelessness, or the
22 substandard housing market—regardless of the merits surrounding their case. Many of these
23 tenants live in shelters, on the couches of friends or in properties with defective structural
24

1 problems like a caving-in roof, black mold in the bedrooms, and pest infestations that the
2 property owner refuses to address. Many have no other options because they cannot qualify for a
3 better standard of rental unit, even though they are otherwise a good neighbor and capable of
4 making rent.

5 16. We receive many calls from tenants who want help resolving a housing problem,
6 but are concerned about retaliation by the landlord. Many tenants, after being informed of
7 procedures or remedies that may enable them to favorably resolve a housing problem, express
8 reluctance to defend against eviction lawsuits or assert legal rights and protections due to the fear
9 of being permanently marked with an unlawful detainer record. Their biggest concern about
10 taking action is ending up with an eviction on their record. Such tenants have often told me that
11 they would prefer to have a "clean record" and be able to obtain housing elsewhere, even if the
12 action being taken against them was unfair or illegal.

13 17. In my experience as a housing counselor, an improper or unfair eviction is often
14 filed when:

- 15 (a) multiple tenants are signed to the same lease, and the landlord neglects to
16 update the lease when some of the tenants move out. If any of the remaining
17 tenants are evicted, sometimes years later, it is not uncommon for the previous
18 tenants to get named in the lawsuit because their names were still on an old
19 lease;
- 20 (b) where the tenant makes a lawful deduction from their rent under RCW
21 59.18.100 to pay for a repair the landlord failed to complete. While the law
22 allows for this type of deduction from rent, many landlords will file an
23
24

1 eviction lawsuit against the tenant calling the legal deduction a non-payment
2 of rent;

3 (c) the landlord serves an improper notice to the tenant not allowing enough time
4 to vacate the property, and files an eviction lawsuit to get the tenant out after
5 the improper notice expires;

6 (d) the tenant is disabled and requires extra time to vacate the property or requests
7 some other type of reasonable accommodation based on a disability;

8 (e) the tenant was a victim of domestic violence and the landlord attempts to evict
9 the survivor because they are seen as a "problem tenant" or stigmatized as a
10 cause of disruption in the building;

11 (f) a dispute arises between the two parties and the landlord files an eviction
12 action, or threatens to do so, as leverage to force the tenant to vacate the
13 premises;

14 (g) the tenant is late on the rent but pays the entire amount owed within the 3 days
15 required by law prior to being in "unlawful detainer," yet the landlord still
16 files for an eviction;

17 (h) the landlord wants the tenant to move, but there is a valid lease in place;

18 (i) banks who end up owning a foreclosed home file eviction actions against
19 current tenants;

20 (j) the tenant requests repairs that the landlord does not want to make; or

21 (k) the tenants file a valid complaint with a civil rights office or building code
22 compliance department.

1 18. As a result of landlords filing unfounded or retaliatory evictions, we must
2 routinely inform tenants that there may be consequences to asserting their rights. We advise
3 tenants that the mere filing of an unlawful detainer action may dramatically restrict their future
4 rental housing prospects. We tell tenants about this dynamic so they can consider this serious
5 consequence before taking an action to enforce their rights.

6 19. The TU has worked with innocent tenants who, through no fault of their own, had
7 an eviction filed against them. Their stories and circumstances vary, but they all have suffered
8 the same dire consequences from the mere filing of an unlawful detainer against them.

9 20. For example, we spoke to a tenant living in Bellevue who signed a one-year lease
10 with his landlord. As a disabled senior citizen with considerable health problems, he was
11 relieved to have found a stable place to call home where he knew he could live for the next year.
12 Just a few months later he was served with an eviction lawsuit from the bank foreclosing on his
13 building even though he was fully paid up in rent and met all of his rental obligations. With an
14 eviction on his record, no one would rent to him. He ended up living in a nursing home rather
15 than returning to self-sufficiency.

16 21. A tenant from Tacoma had a landlord refuse to repair the water leaking from a
17 light fixture. When she pursued the repair, her landlord claimed her lease was void. She was
18 fully paid up in rent, and when the judge saw her signed copy of the lease, he dismissed the case.
19 With the dismissed eviction record in the court file, she was denied housing five times, and when
20 she was accepted, she was forced to pay an extra \$680 security deposit because she was a "risk."

21 22. A Section 8 tenant went all the way through the eviction process because a
22 Housing Authority mistakenly withheld its portion of the rent due to an administrative error. The
23 Housing Authority paid the full amount it owed and her tenancy was reinstated, but since the
24

1 unlawful detainer was filed, future landlords seeing that record were led to believe she was
2 evicted. When she requested that the screening company omit the record, they refused.

3 23. An Issaquah woman had moved out of her foreclosed home as required, but later
4 the bank filed for eviction anyway even after she personally turned over the keys. Presently
5 banks are filing many eviction actions that they do not pursue, simply as a course of business. In
6 this tenant's case, the bank could not take action since she had already vacated, so the court
7 administratively dismissed the eviction. With the dismissed eviction on her record, the tenant
8 was denied housing time and again, and was homeless for three years, sleeping on couches in
9 unsafe environments and in hotels while she was also battling thyroid cancer. As the tenant
10 stated, "OnSite [a tenant screening company] treated me like a criminal and misused their power,
11 saying they hear this story every day. I let them know I was never evicted and it was false
12 information. I assumed clearing my record would be simple. I was wrong."

13 24. A young woman we talked to in Seattle was a first-time renter, and signed a joint
14 lease agreement with her roommates to share a single-family house. When the living
15 environment became unsafe, her landlord allowed her off the lease and she vacated on good
16 terms. However, a year later the landlord evicted the remaining roommates, and he neglected to
17 remove her name from the original lease. In an oversight, the landlord's attorney included her in
18 the eviction lawsuit because her name was listed on the lease, permanently marking her record
19 even though she had not lived at the home for a year. She only discovered the eviction later.
20 She was mortified by her tarnished record. With no practical way to remove the record, she
21 asked the landlord to file a motion to vacate the Writ of Restitution. The landlord regretted his
22 mistake and actually did file to vacate the Writ just under her name. However, because

1 prospective landlords typically only base a rental decision on the existence of an eviction filing
2 rather than its outcome, the eviction record still hampers her ability to secure housing.

3 25. A physically disabled tenant living in Whatcom County was on a month-to-month
4 rental agreement. The tenant moved into a rental unit with his two children. The landlord
5 agreed to make needed repairs to the home prior to move in. When the landlord reneged on the
6 agreement, the tenant wrote a letter seeking repairs to the defective refrigerator, exposed
7 electrical outlet in what was to be the children's room and to repair defective plumbing. Instead
8 of making repairs, the landlord issued a 20-day notice to vacate. When the tenant mailed the
9 landlord his full rent check, he included a copy of the retaliation statute. The landlord refused
10 the check and served an unfiled Summons and Complaint. After consulting with legal aid, and
11 TU tenant counselors, the tenant decided to vacate before the landlord filed the action to protect
12 his record rather than assert his defenses. The mere threat of the lawsuit cast a chilling effect on
13 the tenant's ability to avail himself of his rights, causing his family to move their possessions
14 into storage and relocate into a motel at great expense to the family.

15 26. As a tenant advocacy organization, we are in the untenable position of being
16 forced to inform tenants they should think seriously about whether to enforce their legal rights
17 due to the possibility of retaliation in the form of an unlawful detainer filing.

18 27. We must now inform tenants that they may never be able to remove an unfounded
19 eviction filing from their record no matter how negatively that record impacts their health, safety
20 or ability to obtain housing.

21 28. The tenants we speak with, who have unjust evictions listed in the court record,
22 have experienced various obstacles directly related to their eviction record, including loss of
23 employment, medical problems, being forced to return to an abusive relationship, and frequently
24

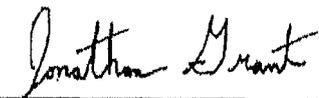
1 homelessness. I have received many calls from former tenants who suffered severe difficulties
2 while homeless. Without stable housing some lost their employment while others had their
3 health deteriorate. Homeless individuals face reduced life expectancy, rape and sexual abuse,
4 vulnerability to being the target of crime, and death.

5 29. Those tenants who escape living on the streets are forced to rent substandard
6 housing where it is common that their health is negatively impacted, for example, because of
7 pervasive black mold due to lack of property maintenance. Some families had to separate from
8 the family member with the eviction record to qualify for housing. Some children in homeless
9 families and those living in substandard housing report struggles to keep up with school work or
10 attend school altogether.

11 30. I have made the foregoing statements voluntarily and of my own personal
12 knowledge; I am competent to testify and if called as a witness in this matter I would testify as
13 stated above.

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

16 Signed at Seattle, Washington, on this the 14th day of May, 2013.

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19 _____
Jonathan Grant, Declarant

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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Declaration of Jonathan Grant by electronic mail on the 14th day of May, 2013, to the following counsel of record at the following addresses:

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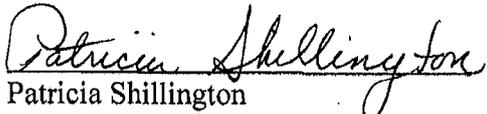
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Dated this 14th day of May, 2013.

GARVEY SCHUBERT BARER


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Subject: RE: Aaron Hundtofte et al vs. Ignacio Encarnacion et al / Amicus Brief

Rec'd 5-14-13

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Subject: Aaron Hundtofte et al vs. Ignacio Encarnacion et al / Amicus Brief

Aaron Hundtofte et al. vs Ignacio Encarnacion et al

Supreme Court No.: 88036-1

Submitted by Victoria Slade, WSBA # 44597, Tel: (206) 464-3939, Email:
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Pat Shillington filed the documents on behalf of attorney Victoria Slade:
pshillington@gsblaw.com

The following documents are attached:

1. Motion for Permission to File Amicus Brief
2. Brief of Amicus Curiae Tenants Union of Washington State
3. Declaration of Jonathan Grant

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