

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Feb 13, 2015, 9:27 am
BY RONALD R. CARPENTER
CLERK

No. 90088-4

RECEIVED BY E-MAIL

SUPREME COURT
OF THE STATE OF WASHINGTON

JOSE SEGURA and TABETHA GONZALEZ,

Appellants,

vs.

ROGACIANO and RAQUEL CABRERA,

Respondents.

BRIEF OF AMICUS CURIAE RENTAL HOUSING
ASSOCIATION OF WASHINGTON

Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick/Tribe
2775 Harbor Ave SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Amicus Curiae
Rental Housing Association
of Washington



ORIGINAL

TABLE OF CONTENTS

| | <u>Page</u> |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Table of Authorities | ii-iv |
| A. INTEREST OF AMICUS CURIAE | 1 |
| B. INTRODUCTION | 2 |
| C. STATEMENT OF THE CASE..... | 3 |
| D. ARGUMENT | 4 |
| (1) <u>Emotional Distress Damages Are Not Recoverable as an Aspect of Actual Damages under RCW 59.18.085(3)(e)</u> | 7 |
| (a) <u>RCW 59.18.085 and the RLTA</u> | 7 |
| (b) <u>Legislative History of RCW 59.18.085(3)(e)</u> | 11 |
| (c) <u>Washington’s Common Law on the Recovery of Emotional Distress Damages for Breach of Contract</u> | 13 |
| (2) <u>If Emotional Damages Are Recoverable, They Were Appropriately Denied Here in the Absence of Objective Symptomology</u> | 18 |
| E. CONCLUSION..... | 20 |
| Appendix | |

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

Arborwood Idaho, LLC v. City of Kennewick, 151 Wn.2d 359,
89 P.3d 217 (2004).....2

Aspon v. Loomis, 62 Wn. App. 818, 816 P.2d 751 (1991),
review denied, 118 Wn.2d 1015 (1992).....15

Birchler v. Castello Land Co., Inc., 133 Wn.2d 106,
942 P.2d 968 (1997).....16

Bylsma v. Burger King Corp., 176 Wn.2d 555,
293 P.3d 1168 (2013).....19, 20

Cary v. Mason County, 173 Wn.2d 697, 272 P.3d 194 (2012).....2

Cerrillo v. Esparza, 158 Wn.2d 194, 142 P.3d 155 (2006)5, 6

Cherberg v. Peoples National Bank of Washington,
88 Wn.2d 595, 564 P.2d 1137 (1977).....15

City of Federal Way v. Koenig, 167 Wn.2d 341,
217 P.3d 1172 (2009).....6

City of Pasco v. Shaw, 161 Wn.2d 450, 166 P.3d 1157 (2007).....2

Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801,
16 P.3d 583 (2001).....4, 6

Coogan v. Schmidt, 181 Wn.2d 661, 335 P.3d 424 (2014).....17

Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1,
43 P.3d 4 (2002).....5

Dexheimer v. CDS, Inc., 104 Wn. App. 464, 17 P.3d 641 (2001).....14, 15

Ellerman v. Centerpoint Prepass, Inc., 143 Wn.2d 514,
22 P.3d 795 (2001).....6

Gagliardi v. Denny's Restaurants, Inc., 117 Wn.2d 426,
815 P.2d 1362 (1991).....13

Hegel v. McMahon, 136 Wn.2d 122, 960 P.2d 424 (1998)19, 20

Hendrickson v. Tender Care Animal Hospital Corp.,
176 Wn. App. 757, 312 P.3d 52 (2013),
review denied, 179 Wn.2d 1013, 316 P.3d 495 (2014).....14

Howard v. Horn, 61 Wn. App. 520, 810 P.2d 1387,
review denied, 117 Wn.2d 1011 (1991).....15

Hunsley v. Giard, 87 Wn.2d 424, 553 P.2d 1096 (1976)19, 20

| | |
|--------------------------------------------------------------------------------------------------------------------|-----|
| <i>Kilian v. Atkinson</i> , 147 Wn.2d 16, 50 P.3d 638 (2002) | 5 |
| <i>Kloepfel v. Bokor</i> , 149 Wn.2d 192, 66 P.3d 630 (2003)..... | 19 |
| <i>Lian v. Stalick</i> , 106 Wn. App. 811, 25 P.3d 467 (2001)..... | 15 |
| <i>Martini v. Post</i> , 178 Wn. App. 153, 313 P.3d 473 (2013)..... | 14 |
| <i>Price v. State</i> , 114 Wn. App. 65, 57 P.3d 639 (2002)..... | 14 |
| <i>Pruitt v. Savage</i> , 128 Wn. App. 327, 115 P.3d 1000 (2005) | 15 |
| <i>Schwarzmann v. Ass'n of Apartment Owners of Bridgehaven</i> , 33 Wn. App. 397, 655 P.2d 1177 (1982)..... | 15 |
| <i>State ex rel. Royal v. Board of Yakima County Comm'rs</i> , 123 Wn.2d 451, 869 P.2d 56 (1994)..... | 5 |
| <i>State v. Schwab</i> , 103 Wn.2d 542, 693 P.2d 108 (1985)..... | 8 |
| <i>Stone v. Chelan County Sheriff's Dep't</i> , 110 Wn.2d 806, 756 P.2d 736 (1988)..... | 5-6 |
| <i>Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.</i> , 125 Wn.2d 305, 884 P.2d 920 (1994)..... | 6 |
| <i>Tucker v. Hayford</i> , 118 Wn. App. 246, 75 P.3d 980 (2003)..... | 15 |
| <i>Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 858 P.2d 1054 (1993)..... | 8 |
| <i>White River Estates v. Hilburner</i> , 134 Wn.2d 761, 953 P.2d 796 (1998)..... | 16 |

Statutes

| | |
|----------------------------------|---------------|
| Laws of 1989, ch. 342, § 13..... | 11 |
| Laws of 2005, ch. 364, § 1..... | 9 |
| RCW 59.18.060 | 7 |
| RCW 59.18.090 | 7 |
| RCW 59.18.085 | <i>passim</i> |
| RCW 59.18.085(1)..... | 9 |
| RCW 59.18.085(2)..... | 10, 12 |
| RCW 59.18.085(3)..... | 4, 10, 17 |
| RCW 59.18.085(3)(a) | 9 |
| RCW 59.18.085(3)(b) | 10 |
| RCW 59.18.085(3)(c, f-h)..... | 11 |
| RCW 59.18.085(3)(e) | <i>passim</i> |
| RCW 59.18.100 | 7 |
| RCW 59.18.110 | 7 |
| RCW 59.18.160 | 7 |
| RCW 59.18.180 | 7 |
| RCW 59.18.310 | 7 |

Codes, Rules and Regulations

RAP 13.7(d)4

Other Authorities

2A Norman J. Singer, *Statutes and Statutory Construction* § 48A:16
(6th ed. 2000).....5
Restatement of Contracts § 34113
Restatement (Second) of Property, § 17.615

A. INTEREST OF AMICUS CURIAE

Rental Housing Association of Washington ("RHA") is appearing as amicus curiae in this case at the Court's invitation conveyed in the January 22, 2015 letter of Commissioner Narda Pierce to RHA's executive director, Bill Hinkle.

RHA is a 5,000 plus member non-profit organization of rental housing owners (single family homes to multi-family communities) in Washington. Its objectives are to oversee the general welfare of the rental housing industry, lead advocacy efforts, provide continuous development of skills and knowledge, and assist members to provide appropriate services to the renting public.

RHA represents the interests of rental housing owners to state and local legislative bodies, news media and the general public. RHA is actively involved in the Legislature on any legislation affecting landlords. Its staff studies the regular meeting agendas of the local governments, meets with city and county council members and reports to their board about any issues which affect the local community. It is also involved in educating and encouraging member involvement in issues affecting the rental housing industry. RHA offers educational programs which enhance rental property owners' knowledge and provides different fora for knowledge sharing and social interaction. RHA also offers products and

services rental property owners need to be successful, while encouraging the highest standards of ethics and integrity for its members. RHA promotes the value of the rental housing industry to the community and educates renters about the process of becoming a tenant and being a good tenant.

RHA or its predecessor has also appeared as an amicus curiae in a number of cases.¹

B. INTRODUCTION

The trial court and the Court of Appeals properly concluded that a tenant may not recover emotional distress damages under RCW 59.18.085(3)(e), a statute providing for relocation assistance rights for tenants. RCW 59.18.085 is a facet of Washington's Residential Landlord-Tenant Act ("RLTA") that addresses the contractual relationships between landlords and tenants.

If a landlord rents a dwelling after being notified by the applicable government agency that the dwelling "is condemned or unlawful to occupy due to the existence of conditions" violative of applicable codes, statutes, ordinances, or regulations, the landlord must pay relocation assistance if the landlord "knew or should have known of the existence of

¹ See, e.g., *Cary v. Mason County*, 173 Wn.2d 697, 272 P.3d 194 (2012); *City of Pasco v. Shaw*, 161 Wn.2d 450, 166 P.3d 1157 (2007); *Arborwood Idaho, LLC v. City of Kennewick*, 151 Wn.2d 359, 89 P.3d 217 (2004).

these conditions." RCW 59.18.085(3)(e) allows a tenant to obtain such assistance and may recover his/her "actual damages sustained ... as a result of the condemnation, eviction, or displacement that exceed the amount of relocation assistance that is payable."

In enacting RCW 59.18.085, a part of the RLTA and its contract-based remedial scheme, the Legislature was fully aware of Washington's common law on landlord-tenant remedies. Remedies in the RLTA are largely contractual in nature. Moreover, at the time RCW 59.18.085 relocation assistance provisions were enacted in 2005, Washington contract law generally, and in the landlord-tenant context specifically, precluded the recovery of emotional distress damages in the absence of intentional misconduct.

Even if emotional distress damages are recoverable as an aspect of "actual damages" under the statute, and RHA believes they are not, any such damages should not be recoverable in the absence of objective symptomology as Washington common law demands, to avoid such damages becoming a routine, punitive addition to every claim under RCW 59.18.085(3)(e).

C. STATEMENT OF THE CASE²

² RHA notes that the Cabrerias have appeared pro se throughout this case and, as discussed in Commissioner Pierce's January 22 letter, they "did not file a brief in the

For purposes of this brief, RHA adopts the articulation of the facts in the Court of Appeals opinion. *See* Appendix. As that court noted, the trial court here stated: "The relationship of the parties arises from a contract to lease real property. The misconduct on the part of the landlord was intentional but it is not an intentional tort. The damages are limited to those identified in the statute RCW 59.18.085(3)." CP 12.

D. ARGUMENT

This is a case of statutory interpretation in which this Court must interpret the provisions of RCW 59.18.085 generally, and what the Legislature meant when it used the term "actual damages" in RCW 59.18.085(3)(e) specifically.

Well-developed principles of statutory interpretation govern this Court's analysis here. "The primary goal of statutory construction is to carry out legislative intent." *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In Washington's traditional process of statutory interpretation, this analysis begins by looking at the words of the statute. "If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself." *Id.* The Court must look to

Court of Appeals or answer to the petition for review in this Court." Nor have they filed a supplemental brief pursuant to RAP 13.7(d) in this Court. Consequently, any facts beneficial to the Cabrerias have not been developed adequately. By contrast, the tenants have been represented by counsel throughout this case and have benefitted from a supportive brief from the Washington State Association for Justice Foundation.

what the Legislature said in the statute and related statutes to determine if the Legislature's intent is plain. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).³ If the language of the statute is plain, that ends the Court's role. *Cerrillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006).

In undertaking this construction of a statute, the Court must construe it in a manner that best fulfills the legislative intent. *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 459, 869 P.2d 56 (1994). But the Court should not read language into a statute even if it believes the Legislature *might* have intended it. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). Statutes must be interpreted and construed so that all the language used is given effective, with no portion rendered meaningless or superfluous. *Stone v. Chelan County Sheriff's*

³ In the past, the plain meaning rule rested on theories of language and meaning, now discredited, which held that words have inherent or fixed meanings. *Dep't of Ecology*, 146 Wn.2d at 11. These theories are unnecessary to the plain meaning rule, however, if the rule is interpreted to direct a court to construe and apply words according to the meaning that they are ordinarily given, taking into account the statutory context, basic rules of grammar, and any special usages stated by the Legislature on the face of the statute. *Id.* Now, the plain meaning rule requires courts to consider legislative purposes or policies appearing on the face of the statute as part of the statute's context. *Id.* In addition, background facts of which judicial notice can be taken are properly considered as part of the statute's context, because courts presume the Legislature also was familiar with them when it passed the statute. *Id.* Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes. *Id.*, citing 2A Norman J. Singer, *Statutes and Statutory Construction* § 48A:16 at 809-10 (6th ed. 2000). Under the modern approach, the plain meaning is still derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. *Id.*

Dep't, 110 Wn.2d 806, 810, 756 P.2d 736 (1988). If, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous. *Cockle*, 142 Wn.2d at 808; *Timberline Air Serv., Inc. v. Bell Helicopter-Telectron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994). Only then may the Court resort to "principles of statutory construction, legislative history, and relevant case law" to assist it in discerning legislative intent. *Cerrillo*, 158 Wn.2d at 202; *Cockle*, 142 Wn.2d at 809.

A significant canon of statutory interpretation, recognized by Washington courts, is that the Legislature is aware of the common law in enacting a statute and courts must apply common law principles if common law terminology is employed in such a statute. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 351, 217 P.3d 1172 (2009); *Ellerman v. Centerpoint Prepass, Inc.*, 143 Wn.2d 514, 525, 22 P.3d 795 (2001).

Thus, under the foregoing principles of statutory interpretation, this Court must look to the specific language of the statute and the context of the statute as a part of the RLTA, a statute addressing landlord-tenant contractual remedies. Moreover, this Court must consider Washington's common law on landlord-tenant remedies, the law with which the Legislature is charged with understanding in 2005 when the language of RCW 59.18.085 was developed.

(1) Emotional Distress Damages Are Not Recoverable as an Aspect of Actual Damages under RCW 59.18.085(3)(e)

(a) RCW 59.18.085 and the RLTA

The Court of Appeals, in both the majority and dissenting opinions, and the parties here have focused on RCW 59.18.085, but have overlooked the overall thrust of the RLTA itself. The RLTA is a vital aspect of the appropriate context for the interpretation of RCW 59.18.085(3)(e) because RCW 59.18.085 is but one part of the RLTA. The RLTA, first enacted in 1973, governs the *contractual* relationship between landlords and tenants in Washington.

A survey of the rights and remedies afforded landlords and tenants in the RLTA only confirms the serious attention given by the Legislature to balancing the rights and remedies of each respective group. The RLTA's remedies are essentially contractual in nature. For example, if a tenant breaches duties under the RLTA, the landlord may enter the premises and remedy defects or dangerous conditions, sue for rents due, or file an unlawful detainer action to oust the tenant. RCW 59.18.160; RCW 59.18.180; RCW 59.18.310. Conversely, a tenant may effectuate repairs to the premises and deduct the cost of repairs from the rent, or, if the landlord fails to remedy defects in the premises, quit the premises without having to pay rent. RCW 59.18.090; RCW 59.18.100; RCW 59.18.110.

This Court held in *State v. Schwab*, 103 Wn.2d 542, 693 P.2d 108 (1985) that a violation of RCW 59.18 does not constitute a per se violation of the Consumer Protection Act, RCW 19.86.⁴ Indeed, the Court there ruled that the RLTA is exclusive as to rights and remedies, *id.* at 546-50, and stated:

It is hard to perceive of a more thoroughly considered piece of legislation than the Residential Landlord-Tenant Act of 1973. The history of that enactment shows the care exercised by the Legislature in writing the act and in delineating the specific rights, duties, and remedies of both landlords and tenants.

Id. at 551.

RCW 59.18.085 itself dates from 2005. It is specifically a part of RLTA and was designed to provide relocation assistance for tenants in certain specific circumstances.⁵ The statute also provided for specific

⁴ Emotional distress damages are not recoverable under the CPA in any event. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 318, 858 P.2d 1054 (1993).

⁵ The Legislature articulated the purpose of RCW 59.18.085 as follows:

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

defenses to its application.⁶

The core of the statute is its first subsection which states:

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.

RCW 59.18.085(1). Under subsection (3), if the landlord rents substandard dwellings, despite notice from government that the property will be condemned or deemed unlawful to occupy, the landlord must pay relocation assistance if the landlord knew or should have known of the conditions that led to the condemnation of the property or its being deemed unfit for occupancy. The statute contemplates that it can be violated without intentional conduct on the landlord's part when it

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.

Laws of 2005, ch. 364, § 1.

⁶ RCW 59.18.085(3)(a) articulates a number of limitations on a landlord's obligation to pay relocation assistance or damages including where the condemnation or no occupancy order results from conditions caused by a tenant's or any third party's illegal conduct without the landlord's prior knowledge, natural disasters, or the acquisition of the landlord's property by eminent domain.

employs the "should have known" language.⁷

The Court of Appeals' characterization of the remedy in RCW 59.18.085(3) is noteworthy. The majority concluded that it could be invoked by landlord conduct amounting to reckless or wanton misconduct. Op. at 4-6. By contrast, the dissent believed that the statute comes into play if the landlord engaged in merely negligence conduct. Dissent at 6-7. Both opinions *agree* that RCW 59.18.085 can be violated by landlord conduct short of intentional conduct, and that is significant for reasons noted *infra*.

The amount of the statutory relocation assistance is based on the rental agreement:

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 displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.

RCW 59.18.085(3)(b). The tenant may recover such relocation assistance from the landlord in a civil action:

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*

⁷ By contrast, RCW 59.18.085(2) provides for treble the tenant's actual damages if the landlord *knowingly* rents the dwelling in violation of applicable codes, statutes, ordinances, or regulations, a more intentional standard. RCW 59.18.085(2) is not at issue in this case.

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.

RCW 59.18.085(3)(e) (emphasis added).⁸ RCW 59.18.085(3)(e) does not define "actual damages."

(b) Legislative History of RCW 59.18.085(3)(e)

As noted *supra*, if the term "actual damages" in RCW 59.18.085(3)(e) is ambiguous this Court may resort to the statute's legislative history. To a considerable extent, that legislative history is significant as much for what it does not say, as what it says. The Legislature actually first addressed conditions in the rented premises that endanger or impair the tenant's health and safety in 1989 legislation when it enacted RCW 59.18.085. Laws of 1989, ch. 342, § 13. That statute did not provide for relocation assistance, however. It did authorize the recovery of treble the tenant's actual damages if the landlord *knowingly* (intentionally) rented premises that were condemned or unfit for

⁸ As an alternative to actions by tenants, local governments may also compel landlords to pay relocation assistance by civil penalties or advance the relocation assistance and recover it from the landlord. RCW 59.18.085(3)(c, f-h).

occupancy.⁹

The 2005 Legislature amended RCW 59.18.085 to provide for relocation assistance if the landlord knew or should have known the premises were condemned or unfit, but leased the premises anyway and was then notified of their unfit status by an appropriate governmental agency. As the Court of Appeals majority noted, *op. at 6-7*, the purpose of the 2005 amendment was to provide tenants *relocation assistance*, not a cause of action. *Nowhere* in the final bill report for the 2005 legislation (*see Appendix*) did the Legislature evidence an intent to import a tort-based remedy into the statute. *Nowhere* did the Legislature indicate a desire to change the common law's treatment of damages in contractually-based actions to be discussed *infra*. Rather, the language of RCW 59.18.085(3)(e) is precise. The recoverable damages are *three times* the actual damages "that exceed the amount of the relocation assistance that is payable." When the Legislature employed this latter phrase it made clear its intent to confine damages to tangible, contract-based damages, rather than create a new remedy in tort. After all, the Legislature had already taken the unusual step of allowing recovery of treble damages in any event.

The legislative history of RCW 59.18.085(3)(e) does not support

⁹ This statute was the precursor to what is now RCW 59.18.085(2).

an argument that "actual damages" under that statute were intended to encompass tort-based damage elements like emotional distress damages.

(c) Washington's Common Law on the Recovery of Emotional Distress Damages for Breach of Contract

As noted *supra*, the Legislature is presumed to be aware of the common law. Washington's common law on the recovery of emotional distress damages in the contractual context for breach of a landlord's duties is clear. Neither the majority nor the dissent in the Court of Appeals discusses this larger contractual context to the proper analysis of RCW 59.18.085(3)(e) when the Legislature enacted it in 2005. Similarly, neither opinion places that statute in the proper context - the RLTA is a statute implicating contract rights.

It has long been the rule in Washington, derived from the *Restatement of Contracts* § 341,¹⁰ that emotional distress damages are not recoverable for an ordinary breach of contract. *Gagliardi v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 440-48, 815 P.2d 1362 (1991) (citing § 341 of the *Restatement*, no emotional distress damages for breach of

¹⁰ The *Restatement* provides:

In actions for breach of contract, damages will not be given as compensation for mental suffering, except where the breach was wanton or reckless and caused bodily harm and where it was the wanton or reckless breach of a contract to render a performance of such a character that the defendant had reason to know when the contract was made that the breach would cause mental suffering for reasons other than mere pecuniary loss.

employment contract); *Hendrickson v. Tender Care Animal Hospital Corp.*, 176 Wn. App. 757, 767, 312 P.3d 52 (2013), *review denied*, 179 Wn.2d 1013, 316 P.3d 495 (2014) (no claim for emotional distress in reckless breach of bailment contract for dog at veterinary hospital).

Washington has, however, allowed for the recovery of emotional distress damages for breach of contract where the type or character of the contract makes emotional suffering for reasons other than mere pecuniary loss foreseeable from the contract's outset. Specifically, if the relationship was primarily economic in nature, emotional distress damages are generally unavailable. *Contrast Gagliardi*, 117 Wn.2d at 441 (no emotional distress damages for breach of an employment contract because the purpose of such contracts are economic) with *Price v. State*, 114 Wn. App. 65, 57 P.3d 639 (2002) (emotional distress damages are recoverable for problems arising out of DSHS negligence in disclosing prospective adoptive child's problems). However, even where such emotional distress damages are recoverable, the defendant's conduct must be akin to the intentional tortious conduct.¹¹

¹¹ Personal injury claims arising out of the breach of a provision in the RLTA have presented a more complex question. There are three distinct grounds for landlord liability to a tenant for personal injuries to a tenant: (1) the rental agreement, (2) the common law; and (3) the RLTA. *Martini v. Post*, 178 Wn. App. 153, 167, 313 P.3d 473 (2013). Some courts have held that the RLTA itself, in contrast to the common law or the rental agreement itself, does not permit the recovery of tort-related damages for its violation. *Dexheimer v. CDS, Inc.*, 104 Wn. App. 464, 471-72, 17 P.3d 641 (2001);

Generally, in the landlord-tenant setting, emotional distress damages are only narrowly available. In *Cherberg v. Peoples National Bank of Washington*, 88 Wn.2d 595, 564 P.2d 1137 (1977), a case focused primarily on whether a tenant could recover in tort for conduct in breach of a lease agreement, this Court held that a commercial tenant could state a claim for tortious interference and recover emotional distress damages where the landlord intentionally refused to make repairs on a building that was rendered structurally unsafe by the construction of a high rise next door. A claim for tortious interference and emotional distress damages could be stated by the tenant because the landlord *intended the interference*, by intentionally seeking to oust the tenant. See *Schwarzmann v. Ass'n of Apartment Owners of Bridgehaven*, 33 Wn. App.

Aspon v. Loomis, 62 Wn. App. 818, 825-26, 816 P.2d 751 (1991), *review denied*, 118 Wn.2d 1015 (1992); *Howard v. Horn*, 61 Wn. App. 520, 524-25, 810 P.2d 1387, *review denied*, 117 Wn.2d 1011 (1991). Rather, a tenant's recovery under the RLTA for its violation is limited to the contractually-based remedies there enumerated in RCW 59.18.090. *Dexheimer*, 104 Wn. App. at 471. The *Dexheimer* court held that a trial court erred in allowing a tenant to recover monetary damages for a breach of the duty to repair under the Act: "Monetary damages are not available for a breach of a landlord's duties under the RLTA." *Id.* at 472. *But see, Tucker v. Hayford*, 118 Wn. App. 246, 75 P.3d 980 (2003) (seemingly abandoning *Dexheimer* and finding claim for personal injuries could be stated by tenant for the RLTA's violation).

A violation of the RLTA's provisions may, however, result in a tenant's claim for a breach of the implied warranty of habitability, a contract-based remedy, based on the *Restatement (Second) of Property*, § 17.6. *Lian v. Stalick*, 106 Wn. App. 811, 25 P.3d 467 (2001). But the *Lian* court still held that personal injury damages were unavailable for violation of RCW 59.18.060. *Id.* at 819. Moreover, the implied warranty is inapplicable to anyone other than a tenant. *Pruitt v. Savage*, 128 Wn. App. 327, 331, 115 P.3d 1000 (2005). The present case, of course, does not involve personal injuries and these cases are inapposite.

397, 655 P.2d 1177 (1982) (no recovery for intentional or negligent infliction of emotional distress against condo owners for failure to remedy water problems, citing *Cherberg*). See also, *Birchler v. Castello Land Co., Inc.*, 133 Wn.2d 106, 117, 942 P.2d 968 (1997) (emotional distress damages may be recoverable under statute creating right to recover for intentional tort because emotional distress damages are generally recoverable for intentional interference with property interests).

Finally, in *White River Estates v. Hiltburner*, 134 Wn.2d 761, 953 P.2d 796 (1998), this Court ruled that emotional distress damages were not recoverable against a mobile home park landlord for withholding consent to a tenant's lease assignment in violation of a provision of the Mobile Home Landlord-Tenant Act, an act very much analogous to the RLTA. This Court's analysis of the issue is important here, as the Court of Appeals observed below. Op. at 4. The *White River Estates* court analyzed the specific statute at issue to determine if it could be violated without intentional conduct because such damages are only available "upon proof of an intentional tort." *Id.* at 768. The Court concluded that emotional distress damages were unavailable because the statute "may be violated by conduct not amounting to an intentional tort." *Id.* at 769.

Here, the Legislature is charged with awareness of the common law in 2005 on the recovery of emotional distress damages, and it relied

on that case law regarding the limited recovery of emotional distress damages for breaches of contract generally or in the landlord-tenant setting specifically when it employed the term “actual damages” in RCW 59.18.085(3)(e). First, RCW 59.18.085(3) is a part of the RLTA, a statutory scheme addressing the *contractual relationships* between landlords and tenants. Second, RCW 59.18.085 provides for relocation assistance to tenants; the remedies afforded tenants by RCW 59.18.085(3)(e) are additional *contractually-based remedies* for its breach. RCW 59.18.085(3)(e) does not create a cause of action in tort. *Gagliardi* controls and emotional distress damages are not recoverable for a breach of contract that is primarily economic in nature.

Finally, even if this Court were to conclude RCW 59.18.085(3)(e) creates a tort remedy for tenants, *White River Estates* controls. Both Court of Appeals opinions in this case determined RCW 59.18.085(3) could be violated by conduct not amounting to an intentional tort by the landlord. Emotional distress damages in the landlord-tenant context are not recoverable under RCW 59.19.085(3)(e) in the absence of intentionally tortious conduct.¹²

¹² In cases arising after the Legislature’s enactment of RCW 59.18.085 in 2005, this Court has been careful to allow the recovery of emotional distress damages. For example, in this Court’s recent decision in *Coogan v. Schmidt*, 181 Wn.2d 661, 335 P.3d 424 (2014), the Court specifically noted the distinction in its jurisprudence between actions predicated upon negligence and those involving intentional torts. *Id.* at 670-72.

As the trial court specifically found the respondents did not commit what amounted to an intentional tort, CP 12, the trial court and Court of Appeals were correct in denying the recovery of emotional distress damages here.

(2) If Emotional Damages Are Recoverable, They Were Appropriately Denied Here in the Absence of Objective Symptomology

If this Court concludes that emotional distress damages are recoverable, the Court should apply the requirement from cases involving tortious infliction of emotional distress and tort cases relating to emotional distress without physical injuries limiting such damages to those instances where the plaintiff has objective symptomology. This principle avoids having such emotional distress damages, trebled under RCW 59.18.085(3)(e), becoming a vehicle for the routine recovery of punitive damages. Because the Seguras did not prove such symptoms, any recovery for emotional distress here was properly denied.

Emotional distress damages are not available in tortious infliction of emotional distress cases, unless the plaintiff exhibits objective symptomology, that is, symptoms that can be objectively diagnosed by

The Court held that emotional distress damages in legal malpractice actions are available when emotional harm to the client "is foreseeable due to the particularly egregious (or intentional) conduct of an attorney or the sensitive or personal nature of the representation." *Id.* at 674. There, the Court rejected an award of emotional distress damages. *Id.* at 674-75.

appropriate expert witnesses. *Hunsley v. Giard*, 87 Wn.2d 424, 436, 553 P.2d 1096 (1976); *Hegel v. McMahon*, 136 Wn.2d 122, 135, 960 P.2d 424 (1998). As this Court observed in *Hegel* in connection with a claim of negligent infliction of emotional distress, the "objective symptomology limitation is valuable as corroborating evidence to fend off fraudulent claims." 136 Wn.2d at 134. This Court there held:

To satisfy the objective symptomology requirement established in *Hunsley*, a plaintiff's emotional distress must be susceptible to medical diagnosis and proved through medical evidence. This approach calls for objective evidence regarding the severity of the distress, and the causal link between the observation at the scene and the subsequent emotion reaction.

Id. at 135.¹³

In *Bylsma v. Burger King Corp.*, 176 Wn.2d 555, 293 P.3d 1168 (2013), a case on certification from the United States Court of Appeals for the Ninth Circuit, this Court held that under the Washington Product Liability Act a claim for emotional distress alone, without physical injuries, was unavailable to a plaintiff unless the plaintiff's distress was reasonable and the plaintiff experienced objective symptoms of emotional distress. *Id.* at 561. The Court noted these limitations have been adopted

¹³ This Court held that objective symptomology was not required for *intentional* infliction of emotional distress in *Kloepfel v. Bokor*, 149 Wn.2d 192, 66 P.3d 630 (2003), but if the Court is inclined to allow the award of emotional distress damages for a breach of RCW 59.18.085(3)(e); it is broadening liability under that statute to conduct amounting to negligence on the part of a landlord. *Hegel* is apt.

by Washington courts to address concerns about feigned claims and prolonged litigation. *Id.* at 560.

At most, the evidence below was that the Seguras experienced worry or anxiety about their tenancy, rather than objective symptoms of emotional distress. As Mrs. Segura testified:

My husband, my children, and I were all very upset and anxious after the Code Enforcement lady told us we had to vacate the apartment into which we had just moved. We did not know whether we would be able to find another home on short notice. I worried that my family might end up in the street because the Cabreras had not followed the law.

CP 49.

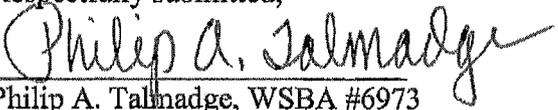
Such testimony simply would not sustain an award of emotional distress damages here under *Hunsley*, *Hegel*, or *Bylsma* because there were no objective symptoms of emotional distress.

E. CONCLUSION

The trial court and the Court of Appeals were correct in foreclosing the tenants here from recovering emotional distress damages under RCW 59.18.085(3)(e). This Court should affirm the Court of Appeals opinion.

DATED this 31 day of February, 2015.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973

Talmadge/Fitzpatrick/Tribe

2775 Harbor Ave SW

Third Floor, Suite C

Seattle, WA 98126

(206) 574-6661

Attorneys for Amicus Curiae

Rental Housing Association

of Washington

APPENDIX

FILED
FEB. 27, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

| | | |
|-------------------------|---|-------------------|
| JOSE SEGURA and TABETHA |) | No. 31118-0-III |
| GONZALEZ, |) | |
| |) | |
| Appellants, |) | |
| |) | |
| v. |) | |
| |) | PUBLISHED OPINION |
| ROGACIANO and RAQUEL |) | |
| CABRERA, |) | |
| |) | |
| Respondent. |) | |

BROWN, J.—Tenants Jose Segura and Tabetha Gonzalez appeal the trial court’s summary judgment decision not to award them emotional distress damages as part of their RCW 59.18.085(3) relocation assistance claim against landlords Rogaciano and Raquel Cabrera. The tenants contend the trial court erred in concluding emotional distress damages are not recoverable as actual damages under RCW 59.18.085(3). We hold the trial court did not err, and affirm.

FACTS

In 2007, the Cabrereras purchased a Pasco house to use as a residential rental. Although the city licensed them to rent the house solely as a single dwelling, they later

No. 31118-0-III
Segura v. Cabrera

converted the basement into a second unit. On July 3, 2011, the Cabrerias leased the downstairs unit to Mr. Segura and Ms. Gonzalez. Five days later, the city's code enforcers inspected the house and found the downstairs unit uninhabitable and unpermitted. The code enforcers partly ordered the tenants to vacate the basement unit in 20 days and limited use of the property to a single family dwelling.

On July 14, 2011, the tenants delivered a written demand for monetary relocation assistance under RCW 59.18.085(3) to the landlords, who later claimed they misunderstood the demand and had been advised to ignore it. Five days later, the landlords notified the tenants to vacate the premises by August 7, 2011. The tenants asserted the landlords twice interfered with their use of the premises before the move-out deadline and after the relocation assistance demand. First, the landlords attempted to have the tenants' car towed from the premises. Second, the landlords entered the premises without notice and changed the locks before the tenants moved out. The tenants believe the landlords took some of their personal property.

The tenants sued the landlords, partly claiming relocation assistance. The landlords denied liability. About a year later, the tenants moved for summary judgment on their relocation assistance claim. Their requested damages totaled \$4,550, including \$2,000 in relocation assistance, \$600 in prepaid rent, \$600 in rent deposit, \$150 in electricity deposit, \$200 in fuel, and \$1,200 "for the anxiety, worry, inconvenience, and upheaval inflicted upon the plaintiffs and their children." Clerk's Papers (CP) at 64.

The court granted summary judgment to the tenants for all their requested damages except emotional distress damages, concluding they were not recoverable as

No. 31118-0-III
Segura v. Cabrera

actual damages under RCW 59.18.085(3). On reconsideration, the court clarified, "The relationship of the parties arises from a contract to lease real property. The misconduct on the part of the landlord was intentional but it is not an intentional tort. The damages are limited to those identified in the statute RCW 59.18.085(3)." CP at 12. The tenants appeal the trial court's refusal to award them emotional distress damages.

ANALYSIS

The issue is whether the trial court erred in concluding emotional distress damages are not recoverable as actual damages under RCW 59.18.085(3).

We interpret a statute de novo. *Multicare Med. Ctr. v. Dep't of Soc. & Health Servs.*, 114 Wn.2d 572, 582 n.15, 790 P.2d 124 (1990). In doing so, we "discern and implement" our legislature's intent. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003); see *State ex rel. Great N. Ry. v. R.R. Comm'n of Wash.*, 52 Wash. 33, 36, 100 P. 184 (1909). If our legislature's intent is apparent from a statute's plain language, we do not construe it otherwise. *J.P.*, 149 Wn.2d at 450; *Walker v. City of Spokane*, 62 Wash. 312, 318, 113 P. 775 (1911). If a statute is ambiguous, we may consider its legislative history. *J.P.*, 149 Wn.2d at 450; *Shelton Hotel Co. v. Bates*, 4 Wn.2d 498, 507-08, 104 P.2d 478 (1940). A statute's meaning is ambiguous "if it is subject to two or more reasonable interpretations." *State v. McGee*, 122 Wn.2d 783, 787, 864 P.2d 912 (1993). A statute's meaning is not ambiguous "merely because different interpretations are conceivable." *State v. Till*, 139 Wn.2d 107, 115, 985 P.2d 365 (1999).

No. 31118-0-III
Segura v. Cabrera

Whether a plaintiff may recover emotional distress damages for a defendant's statutory violation "depend[s] on the language of the particular statute at issue." *White River Estates v. Hiltbruner*, 134 Wn.2d 761, 765, 953 P.2d 796 (1998). RCW 59.18.085 provides,

(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

. . . .
(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.

(Emphasis added.)

The tenants contend they may recover emotional distress damages because subsection (3)(e)'s "actual damages" language includes emotional distress damages and subsection (3)(a)'s "knew or should have known" language sounds in intentional tort, for which emotional distress damages are recoverable. The Residential Landlord-Tenant Act, chapter 59.18 RCW, does not define the words "actual damages." These words are ambiguous because they could reasonably include or exclude emotional distress damages where, as here, any damages under RCW 59.18.085(3) arise primarily from a contract to lease residential real property. The legislative history of subsection (3)(e) does not indicate the intended scope of these words. Absent some

No. 31118-0-III
Segura v. Cabrera

clear direction from our legislature, emotional distress damages are recoverable solely if subsection (3)(a) sounds in intentional tort. See *White River Estates*, 134 Wn.2d at 766.

The phrase “knew or should have known” generally imposes a recklessness standard. *E.g., Bilden v. United Equitable Ins. Co.*, 921 F.2d 822, 829 n.7 (8th Cir. 1990) (citing RESTATEMENT (SECOND) OF TORTS § 500 cmts. f-g (1965)); see RESTATEMENT (SECOND) OF TORTS § 500 (“The actor’s conduct is in *reckless disregard* of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, *knowing or having reason to know* of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.” (Emphasis added.)).

Washington courts often describe recklessness as wanton misconduct, distinguishable from willful misconduct. *Adkisson v. City of Seattle*, 42 Wn.2d 676, 684-87, 258 P.2d 461 (1953); *Jenkins v. Snohomish County Pub. Util. Dist. No. 1*, 105 Wn.2d 99, 106, 713 P.2d 79 (1986); *Johnson v. Schafer*, 110 Wn.2d 546, 549-50, 756 P.2d 134 (1988); *Zellmer v. Zellmer*, 164 Wn.2d 147, 155 n.2, 188 P.3d 497 (2008); *Mendenhall v. Siegel*, 1 Wn. App. 263, 266-67, 462 P.2d 245 (1969); *Livingston v. City of Everett*, 50 Wn. App. 655, 660, 751 P.2d 1199 (1988); see RESTATEMENT (SECOND) OF TORTS § 500 special note. Wanton misconduct is

the intentional doing of an act, or intentional failure to do an act, in *reckless disregard* of the consequences, and under such surrounding circumstances and conditions that a reasonable man would *know, or have*

No. 31118-0-III
Segura v. Cabrera

reason to know, that such conduct would, in a high degree of probability, result in substantial harm to another.

Adkisson, 42 Wn.2d at 687 (emphasis added); see 6 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CIVIL 14.01 & cmt., at 177-78 (6th ed. 2012). These authorities clarify subsection (3)(a)'s "knew or should have known" language does not sound in intentional tort.¹ Consequently, subsection (3)(e)'s "actual damages" language does not include emotional distress damages.

This division previously interpreted the "actual damages" provided under the Washington law against discrimination, RCW 49.60.030(2), as including emotional distress damages. *Ellingson v. Spokane Mortg. Co.*, 19 Wn. App. 48, 56-58, 573 P.2d 389 (1978). The court reasoned the words "actual damages" convey their ordinary common law meaning, since our legislature expressed no intent for them to convey a different statutory meaning. *Id.* at 56-57. Because "actual damages" do not ordinarily exclude emotional distress damages compensating real injury,² the court held the plaintiff could recover them under a liberal construction effectuating the statute's purpose. *Id.* at 57-58.

But here, interpreting the "actual damages" provided in RCW 59.18.085(3)(e) as including emotional distress damages would be incongruent with the statute's purpose.

¹ While some of these authorities use the words "intentional" and "intentionally" in describing wrongdoings, they still impose a recklessness standard regarding injuries. A tort is not truly intentional unless the defendant intends both a wrongdoing and some injury to the plaintiff. See RESTATEMENT (SECOND) OF TORTS §§ 8A & cmts. a-b, 500 & cmt. f.

² "Actual damages" are "[a]n amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses." BLACK'S LAW DICTIONARY

No. 31118-0-III
Segura v. Cabrera

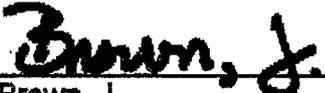
The statute exists primarily to provide monetary relocation assistance. LAWS OF 2005, ch. 364, § 1 ("The purpose of this act is to establish a process by which displaced tenants would receive *funds for relocation* from landlords who fail to provide safe and sanitary housing after due notice of building code or health code violations." (Emphasis added.)). These funds are not compensatory but an approximation of what a typical displaced tenant likely needs from a landlord to rent another residence: the greater of \$2,000 or three months' rent (ostensibly enough for the first and last months of a lease term), plus return of any prepaid deposit or rent. See RCW 59.18.085(3)(b). While subsection (3)(e) additionally provides "actual damages" exceeding these funds, we must interpret those words in light of the conduct subsection (3)(a) prohibits.

Because a landlord may violate subsection (3)(a) by conduct not amounting to an intentional tort, a displaced tenant may not recover emotional distress damages under subsection (3)(e). Considering the language of RCW 59.18.085(3)(e), "actual damages" that "exceed the amount of relocation assistance that is payable" implies out of pocket or financial damages incurred by relocation. While we do not so hold, wages lost during relocation, fuel costs, and equipment rental costs might be examples. This interpretation better suits the statute's purpose, which suggests the "actual damages" provided in RCW 59.18.085(3)(e) are limited to reasonable moving expenses. While relocation can be notoriously frustrating, moving expenses do not include emotional distress damages. Therefore, we hold a displaced tenant may not recover emotional distress damages for a landlord's violation of RCW 59.18.085(3). Accordingly, the trial

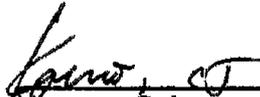
No. 31118-0-III
Segura v. Cabrera

court did not err. It follows that we deny the tenants' attorney fee request because they have not prevailed here.

Affirmed.


Brown, J.

I CONCUR:


Korsmo, C.J.

No. 31118-0-III

FEARING, J. (dissenting) — When construing the phrase “actual damages” in RCW 59.18.085, the majority follows judicial presumption rather than the intent of the legislature. In my view, the majority thus shirks a court’s responsibility to apply the law rather than create it. Therefore, I dissent.

On appeal, appellants Jose Segura and Tabetha Gonzalez contend that the trial court erred when it ruled that damages for emotional distress are not recoverable as “any actual damages” under RCW 59.18.085, the relocation assistance statute. The majority disagrees and affirms the trial court. I would hold that emotional distress damages are recoverable, based on the intent of the legislature when it drafted the statute as discerned by traditional principles of statutory construction. I would reverse the trial court, remand for a hearing for the purposes of awarding damages for emotional distress, and award appellants’ reasonable attorney fees and costs on appeal.

2005 RELOCATION ASSISTANCE ACT

In 2005, the Washington legislature passed a bill demanding that landlords pay relocation costs of tenants living in substandard housing. LAWS OF 2005, ch. 364, § 2 (codified at RCW 59.18.085). The legislature declared that the people of the state of Washington deserve decent, safe, and sanitary housing. Certain tenants in Washington live 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 must condemn property when landlords fail to remedy building code or health code violations after repeated notice, and, as a result, families with limited financial resources are displaced and left with nowhere to go. The 2005 bill allows a municipality to advance the costs of relocation to the tenant and seek reimbursement from the landlord. In the alternative, the tenant may maintain an action against the landlord to collect the costs and “*any actual damages* sustained . . . as a result of the . . . displacement.” RCW 59.18.085(e) (emphasis added).

The relevant portions of RCW 59.18.085 read,

(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

....
(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.

....
(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.

(Emphasis added.)

Chapter 59.18 RCW does not define "actual damages." Our sole issue is whether "any actual damages" under the statute includes damages for emotional distress? The Segura-Gonzalez family understandably claims it suffered significant anxiety, worry, inconvenience, and upheaval from being forced to vacate their home on short notice soon after signing a one-year lease.

Competing lines of law render the answer to our issue problematic. The first line of law, followed by the majority, directs us to deny emotional distress damages when a statutory tort may be committed unintentionally. The second line of law directs us to endorse emotional distress damages when a statute permits an award of "actual damages." Unlike the majority, I would resolve the tension between these two lines of law by applying tempered principles of statutory interpretation in order to discern the legislature's intent and thereby would follow the second line of law.

STATUTORY TORTS

Under tort principles, when a plaintiff suffers mental or emotional distress caused by some negligent act, there is no right of action, even when the mental condition causes physical injury, unless the act causing the mental fright or emotional distress also

threatens immediate bodily harm. *Kloepfel v. Bokor*, 149 Wn.2d 192, 200, 66 P.3d 630 (2003); *Smith v. Rodene*, 69 Wn.2d 482, 488-89, 418 P.2d 741 (1966). But where mental suffering or emotional distress is caused by a willful act, recovery is permitted, regardless of a threat to physical safety. *Kloepfel*, 149 Wn.2d at 200 (citing *Rodene*, 69 Wn.2d at 488-89); *Odom v. Williams*, 74 Wn.2d 714, 719, 446 P.2d 335 (1968). These principles extend, with one twist, to tort actions based upon statutory violations. If a violation of the statute does not require intentional misconduct, emotional distress damages are generally unrecoverable, even if the defendant's conduct in the suit is willful. *White River Estates v. Hiltbruner*, 134 Wn.2d 761, 765, 953 P.2d 796 (1998); *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 321, 858 P.2d 1054 (1993) (hereinafter *Fisons*). Thus, according to this first line of law adopted by the majority, the focus of the inquiry in statutory claims moves from the particular defendant's conduct to the mental state required by the statute.

Washington's leading case on emotional distress damages for a statute's violation is *White River Estates*, 134 Wn.2d at 765. There, a mobile home park tenant sued her landlord for interfering in a sale of her mobile home, when the landlord refused to consent to the assignment of a park lease. The tenant claimed the landlord violated RCW 59.20.073(5), which reads, in part, "Consent to an assignment shall not be unreasonably withheld." When the jury awarded the tenant damages for emotional distress, the landlord appealed. The Supreme Court reversed the award, since the statute could be

violated by negligent conduct.

Our high court began its analysis in *White River Estates* by noting RCW 59.20.073 is silent regarding what damages are available for its violation. The statute neither authorized nor disallowed recovery for emotional distress. In turn, according to the court, whether emotional distress damages are available following a statutory violation will depend on the language of the particular statute at issue. *White River Estates*, 134 Wn.2d at 766. The court wrote:

White River also argues that emotional distress damages may be a remedy for a statutory violation but only if the violation sounds in intentional tort. We agree. In the absence of a clear mandate from the Legislature, Washington courts have “liberally” construed damages for emotional distress for causes of action, including those based on statutory violations, if the wrong committed is in the nature of an intentional tort.

....
Consistent with the rule that damages for emotional suffering are available only upon proof on an intentional tort, this court has declined to allow emotional distress damages where the statutory violation requires only proof of negligent, as opposed to intentional, conduct.

....
RCW 59.20.073 does not require “willful” or “intentional” conduct, nor has any court interpreted RCW 59.20.073 to require such conduct. The statute requires proof that only the landlord acted “unreasonably” when denying consent to a tenant’s assignment. RCW 59.20.073.

....
The particular facts in this case may indicate intentional conduct on the part of the Park, but that is not the inquiry The focus is not on the particular facts of the case but whether the statutory violation requires proof of an intentional tort.

In conclusion, we find that emotional distress damages are not recoverable for a violation of RCW 59.20.073 because that statute may be violated by conduct not amounting to an intentional tort.

White River Estates, 134 Wn.2d at 766, 768-69 (citations omitted).

White River Estates built upon a foundation earlier laid by the Supreme Court—namely *Birchler v. Castello Land Co.*, 133 Wn.2d 106, 942 P.2d 968 (1997). In *Birchler*, the Court interpreted the timber trespass statutes, RCW 64.12.030 and .040, as allowing recovery for either a casual or involuntary trespass, on the one hand, or willful trespass, on the other hand, the latter case affording treble damages. 133 Wn.2d at 117. Plaintiffs sought treble damages. Since the plaintiffs hinged their suit upon the intentional trespass portion of the statute, they could recover emotional distress damages. In *Fisons*, however, the state high court denied recovery for emotional distress under the Product Liability Act, chapter 7.72 RCW, since liability could be predicated on negligence or even strict liability. *Fisons*, 122 Wn.2d at 321.

RCW 59.18.085, the statute under which the Segura-Gonzalez family sues, neither expressly permits emotional distress damages nor precludes such damages. Thus, if we follow our first line of law, we must address the mental state element found in RCW 59.18.085.

As the majority discusses, the statute imposes liability upon a landlord that “knew or should have known” of the defective conditions in the premises. The inclusion of the phrase “should have known” presupposes that the defendant has no actual knowledge of the defective condition. If the defendant lacks actual knowledge of a hazard, the defendant’s conduct may not be characterized as intentional. A standard that asks whether the defendant knew or, in the exercise of reasonable care, should have known

imposes liability for negligence. *Sligar v. Odell*, 156 Wn. App. 720, 732, 233 P.3d 914 (2010) (dog bite); *Maison de France, Ltd. v. Mais Ouil, Inc.*, 126 Wn. App. 34, 44, 108 P.3d 787 (2005) (defamation); *Betty Y. v. Al-Hellou*, 98 Wn. App. 146, 150, 988 P.2d 1031 (1999) (negligent hiring); *Iwai v. State*, 129 Wn.2d 84, 97, 915 P.2d 1089 (1996) (premises liability); *Jung v. York*, 75 Wn.2d 195, 198, 449 P.2d 409 (1969) (pedestrian vehicle accident). “Negligence considers the defendant’s conduct by asking what it knew or should have known about hazards.” *Simonetta v. Viad Corp.*, 165 Wn.2d 341, 370 n.13, 197 P.3d 127 (2008) (products liability). Since RCW 59.18.085 can be violated by negligent conduct, the majority is correct that emotional distress damages are unavailable under the statute if we strictly apply the holding of *White River Estates*.

But the *White River Estates* line of decisions deserves some criticism. The deciding courts did not attempt to discern, or effectuate, what the legislature intended in each statute. The decisions do not focus on the precise language of the various statutes. The court gives no explanation as to why it could not allow the injured party to recover emotional distress damages for intentional, but not negligent, violations of the respective statutes. The courts give no reason for the creation of the rule. And thus, there is no reason for us to apply it in this case.

ACTUAL DAMAGES

Based upon the precedence of *White River Estates*, *Birchler*, and *Fisons*, the majority concludes that Segura and Gonzalez may not recover emotional distress

damages. Nevertheless, the majority fails to recognize that the statutory language respectively tackled in those three decisions is distinguishable from language in RCW 59.18.085. Specifically, unlike RCW 59.18.085, none of the other statutes at issue in *White River Estates*, *Birchler*, or *Fisons* employ the familiar term “actual damages.”

White River Estates addressed a violation of RCW 59.20.073, which imposes on landlords a duty not to unreasonably withhold consent of assignment, without mention of a private right of action for its violation, let alone the available damages for such a violation. Nor does chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act, ascertain anywhere in its many sections the damages available for violations of the act by the landlord.

Birchler concerned the violation of RCW 64.12.030 and .040, trespass to trees. The former statute directed entry of judgment for “treble the amount of damages claimed or assessed,” but does not name the type of damages available.

Fisons addressed damages available under the Product Liability Act, chapter 7.72 RCW. The chapter defines “harm”: “‘Harm’ includes any damages recognized by the courts of this state: PROVIDED, That the term ‘harm’ does not include direct or consequential economic loss under Title 62A RCW.” RCW 7.72.010(6). RCW 7.72.010(6) defines “harm” or “damages” broadly, but does not utilize the term “actual damages” used in RCW 59.18.085.

Should the difference between RCW 59.18.085 and the other statutes lead this court to conclude that a violation of RCW 59.18.085, despite encompassing negligent conduct, permits damages for emotional distress? Yes.

Currently ninety-five Washington statutes direct courts to grant “actual damages” to prevailing plaintiffs in various statutory causes of action. Many statutory schemes are silent on whether “actual damage” encompasses damages for emotional distress. For example, RCW 7.48.315 permits a farmer, who prevails in any action alleging that agriculture activity constitutes a nuisance, to recover “actual damages,” and “actual damages” is defined as including “lost revenue and the replacement value of crops or livestock damaged.” RCW 7.48.315(3). Emotional distress damages are not explicitly included in the definition.

As a counter example, RCW 27.44.050, affords a Native American tribe or enrolled member a cause of action for destruction or defacing of an Indian artifact. The statute allows recovery for actual damages and reads that “[a]ctual damages include special and general damages, which include . . . emotional distress.” RCW 27.44.050(3)(c). One could conclude that RCW 59.18.085 does not permit emotional distress damages because the statute does not expressly include the term in its language as does RCW 27.44.050. Or one could conclude that RCW 27.44.050 illustrates that emotional distress damages at most automatically, or at least presumptively, flow from use of the term “actual damages.”

In one setting, the Consumer Protection Act, Washington courts have disallowed recovery of emotional distress damages under a statute that affords “actual damages.” *Fisons*, 122 Wn.2d at 318; *Stevens v. Hyde Athletic Indus., Inc.*, 54 Wn. App. 366, 369, 773 P.2d 871 (1989). RCW 19.86.090 grants a private right of action under the act “to recover *actual damages* sustained.” (Emphasis added.) Denying emotional distress damages follows sound reasoning, in this context however, because the right to sue is limited to a “person who is injured in his or her business or property by a violation of [the Act].” RCW 19.86.090. According to our high court, “[t]he phrase ‘business or property’ also retains restrictive significance. It would, for example, exclude personal injuries suffered.” *Fisons*, 122 Wn.2d at 318 (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S. Ct. 2326, 60 L. Ed. 2d 931 (1979)).

But otherwise, mental pain and suffering is included within a statutory definition of “actual damages,” even when the statutory scheme does not define that phrase. The Washington law against discrimination, RCW 49.60.030(2), states “[a]ny person deeming himself or herself injured by any act in violation of this chapter shall have a civil action . . . to recover the *actual damages* sustained by the person.” (Emphasis added.) In turn, a leading case on emotional distress damages construes the statute. In *Ellingson v. Spokane Mortgage Company*, 19 Wn. App. 48, 573 P.2d 389 (1978), the court addressed whether emotional distress damages were available under RCW 49.60.030(2) and answered in the affirmative. The court considered the phrase “actual damages” to be a

“familiar legal term [with a] familiar legal meaning.” *Ellingson*, 19 Wn. App. at 57. The court relied on *Black's Law Dictionary's* definition of “actual damages”:

Real, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed on the one hand to “nominal” damages, and on the other to “exemplary” or “punitive” damages. Synonymous with “compensatory damages” and with “general damages.”

(Citations omitted.) *Ellingson*, 19 Wn. App. at 57 (quoting BLACK'S LAW DICTIONARY 467 (revised 4th ed. 1968)). The *Ellingson* court held:

The generally accepted legal meaning of “actual damages” is recognized in *Rasor v. Retail Credit Co.*, [87 Wn.2d 516, 529, 554 P.2d 1041 (1976)]:

In reference to the type of harm suffered, the term “actual damages” has a generally accepted legal meaning. Although it declined to define “actual injury,” the United States Supreme Court recently noted the variety of harm which may result when damage is actually sustained.

Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the *more customary types of actual harm* inflicted by defamatory falsehood *include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering*. Of course, juries must be limited by appropriate instructions, and all awards must be supported by competent evidence concerning the injury, although there need be no evidence which assigns an actual dollar value to the injury.

(Italics ours.) *Gertz v. Robert Welch, Inc.* [418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974)], *supra* at 350. Accord, *Weaver v. Bank of America Nat'l Trust & Sav. Ass'n* (59 Cal. 2d 428, 30 Cal. Rptr. 4, 380 P.2d 644 (1963)), *supra*; *Anderson v. Pantages Theater Co.*, 114 Wash. 24, 31, 194 P. 813 (1921). *It is important to note* that although *Gertz* was a defamation action, it is clear that the *court's language is not limited to such cases*.

(Italics ours.) Therefore, we hold that the recovery of “actual damages” under the law against discrimination, RCW 49.60, is not limited to merely pecuniary or out-of-pocket losses or, as the case here, to the wage

compensation differential. Rather, the remedy and the recovery authorized by the statute encompasses all claims for compensatory damages for injury in fact, as distinguished from exemplary, nominal or punitive damages. This conclusion is consistent with the mandate of liberal construction of this remedial legislation to effectuate its purposes. RCW 49.60.010-.020.

Ellingson, 19 Wn. App. at 57-58. (some alterations in original). In so ruling, the court did not base its decision upon the statute generally requiring intentional conduct, but upon the definition of “actual damages.”

In *Martini v. Boeing Company*, 137 Wn.2d 357, 971 P.2d 45 (1999), the state high court confirmed that the term “actual damages,” in the context of RCW 49.60.020, “encompass[es] all the elements of compensatory awards,” including “damages for emotional distress.” *Martini*, 137 Wn.2d at 368, 370; *see also Dean v. Seattle-Metro*, 104 Wn.2d 627, 641, 708 P.2d 393 (1985).

Ellingson relies significantly upon our Supreme Court’s decision in *Rasor v. Retail Credit Company*, 87 Wn.2d 516, 554 P.2d 1041 (1976), in which the Court addressed whether emotional distress damages were available under the federal Fair Credit Reporting Act, chapter 19.182 RCW. The Act permits recovery for “an amount equal to . . . any *actual damages* sustained by the consumer.” 15 U.S.C. § 1681o; 15 U.S.C. § 1681n. (Emphasis added.) The Court held that “actual damages” are synonymous with compensatory damages, which includes recovery for emotional distress. *Rasor*, 87 Wn.2d at 530.

Conrad v. Alderwood Manor, 119 Wn. App. 275, 78 P.3d 177 (2003), included a

claim under the abuse of vulnerable adults statute, RCW 74.34.200, which permits recovery for “actual damages.” RCW 74.34.200(3). Our court did not directly address whether emotional distress damages could be recovered under the statute, but the court affirmed a high jury verdict that included recovery of \$2.75 million for mental pain and suffering. Noticeably, the defendant could be held liable for “neglect,” i.e., unintentional harm under the statute. Therefore, if the majority is correct, we erred in *Conrad*.

In *Dees v. Allstate Insurance Company*, 933 F. Supp. 2d 1299 (W.D. Wash. 2013), the United States District Court addressed Washington’s insurance fair conduct act, RCW 48.30.015. RCW 48.30.015(1) reads, “Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action . . . to recover the *actual damages* sustained.” (Emphasis added.) The Court held that pain and suffering could be recovered for a violation of the Act.

As a general rule, federal and other state statutes that grant “actual damages” permit recovery for emotional distress. See *Jacobs v. Nat’l Drug Intelligence Ctr.*, 548 F.3d 375, 376 (5th Cir. 2008) (privacy act of 1974, 5 U.S.C. § 552a); *Smith v. The Berry Co.*, 198 F.3d 150, 151 (5th Cir. 1999) (Louisiana’s antidiscrimination statute); *Greisz v. Household Bank*, 8 F. Supp. 2d 1031, 1043 (N.D. Ill. 1998) (Illinois Consumer Fraud Act); *Dan Boone Mitsubishi, Inc. v. Ebrom*, 830 S.W. 2d 334 (Tex. Ct. App. 1992) (Texas consumer protection act); *Shaw v. Cassar*, 558 F. Supp. 303, 311 (D.C. Mich. 1983) (tenant lock out statute). Thus, our second line of law urges us to award emotional

distress damages under RCW 59.18.085.

STATUTORY INTERPRETATION

Our review of the two lines of law only begins our task. In the end, we must discern whether our legislature, in RCW 59.18.085, desired the tenant to recover emotional distress damages when forced to relocate because of substandard conditions. We must discover what the legislature meant by the term “actual damages.” The court must ascertain and give effect to the legislature’s intent. *Dep’t of Transp. v. State Emps. Ins. Bd.*, 97 Wn.2d 454, 458, 645 P.2d 1076 (1982). In so doing, the court relies on many tested, commonsensical, and intelligent principles to divine the meaning of the statute, principles employed when interpreting other important and even sacred texts.

To determine legislative intent, this court looks first to the language of the statute. *Lacey Nursing v. Dep’t of Revenue*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). “Undefined statutory terms must be given their usual and ordinary meaning and courts may not read into a statute [meaning] which [is] not there.” *Nationwide Ins. v. Williams*, 71 Wn. App. 336, 342, 858 P.2d 516 (1993) (citing *Dominick v. Christensen*, 87 Wn.2d 25, 27, 548 P.2d 541 (1976)). Washington law teaches that “actual damages” is a familiar term that includes emotional distress damages. *Ellingson*, 19 Wn. App. at 57. “Actual damages” thus encompasses the usual and ordinary meaning of emotional distress.

We may also construe a statute by referring to a statement of purpose expressed by the legislature. Espousing its intent for RCW 59.18.085, the legislature stated:

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.

LAWS OF 2005, ch. 364, § 1 (emphasis added). One might conclude that the legislature intended to limit recoverable damages to “funds for relocation,” or out of pocket expenses. But that interpretation belies RCW 59.18.085’s express language. The statement of purpose may inform the impetus for the statute, but it in no way limits RCW 59.18.085(3)(e)’s award of actual damages in addition to relocation costs.

Like a detective looking for evidence surrounding the locus of the body, we may look for clues of the legislature’s intent by considering those words surrounding “actual damages” in RCW 59.18.085. We consider the statute’s plain meaning by looking at the text of the provision at issue, as well as the context of the statute in which that provision is found.

State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). The statute reads: “*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.*” RCW 59.18.085(3)(e) (emphasis added). By its plain language, the statute allows actual damages “in addition” to relocation costs.

Mention of amounts “that exceed the amount of relocation assistance” may imply that the only additional damages recoverable are out of pocket or financial damages incurred by relocation. Still, the word preceding “actual damages” in RCW 59.18.085 is “any.” The statute entitles the tenant “*to recover any actual damages sustained by them as a result of*

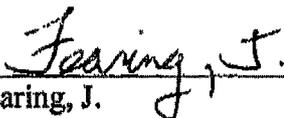
the . . . displacement.” (Emphasis added.) “Any” is defined in part as “every” and “all,” and as being indiscriminate. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 97 (1993). Unless this court includes emotional distress in actual damages, we fail to give meaning to the determiner “any.” Thus, the word’s use is a strong indication of intent to allow emotional distress damages. The majority’s failure to recognize the word “any” in the statute violates the principle that we interpret statutes to give effect to all the language used. *Cornu-Labat v. Hosp. Dist. No. 2 Grant County*, 177 Wn.2d 221, 231, 298 P.3d 741 (2013).

The final principle of statutory construction, upon which we should rely is this: the legislature is presumed to know the law in the area in which it is legislating. *Wynn v. Earin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008); *Price v. Kitsap Transit*, 125 Wn.2d 456, 463, 886 P.2d 556 (1994). The Washington legislature adopted RCW 59.18.085 in 2005. The state legislature adopted the statute with the backdrop of state decisions holding that “actual damages” includes emotional distress damages. The legislature had available and presumably used definitions of “actual damages” as including emotional distress damages. When the drafters of RCW 59.18.085 prepared the bill and when the legislators voted on the bill, they more likely bore in mind that “actual damages” is defined by a legal dictionary and court cases as including emotional distress damages rather than pondering the court construct, upon which the majority relies, that denies emotional distress damages for statutory torts because they can be committed

unintentionally.

Statutes, as expressions of the legislature's intent, prevail over conflicting common law doctrines. *Windust v. Dep't of Labor & Indus.*, 52 Wn.2d 33, 36-37, 323 P.2d 241 (1958); *Wynn*, 131 Wn. App. at 39. Consistent with the intent of the legislature, rather than with a slavish devotion to judicial theory, a displaced tenant should recover emotional distress damages under RCW 59.18.085.

Finally, sound policy reasons exist to grant emotional distress damages upon a violation of RCW 59.18.085. The party injured is typically an economically vulnerable party. Summarily being thrown from one's home is stressful and deserves compensation as much as the cutting of one's trees. By ruling for Segura and Gonzalez, we might help secure safe and sound housing, a critical need for Washington residents.



Fearing, J.



WA F. B. Rep., 2009 Reg. Sess. H.B. 1663
Washington Final Bill Report, 2009 Reg. Sess. H.B. 1663
Washington Final Bill Report, 2009 Reg. Sess. H.B. 1663

Washington Final Bill Report, 2009 Regular Session, House Bill 1663

May 27, 2009
Washington Legislature
Sixty-first Legislature, First Regular Session, 2009

Synopsis as Enacted

Brief Description: Creating relocation assistance rights for nontransient residents of hotels, motels, or other places of transient lodging that are shut down by government action.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Springer, Simpson, Roberts, Miloscia, Nelson, Ormsby and Santos).

House Committee on Judiciary

Senate Committee on Financial Institutions, Housing & Insurance

Background:

If a governmental agency notifies a landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes or regulations, the landlord may not enter into any rental agreement for the dwelling until the conditions are corrected. If the landlord enters into a rental agreement with a new tenant prior to correcting the conditions, the tenant is entitled to three months rent or up to treble the actual damages sustained. The tenant is also entitled to the costs of suit or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy or is required by an appropriate governmental agency to vacate the premises, the tenant may recover the entire amount of any deposit paid to the landlord and all prepaid rent.

A landlord who knew or should have known that a dwelling would be condemned or be unlawful to occupy is required to pay relocation assistance to displaced tenants. Relocation assistance consists of the following:

- the greater of \$2,000 per dwelling unit or three times the monthly rent; and
- the entire amount of any deposit prepaid by the tenant and all prepaid rent.

Landlords must pay relocation assistance and any prepaid deposit or rent to displaced tenants within seven days of the governmental agency sending notice of the condemnation, eviction, or displacement order. The landlord may pay relocation assistance to the displaced tenants individually or to the governmental agency ordering the condemnation or eviction. A local government may advance the cost of relocation assistance payments and assess interest and penalties if a landlord fails to pay displaced tenants in a timely manner. The governmental agency that notifies a landlord of condemnation must notify the displaced tenants that they may be entitled to relocation assistance.

Relocation assistance is not required to be paid by the landlord if the condemnation or no occupancy order results from conditions:

- caused by illegal conduct by a tenant or any third party without the landlord's prior knowledge;
- arising from a natural disaster; or
- created by the acquisition of the property by eminent domain.

Summary:

A person who has lived in a hotel, motel, or other place of transient lodging for 30 or more consecutive days is deemed to be a tenant for the purpose of relocation assistance even though the living arrangements are exempt from the Residential Landlord-Tenant Act. The tenant living in a place of transient lodging must be there with the knowledge and consent of the owner, manager, clerk, or other agent representing the owner. Landlords providing transient lodging must pay relocation assistance directly to displaced tenants.

An interruption in occupancy primarily intended to avoid relocation assistance does not affect the eligibility of the person residing in a place of transient lodging to receive relocation assistance. An oral or written occupancy agreement that waives the right of a transient tenant to receive relocation assistance is against public policy and unenforceable.

Notes on Final Passage:

| | | |
|--------|----|----|
| House | 72 | 24 |
| Senate | 29 | 18 |

Effective: July 26, 2009

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

WA F. B. Rep., 2009 Reg. Sess. H.B. 1663

END OF DOCUMENT

© 2015 Thomson Reuters. No Claim to Orig. US Gov. Works.

DECLARATION OF SERVICE

On this day said forth below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Brief of Amicus Curiae Rental Housing Association of Washington in Supreme Court Cause No. 90088-4 to the following parties:

George M. Ahrend
16 Basin St. SW
Ephrata, WA 98823

Bryan P. Harnetiaux
517 E. 17th Avenue
Spokane, WA 99203

Scott M. Kinkley
Northwest Justice Project
1702 West Broadway
Spokane, WA 99201

Raquel Cabrera *Sent by U.S. mail only
Rogaciano Cabrera
323 N. Douglas
Pasco, WA 99301

Original efiled with:

Washington Supreme Court
Clerk's Office
415 12th Street W
Olympia, WA 98504-0929

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

DATED: February 13, 2015, at Seattle, Washington.



Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick/Tribe

OFFICE RECEPTIONIST, CLERK

To: Roya Kolahi
Cc: gahrend@ahrendlaw.com; bryanpharnetiauxwsba@gmail.com; scottk@nwjustice.org; Bill Hinkle
Subject: RE: Jose Segura, et al. v. Rogaciano Cabrera, et ux. Cause No. 90088-4

Received 2-13-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Roya Kolahi [mailto:Roya@tal-fitzlaw.com]
Sent: Friday, February 13, 2015 9:20 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: gahrend@ahrendlaw.com; bryanpharnetiauxwsba@gmail.com; scottk@nwjustice.org; Bill Hinkle
Subject: Jose Segura, et al. v. Rogaciano Cabrera, et ux. Cause No. 90088-4

Good Morning:

Attached please find the Brief of Amicus Curiae Rental Housing Association of Washington in Supreme Court Cause No. 90088-4 for today's filing. Thank you.

Sincerely,

Roya Kolahi
Legal Assistant
Talmadge/Fitzpatrick/Tribe
206-574-6661 (w)
206-575-1397 (f)
roya@tal-fitzlaw.com