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STATE OF WASHINGTON  
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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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NO. 98024-1

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**THOMAS SILVER,**

Petitioner,

v.

**RUDEEN MANAGEMENT COMPANY, INC.,**

Respondent.

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**RESPONDENT'S SUPPLEMENTAL BRIEF**

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## **A. INTRODUCTION.**

The issue before this Court is the correct application of Chapter 4.16 Revised Code of Washington as to an alleged violation of the Washington Residential Landlord-Tenant Act of 1973 (RLTA); specifically a violation of RCW 59.18.280. The Court has recognized that the RLTA is a piece of legislation which was thoroughly developed to the point where this Court stated: “it is hard to perceive of a more thoroughly considered piece of legislation than the Residential Landlord-Tenant Act of 1973.” *State v. Schwab*, 103 Wn.2d 542,551, 693 P.2d 108, 113 (1985). Understanding the statutory framework is key to applying the correct statute of limitations.

The remedies provided in the RLTA are unique to the Landlord-Tenant relationship. Analysis of the duties and prohibitions therein provides insight into the unique and independent nature of the remedies for violations of the RLTA. As most of these remedies have no clear basis in common law, the appropriate statute of limitations is found at RCW 4.16.130: “An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.” The Court of Appeals for Division III correctly determined that RCW 4.16.130 time barred the Appellant’s complaint.

In making its decision, the Court of Appeals relied on the fact that Appellant’s “complaint is expressly predicated on the landlord’s duty under RCW 59.18.280(1) to respond within twenty-one days by either returning a damage deposit or providing a final statement justifying the withholding of some or all of the deposit. He seeks the remedies accorded by that statute.” *Silver v. Rudeen Management Company, Inc.*, 10 Wn.App.2d 850, 449 P.3d 1067, 1069 (2019). This decision recognizes the nature of the remedy as being independent from any existing legal right which the Appellant may have had, absent the imposition of the statutory penalties found in the RLTA. This decision is consistent with the precedent set by this Court in *Seattle Professional Engineering Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 991 P.2d 1126, (2000). The decision should be affirmed.

## **B. SUPPLEMENTAL ARGUMENT.**

The legislature enacted the RLTA to address injustices within the landlord-tenant relationship. Although it does not contain an express public purpose, its provisions can easily be seen to address problems within a relationship in which there is unequal control of the terms and conditions of that relationship. Landlords can take advantage of tenants who need a place to live; Tenants, while having possession of the property

can cause severe damage to the landlord's investment. The RLTA attempts to address these issues and provide a standard of conduct to resolve conflict within the relationship. It provides penalties and incentives to encourage the parties to adhere to its terms.

The violations of duties and prohibitions expressly stated in the RLTA provide their own remedies. The fact that these remedies are limited by conditions set in the RLTA demonstrate their deviation from the common law. The provisions tend to be technical and provide for private enforcement and in most cases strict liability. Additionally, the remedies provided by the RLTA are not exclusive as they do not limit other causes of action if they exist.

Since a violation of RCW 59.18.280 provides a conditional remedy based on a regulatory provision of the statute, the action for relief under that section is one which is "not hereinbefore provided for" by other statutes of limitations. RCW 4.16.130. The application of RCW 4.16.130 is consistent with established precedent.

**1. REMEDIES FOR VIOLATIONS OF THE RLTA ARE CONDITIONAL.**

A factor which demonstrates the independent nature of the remedies provided by the RLTA are their limitations. There are two sections which limit the parties' use the RLTA in an offensive manner.

One provision requires payment of rent, and another requires good faith.

**a. TENANTS MUST BE CURRENT IN RENT TO EXERCISE REMEDIES UNDER THE RLTA.**

One of the provisions which provides a check and balance in favor of landlords is the current rent provision of the RLTA. In order for a tenant to seek remedies under the RLTA, the tenant must be current in his or her rent.

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.

RCW 59.18.080.

This section recognizes that remedies under the RLTA are distinct from common law remedies. It states that the limitation on statutory remedies is “not to be construed as limiting the tenant's civil remedies for negligent or intentional damages”, i.e. tort damages. Even if the regulatory, statutory remedies are not accessible to a tenant because of their nonpayment of rent, the tenant’s tort remedies would still be available, if they otherwise exist. The statute does not leave the tenant

without recourse if he or she has a common law cause of action. The tenant simply does not get enhanced and independent remedies provided by the RLTA. If the tenant is current in rent, he or she may access the statutory remedies even though he or she may not have any common law remedies. The statutory remedies stand on their own and are not intertwined with other remedies. This point is expanded by the requirement of good faith.

**b. BOTH LANDLORDS AND TENANTS MUST ACT IN GOOD FAITH AS A PRECONDITION TO EXERCISE OF A REMEDY UNDER THE RLTA.**

RCW 59.18.020 imposes a duty of good faith in order to exercise any remedy under the RLTA.

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

RCW 59.18.020.

The imposition of a duty of good faith distinguishes the statutory remedies from the common law remedies, and rightfully so. The remedies provided in the RLTA are punitive in nature and many of the penalties against the landlords are based on strict liability. It would be inequitable to allow tenants to reap the benefits of statutory damages, double damages

and attorney fees if there were no requirement of good faith or to be current in rent.

These limitations indicate an exclusivity to the extraordinary remedies provided in the RLTA without denying a tenant the ability to access the courts for common law remedies if available.

**2. THE NATURE AND EXTENT OF REMEDIES FOR VIOLATIONS OF THE RLTA ARE EXPRESSLY PROVIDED IN THE ACT.**

The RLTA contains several sections which provide for remedies. One form of remedy creates formal and informal processes which are designed to address violations of the Act's provisions. Another form of remedy is to create a cause of action which provides for statutory damages. Some of the remedies tend to preserve the tenancy while others contemplate termination of the tenancy.

RCW 59.18.070 is the first section of the act which provides a remedy.

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

RCW 59.18.070 (emphasis added, footnote omitted.)

The remedy provided by this section is an informal process which has no judicial element. The tenant can pursue legal remedies otherwise available and/or provide a notice to the landlord to repair a defective condition. If the landlord fails to rectify the condition then the tenant can proceed under RCW 59.18.090 which includes tenant's unilateral termination of the tenancy or pursue legal remedies. If the tenant follows the statutory procedure, he or she is entitled to the extraordinary, statutory remedies.

Monetary penalties are available to tenants pursuant to certain section of the statutory framework. For example, RCW 59.18.253 addresses fees charged by a landlord for reserving a dwelling unit. It provides a remedy for violations of that section.

(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.

RCW 59.18.253(4).

Likewise, RCW 59.18.225 addresses sources of income to determine eligibility to rent. It provides that a landlord who violates its provisions “shall be held liable in a civil action up to four and one-half times the monthly rent of the real property at issue, as well as court costs and reasonable attorneys' fees.” RCW 59.18.255(4).

RCW 59.18.280(2) provides monetary penalties unique to the statute. It reads:

(2) If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he or she shall be liable to the tenant for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the twenty-one days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorneys' fee.

RCW 59.18.280(2).

The structure of this statutory provision is a classic “if then” provision with respect to liability. “If the landlord fails” to act within 21 days, then “he or she shall be liable”. The plain language of the statute defines the event which creates liability: the failure to effectuate one of

two events within 21 days. There is no equivalent or similar event in the common law which creates liability, and which is conditioned upon good faith and being current in the payment of rent. The liability thereunder is strict, only being relieved upon the landlord proving one of two other factors. Punitive damages are available to the tenant. Understanding the nature of liability and the accompanying remedy is critical in determining which statute of limitations applies.

**3. THE COURT OF APPEALS DECISION IS CONSISTENT WITH THE PRINCIPLES SET OUT IN THE CASE LAW APPLYING THE STATUTES OF LIMITATIONS.**

In this matter, Appellant filed a complaint alleging that the Respondent was liable to pay him the amount of his damage deposit based on a violation of RCW 59.18.280. In order to prevail on that claim, the Appellant must allege and prove that he did not receive an accounting of his damage deposit. Although his complaint acknowledges that he received an accounting, he further alleges that the accounting was not a full and specific statement because it contained some items which were estimated. Appellant contends that anytime a landlord estimates an expense, it creates a violation of the statute regardless of the accuracy of the estimate:

- 6.1.3 An estimate is not a full and specific statement.
- 6.1.4 An undisclosed charge is not a full and specific statement.
- 6.1.5 An anticipated charge is not a full and specific statement.

CP 9. (Appellant’s Complaint.) As explained *infra*, the allegation that the deposit accounting did not meet the requirements of the RLTA establishes the potential liability on the part of the landlord. The Appellant has no claim for liability absent the alleged RLTA violation.

The last time this Court addressed issues related to RCW 4.16.130 was 20 years ago in the matter of *Seattle Professional Engineering Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 991 P.2d 1126, (2000). In that matter, Boeing employees were seeking to be paid for time spent in mandatory orientation. The employees were forced to attend orientation and were not paid for that time. They sought remedies available under RCW 49.46.020(1). This Court ruled that Boeing had a “legal obligation imposed in law . . . [to] pay an employee” for time spent to attend orientation, and the employees had a right to claim the wages for that time. Boeing’s failure to fulfill that obligation created a cause of action in common law for unjust enrichment which subject to a three-year limitation period. RCW 4.16.080(3).

RCW 49.46.020(1) is the statutory equivalent. It requires

payment of wages and provides a remedy for failure to pay those wages. A cause of action based on this statute is a cause of action to enforce a right which exists in common law. Because RCW 49.46.020(1) enforces an unwritten contractual right, RCW 4.16.080(3) provides the appropriate statute of limitations: “an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument”. Thus this Court applied a three-year statute of limitations to actions brought pursuant to RCW 49.46.020(1).

In deciding the Boeing case, this Court was mindful of the possibility of negating the provisions of RCW 4.16.130 based on the theory that the statutory action was based in tort.

We decline to adopt the employees' suggestion that a claim under the WMWA is akin to a civil rights action or tort action because this approach essentially eviscerates RCW 4.16.130. Any action in court upholds a right of some sort.

SPEAA, 139 Wn.2d at 837.

In this matter, the alleged violation of the RLTA created the Appellant’s claim for liability on the part of the landlord. Unlike the Boeing case, there is no “legal obligation imposed in law” that a tenant has a right to receive his damage deposit at the close of the tenancy. It is conditional. If the landlord fails to perform the statutory duties under RCW 59.18.280, then the landlord is liable for the amount of the damage

deposit, along with possible statutory penalties. The statutory language is noteworthy. Stating that the landlord is liable for the damage deposit is different than stating that the tenant is entitled to refund of the damage deposit. The statutory violation creates liability on the part of the landlord, regardless of the existence of any right on the part of the tenant. Even if the landlord is otherwise entitled to keep the damage for compensable damage, he or she will still be liable to the tenant for the amount of the deposit if he or she violates RCW 59.18.280.

For example, many lease agreements contain the statutory duty to provide a damage deposit accounting. This would create a contractual obligation to provide the accounting within 21 days. If the tenant's damages exceeded the damage deposit and the landlord failed to give the accounting within 21 days, the tenant would have no remedy as a result of the landlord's breach of the contract. The tenant would be unable to prove causation and damages. However, the tenant's cause of action for the landlord's violation of RCW 59.18.280 would survive, and the landlord could still be liable for the damages therein. This situation illustrates how the statute creates liability on the part of the landlord independent of any other obligations express or implied.

Taking this example to the extreme, a tenant could abandon the rental unit, cause \$20,000 in damage to the premises, and leave several hundred dollars in utility bills which must be paid by the landlord. Clearly this tenant would have no claim in law, equity or sanity to a refund of his or her damage deposit. However, RCW 59.18.280 still provides a remedy to the tenant, if its provisions are violated. The landlord would still be liable for the amount of the damage deposit and statutory remedies if he or she violates RCW 59.18.280 by not sending an accounting within 21 days. RCW 59.18.280 is completely blind as to other rights and remedies. As such it is an independent action for which no other statute of limitations is provided other than RCW 4.16.130.

This principle of enhanced rights to determine statutes of limitations as described in *SPEEA v Boeing* is found historically throughout the case law addressing the statutes of limitations. It is the common thread woven through the analysis. In *Lewis v. Lockheed Shipbuilding and Const. Co.* the court applied this principal to rights which had vested in public employment. Finding that a public employee had earned a property right in his civil service pension, firing him was an act that invaded that right. A cause of action to vindicate that right was afforded a three-year statute of limitations.

Washington courts have consistently followed *Northern Grain* in holding that the 2-year catch-all statute applies to causes of action arising out of the failure of public officials to perform their official duties. See, e.g., *Constable v. Duke*, 144 Wash. 263, 266-67, 257 P. 637 (1927); *Gates v. Rosen*, 29 Wash.App. 936, 941, 631 P.2d 993 (1981), aff'd sub nom. *Hall v. Niemer*, 97 Wash.2d 574, 649 P.2d 98 (1982); *Peterick v. State*, supra, 22 Wash.App. at 169, 589 P.2d 250. **But where the defendant directly invades a legally protected interest of the plaintiff, the 3-year statute applies.** In *Luellen v. Aberdeen*, 20 Wash.2d 594, 148 P.2d 849 (1944), the plaintiff sought reinstatement to the city police force. The court held that, because the plaintiff had acquired a property right to his civil service pension, the city invaded that right by firing him. The court thus applied the 3-year statute, stating that it was intended to cover injury to that kind of property that is intangible in its nature, especially when the injury consists of some direct, affirmative act which prevents another from securing, having, or enjoying some valuable right or privilege. *Luellen*, at 604, 148 P.2d 849.

*Lewis v. Lockheed Shipbuilding and Const. Co.*, 36 Wn.App. 607, 676 P.2d 545, (1984) (footnote omitted, emphasis added.)

In this matter, the Appellant's complaint is to enforce the regulatory provisions of the RLTA. Appellant has not demonstrated a legal right to claim the deposit, outside of the statutory provision. It is the only remedy sought in the complaint. It stands or falls on its own merit. A claim of this nature is governed by RCW 4.16.130 which provides a two-year statute of limitations. Because the action was filed more than

two years after the cause of action accrued, the trial court and court of appeals properly dismissed the case.

**4. APPELLANT’S ASSERTIONS REGARDING A COMMON LAW TRUST ARE MISPLACED.**

Appellant argues that holding a refundable deposit creates a common law trust based on the statutory requirement to place the deposit in a pooled trust account. As discussed in other briefing, the holding of a refundable deposit is much more akin to a performance bond, rather than a trust. The tenant acts as the principal under the bond. The funds are held in trust as a surety that performance will take place. The landlord is the obligee who will receive the funds in the event of default. The RLTA places no higher duty on the landlord than explaining why he kept the deposit.

The landlord complies with this section if the required statement or payment, or both, are delivered to the tenant personally or deposited in the United States mail properly addressed to the tenant's last known address with first-class postage prepaid within the twenty-one days.

RCW 59.18.280(1)(b).

As discussed in Respondent’s Response to Petition for Review, the placing of the funds in a pooled trust account does not create a common law trust. By advancing this argument, Appellant is attempting to divert attention away from the nature of the right he is attempting to claim. The

nature of the funds does not determine the nature of the claim. The character of the claim determines the nature claim. The focus of the analysis is whether a “legal obligation imposed in law” upon which the Appellant’s claim may rest independent of the RLTA. The character of the funds held for a damage deposit does not in itself create such a legal obligation.

**5. RESPONDENT IS ENTITLED TO ATTORNEY FEES.**

Respondent’s claim to attorney fees is based procedurally on RAP 18.1(b) and substantively on RCW 59.18.280(2): “In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorneys' fee.” If the matter is affirmed, Respondent is the prevailing party in the litigation and is entitled to reasonable attorney fees.

**6. APPELLANT IS NOT ENTITLED TO ATTORNEY FEES.**

Should the matter be reversed, there are no substantive grounds to award fees to the Appellant. The matter would have to be remanded to the trial court for further proceedings and no party would be a prevailing at that point.

**C. CONCLUSION**

The decisions of the Trial Court and the Court of Appeals for Division III are correct and should be affirmed.

Respectfully Submitted, on  
June 8, 2020.

A handwritten signature in black ink, appearing to read "TW", with a horizontal line extending to the right.

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CERTIFICATE OF SERVICE

I certify that I filed a copy of the foregoing Respondent's Supplemental Brief which provides a copy of it to the attorneys for the Appellant listed below. Additionally I sent a copy of it to them via email at the email addresses below.

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Dated June 8, 2020 at Spokane Valley, Washington.



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Timothy W. Durkop

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