No.

102404-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

VIRGINIA CHIU and VINCENT LIEW,
Petitioners,
v.
BRIAN HOSKINS,
Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mafe Rajul, Judge

PETITION FOR REVIEW OF THE COURT OF APPEALS
AUGUST 21, 2023
CORRECTED DECISION IN 83734-6-I

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I. IDENTITY OF THE MOVING PARTY

Petitioners, Virginia Chiu and Dr. Vincent Liew, through their attorney of record, Erin C. Sperger, move this Court for the relief designated in Part II of this petition.

II. COURT OF APPEALS DECISION

Petitioners request review of the Court of Appeals' August 21, 2023 decision, which is attached as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

A. Whether a landlord is liable to a tenant for the full amount of his or her deposit when the landlord provides a partial "refund due" within the applicable statutory period in RCW 59.18.280.

B. Whether SMC 7.24.060(A)(2) requires tenants to prove actual damages.

C. Whether tenants can recover under both the RCW 59.18.260 and SMC 7.24.060(A)(1) and (2) when the landlord commits multiple violations under the SMC but only one overlaps with RCW 59.18.260.

D. Whether the doctrine of accord and satisfaction prevents the landlord from agreeing to charge a specific amount for alleged damages, retain the amount agreed to, then bring a claim against the tenant for more than what was agreed to.

E. Whether SMC 7.24.060(A)(1) and (2) make a landlord liable for damages for each violation instead of one amount no matter how many violations the landlord commits.

IV. STATEMENT OF THE CASE

The relevant facts to this petition are set forth in Appellants' opening brief and in their motion for reconsideration and are incorporated by reference herein. In addition, the following facts are relevant:

Virginia Chiu and Dr. Vincent Liew (collectively the "Tenants") rented the property commonly known as the upper/main level unit of 5329 9th Ave. NE, Seattle, WA 98105 ("Premises"), from Brian Hoskins. Exh. 1. Their tenancy commenced on August 1, 2018 and ended July 31, 2019. Exh. 1. The parties agreed to extend the tenancy through August 31, 2019, but on July 16 Hoskins requested the Tenants move out on August 22 and they agreed. RP 402-03; CP 279; Exh. 20. Then

on August 12, the Tenants notified Hoskins they would be fully vacated on August 15, and they requested to return the keys to Espinosa on August 17. CP 283, 289-90; Exh. 20. The evidence in the record shows the Tenants vacated as requested because the unit was vacant on August 24 when Hoskins' new tenant performed a walkthrough. Exh. 42; RP 322.

The initial lease Hoskins provided to the Tenants included the following provisions:

> 5. **DEPOSIT.** Lessee to pay the sum of $2800 as a deposit for the performance of Lessee's obligations, $30 of the $2800 deposit will be a non-refundable fee for repair and cleaning of the apartment upon vacating. This deposit does not limit Owner's rights or Lessee's obligations. The Owner shall have the right to proceed against the Lessee to recover costs for cleaning.. which exceed the amount of … Cleaning Fee… CP 150; Exh. 1.

The Lease Addendum, signed by Appellants on August 3, 2019 included the following provisions:

> In addition to the deposit, lessee agrees to pay *$300 as a non-refundable fee* for move in expenses… The *Owner shall have the right to proceed against the Lessee to recover costs for cleaning*…

Exh. 28. (emphasis added).

After Chiu and Liew vacated, Hoskins sent them an email on September 6, 2019, listing some items he was going to deduct from their deposit. CP 292. After the Tenants disputed some of the charges, Hoskins agreed to reduce the landscaping and repair charges to account for items the Tenants said were already broken when they moved in. Hoskins mailed a check to the Tenants for $346.13 on September 20, 2019. CP 292-96, 307.

On November 12, 2019, more than 21 days after they vacated and more than 21 days after the lease extension was initially supposed to terminate on August 31, 2019, Hoskins mailed another refund check to the Tenants for $188. CP 306.

The Tenants filed their amended complaint against Hoskins, on February 3, 2021, which alleged violations of SMC 7.24.060(A)(1) and (2) for including and attempting to enforce unlawful provisions and violating the RLTA (RCW 59.18.260 and .280) for failing to provide a written checklist and failing to

comply with the statutory requirements for returning a deposit. CP 8-10.

On summary judgment, the trial court found Hoskins liable as a matter of law for, among other things, violating SMC 7.24.060(A)(2). CP 501.

Next, on summary judgment, the trial court stated that the parties negotiated the appropriate refund, and "any causes of action brought by the plaintiffs on issues pertaining to the refund of the security deposit.. on issues of... amounts paid will be dismissed." RP 30. If the trial court correctly concluded that the parties negotiated an appropriate refund of $655 (Exh. 25) plus $346.13 (Exh. 30) plus $118 (Exh. 31), for a total of $1,119.13, it necessarily implies the parties negotiated the retained amount of $1,680.87 ($2,800 less $1,119.13). Yet, the trial court allowed Hoskins to recover $2,346.93. CP 593. This amount included $1,300 for the landscaping when Hoskins had already agreed to only charge $1,000. Exh. 25, 26; CP 593. The award also

included $76.25 for the refrigerator shelf, for which Hoskin had previously agreed to credit the Tenants $100 because it was already broken when they moved in. Exh. 25, 26; CP 593.

On appeal, the Tenants argued the trial court violated the Tenants' right to due process when it applied the doctrine of Accord and Satisfaction against the Tenants but not against Hoskins. App.'s Opening Br. at 48. The Court of Appeals found this was not error because a trial court is not bound by its summary judgment rulings and can revise it at any time before entry of final judgment. *Chiu v. Hoskins*, No. 83734-6-I, Corrected Slip Opinion at 13 (August 21, 2023) (hereinafter "Opinion"). However, the Court of Appeals did not address the issue of whether the trial court unfairly applied the doctrine against one party but not the other.

The trial court dismissed the Tenants' claim under RCW 59.18.280. CP 500.

After trial, the trial court did not award statutory damages under SMC 7.24.060(A) because it found the Tenants had no actual damages. CP 590.

On appeal, the Appellants argued, among other things, that under both SMC 7.24.060(A)(1) and (2) damages are mandatory and tenants do not have to prove actual damages. The Court of Appeals agreed that SMC 7.24.060(A)(1) does not require proof of actual damages. Opinion at 1-2. In its corrected opinion after reconsideration, the Court of Appeals found that SMC 7.24.060(A)(2) does require actual damages.

Next, the Court of Appeals held "[n]or can Tenants simultaneously recover under both the SMC and the RLTA for each violation at issue here." Opinion at 9. The Court then used the example of Hoskins' failure to provide a checklist prior to taking the deposit to find the Tenants could not recover damages under both the SMC and RLTA because SMC 7.24.035(E) "precisely track[s]" the requirements in RCW 59.18.260. As the Court of Appeals acknowledged, Hoskins committed three

violations of the SMC by including and attempting to enforce three separate provisions in the lease, two of them unrelated to the checklist, which did not track the requirements in RCW 59.18.260. Opinion at 8. Yet, the Court of Appeals precluded the Tenants from recovering any damages under RCW 59.18.260 because it mirrored one of the multiple violations Hoskins committed under SMC 7.24.060. Opinion at 9.

On appeal the Tenants argued that Hoskins failed to comply with RCW 59.18.280 because he failed to provide the deposit statement in the manner the statute requires, but also because he failed to provide the deposit statement "together with the refund due" within the applicable statutory time period. App. Op. Br. at 45-46. To support this argument, the Tenants pointed to evidence in the record that Hoskins made a second payment to them on November 12, 2019, which was well past the 21-day period regardless of whether it commenced on August 31 or earlier. CP 306. This showed that Hoskins knew he did not return the refund due at the time of the first payment.

Although the Court of Appeals denied the Tenants' motion for reconsideration on this issue, it corrected its opinion to address the argument in footnote 9 as follows:

> While Hoskins made additional payments to Tenants after September 20, they relate to his continuing efforts to negotiate with Tenants regarding the amount of their deposit refund. Given the parties' ongoing negotiations and corresponding resolution, these additional payments do not violate the 21-day deadline specified in RCW 59.18.280(1). See Goodeill v. Madison Real Estate, 191 Wn. App. 88, 91, 362 P.3d 302 (2015) (requiring "conscientious attempt to comply with" statutory deadline).

Opinion at 13 fn. 9.

Finally, the Court of Appeals held that a landlord is only liable for actual or statutory damages one time no matter how many violations the landlord commits. Opinion at 8.

The Tenants now timely petition this Court to accept review of the issues outlined above.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Court of Appeals' erroneous decision that Hoskins complied with RCW 59.18.280 by giving the tenants a partial refund due within 21-days after their lease ended then "negotiating" for the release of more in in conflict with this Court's precedent in Silver v. Rudeen Mgmt. Co., 197 Wn.2d 535, 484 P.3d 1251 (2021) and is an issue of substantial public concern which this Court should address under RAP 13.4(b)(1) and (4).

Former RCW 59.18.280[1] provides:

> (1) Within twenty-one days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW **59.18.310**, within twenty-one days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement.
>
> (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

1 The statute changed in 2023 to now allow 30 days.

> 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**.

As this Court discussed in *Silver v. Rudeen*, this 21-day period is imperative because statutes that impose strict obligations and meaningful remedies are the only way to hold landlords accountable to respecting tenants' rights." *Silver,* 197 Wn.2d at 546. This is because "in many cases the amount in controversy will prevent one from going to court. For example, a tenant might feel that he was entitled to $20 of the security deposit, but he might feel that $20 might be less than what it would cost him in time and trouble to go to court. ... If a simple procedure could be provided to insure swift and just results, these petty injustices might be avoided." *Silver*, 197 Wn.2d at 546 (citing Subcomm. on the Model Landlord-Tenant Act of Comm. on Leases, Proposed Uniform Residential Landlord and Tenant Act , 8 REAL PROP., PROB. & TR. J. 104, 110 (1973)).

Here, the Tenants argued on appeal that the 21-day period should have commenced on August 23 at the latest, which is the day after the parties agreed the Tenants would vacate. App. Op. Br. at 43-44. But even if the 21-day period commenced on August 24, when Hoskins had knowledge the unit was vacant, his September 20 partial refund was not within the applicable 21 days.

Further, even if the September 20 partial refund was within the applicable 21-day period, the fact that Hoskins made a second refund on November 12, 2019, which was not within 21 days of any of the possible commencement dates. This establishes that Hoskins did not provide the deposit statement "together with the refund due." If he had provided the refund due there would be no need for this second payment. Therefore, Hoskins violated RCW 59.18.280 as a matter of law.

The Court of Appeals incorrectly relied on *Goodeill*, 191 Wn. App. at 91, to find that Hoskins made a "conscientious attempt to comply with" the statutory deadline by "his continuing

efforts to negotiate with Tenants." Opinion at 13 fn. 9. But this is not the standard set forth in *Goodeill* or *Silver*. *Silver*, 197 Wn.2d at 546; *Goodeill*, 191 Wn. App. at 91.

A deposit is a tenant's personal property, which the landlord holds in trust as security for the tenant's performance under the lease. *Silver*, 197 Wn.2d at 549 (citing 17 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 6.53, at 397-401 (2d ed. 2004)). The landlord cannot withhold the deposit absent the tenant's breach. In order to retain any portion of the deposit for excessive damage beyond ordinary wear and tear, the landlord must provide a full and specific statement within the statutory period. *Silver*, 197 Wn.2d 535. A landlord cannot simply keep the tenant's personal property without justification until he negotiates a settlement.

This Court should accept review of this issue because it is an issue of substantial public concern not only to Seattle tenants

but to all Washington tenants. If this decision is allowed to stand, a landlord can simply comply with the statue by returning $1 within the applicable period, knowing it is not the full "refund due" as required by RCW 59.18.280. This will defeat the purpose of the statute.

B. The Court of Appeals' erroneous decision that SMC 7.24.060(A)(2) requires tenants to prove actual damages is an issue of substantial public concern which this Court should address under RAP 13.4(b)(4).

The Court of Appeals erred in reading into SMC 7.24.060(a)(2) a provision requiring actual damages that was not there.

SMC 7.24.060(A)(2) provides:

> A landlord who includes provisions prohibited by subsection 7.24.030.B, Section 7.24.035, Section 7.24.036, or Section 7.24.038 in a new rental agreement, or in a renewal of an existing agreement, shall be liable to the tenant for up to $3,000 plus reasonable attorney fees and costs.

The "fundamental objective in interpreting statutes 'is to ascertain and carry out the Legislature's intent.'" *Lockett v.*

Saturno, 21 Wn. App. 2d 216, 222 (2022) (citing *Silver*, 197 Wn.2d at 542 (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC.*, 146 Wn.2d 1, 9 (2002)). This Court construes a municipal ordinance according to the rules of statutory interpretation. *City of Seattle v. Swanson*, 193 Wn. App. 795, 810 (2016). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.'" *Seattle Hous. Auth. v. City of Seattle,* 3 Wn. App. 2d 532, 538, 416 P.3d 1280 (2018) (alteration in original). Statutory analysis "begins with the text and, for most purposes, should end there as well." *Malyon v. Pierce County*, 131 Wn.2d 779, 799, 935 P.2d 1272 (1997). If the Court finds a statute's meaning is not plain, but "susceptible to more than one reasonable meaning," it is ambiguous. *Campbell & Gwinn, LLC*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002). In that case, the Court applies cannons of statutory construction such as "avoid[ing] an interpretation that produces an absurd result" (*Lockett*, 21 Wn. App. 2d at 224 (citing *Wright v. Jeckle*, 158 Wn.2d 375, 379-80 (2006)),

constitutional avoidance (*Stout v. Felix,* 198 Wn.2d 180, 199 (2021)) and legislative history. *Campbell & Gwinn*, 146 Wn.2d at 12.

However, a court "do[es] not have the power to read into a statute that which [it] may believe the legislature has omitted, be it an intentional or an inadvertent omission." *State v. Brake*, 15 Wn .App. 2d 740, 747, 476 P.3d 1094 (2020) (citing *State v. Martin*, 94 Wn.2d 1, 8, 614 P.2d 164 (1980)).

Here, the plain language of SMC 7.24.060(A)(2) does not require actual damages. Thus, neither the trial court nor the Court of Appeals had authority to read that requirement into the statute. *Brake*, 15 Wn. App. 2d at 747.

Further, requiring actual damages would produce an absurd result because there are few scenarios where a tenant would incur actual damages as a result of a landlord including an unlawful provision in the lease. This is particularly true if a tenant discovers it is unlawful before signing the lease or before the landlord has a chance to enforce it.

This Court should accept review of this issue because it raises a substantial issue of concern to consumers in Seattle, which has a population of approximately 750,000 people, of which 54.8% are tenants. See United State Census, 2020 Quick Facts Seattle city, Washington available at https://www.census.gov/quickfacts/fact/table/seattlecitywashington/PST045222 (last visited 9/19/23).

C. The Court of Appeals' erroneous decision that tenants cannot recover under both the RCW 59.18.260 and SMC 7.24.060(A)(1) and (2) when the landlord commits multiple violations under the SMC but only one overlaps with RCW 59.18.260 an issue of substantial public concern which this Court should address under RAP 13.4(b)(4).

The Court of Appeals incorrectly concluded that when a landlord included and attempts to enforce multiple unlawful provisions tenants cannot recover under both SMC 7.24.060(A)(1), for violating SMC 7.24.035(E), and under RCW 59.18.260 if one of the multiple violations is failing to provide a move in checklist. Opinion at 9.

Here, the unlawful lease provisions Hoskins included are and related to (a) the excessive security deposit, (b) the excessive non-refundable cleaning fee, and (c) the unsigned checklist. Opinion at 8. The Court of Appeals held the Tenants cannot recover under both SMC 7.24.060(A)(1) and RCW 59.18.260 because one of the violations Hoskins committed relates to SMC 7.24.035(E), which "precisely track[s] the requirements in RCW 59.18.260." However, the other two violations did not track the requirements in RCW 59.18.260.

The Tenants should be allowed to recover under RCW 59.18.260 for their claim regarding the failure to provide a checklist, but under SMC 7.24.060(A)(1) and (2) for the other two violations. This would not be double recovery since they would be entitled to damages in the amount of double their deposit under SMC 7.24.060(A)(1) even if they did not bring a claim regarding the checklist. Thus, there is no legal basis for limiting the Tenants' recovery to only damages under SMC 7.24.060(A)(1) or RCW 59.18.260 when only one of the multiple

violations overlap.

Further, there is no legal basis for limiting damages under SMC 7.24.060(A)(2) regarding the checklist because the unlawful conduct in (A)(2) is ***including*** an unlawful provision while the unlawful conduct in RCW 59.18.260 is ***failing to include*** a provision for the return of the deposit or the act of unlawfully ***collecting or withholding*** the deposit. These clearly do not precisely track each other. (emphasis added). Put another way, SMC 7.24.060(A)(2) and RCW 59.18.260 do not define the same injury. Therefore, recovery under both is not a double recovery and is not prohibited. *Cf.* Opinion at 9 (citing *Pub. Emps. Mut. Ins. Co. v. Kelly*, 60 Wn. App. 610, 618, 805 P.2d 822 (1991) ("it is a basic principle of damages… that there shall be no double recovery for the same injury.")).

D. The Court of Appeals' erroneous decision that a landlord can negotiate an agreed upon amount then still sue the Tenant for more violates the well-established doctrine of accord and satisfaction, the Tenants' Fourteenth Amendment right to due process, and raises an issue of substantial public concern which this Court should address under RAP 13.4(b) (3) and (4).

The Court of Appeals erroneously affirmed the trial court's unfair application of the doctrine of accord and satisfaction.

The Fourteenth Amendment's Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). "Denial of the constitutional right to a fair tribunal is a structural error that requires reversal regardless of prejudice." *Gonzales v. State (In re A.N.G.)*, 12 Wn. App. 2d 789, 796 (2020) (citing *State v. Blizzard*, 195 Wn. App. 717, 727, 381 P.3d 1241 (2016)).

Accord and satisfaction requires the parties have a bona fide dispute, an agreement to settle that dispute, and performance

of the agreement. DAVID K. DEWOLF & KELLER W. ALLEN WASHINGTON PRACTICE: TORT LAW AND PRACTICE § 16.2 (3d ed.2007). An accord and satisfaction is a new contract — a contract complete in itself. *Evans v. Columbia Int'l Corp.,* 3 Wn. App. 955, 957, 478 P.2d 785 (1970). When an accord is fully performed, the previously existing claim is discharged and all defenses and arguments based on the underlying contract are extinguished. *Paopao v. State, Dshs*, 145 Wn. App. 40, 46, 185 P.3d 640 (2008) (citing *N.W. Motors, Ltd. v. James,* 118 Wn.2d 294, 305, 822 P.2d 280 (1992); *Mut. of Enumclaw Ins. Co. v. State Farm Mut. Auto. Ins. Co.,* 37 Wn. App. 690, 694, 682 P.2d 317 (1984)). Negotiating an appropriate refund of $655 (Exh. 25) plus $346.13 (Exh. 30) plus $118 (Exh. 31), for a total of $1,119.13, necessarily implies the parties negotiated the retained amount as well – $1,680.87 ($2,800 less $1,119.13).

At summary judgment, Hoskins argued that because the Tenants objected to the initial amount, but accepted the two checks, this was a negotiation, thus, the Tenants were barred

from receiving any further refund under the doctrine of accord and satisfaction. CP 23, 25-26; RP 12. The trial court agreed and dismissed the Tenants' claims for a refund of their deposit. RP 30. Thus, by applying the doctrine of accord and satisfaction neither party could claim they were entitled to an amount that was different from the settlement amount.

Yet, the trial court allowed Hoskins to recover $2,346.93. CP 593. This amount included $1,300 for the landscaping when Hoskins had already agreed to only charge $1,000. Exh. 25, 26; CP 593. The award also included $76.25 for the refrigerator shelf, for which Hoskin had previously agreed to credit the Tenants $100 because it was already broken when they moved in. Exh. 25, 26; CP 593. Further, the amount of the award included $300 for the non-refundable fee but did not credit the Tenants for the unlawful $375 cleaning fee they were already charged. CP 593. Finally, the award did not credit the Tenants $300, to which Hoskins previously agreed to credit them. Exh. 25; CP 291-97, 593. In fact, at trial Hoskins conceded that he

agreed to credit the Tenants for items they alleged were already in disrepair when they moved in. RP 348-49.

Thus, the trial court allowed Hoskins to argue and recover an amount different from what, according to the trial court, was a negotiated settlement amount, but then shielded Hoskins from having to defend against the Tenants' objections. This was fundamentally unfair. While a trial court can overrule itself any time before entry of the final judgment under CR 54(b), it cannot unfairly apply a doctrine against one party and not the other.

This Court should accept review of this issue because it presents a constitutional issue and sends a message to all tenants that if they sue their landlord they will not be treated fairly by the court. This is of substantial public concern.

E. The Court of Appeals' erroneous decision that even when a landlord commits multiple violations of SMC 7.24.060(A)(1) and (2), the landlord is only liable for one amount of statutory or actual damages is in conflict with a cannon of statutory interpretation set forth in the Supreme Court decision of *Queen City Sav. & Loan Ass'n v. Mannhalt*, 111 Wn.2d 503, 508, 760 P.2d 350 (1988) and is an issue of substantial public concern which this Court should address under RAP 13.4(b)(1) and (4).

"[A] recognized rule of statutory [construction] is that courts generally 'may construe singular words in the plural and vice versa, unless such a construction would be repugnant to the context of the statute or inconsistent with the manifest intention of the Legislature.' " *State v. Marjama*, 14 Wn. App. 2d 803, 473 P.3d 1246 (2020) (quoting *State v. Baggett*, 103 Wn. App. 564, 570-71, 13 P.3d 659 (2000) (quoting *Queen City Sav.*, 111 Wn.2d at 508).

Here, the Court of Appeals made no attempt to analyze whether City Council intended to punish the landlord for each violation. Instead, it just held that the plain language of the statute prohibits it. Opinion at 8. This holding is clearly

contradicted by *Queen City Sav.*, 111 Wn.2d at 508.

Further, the statutory scheme must be read as a whole. *State v. Blake*, 197 Wn.2d 170, 205, 481 P.3d 521 (2021). Elsewhere in the SMC, City Council has expressly stated that penalties are to be applied per incident. SMC 22.206.305. Thus, in the context of the entire statutory scheme, City Council intended to make a landlord liable for damages for each incident, not to limit damages when a landlord commits multiple violations in the same lease agreement.

This Court should accept review of this issue because the Court of Appeals' holding directly contradicts a cannon of statutory interpretation set forth in the Washington Supreme Court case of *Queen City Sav.*, 111 Wn.2d at 508. The decision also creates an issue of substantial public concern because if this decision is allowed to stand, a landlord is incentivized to commit as many violations as he can get away with because he can only be held liable for one.

VI. CONCLUSION

Appellants respectfully request that this Court accept review under RAP 13.4(b).

DATED this 20th day of September, 2023.

ERIN C. SPERGER, WSBA No. 45931
Attorney for Appellant

I certify that this brief is 4,382 words in compliance with RAP 18.17(c)(8)

APPENDIX A

FILED
8/21/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VIRGINIA CHIU, an individual, and VINCENT LIEW, an individual,

Appellants,

v.

BRIAN HOSKINS and the marital community thereof,

Respondent.

No. 83734-6-I

DIVISION ONE

PUBLISHED OPINION

FELDMAN, J. — Virginia Chiu and Vincent Liew (Tenants) appeal the trial court's order on summary judgment, findings of facts and conclusions of law, and judgment in this landlord-tenant dispute. Tenants claim that their landlord, Brian Hoskins, failed to comply with various provisions in the Residential Landlord-Tenant Act of 1973 (RLTA), ch. 59.18 RCW, and chapter 7.24 (Rental Agreement Regulation) of the Seattle Municipal Code (SMC). The trial court concluded that Hoskins failed to comply with several such provisions but declined to award damages because it concluded that Tenants had not suffered actual damages. Tenants contend that the trial court erred in failing to award statutory damages and attorney fees, which they claim are *required* by the RLTA and the SMC upon finding a violation. We agree with Tenants and reverse in part on this point. We

also hold that the trial court applied the wrong legal standard in awarding damages to Hoskins for costs he incurred to restore the property to "move-in condition" after Tenants vacated the property, and we reverse on that point as well. In all other respects, we affirm.

I

Tenants first learned of the rental property at issue in this appeal (the Property) in June 2018. After seeing the Property, they filled out an application, which Hoskins approved. Hoskins then sent them a lease with a move-in checklist for them to fill out. The purpose of the required move-in checklist is to identify existing issues that are purportedly subject to repair by the landlord. Tenants signed both the lease and the checklist as required. Hoskins also signed the checklist but did not send it back to Tenants. Instead, Hoskins responded to a list of move-in issues that Tenants had provided by e-mail. Hoskins replied promptly to that list and repaired those issues that could be fixed.

The monthly rent was $2,395, and Hoskins also required a security deposit of $2,800, which included a $300 nonrefundable cleaning fee. Although Tenants paid the security deposit without complaint, they discovered a year later that a security deposit cannot lawfully exceed the monthly rent, nor can a nonrefundable move-in fee exceed 10 percent of the monthly rent, under SMC 7.24.035. Hoskins did not realize that this limit had changed in 2017 and had thus charged Tenants an excessive amount. When Tenants brought this issue to Hoskins' attention, he promptly refunded the overage.

When they took occupancy of the Property, Tenants' understanding was that they were to take care of the yard. Hoskins asked if they wanted to hire a

gardener, and they indicated they did not because they liked gardening. They subsequently struggled to maintain the yard, so Hoskins asked again if they wanted to hire a gardener. This time, Tenants agreed. Hoskins then found a gardener, and Tenants agreed to pay the gardener $50 per month. Thereafter, the gardener maintained the yard periodically but did not notify Hoskins or Tenants when he would be performing these services.

The lease expired on June 27, 2019, and Tenants thereafter agreed to go month to month (with no rent increase) until they moved out at the end of August. When Tenants moved out, they did not leave the Property in the same condition that it was in at the inception of the lease. Hoskins incurred various costs for cleaning and repairs to return the Property to its prior condition, and he subtracted those charges from Tenants' remaining security deposit.

After Tenants informed Hoskins that they would be moving out at the end of August, Hoskins identified a prospective tenant, who signed a lease with Hoskins with a move-in date of August 24, 2019. The prospective tenant paid Hoskins $6,587 but then rescinded the lease for a number of reasons, including the condition of the apartment and yard. The prospective tenant and Hoskins reached an agreement whereby Hoskins retained $1,297 and refunded the rest.

Dissatisfied that they had not received their full security deposit back, Tenants sued Hoskins, alleging that he had violated both the SMC and RLTA. Hoskins denied Tenants' allegations and asserted a counterclaim for breach of contract and waste. A bench trial was held in December 2021, and the trial court largely ruled in Hoskins' favor. The court rejected Tenants' arguments regarding various "technical violations" of the SMC and RLTA because Tenants had not

proved actual damages and/or Hoskins had not acted unlawfully. Regarding Hoskins' counterclaim, the court found Tenants liable for $2,346 for repairs, cleaning, and yard maintenance and $800 ($100 per day) for eight days during which Hoskins could not rent the unit as a result of the way Tenants had left it.

The trial court then turned to the issue of prevailing party attorney fees. The court ruled that Hoskins was the prevailing party for purposes of awarding attorney fees under the parties' lease, which states in relevant part, "[I]n the event of disagreement or litigation regarding the performance of the terms and provisions of this Agreement by either party hereto, the prevailing party shall be entitled to the payment of their costs and expenses, including reasonable attorney's fees . . . . " Based on this provision, the trial court awarded Hoskins $19,325 for fees incurred in defense against Tenants' claims.

The trial court entered judgment in Hoskins' favor. Tenants appealed, and Hoskins cross-appealed. Hoskins has since withdrawn his cross-appeal.

II

When reviewing a trial court's findings of fact and conclusions of law following a bench trial, we determine "whether the findings of fact are supported by substantial evidence and whether those findings support the conclusions of law." *224 Westlake, LLC v. Engstrom Props., LLC*, 169 Wn. App. 700, 705, 281 P.3d 693 (2012). The substantial evidence standard is satisfied if there is sufficient evidence "'to persuade a rational, fair-minded person of the truth of the finding.'" *Hegwine v. Longview Fibre Co.*, 162 Wn.2d 340, 353, 172 P.3d 688 (2007) (quoting *In re Est. of Jones,* 152 Wn.2d 1, 8, 93 P.3d 147 (2004)). If that standard is satisfied, we will not substitute our judgment for that of the trial court even if we

might have resolved disputed facts differently. *Green v. Normandy Park Riviera Section Cmty. Club, Inc.*, 137 Wn. App. 665, 689, 151 P.3d 1038 (2007), (citing *Sunnyside Valley Irrig. Dist. v. Dickie,* 149 Wn.2d 873, 879, 73 P.3d 369 (2003)). The standard of review applicable to legal issues, including the proper interpretation of the RLTA and SMC, is de novo. *State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 456, 461 P.3d 334 (2020).[1]

A. *Deposit, nonrefundable move-in fee, and checklist*

The trial court concluded that Hoskins charged a security deposit in excess of the monthly rent and a nonrefundable fee in excess of 10 percent of the monthly rent in violation of SMC 7.24.035(A)[2] and (B)(4),[3] respectively. The court also concluded "that the checklist signed by Hoskins was not provided to the plaintiffs" in violation of SMC 7.24.030(C)(1).[4] Despite these findings, the trial court did not award damages based on the security deposit violation because it found that "plaintiffs did not suffer any damages as a result of the violation . . . ." Nor did it award damages for the checklist violation, similarly ruling that "[t]he court does not

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[1] While the Supreme Court has held that the RLTA is a remedial statute, *see Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 548, 484 P.3d 1251 (2021), the parties dispute whether the SMC is remedial in nature. The proper resolution of this issue determines whether any ambiguity in the SMC must be resolved in Tenants' or Hoskins' favor. Because we find no ambiguity in the RLTA or the SMC, we need not (and do not) rely on these rules of statutory interpretation.

[2] SMC 7.24.035(A) states in relevant part, "After January 15, 2017, the total amount of a security deposit and nonrefundable move-in fees may not exceed the amount of the first full month's rent for the tenant's dwelling unit."

[3] SMC 7.24.035(B)(4) states in relevant part, "The total amount of non-refundable move-in fees may not exceed ten percent of the first full month's rent . . . ."

[4] SMC 7.24.030(C)(1) provides, "The landlord shall prepare and provide to the tenant at the commencement of tenancy a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the dwelling unit at the time of occupancy including damages to the premises and furnishings, which include but are not limited to walls, floors, countertops, carpets, drapes, furniture, and appliances. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement."

find the plaintiffs suffered any damages as a result of not receiving a copy of the lease that contained the landlords' [sic] signature."

Substantial evidence supports the trial court's findings and conclusions regarding SMC 7.24.035(A), 7.24.035(B)(4), and 7.24.030(C)(1). Preliminarily, Hoskins charged Tenants a security deposit of $2,800 despite a monthly rent of $2,395 in violation of SMC 7.24.035(A). While Hoskins promptly returned the overage when the tenants informed him of the violation, SMC 7.24.035(A) is stated in the disjunctive—"charged or withheld"—and he plainly charged an unlawful amount. Additionally, SMC 7.24.035(E) states that "[n]o deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings . . . is provided by the landlord to the tenant at the commencement of the tenancy." Thus, if a landlord fails to provide a signed checklist, as occurred here, the landlord cannot lawfully charge, collect, *or* withhold a security deposit. Because Hoskins violated SMC 7.24.035(A), SMC 7.24.035(B)(4), *and* SMC 7.24.030(C)(1), it was unlawful for him to charge, collect, or withhold *any* security deposit.

Despite this evidence, Hoskins argues that he is not liable to Tenants under SMC 7.24.060(A)(1) because that provision imposes liability only if a landlord "*attempts to enforce* provisions in a rental agreement that are contrary to the requirements of Sections 7.24.030, 7.24.035, 7.24.036, or 7.24.038." SMC 7.24.060(A)(1) (emphasis added). The SMC does not define the critical phrase "attempts to enforce." Where a statute does not define a term, the court may look to the dictionary for a definition of the term's ordinary meaning. *State v. Christian*,

200 Wn. App. 861, 865, 403 P.3d 925 (2017). The term "attempt" is defined as "to make an effort to do, accomplish, solve, or effect." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 140 (1993). And "enforce" is defined to include "**1 :** to give force . . . **5 :** . . . COMPEL . . . **7 :** to put in force **:** cause to take effect." WEBSTER'S at 751. Thus, the ordinary meaning of "attempts to enforce" is to make an effort to give force, compel, or put in force: cause to take effect. Applying that construction here, Hoskins attempted to enforce provisions that were contrary to the SMC when he charged and collected a security deposit in excess of the monthly rent and a nonrefundable fee in excess of 10 percent of the monthly rent in violation of SMC 7.24.035(A) and (B)(4) and did so without providing a signed checklist as required by SMC 7.24.030(C)(1), which is a violation of SMC 7.24.035(E).

Having concluded that the trial court correctly found Hoskins violated the SMC in multiple respects, we turn to the issue of remedy. By ruling that Tenants could not recover damages unless they could show actual damages, the trial court misinterpreted SMC 7.24.060(A)(1). That section states:

> If a landlord attempts to enforce provisions in a rental agreement that are contrary to the requirements of Sections 7.24.030, 7.24.035, 7.24.036, or 7.24.038, the landlord *shall be liable* to the tenant for: 1) any actual damages incurred by the tenant as a result of the landlord's attempted enforcement; 2) double the amount of any penalties imposed by the City; 3) double the amount of any security deposit unlawfully charged or withheld by the landlord; and 4) reasonable attorney fees and costs.

SMC 7.24.060(A)(1) (emphasis added). As can be seen, the plain language of the statute is mandatory—"the landlord *shall be liable*." Thus, if a landlord attempts to enforce provisions in a rental agreement that are contrary to the requirements of the enumerated provisions, the trial court *must* award (1) actual damages, (2)

double any penalties imposed, (3) double the amount of any security deposit unlawfully charged or withheld, and (4) reasonable attorney fees and costs. The trial court here correctly recognized and applied subsection (1) but erroneously overlooked subsection (3) as well as subsection (4).

While Tenants can recover statutory damages under the SMC, what they cannot do is recover those statutory damages multiple times. That issue is squarely addressed in SMC 7.24.060(A)(1), which states that a landlord "shall be liable" if the "landlord attempts to enforce provision*s* in a rental agreement that are contrary to the requirements of Sections 7.24.030, 7.24.035, 7.24.036, or 7.24.038." (Emphasis added.) As the plural "provision*s*" shows, a landlord is liable for actual and statutory damages under SMC 7.24.060(A)(1) if the landlord enforces one or more unlawful provisions (plural) in a rental agreement. Here, the unlawful lease provisions are and relate to (a) the excessive security deposit, (b) the excessive nonrefundable cleaning fee, and (c) the unsigned checklist. Under SMC 7.24.060(A)(1), Tenants can properly recover actual and statutory damages because their lease includes unlawful provisions. What Tenants cannot do is recover the *same* actual and statutory damages several times simply because the lease includes several unlawful provisions under the SMC.

Nor can Tenants simultaneously recover under both the SMC and the RLTA for each violation at issue here. By way of example, the deposit and checklist requirements in SMC 7.24.035(E) precisely track the requirements in RCW 59.18.260.[5] Tenants claim, therefore, that they can recover statutory damages

[5] SMC 7.24.035(E) states in pertinent part, "No deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the

under *both* provisions. We disagree, as "it is a basic principle of damages . . . that there shall be no double recovery for the same injury." *Pub. Emps. Mut. Ins. Co. v. Kelly*, 60 Wn. App. 610, 618, 805 P.2d 822 (1991). Additionally, Tenants have not cited a case where a tenant has recovered under both the RLTA and the SMC for the same underlying violation. We therefore assume no such case exists. *Donner v. Blue*, 187 Wn. App. 51, 61, 347 P.3d 881 (2015) ("'Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.'" (internal quotation marks omitted) (quoting *State v. Logan*, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000)).[6]

Finally, we turn to the issue of attorney fees. The SMC requires that the trial court award reasonable attorney fees where a violation is found. It states, "[T]he landlord *shall be liable* to the tenant for . . . reasonable attorney fees and costs." SMC 7.24.060(A)(1) (emphasis added). The RLTA, in turn, includes discretionary

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condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement." RCW 59.18.260 likewise states, "No deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement."

[6] Tenants wrongly claim that the court allowed such a double recovery in *Lang Pham v. Corbett*, 187 Wn. App. 816, 351 P.3d 214 (2015). Contrary to Tenants' argument, the court in *Pham* did not allow the tenants to recover under both the RLTA and the SMC for the same underlying violation. Instead, the issue was whether the tenants could recover both relocation assistance under SMC 22.206.260(F) and *other relief* under the RLTA. 187 Wn. App. at 835. Also critical here, *Pham* interpreted and applied chapter 22.206 SMC and not the provisions in chapter 7.24 SMC at issue here. 187 Wn. App. at 835. It is of no moment here that Title 22 SMC does not affect or limit a tenant's rights under the RLTA—as the court held in *Pham*, citing SMC 22.206.305—because Tenants here are not pursuing a claim under that title.

language: "the prevailing party *may recover* court costs and reasonable attorneys' fees." RCW 59.18.260 (emphasis added). Thus, for the same reasons set forth above (the mandatory language in SMC 7.24.060(A)(1)), Tenants are entitled to recover reasonable attorney fees as well as statutory damages under SMC 7.24.060(A)(1). We remand the matter to the trial court to award these amounts.[7]

B. *Notice of yardwork*

Tenants next argue that the trial court erred when it rejected their claim that Hoskins violated SMC 22.206.180(F) when a gardener entered the backyard without providing two days' notice. SMC 22.206.180(F)(1)(a) states in pertinent part that it is unlawful for an owner to "[e]nter a tenant's housing unit or premises" except after giving the tenant "at least two days' notice of intent to enter for the purpose of inspecting the premises, making necessary or agreed repairs, alterations or improvements, or supplying necessary or agreed services." Addressing this issue, the trial court found "that the defendant Hoskins did not violate the ordinance because the gardener did not go inside the unit; all the work was done outside."

We agree with the trial court's analysis. The rental agreement here defines the leased premises as "the apartment situated on the upper/main level of the house at 5329 9th Ave. NE in the City of Seattle, County of King, State of

[7] Tenants also claim that Hoskins violated SMC 7.24.060(A)(2), which states, "A landlord who includes provisions prohibited by subsection 7.24.030.B, Section 7.24.035, Section 7.24.036, or Section 7.24.038 in a new rental agreement, or in a renewal of an existing agreement, shall be liable to the tenant for up to $3,000 plus reasonable attorney fees and costs." Unlike SMC 7.24.060(A)(1), which requires an award of statutory damages, SMC 7.24.060(A)(2) requires proof of actual damages and limits recovery of those damages to "up to $3,000." The trial court found that Tenants proved "no actual damages," and its finding is supported by substantial evidence. Thus, the trial court correctly denied recovery of both damages and attorney fees under SMC 7.24.060(A)(2).]

Washington." Because the yard is not part of the housing unit or leased premises, the gardener did not enter Tenants' housing unit or premises and was not required to give notice under SMC 22.206.180(F)(1)(a). The trial court correctly rejected this claim.

C. *Delivery of deposit statement*

Tenants assert that Hoskins failed to comply with the RLTA requirement to timely give them a security deposit statement when he e-mailed the statement to them rather than delivering it personally or placing a copy in the United States mail. The RTLA addresses this requirement in RCW 59.18.280(1), which states in relevant part:

> Within twenty-one days after the termination of the rental agreement and vacation of the premises . . . the landlord *shall give* a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement . . . .
>
> . . . .
>
> (b) 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.

(Emphasis added.) The trial court found that Mr. Hoskins complied with RCW 59.18.280 and dismissed the claim on summary judgment. Based on the plain language of the statute and undisputed facts, we affirm.

On September 6, 2019, six days after the lease expired,[8] Hoskins sent an e-mail to Tenants with an initial explanation of repairs and dollar amounts.

[8] As noted previously, Tenants asked Hoskins, and Hoskins agreed, to extend the lease until the end of August. While Hoskins initially identified a tenant who was willing to move into the Property on August 24, 2019, the prospective tenant rescinded their lease with Hoskins due to (among other

Following this, on September 16, 2019, Hoskins sent Tenants an itemized accounting of the security deposit indicating a total refund of $346.13. He then issued payment for that amount on September 20, 2019. Payment occurred within the 21-day period specified in RCW 59.18.280(1). While the deposit statement was not delivered personally to Tenants or sent by United States mail, RCW 59.18.280(1) does not mandate either method of delivery. To the contrary, subsection (b) provides two ways to "give" the required security deposit statement that are sufficient to establish compliance with RCW 59.18.280(1) but does not exclude or prohibit other, equally effective, ways to give the statement, including e-mail.

We have interpreted other statutes in a similar fashion. For example, the first sentence of RCW 4.28.210 states that "[a] defendant appears in an action when he or she answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his or her appearance." In *City of Des Moines v. $81,231 in United States Currency*, 87 Wn. App. 689, 696, 943 P.2d 669 (1997), we held that "[t]he methods set forth in RCW 4.28.210 for 'appearing' in an action are not exclusive" and therefore other acts may constitute an "appearance." The same reasoning applies to RCW 59.18.280(1). Because undisputed facts show that Hoskins satisfied the statutory requirement to timely "give" Tenants a security deposit statement, and because Hoskins issued payment to Tenants within the

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things) the condition of the apartment and yard. The 21-day period in RCW 59.18.280(1) thus commences on August 31, 2019.

prescribed 21-day period,[9] the trial court correctly dismissed this claim on summary judgment.

D. *Hoskins' counterclaim for breach of the lease agreement and waste*

Turning to Hoskins' counterclaim for breach of the lease agreement and waste, the trial court found in favor of Hoskins and awarded three distinct categories of damages: (1) $1,300 paid by Hoskins to the gardener to clean up the yard, (2) $800 ($100 per day) for eight days during which Hoskins could not rent the unit as a result of the way Tenants had left it, and (3) $746.65 for repair costs relating to patching, paint, a refrigerator shelf, and various other repairs. Tenants contend that each of these awards is erroneous. We agree in part and disagree in part as follows.

Starting with the gardener fees, Tenants argue that the trial court erred when it allowed Hoskins to argue at trial that he should recover $1,300 for landscaping when the court had already determined in response to their summary judgment motion that "Hoskins had already agreed to only charge $1,000." A trial court, however, is not bound by its summary judgment rulings and can revise those rulings "any time before entry of final judgment." *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 300, 840 P.2d 860 (1992). Additionally, substantial evidence, including testimony and photographs of the yard, supports the trial court's award of $1,300 for this item. Tenants' contrary arguments are without merit.

[9] While Hoskins made additional payments to Tenants after September 20, they relate to his continuing efforts to negotiate with Tenants regarding the amount of their deposit refund. Given the parties' ongoing negotiations and corresponding resolution, these additional payments do not violate the 21-day deadline specified in RCW 59.18.280(1). *See Goodeill v. Madison Real Estate*, 191 Wn. App. 88, 91, 362 P.3d 302 (2015) (requiring "conscientious attempt to comply with" statutory deadline).

Turning to the remaining items, the trial court awarded these amounts because it found that "[w]hen the plaintiffs moved out, they did not leave the premises in *move-in condition* as required by the lease" and that "Hoskins met his burden by a preponderance of evidence that the plaintiffs did not leave the unit in *move in condition*." (Emphasis added.) Based on these findings, the trial court awarded Hoskins $746.65 for repair costs relating to patching, paint, a refrigerator shelf, and various other "minor repairs." The court similarly found that "the unit would not have been in move in condition until September 8th, 2019, when the repairs, the yardwork, and the cleaning had been completed" and therefore awarded $800 ($100 per day) for the eight days during which Hoskins could not rent the unit as a result of the way Tenants had left it.[10] Tenants argue that in awarding these damages the trial court applied the wrong legal standard. We agree.

This issue is squarely governed by several complementary provisions of the RLTA. First, RCW 59.18.130(10) states that "[e]ach tenant shall . . . [u]pon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under this chapter." Second, RCW 59.18.260 states, "No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises." And lastly, RCW 59.18.280(1)(a) likewise states,

[10] The award of $800 is premised on section 13 of the lease, entitled "UNCLEAN/DAMAGED CONDITIONS," which states, "Should Lessee leave the apartment in an unclean or damaged condition and Owner/Manager is unable to lease the apartment because of the condition, then Lessee shall be liable for $100 for each day of lost rent." While the standard for awarding this amount improperly varies from the RLTA (as discussed in the text above), there is no argument that $100 constitutes an unlawful penalty, presumably because it approximates the monthly rent.

"No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises."

Applying the plain language of the statute, the trial court was required by the RLTA to determine whether Tenants failed to leave the leased premises (the apartment, as defined in the lease and discussed above) in "their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under this chapter" and award recoverable damages if and to the extent that Tenants failed to do so. Instead, the trial court applied a "move-in condition" test, which erroneously varies from the RLTA. We therefore vacate the judgment on these awards and remand the issue so that the trial court can properly award damages for repair costs and $100 per day for each day of lost rent, if any, based on the controlling legal standard set forth above and in RCW 59.18.130(10).

Finally, Tenants claim that the award of $800 for lost rent also is untenable because Hoskins collected rent from a prospective tenant for a period that included September 1-8 and then refunded *some* of that rent and retained $1,297. Addressing this issue, the trial court explained that Hoskins was unable to rent the unit for 22 days, which would have supported a damages award of $2,200, but it awarded only $800. The difference between these two figures is $1,400, which is more than the amount ($1,297) that Hoskins retained from the rent paid by the prospective tenant. While the trial court applied an incorrect legal standard for determining liability—as the above discussion shows—it appropriately analyzed Hoskins' alleged damages and may elect to do so again at the conclusion of the litigation.

E. *Attorney fees on appeal*

Both parties request attorney fees on appeal pursuant to RAP 18.1. Tenants argue that they are entitled to attorney fees under SMC 7.24.060, while Hoskins seeks attorney fees under the parties' lease. This court has repeatedly held that "[w]here both parties prevail on major issues, neither is entitled to attorney fees." *Sardam v. Morford*, 51 Wn. App. 908, 911, 756 P.2d 174 (1988). Here, as in *Sardam*, both parties have prevailed on major issues, so neither is entitled to recover prevailing party attorney fees on appeal.

III

We vacate the trial court's judgment and remand the matter for further proceedings consistent with this opinion, including an award of (1) statutory damages and attorney fees under SMC 7.24.60(A)(1); and (2) repair costs and $100 per day for each day of lost rent, if any, based on the controlling legal standard in RCW 59.18.130(10).

We also vacate the trial court's award of attorney fees under the parties' lease. Whether to award on remand attorney fees under the lease necessarily turns on issues that this Court did not address, such as whether Hoskins or Tenants ultimately prevail in the litigation.

In all other respects, we affirm.

Feldman, J.

WE CONCUR:

Díaz, J.

LEGAL WELLSPRING, PS

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