Appellate Court No. 311180

THE COURT OF APPEALS OF THE STATE OF WASHINTON
FOR DIVISION III

Jose Segura and Tabetha Gonzalez,

Appellants,

v.

Rogaciano and Raquel Cabrera,

Respondents.

Appellants' Brief

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Attorneys for Appellants

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Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

This appeal arises from a trial court's decision to deny the appellants' $1,000.00 in emotional distress damages based on its legal conclusion that, as a matter of law, such damages are not available to prevailing plaintiffs in actions brought pursuant to the relocation assistance provisions of the Residential Landlord Tenant Act, RCW 59.18.085.

RCW 59.18.085 (3)(e) expressly allows prevailing tenants to recover "any actual damages sustained by them as a result of condemnation, eviction, or displacement..." Moreover, the relocation assistance cause of action requires proof that the landlord "knew or should have known" of the conditions that caused condemnation, eviction, or displacement by the code enforcement authorities, making the action akin to those for intentional torts in which Washington routinely allows the recovery for emotional distress injuries.

Consequently, the trial court erred as a matter of law when it refused to award these damages to the appellants. Appellants ask this Court to reverse that error and enter the award the trial court should have made.

I. ASSIGNMENT OF ERROR AND STATEMENT OF ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. Assignment of Error

The trial court erred when it decreased appellants' damage award from $4,450.00 to $3,450.00 on the holding that emotional distress damages are not legally available to prevailing plaintiffs in actions under RCW 59.18.085.

B. Statement of Issues Pertaining to the Assignment of Error.

Appellants raise the following issues pertaining to the assignment of error:

1. Whether a Washington litigant under the statutory cause of action in RCW 59.18.085(3) may claim and recover damages for emotional distress?
2. Whether the trial court's reduction of appellants' damages award from $4,450.00 to $3,450.00 on its legal conclusion that emotional distress damages are not properly recoverable in a successful RCW 59.18.085(3) claim constitutes an error of law materially affecting appellants' substantial rights, such that the $4,450.00 judgment must be entered?
3. Whether the trial court's denial of appellants' motion for reconsideration was an error of law materially affecting their

substantial rights, such that a judgment for $4,450.00 must be entered to include proven emotional distress damages?

II. STATEMENT OF THE CASE

Respondents Rogaciano Cabrera and his wife Raquel Cabrera, respondent landlords, purchased a house located at 1617 E. Lewis Street in Pasco, Washington in about 2006. CP at 100-102. The respondents purchased the house specifically for use as residential rental property. CP at 102. Before moving to Pasco, Mr. and Ms. Cabrera lived in Pomona, California, where they had also owned rental property. CP at 101. Before Mr. and Ms. Cabrera started renting out the Lewis Street home in Pasco, they sought no training and did no investigation of the laws that might apply to them as landlords in Washington State. CP at 103-104.

Mr. Cabrera applied for and received a license from the City of Pasco to rent the 1617 E. Lewis Street address as a single dwelling, but later converted the basement to a separate apartment and began renting the home as a duplex. CP at 103. Mr. Cabrera never checked the City of Pasco's housing code to see what the law required of him and he never asked the Pasco Code Enforcement office for information or advice. CP at 103-105.

On July 3, 2011, Mr. and Ms. Cabrera rented the basement apartment at 1617 E. Lewis Street to the appellants, Jose Segura and

Tabetha Gonzalez, tenant appellants, and their two children, under a year-long lease. CP at 51-54. The Segura/Gonzalez family pre-paid Mr. Cabrera $600.00 for the first month's rent, a $600.00 rental security deposit, and a $150.00 deposit for electrical utility service (provided through a metered account Mr. Cabrera required of the upstairs tenant at that address to carry in her name). CP at 47 and 119.

On July 8, 2011, a Pasco Housing Code Enforcement officer inspected the premises at 1617 E. Lewis Street based on a complaint by the upstairs tenant. CP at 196. On July 13, 2011, the Code Enforcement office issued a Corrective Notice to respondents for many defects, including the unlawful conversion and operation of the basement of the structure as an illegal duplex. CP at 67-74. The City told the Segura/Gonzalez family, who moved in just ten days earlier, to vacate the basement apartment based on the illegality. CP at 47-48. Soon after, Mr. Cabrera himself served the Segura/Gonzalez family with a 20 day notice to vacate the premises on July 19, 2011 "for reasons due to being asked by the city saying the house can be habited it need to be evacuated by August 7 (*sic*)." CP at 190.

On Saturday, July 23, 2011, Mr. Cabrera attempted to have appellants' car towed from the premises, although he had only served the twenty day notice a few days earlier. CP at 48. Ms. Gonzalez called the

Pasco Police Department. CP at 48. The police told Mr. Cabrera that the appellants had a right to park at the premises unless they were legally evicted. CP at 48. A few days before the family left the basement apartment, Mr. Cabrera entered without notice and changed the locks. CP at 48. Again, the police were called and the premises returned to the family. CP at 48. However, upon reentry, the family found that a box of knives was missing. CP at 48. Mr. Cabrera denies taking these knives on that occasion, but admits these were the same knives he had previously taken from the family and been required to return after that taking was discovered. CP at 95-96.

The Segura/Gonzalez family suffered significant anxiety, worry, inconvenience, and upheaval from being forced to vacate their home on a few days' notice shortly after signing a year's lease. CP at 49. The emergency search for a new home and the crisis move cost the family about $200.00 in otherwise unneeded gasoline expenses. CP at 49. Moreover, the Cabreras never returned the $750.00 in rental and electricity deposits the Segura/Gonzalez family paid. CP at 50.

One day after Pasco Code Enforcement served respondents with the July 13, 2011 Corrective Notice about their illegal rental of the basement apartment to the Segura/Gonzalez family, appellants' counsel served a written demand that Mr. and Ms. Cabrera pay relocation

assistance in accord with the requirements of RCW 59.18.085(3). CP at 193-194. Mr. Cabrera admits that he received this demand and "really ignored it." CP at 114-116.

Appellants filed this action on July 26, 2011. CP at 200 -213. An answer, signed only by Mr. Cabrera, was filed on August 23, 2011. CP at 199. It alleged no affirmative defenses beyond ignorance of the law. CP at 199. Mr. Cabrera testified at deposition that he did not prepare the answer, did not know who did prepare it, never read it, and did not know whether the allegations of the answer were true. CP at 47-48.

On November 3, 2011, the Code Enforcement Board for the City of Pasco found that respondents violated the Pasco Municipal Code in their operation of 1617 E. Lewis Street rental property, including by illegally converting the basement of a single family dwelling and renting it as a duplex. CP at 72-74.

At deposition, Mr. Cabrera admitted renting the downstairs apartment at 1617 E. Lewis Street to appellants was illegal because he did not have a license to convert and rent the house as a duplex. CP at 123. Mr. Cabrera admits no effort was ever made to find out whether converting and renting the house as a duplex was legal. CP at 123.

Based on Mr. Cabrera's deposition, the answer, and the Pasco Code Enforcement documents, appellants moved for summary judgment

for an award of $4,450.00 in damages and attorney fees and costs. CP at 57-74. Appellant Tabetha Gonzalez filed a declaration in support of summary judgment describing the injuries respondents' actions had caused her and her family, including harassment and illegal lock-out by respondents after the City notice was issued; missing property; $200.00 in gasoline expenses for an emergency house search and move; and the anxiety, worry, and upheaval she and her family suffered from being forced to vacate their home on a few days' notice shortly after signing a year's lease. CP at 47 -50. As she explained:

> 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 at 49.

Respondents personally appeared at the scheduled hearing on July 23, 2012, and admitted they had filed no evidence or other opposition to appellants' motion and evidence in support of summary judgment. CP at 9. At the Court's request, appellants' counsel reviewed the facts and the law, described appellants' injuries as established by Ms. Gonzalez's declaration (including the emotional distress injuries), and asked the trial court to enter judgment in the $4,450.00 amount requested in the unopposed motion for summary judgment. That amount included a

requested award of $1,000.00 in emotional distress damages "for anxiety, worry and the inconvenience...of signing a year lease, finding a place, and then immediately having to go out and move your family again."[1]

The trial court did not question the sufficiency of appellants' proof of emotional injuries, or dispute the amount requested in compensation for those injuries. The trial court questioned the appellants' ability to recover emotional distress damages at all, stating that case was "a contract action."[2] Appellants' counsel responded that relocation assistance was a statutory cause of action, and the statute specifically allowed the recovery of any types of damages that might result. Appellants' counsel argued that

> "where the code violation made it absolutely clear that this particular rental was illegal from the day it was made, that the anxiety and the worry that resulted from being told a week after you move in that you must immediately leave is a compensable form of damages, if not under the breach of contract statute section, then certainly under the statutory recovery part."[3]

From the bench, the trial court then announced that it was signing the proposed order granting the appellants' motion for summary judgment and awarding final judgment in the case, but that it was reducing the damages award from $4,450.00 to $3,450.00 to eliminate any recovery for emotional distress injuries because the

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[1] *See* Transcript of July 23, 2012 Hearing (hereafter "TR"), filed with the Court of Appeals on October 9, 2012, page 10, line 12-15.
[2] *See* TR, page 11, line 12.
[3] *See* TR, pages 11, lines 22-25, pages 12, lines 1-4.

Court did not believe such damages were legally recoverable under RCW 59.18.085.[4]

Appellants timely moved for reconsideration and/or to alter or amend the July 23, 2012 final judgment, explaining in detail why the two step analysis adopted by the Supreme Court in *White River Estates v. Hiltbruner*, 134 Wn.2d 761, 953 P.2d 796 (1998) supported their position and award of emotional distress damages in this case. CP at 57-74. In denying reconsideration, the trial judge reiterated that the

> "relationship between the parties arises from contract to lease real property. The landlord's misconduct was intentional but was not an intentional tort. Appellants' damages were limited to those identified in the statute RCW 59.18.083 (3)." CP at 12.

Appellants timely filed this appeal from the original judgment entry of July 23, 2012 and from the order denying reconsideration. CP at 6-7.

III. ARGUMENT

A. Scope of Review

The trial court's erroneous interpretation of statutes and judicial decisions constitute errors of law subject to *de novo* review. *Fellows v. Moynihan*, ___Wn.2d___, 285 P.3d 864, 868 (2012). Issues of law are reviewed *de novo*. *Williams v. Leone & Keeble, Inc.*,___Wn. App.___, 285

[4] *See* TR, page 13, lines 18-21

P.3d 906, 909 (2012). So too are final judgments entered on summary judgment. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 78 P.3d 1274 (2003). The *de novo* standard allows the reviewing court to freely substitute its judgment for that of the trial court.

Pursuant to RAP 12.2, if the appellate court finds error, it may reverse or modify the decision under review and take any other action as the merits of the case and the interest of justice may require. *See, e.g., Dryer v. Dryer*, 10 Wn. App. 624, 519 P.2d 12 (1974). Further, the appellate courts are authorized to modify or reverse a trial court order without further proceedings when further proceedings would be wasteful of judicial resources. *In re Dependency of A.S.*, 101 Wn. App. 60, 6 P.3d 11 (2000).

B. RCW 59.18.085(3)(e) Clearly and Unambiguously Allows the Recovery of "Actual Damages" which by Law Include Damages for Emotional Distress.

The cause of action established by RCW 59.18.085 is a purely statutory claim. The question of whether a plaintiff tenant asserting that cause of action may seek and recover damages for emotional distress is therefore a question of legislative intent. Legislative intent is in the first instance determined by review and analysis of the statutory language chosen by the legislature. *Bremerton Public Safety Association v. City of Bremerton*, 104 Wn. App. 226, 230, 15 P.3d 688 (2001). If legislative

intent is apparent from the plain language of the statute, the analysis is complete and the role of the court is simply to apply the statute as written. *Id.*at 230.

RCW 59.18.085 clearly and unambiguously reveals a legislative intent that a prevailing tenant be permitted to recover compensatory damages for any type of injury. In pertinent part, RCW 59.18.085(3)(e) reads as follows:

> "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 the 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)*

The legislative intent behind RCW 59.18.085(3)(e) is clear - displaced tenants are entitled to claim and recover "any actual damages sustained." The term "actual damages" is not defined in the statute; it is therefore to be afforded its usual and ordinary meaning. *Davis v. Employment Sec. Dept.*, 108 Wn.2d 272, 277, 737 P.2d 1262 (1987). The usual and ordinary meaning of "actual damages" is "an amount awarded to a complainant to compensate for a proven injury or loss." *Blaney v.*

International Ass'n of Machinists and Aerospace Workers, Dist. No. 160, 114 Wn. App. 80, 55 P.3d 1208 (2002). RCW 59.18.085(3)(e) therefore precludes non-compensatory claims (such as for punitive damages) but imposes no limits on the right of a prevailing tenant to recover damages for any type of actual injury. Emotional distress, anxiety, worry, and fear are actual injuries "in addition to" the purely contract based monetary injuries arising from the landlord-tenant relationship as described in the first sentence of the statute. Consequently, the plain language of RCW 59.18.085(3)(e) allows the recovery of damages for emotional distress injuries actually sustained.

This Court of Appeals has previously agreed that a statutory cause of action which allows for recovery of "actual damages" permits recovery of compensatory damages for *any* type of injury, including emotional distress, and excludes only claims for exemplary, nominal or punitive damages. *Ellingson v. Spokane Mortg. Co.,* 19 Wn. App. 48, 57, 573 P.2d 389 (1978) (the statutory right to recover "actual damages" under RCW 49.60.030(2) includes the right to recover emotional distress damages). *See also Rasor v. Retail Credit Company*, 87 Wn.2d 516, 554 P.2d 1041 (1976) (holding that the right to recover "actual damages" under Fair Credit Reporting Act encompasses all elements of compensatory awards, including mental anguish and suffering, not just out-of-pocket losses);

Martini v. Boeing Company, 137 Wn.2d 357, 971 P.2d 45 (1999) (RCW 49.60.030 unambiguously states a person injured shall have a claim for "actual damages" -meaning a remedy for full compensatory damages, excluding only nominal, exemplary or punitive damages).

The Legislature was presumably aware that the courts of this state have afforded such meaning to the phrase "actual damages" when it selected that same phrase for use in RCW 59.18.085. Consequently, as a matter of legislative intent apparent from the clear and unambiguous language of the statute itself, RCW 59.18.085 allows prevailing tenants to recover damages for emotional distress sustained as the result of displacement. The trial court therefore erred as matter of law when it refused to award $1,000.00 in damages for proven emotional distress injuries on the basis that such damages were not recoverable under the relocation assistance cause of action.

C. RCW 59.18.085(3)(e) Provides a Cause of Action that Sounds in Intentional Tort Allowing for Emotional Distress Damages.

Appellants believe the plain language of RCW 59.18.085 requires the conclusion that the trial court erred as a matter of law and is therefore sufficient to resolve this appeal in their favor. However, if this Court would find that RCW 59.18.085 lacks a clear mandate on the right of prevailing tenants to recover compensatory damages for any type of injury

actually sustained, including emotional distress injuries, the Washington Supreme Court has instructed an additional consideration that should be addressed before upholding the trial court's conclusions. In *White River Estates v. Hiltbruner*, 134 Wn.2d 761,766, 953 P.2d 796 (1998), the Court said:

> "[I]n the absence of a clear mandate from the Legislature, Washington courts have "liberally" permitted 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."

The *Hiltbruner* court held that the statutory violation at issue in that case did not provide for emotional distress damages because the prohibited conduct was based on a standard of negligence, not intent or conduct akin to an intentional tort. However, under *Hiltbruner* test and a long line of Washington Supreme Court authority would require the conclusion that the trial court erred as a matter of law in denying appellants the ability to recover damages for emotional distress injuries even if RCW 59.18.085 did not clearly require that conclusion. As recently as 2003, in *Kloepfel v. Bokor*, 149 Wn.2d 192, 66 P.3d 630 (2003), the Supreme Court reviewed its prior decisions and repeated with approval the test set out in *Smith v. Rodene*, 69 Wn.2d 482, 418 P.2d 741 (1996):

> "We think that a fair summary of the holdings in such cases is as follows: (1) Where plaintiff suffers mental or emotional distress which is caused by some negligent act of the defendant, there is no right of action, even although the mental condition in turn causes some physical injury; unless the act causing the mental fright or emotional distress also threatens an immediate physical invasion of plaintiff's personal security, that is, threatens immediate bodily harm. (2) **But where mental suffering or emotional distress is caused by a willful act**, recovery is permitted." (*emphasis added*)

RCW 59.18.085 expressly conditions landlord liability upon a showing that displacement was the result of knowledge and willfulness: that the landlord "knew or should have known" of the existence of the conditions that caused Code Enforcement to order the unit vacated. *See* RCW 59.18.085(3)(a). A *mens rea* requirement of knowledge or willfulness is the hallmark of the intentional tort. Since a landlord may not be held liable for damages under the cause of action created by RCW 59.18.085(3) except upon a showing that the landlord knew or should have known of the conditions which caused the tenants' displacement, this statutory cause of action is "akin to an intentional tort," not a negligence action, and therefore emotional distress damages could be recovered as a matter of public policy, even if the legislative intent was not plain. That conclusion is consistent with the fact that the purpose of RCW 59.18.085 is to enact a public policy in favor of protecting tenants against conduct that results in a government-ordered eviction due to a landlord's non-

negligent violation of housing codes. This state has routinely allowed tenants to recover for emotional distress damages sustained as the result of willful landlord conduct. For instance, the Washington Supreme Court agreed more than a century ago that an action that sounds in wrongful eviction allows the tenant to recover damages for emotional distress. *See McClure v. Campbell*, 42 Wash. 252, 84 P. 825 (1906). *See also Cherberg v. Peoples Nat'l Bank*, 88 Wn.2d 595, 564 P.2d 1137 (1977) (emotional distress damages available for willful breach of lease); *Nordgren v. Lawrence*, 74 Wash. 305, 133 P. 436 (1913) (damages for mental suffering available in action for wrongful entry by landlord into tenant's premises).

The situation which RCW 59.18.085(3) covers is one in which a tenant has been wrongly evicted as the result of a landlord's knowing choice not to comply with housing code requirements. These requirements express public policy that rental housing is to be safe and habitable for tenants. Further, RCW 59.18.085(3) is a remedial statute that creates a right of action in favor of tenants when landlords knowingly violate housing code and should therefore be interpreted liberally in favor of tenants displaced as a result of a landlord's rental of unlawful housing. Consequently, this separate line of analysis also supports the conclusion that the trial court erred as a matter of law to the detriment of the

appellants' substantial rights when it refused to award $1,000.00 for proven emotional distress injuries.

D. Appellants are Entitled to Costs and Reasonable Attorney Fees.

Under RCW 59.18.085(e), as displaced tenants appellants are entitled to recover their costs and reasonable attorney fees as part of their statutory claim. Pursuant to RAP 18.1(a) and (b), appellants request that they be awarded costs and reasonable attorney fees on appeal in amounts to be set out and filed as a cost bill and fees affidavit under the requirements of the RAP 18.1(d).

IV. CONCLUSION

RCW 59.18.085(e) is clear and unambiguous. It provides for both "relocation assistance, prepaid deposits and prepaid rent" and "[i]n addition, any actual damages sustained ... as a result...." Emotional damages are included in actual damages. Even if this Court was of the opinion that the statutory phrase "actual damages" was ambiguous, applying the tests of *Hiltbruner* and *Smith v. Rodene* require the conclusion that a prevailing tenant under RCW 59.18.085 is entitled to seek and recover emotional distress damages. It follows that the trial court committed an error of law materially affecting appellants' substantial

rights when it refused to award such damages as requested and established.

In this case, this Court reviews the trial court's decision *de novo* and has the authority to enter judgment for emotional distress without further proceedings when further proceedings would be wasteful of judicial resources. This Court should therefore modify the trial court's judgment and award the unopposed and proven emotional distress damages of $1,000.00 to appellants modifying the trial court's judgment from $3,450.00 to $4, 450.00.

RESPECTFULLY SUBMITTED this 21 day of November, 2012.

THE NORTHWEST JUSTICE PROJECT

Karla Carlisle, WSBA #40107
Gary Smith, WSBA #42792
Of Attorneys for Appellants

Appendix

RCW 59.18.085
Rental of condemned or unlawful dwelling — Tenant's remedies — Relocation assistance — Penalties.

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

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

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

(b) All prepaid rent.

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

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

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

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

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

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

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

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

(ii) Reduce services to any tenant; or

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

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

EXHIBIT
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A

(f) If, after sixty days from the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants, a landlord has failed to repay the amount of relocation assistance advanced by the city, town, county, or municipal corporation under (c) of this subsection, then the city, town, county, or municipal corporation shall assess civil penalties in the amount of fifty dollars per day for each tenant to whom the city, town, county, or municipal corporation has advanced a relocation assistance payment.

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

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

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

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

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

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

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

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

Notes:

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

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

Construction -- 2005 c 364: "The powers and authority conferred by this act are in addition and supplemental to powers or authority conferred by any other law or authority, and nothing contained herein shall be construed to preempt any local ordinance requiring relocation assistance to tenants displaced by a landlord's failure to remedy building code or health code violations." [2005 c 364 § 4.]

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

JOSE SEGURA and TABETHA GONZALEZ,

Plaintiffs,

vs.

ROGACIANO and RAQUEL CABRERA,

Defendants.

No. 11-2-50776-1

JUDGMENT
12-9-508681

JUDGMENT AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

CLERK'S ACTION REQUIRED

I. Judgment Summary

Total judgment of $9,659.55 plus statutory interest; defendants to pay costs and official fees.

Judgment Summary is set forth below:

A. Judgment Creditors: Jose Segura and Tabetha Gonzalez

B. Judgment Debtors: Rogaciano Cabrera and Raquel Cabrera, jointly and severally

C. Plaintiffs' Judgment: ~~$4,450.00~~ $3450.00 CTH with interest from date of this entry

D. Attorney Fees Judgment to Northwest Justice Project: $4,660.00

E. Judgment for costs to Northwest Justice Project: $549.55

F. Attorney for Judgment Creditors: Gary M. Smith

G. Attorney for Judgment Debtors: None: defendants pro se

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Pasco, Washington 99301
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43

EXHIBIT
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II. Findings

On June 18, 2012, the Court granted plaintiffs leave to file a motion for summary judgment by June 22, 2012 and ordered defendants to file any evidence or argument in opposition by July 13, 2012. Plaintiffs' motion for summary judgment on all their claims was timely filed and served on June 22, 2012 and noted for hearing on July 23, 2012 in accord with the June 18, 2012 order.

The plaintiffs' motion was supported by admissions in the January 18, 2012 deposition of defendant Rogaciano Cabrera, the declaration of plaintiff Tabetha Gonzalez, and self-authenticating certified copies of official documents from the City of Pasco's Office of Code Enforcement, including a July 13, 2011 Corrective Notice, an August 5, 2011 Notice of Violation, and the administrative findings entered on those notices. Defendants filed no declarations, documents, or argument in opposition to the motion.

Plaintiffs appeared before the Court on July 23, 2012, represented by counsel the Northwest Justice Project. Defendants did did not appear. The Court heard argument based on the record before it.

The Court finds there are no material facts in dispute as to the extent or amount of plaintiffs' damages, or as to defendants' plain liability to plaintiffs for those damages. The Court therefore finds as a matter of law pursuant to CR 56 that plaintiffs are entitled to entry of summary judgment in their favor as to all issues in dispute, and to entry of a final judgment in accord with that finding and plaintiffs' motion.

III. Order

It is therefore ORDERED, ADJUDGED, and DECREED that:

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1. Plaintiffs are the prevailing parties in this matter;

2. Plaintiffs are awarded judgment against defendants Rogaciano Cabrera and Raquel Cabrera, jointly and severally, for damages in the amount of ~~$4,450.00~~ $3450.00 CSN, which award shall bear interest at the statutory rate from the date of this entry until paid.

3. Based on the unopposed declaration of counsel, the Court finds that Gary M. Smith of the Northwest Justice Project reasonably and necessarily expended at least 23.3 hours of attorney time representing the plaintiffs in this matter, and that the reasonable value of his services in this litigation is at least $200.00 per hour. Additionally, the Court finds the Northwest Justice Project reasonably and necessarily expended $549.55 in recoverable deposition and litigation-related costs. Northwest Justice Project and the plaintiffs are therefore awarded judgment against the defendants Rogaciano Cabrera and Raquel Cabrera, jointly and severally, in the total amount of $5,209.55 as a statutory award of fees and out-of-pocket litigation costs pursuant to RCW 59.18.085. That judgment shall bear interest at the statutory rate from the date of this entry until paid.

4. Defendants Rogaciano Cabrera and Raquel Cabrera shall pay all court costs and official fees in this matter. The Clerk is authorized and directed to bill and collect those costs and fees from defendants directly.

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5. This judgment resolves the only claims of right at issue in this case. Consequently, the trial currently scheduled for August 1, 2012 is CANCELLED.

DATED this 23 day of July, 2012.

Judge

Presented in open court on July 23, 2012 by:

NORTHWEST JUSTICE PROJECT

By
Gary M. Smith, WSBA No. 42792
Attorney for Plaintiffs

Northwest Justice Project
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AUG 21 2012
MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

JOSE SEGURA and TABETHA GONZALEZ,

Plaintiffs,

vs.

ROGACIANO and RAQUEL CABRERA,

Defendants.

No. 11-2-50776-1

ORDER DENYING MOTION TO RECONSIDER AND/OR TO ALTER OR AMEND JUDGMENT

CLERK'S ACTION REQUIRED

This matter came before the Court on the timely-filed motion of plaintiffs Jose Segura and Tabetha Gonzales to reconsider, and/or to alter or amend, this Court's July 23, 2012 judgment and order, pursuant to CR 59 (a)(8) and CR 59(h).

The motion is DENIED. 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 59.18.185(3).

August 21, 2012
Date

Judge Craig J. Matheson

Northwest Justice Project
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EXHIBIT C

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
FOR DIVISION III

JOSE SEGURA and TABETHA GONZALEZ,

Appellants,

vs.

ROGACIANO and RAQUEL CABRERA,

Respondents.

No. 311180

Certificate of Service by Regular Mail

The undersigned hereby certifies that on November 21, 2012, a copy of the following:

Appellants' Brief with the following attachments: ASCII Disc and Transcript of Proceedings.

was served at the following addresses via the method indicated:

Rogaciano Cabrera &
Raquel Cabrera
323 N. Douglas
Pasco, WA 99301

☒ Mail ☐ Hand Delivery ☐ Other _____
☐ Certified Mail ☐ Fax

Signed this 21st day of November, 2012.

Linda Banda

Linda Banda, Legal Assistant

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