NO. 43514-4-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

NORMA TISON,

Appellant,

v.

WESTERN PLAZA, LLC,

Respondent.

REPLY BRIEF OF APPELLANT

Law Offices of Dan R. Young
Attorney for Appellant
1000 Second Avenue
Suite 3200
Seattle, WA 98104
(206) 292-8181

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

Statutes **Page**

Miscellaneous **Page**

I. REPLY TO ARGUMENTS RAISED BY RESPONDENT

A. The Landlord May Not Change Any Provision of the Rental Agreement Upon Three Months' Notice–Only the Rental Amount.

1. There Is No Statutory Basis for the Landlord's Argument.

The landlord argues that this "Court should not read any more into RCW 59.20.090 than what it says." RB at 13. Ms. Tison agrees. The relevant part of the statute provides only that the landlord on three months' notice may increase *rent*. The statute says nothing about the landlord's ability to alter any other provision of the rental agreement.

The landlord notes that "[o]ther than the provision in RCW 59.20.090(2) pertaining to notice required for adjustment of rent, the MHLTA is silent regarding other lease term amendments upon renewal . . ." RB at 18-19. Yet despite this statutory silence, the landlord incorrectly argues that RCW 59.20.080(1)(a) "tacitly" acknowledges amendments upon renewal. RB at 19. This statute, however, refers to park rules "established by the landlord at the inception of the tenancy or as assumed subsequently *with the consent of the tenant* . . ." [italics added]. RCW 59.20.080(1)(a). If even changes in park rules require the consent of the tenant, then *a fortiori* changes–especially material, fundamental, specifically negotiated

changes--in the rental agreement require tenant consent.

To bolster its argument that provisions in the rental agreement may be unilaterally changed, the landlord even misquotes RCW 59.20.080(1) as providing a tenant with six months' notice to comply "[w]hen some material changes in the *rental agreement* or Park Rules occur . . ." [italics added]. RB at 13. However, the reference to the *rental agreement* does not appear in connection with the statutory six-months'-notice provision.[1]

But, inconsistently, the landlord argues that "the landlord may change *any* term of any lease after three months' written notice . . ." [italics added].[2] RB at 16. The landlord is reading more into the MHLTA than what it says. Simply because the MHLTA does not specifically *prohibit* unilateral changes to the rental agreement upon automatic renewal does not imply that the MHLTA *authorizes*

---

[1]The relevant portion of RCW 59.20.080(1)(a) provides that "in the case of a violation of a 'material change' in *park rules* with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate" [italics added]. RCW 59.20.080(1)(a).

[2]Similar sweeping statements appear throughout the landlord's brief, e.g., "nothing in the MHLTA . . prohibits the landlord from changing any [required] terms upon expiration of the rental agreement . . ." RB at 14; "at the time of any renewal, a park owner may also alter the rental agreement to offer fewer services or amenities in the park" RB at 15; "there is no limitation upon whether the Landowner may change the terms of the lease" RB 22.

unilateral amendments.[3] The right to unilaterally change the terms of a written agreement nine months after the ink is dry on the agreement is not a customary part of contract law. "One party may not unilaterally modify a contract." *Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 27-28, 111 P.3d 1192 (2005), *review denied*, 156 Wn.2d 1030 (2006) (citing *Jones v. Best*, 134 Wn.2d 232, 240, 950 P.2d 1 (1998)). The landlord concedes that the statutes involved are not ambiguous. RB at 24.

The reasonable expectations of the parties should also be considered. *Cascade Trailer Court v. Beeson*, 50 Wn. App. 678, 687-88, 749 P.2d 761 (1988) (lessor's insurer is not subrogated to the rights against the tenants for negligently causing a fire, as such is not within the reasonable expectations of a tenant). An average consumer

---

[3]The landlord argues that "where the MHLTA is silent, the landlord's common law property rights remain intact." RB at 11. However, the landlord has no common law right to unilaterally change the terms of a written rental agreement and cites no authority for such a novel proposition. *Flower, infra*; *Jones, infra*. "It is the general rule that parties are presumed to contract with reference to existing statutes, and a statute which affects the subject matter of a contract is incorporated into and becomes a part thereof. If the parties to a contract wish to provide for other legal principles to govern their contractual relationship, they must be expressly set forth in the contract. Absent a clear intent to the contrary disclosed by the contract, the general law will govern." *Wagner v. Wagner*, 95 Wn.2d 94, 98-99, 621 P.2d 1279 (1980) (citations omitted). Further, the landlord makes no argument that the MHLTA unconstitutionally deprives it of a valuable right in property. See, *Laurel Park Community, LLC v. City of Tumwater*, 698 F.3d 1180, 1193-94 (9th Cir. 2012).

buying an immobile manufactured home in a park and renting the lot from the park owner would not expect that a landlord could simply disregard or unilaterally amend a freely negotiated rent limitation clause in the rental agreement.

While the landlord argues that the MHLTA should be "strictly construed" because it is in derogation of the common law, RB at 10-11, the landlord provides no principled approach to what such strict construction would mean. Strict construction would presumably mean that the statute should be construed as written, not expanded to include what is not written. "The distinction between 'liberal construction' and 'strict construction' is easily overstated. Neither a liberal construction nor a strict construction may be employed to defeat the intent of the legislature, as discerned through traditional processes of statutory interpretation." *Estate of Bunch v. McGraw Residential Center*, 174 Wn.2d 425, 432, 275 P.3d 1119 (2012).

Furthermore, whether a statute is in fact in derogation of the common law, and what would constitute a strict construction, involve a complex analysis beyond the scope of what is argued in the landlord's brief. See, *Wichert v. Cardwell*, 117 Wn.2d 148, 153-56, 812 P.2d 858 (1991).

The landlord's construction of the MHLTA is contrary to legislative purposes, the entire legislative scheme, the history of

legislative amendments to the statute, and the customary interpretation of written documents, especially in the consumer context. The landlord clearly has to look somewhere other than the MHLTA to find authority for its wide-ranging argument that the landlord can unilaterally change *any* term in the rental agreement.

2. A Reasonable Construction of the Language in *McGahuey* Does Not Support the Claim that the Landlord May Unilaterally Change *Any* Term in the Rental Agreement.

The landlord accurately summarizes Ms. Tison's argument that *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672 (2001) "limits changes in rental agreements to those which protect the tenant and are equitable." RB at 25. However, the landlord misinterprets *McGahuey* by stating in its next sentence that the "*McGahuey* court rejected this argument as 'untenable.'" *Id.*

What the McGahuey court held to be "untenable" was the tenant's argument in that case that "the landlord is not permitted to increase or add any fee or charge except to increase the rent when the lease agreement expires . . ." *McGahuey* at 181-82. The court of appeals in *McGahuey* specifically stated that "portions of the MHLTA insure that whatever alterations the landlord seeks must be equitable." *McGahuey* at 182.

Furthermore, contrary to the assumption made by the landlord in this case, *McGahuey* dealt, so far as relevant here, only with the

issue of whether a landlord could charge tenants for utilities, where the original rental agreement provided that the landlord would pay for utilities. To the extent that language in *McGahuey* implies that *any* term in the rental agreement could be unilaterally changed, such language is certainly dictum.

While the landlord quotes a good portion of the *McGahuey* opinion, it does not quote the following key paragraph:

> This is a practical approach for the legislature to take. It recognized that mobile homes are difficult and expensive to move and, to protect tenants from the instability inherent in most rental arrangements, it provided for automatic renewal and a long notice period for rent increases. But it did not require that all original lease terms remain in force through every automatic renewal because renewals could extend for countless years. By not regulating them, the Legislature did allow changes in the lease terms to permit the landlord to charge for utilities, so long as they were limited to the actual cost. This is nothing more than a practical acknowledgment that costs increase and those using a service may be required to pay for it.

McGahuey, 104 Wn. App. at 183.

While the above quotation states that the legislature "did not require that all original lease terms remain in force through every automatic renewal . . . [,]" it is clear, as the next sentence shows, that the court is dealing with changes regarding charges for utilities, not any and all changes to lease terms. The final sentence of the quotation

clarifies that the whole issue boils down to "nothing more than a practical acknowledgment that costs increase and those using a service may be required to pay for it." *Id.*

The present case, on the other hand, does not deal with utilities or a subject where a tenant has protections in the MHLTA, as in *McGahuey*, but in the rental agreement. Here the landlord is attempting to strip tenant-negotiated protections away from Ms. Tison and subject her to ruinous rent increases which could force her out of a safe and secure retirement into one of uncertainty and stress. There is no language in *McGahuey* which approves such conduct.

The landlord here further fails to explain how the abrogation of the rent limitation clause is "equitable." Ms. Tison has no protection from rent increases, other than the clause she negotiated in the rental agreement, so by definition unilateral amendment of the rent limitation clause would not be equitable.[4]

Even if *McGahuey* were construed very broadly, there would have to be some limitations on unilateral amendment of rental

---

[4] The landlord argues that the only "equitable" restrictions on leases are the ones in the MHLTA. RB at 28. Since there are no such restrictions on the level of rent in the MHLTA, the only conclusion that can be drawn from the landlord's argument is that there are no equitable restrictions on changes to rent, even if the landlord agrees to such restrictions. The language and reasoning of *McGahuey* simply do not support that broad an argument.

agreements. If there were none, the landlord could obviously change the tenant's lot location; reduce the lot size; require the construction of improvements; eliminate essential services, such as vehicular access, parking or accessibility to the home, etc. The landlord dismisses this logical result of permitting any unilateral change to the rental agreement as being a "slippery slope" argument, but the landlord fails to explain why park landlords would not take such action if they thought it was in their best interest to do so. RB at 12.

The landlord, again inconsistently, tries to argue that this is "a misstatement of the Landowner's position." *Id.* The landlord states that the issue here "is rent, and the landlord is explicitly permitted to change the amount of rent under the MHLTA." *Id.* But the landlord mischaracterizes the issue. The issue is not whether the MHLTA permits rent increases, as it obviously does; the issue is whether that permission can validly be limited by the landlord's voluntary acceptance in the written rental agreement of a limit in the amount and timing of rent increases. The logical result of the landlord's argument is that nothing can prevent the landlord from raising rent to whatever level it wants, regardless of the language the landlord agreed to in the rental agreement.

The landlord argues that Ms. Tison's approach is unworkable, amenities change over time, and a swimming pool may not be required

forever. RB at 15-16. However, this case is not about swimming pools and park amenities. A closer analogy would be a situation where a prospective park tenant has a medical condition requiring swimming or a similar form of daily exercise, and it is difficult for the prospective tenant to travel to a swimming pool. The prospective tenant locates a park with a swimming pool, and mindful of the landlord's argument in its brief, negotiates a written provision in the rental agreement that the pool will remain open as long as the tenant's physical affliction endures. Relying on such provision, the tenant buys the home in the park. Some years later the same owner or a new park owner unilaterally decides to close the pool. Could it be doubted that the tenant should have a remedy for the landlord's conduct in such a case?

3. The Landlord Ignores the Effect of the Rental Agreement.

The landlord acknowledges that by the specific terms of the lease, "amendments to the lease are contemplated." RB at 19. The landlord refers to paragraph 30 of the rental agreement, which provides that "[a]ny amendment or other change to this Agreement . . . shall be in writing." RB at 19-20; CP 23. But this provision does not state that the landlord can unilaterally effect any change to the rental agreement it wants, and the law is to the contrary. "One party may not unilaterally modify a contract." *Flower, supra*, 127 Wn. App. at 27-28;

Jones v. Best, supra, 134 Wn.2d at 240. The obvious purpose of this standard clause is to preclude an *oral* amendment to the rental agreement, not to permit an unidentified party to the agreement to unilaterally impose an amendment on the other party.[5]

Moreover, "[a] traditional bilateral contract is formed by the exchange of reciprocal promises. The promise of each party is consideration supporting the promise of the other." *Govier v. North Sound Bank*, 91 Wn. App. 493, 499, 957 P.2d 811 (1998) (citing *Ebling v. Gove's Cove, Inc.*, 34 Wn. App. 495, 499, 663 P.2d 132 (1983)). Modification of a bilateral contract requires a meeting of the minds as well as consideration separate from that of the original contract. *Wagner v. Wagner, supra*, 95 Wn.2d 94, 103; *Rosellini v. Banchero*, 83 Wn.2d 268, 273, 517 P.2d 955 (1974). The instant rental agreement was clearly a bilateral contract, which therefore cannot be unilaterally modified, as there was no meeting of the minds as to any amendment and no new consideration proffered.

If this were a contract terminable at will, on the other hand, it could be unilaterally modified. It is beyond dispute that Washington law provides that a "terminable-at-will contract may be unilaterally modified." *Duncan v. Alaska USA Federal Credit Union, Inc.*, 148

---

[5]The landlord provides no reason, for example, why Ms. Tison could not impose a unilateral amendment to the rental agreement. After all, the MHLTA does not preclude such argument.

Wn. App. 52, 73, 199 P.3d 991 (2008) (citing *Cascade Auto Glass, Inc. v. Progressive Cas. Ins. Co.*, 135 Wn. App. 760, 768, 145 P.3d 1253 (2006), *review denied*, 161 Wn.2d 1012, 166 P.3d 1217 (2007); (citing *Mayflower Air-Conditioners, Inc. v. West Coast Heating Supply, Inc.*, 54 Wn.2d 211, 213, 339 P.2d 89 (1959)); *see also, Mall Tool Co. v. Far West Equip. Co.*, 45 Wn.2d 158, 273 P.2d 652 (1954).

However, Ms. Tison's rental agreement is not a terminable-at-will agreement. Accordingly, under a contract analysis, the landlord's argument fails.

Finally, it should be noted that "[t]he cardinal rule with which all interpretation begins is that its purpose is to ascertain the intention of the parties." *Berg v. Hudesman*, 115 Wn.2d 657, 663, 801 P.2d 222 (1990) (citing Corbin, *The Interpretation of Words and the Parol Evidence Rule*, 50 Cornell L.Quar. 161, 162 (1965); 4 S. Williston, Contracts § 601, at 306 (3d ed. 1961). But if the parties intended a certain result, then "so be it." *Id.* at 677. Here there is no doubt but that the parties intended the rent limitation clause to be effective. Then "so be it."

"When parties deliberately enter into a contract which is valid in all respects, we have with almost unvarying uniformity followed the principle that the provisions of such contracts should be enforced." *Income Properties Investment Corp. v. Trefethen*, 155 Wash. 493,

501-02, 284 Pac. 782 (1930). The trial court should have enforced the provisions of this rental agreement.

B. The Rent Limitation Clause Was Automatically Renewed with the Rental Agreement Each Year.

The landlord argues that there is a conflict between the term of the one-year rental agreement and the rent-limitation clause extending indefinitely into the future. RB 12-13; 17; 24. The landlord even argues that "the right to automatic renewal [of the rental agreement] is not a contractual right bargained for between the parties, but one imposed by the state." RB 13.

These assertions are simply inaccurate. Automatic renewal of the rental agreement is provided for in the rental agreement itself. CP 22, ¶ 1 ("Tenant agrees that upon expiration of the original term, the Agreement shall automatic[redacted]renew[redacted]. .") If automatic renewal means anything, it means that the provisions of the rental agreement carry over to the renewed term.[6] Thus there is no conflict in having a clause in a one-year rental agr[redacted]ent operate during each successive renewal period.

The landlord views "automatic renewal" as though the temporal *term* of the abstract rental agreement continued, like some

---

[6] *McGahuey*, of course, made an exception for adding utility charges.

disembodied entity lacking any specific content, but without any particular *provisions* of the rental agreement attached to the disembodied *term*, so that in effect, the landlord can unilaterally designate which provisions of the rental agreement continue, and which do not. RB at 4-5; 16. No legal support is offered for such a neo-Platonic conception.

The landlord claims that the presence of a rent limitation clause in the rental agreement extending beyond the term of the rental agreement itself "is an unwarranted impairment upon the parties' ability to negotiate the term of the lease." RB at 24. After all, the landlord notes, if the parties had "intended to be bound by the same terms under a multi-year lease, they could have entered into such a lease." RB at 24. But both parties recognize that "renewals could extend for countless years." *McGahuey*, 104 Wn. App. at 176. One of the purposes of the MHLTA is to promote "long-term and stable mobile home lot tenancies." *Holiday Resort v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 224. It should thus be no surprise to the landlord that rental agreements may renew for many years, and in this light, the landlord has failed to show any impairment in his ability to negotiate and has specifically failed to show why the landlord and Ms. Tison could not have mutually agreed to any term they chose to.

The fact that a rent limitation clause in a one-year rental

agreement may operate for many years over a number of renewals of the rental agreement also does not offend any established legal principles. Such a rent limitation clause is merely a variation of a rent escalation clause in a multi-year rental agreement. The landlord fails to explain why if the rental agreement in this case were denominated a "twenty-five year rental agreement," for example, instead of a "one-year rental agreement," those magic words would have transformed the rental agreement here into an acceptable one.[7]

Moreover, in the landlord-tenant context, it is the landlord who typically drafts the rental agreement. The Landlord does not have to include in the rental agreement a rent limitation clause which it knows will be "automatically renewed" with the rest of the rental agreement. The landlord does not have to include clauses in the rental agreement which it believes, literally, will not withstand the test of time. Nothing prevented the landlord here and Ms. Tison from negotiating a ten-year

---

[7]The landlord argues that the parties agreed to a one-year lease, not a 25-year or 99-year lease, and since the court cannot rewrite the contract, the parties "agreed to and bargained for an annual lease subject in its initial term to the handwritten limitations, but also change upon its renewal." RB at 21. This is a non-sequitur. The parties agreed to a one-year rental agreement which "automatically renewed." Nowhere does the rental agreement provide that the landlord may change it upon renewal. The parties bargained for a rent limitation clause that would operate upon the annual renewal of the rental agreement. The ability of the landlord to change the rent limitation clause would totally destroy the intent of the parties in limiting increases in rent to a specified amount over time.

or longer rental agreement. Functionally, a one-year rental agreement which automatically renews for ten successive years is equivalent to a ten-year rental agreement.[8]

The landlord tries to argue that the rent increase limitation is "personal to Landlord Erlitz so long as he owned the Park[,]" so therefore expired when the park was sold to the current owner. RB at 18. There are three main problems with this argument: (1) the clause in the rental agreement states that "Landlord, Erlitz, agrees to have land rent remain at $345.00 for two years" (CP 23). The name "Erlitz" is set off by commas, indicating that the name is simply an appositive to identify which of the park owners made the agreement.[9] (2) there is no indication that the clause operates only while Erlitz retains some sort of ownership interest in the park or that the clause is personal to Erlitz; and (3) the words "Landlord, Erlitz," are found only in the first footnote; those words are not contained in the second footnote, which is the rent limitation clause at issue in this case.

The landlord next tries to argue that the rent limitation clause

---

[8]There would likely be some wording differences in the ten-year rental agreement, as without some sort of rent-increase formula, the landlord in a ten-year rental agreement would be able to increase rent only three months before the end of the term, i.e., the end of the tenth year.

[9]The actual landlord is identified in the first line of the rental agreement (CP 22) as "Erlitz, Mellen & Vandenbroek, TIC," where the "TIC" likely stands for "tenants in common."

is enforceable only as to the tenant's "remaining tenancy," which it argues is one year.[10] RB at 19. Ms. Tison's rental agreement "automatically renewed" each year, she is still a tenant, she is still paying rent, and she has entered into no new rental agreement, so it is quite obvious that it is Ms. Tison's tenancy which is being referred to, and her "remaining tenancy" has clearly not expired.

If the rent limitation clause in the rental agreement is ambiguous, which Ms. Tison does not concede, any ambiguities in leases are construed against the drafter, here the landlord. *McGary v. Westlake Investors*, 99 Wn.2d 280, 287, 661 P.2d 971 (1983); *Luna v. Gillingham*, 57 Wn. App. 574, 581, 789 P.2d 801 (1990).[11]

1. There Are No Statutory Limitations in This Case on the Parties' Freedom to Bargain.

The landlord argues that the automatic renewal provision of RCW 59.20.090(1) and the provisions in RCW 59.20.080 regarding the termination of rental agreements "impose a statutory limitation on the parties' freedom to bargain." RB at 20. This argument makes no

---

[10]The clause in the second footnote in the rental agreement provides that "every other year, rent will be raised no more than $10.00 for remaining tenancy" (CP 23).

[11]It is undeniable that the landlord could have attached the limiting phrase "so long as Mr. Erlitz is part owner of the park" to the second footnote to establish that the rent limitation applied only during Ms. Tison's tenancy with him. The landlord did not do that.

sense. A rental agreement may provide a tenant with greater protection than the tenant would receive by statute. *Community Investors, Ltd. v. Safeway Stores, Inc.*, 36 Wn. App. 34, 36-37, 671 P.2d 289 (1983) (where lease contained a provision requiring a tenant to have 20 days to cure a default, instead of the 10 days required by statute, the lease provision prevailed); *Indigo Real Estate Services, Inc. v. Wadsworth*, 169 Wn. App. 412, 423, 280 P.3d 506 (2012) (lease may require higher breach standard to support unlawful detainer finding).

Thus, contrary to the landlord's assertions, the parties are not constrained by the provisions of the MHLTA–unless there is an express statutory bar–but are free to bargain for greater protection than provided by statute. *Safeway, supra*; *Indigo, supra*. That is exactly what the parties did here. Since the landlord concedes that the MHLTA is silent on the issues raised in this case, the parties were free to reach an agreement, as expressed in the rental agreement, to a limitation on future rent increases. The landlord cites no cases to the contrary.

2. The Tenant is Not Required to Accept the Landlord's Unilateral Changes to the Rental Agreement.

The landlord argues that the rental amount under RCW 59.20.090(1) may be changed on three months' notice, so the tenant

has time to adjust; terminate the lease; or sell, transfer or assign her lease. RB at 20-21. From that premise the landlord argues that the tenant is "always free to agree or disagree with a change in the terms of the rental agreement . . ." *Id.* It is true that the landlord may increase rent, with no expressed statutory limitation.[12] However, the ability to change all the other terms in the rental agreement would likely work a severe hardship on persons of limited means who live in parks. See, *Laurel Park Community, LLC v. City of Tumwater*, *supra*, 698 F.3d 1180, 1184-85. Most tenants would not be able to move their homes, may have trouble finding a buyer in three months, especially in a recession, and families may be rendered homeless. The landlord's argument from a silent statute does not promote long-term and stable tenancies in parks. The tenant would be at the complete mercy of the landlord. The tenant should not be left in such a precarious position, and the landlord cites no authority requiring it.

C. The Park Waived the Ability to Alter the Rent Limitation Clause.

The landlord argues that while it may have waived the right to

---

[12]There are some limitations on the landlord's ability to increase rent. A landlord, for example, may not increase rent because the tenant has, in good faith, complained to a governmental agency, requested the landlord to comply with the law, filed suit against the landlord, or participated in a homeowners' association or group. RCW 59.20.070(5).

increase rent, it could always reinstate that right by giving "reasonable notice," citing *Crutcher v. Scott Publishing Co.*, 42 Wn.2d 89, 97, 253 P.2d 925 (1953). That case, however, held that "the right of forfeiture cannot be exercised without demand and a reasonable opportunity to comply after there has been a waiver of strict performance by the acceptance of delayed payments." *Id.* The present case does not involve delayed payments, so is entirely distinguishable. In the present case the park waived the right to raise rents in an unlimited amount by signing the rent limitation clause in the 2001 rental agreement.

Once a right has been waived, it cannot be revived. *Otis Housing Association, Inc. v. Ha*, 165 Wn.2d 582, 588, 201 P.3d 309 (2009) (once having elected to litigate, a party has waived an arbitration clause, and cannot claim a right to arbitrate); *Payne v. Ryan*, 183 Wash. 590, 595, 599, 49 P.2d 53 (1935) ("waiver once made can not be revoked"); *Panorama Association v. Panorama Corp.*, 97 Wn.2d 23, 29, 640 P.2d 1057 (1982) (waiver of payments under lease calculation formula precludes landlord from recouping amounts waived); *State v. Smith*, 84 Wn. App. 813, 824, 929 P.2d 1191 (1997) (waiver of privilege at a former trial bars a claim of the privilege at a later trial); *Wilson v. Daniels*, 31 Wn.2d 633, 640, 198 P.2d 496 (1948) ("having been once waived the landlord's rights are

lost"); *Ahlman v. Wilson*, 102 Wash. 677, 685, 174 P. 970 (1918) (having once waived an objection, "the appellants cannot now insist upon its review"); *Corbin v. McDermott*, 33 Wash. 212, 214, 74 Pac. 361 (1914) ("when such objections are once waived they cannot be revived at the mere will of the party making them").

The previous landlord voluntarily signed the rental agreement containing the rent limitation clause and complied with it for nearly a decade. There is simply no basis to conclude that a party can waive a right for ten years and then resuscitate it, as claimed by the landlord here.

D. The Statute of Frauds Does Not Apply.

The landlord contends that the statute of frauds renders the rental agreement unenforceable, because the rental agreement is not acknowledged and does not include a legal description. RB at 30. This argument cannot withstand scrutiny.

RCW 59.04.010 provides in relevant part that "[l]eases . . . shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals."[13] RCW 59.04.010. The present rental agreement does not *exceed* a term of one year, as it is

[13]RCW 59.18.210 contains identical wording.

"for a term of one year." CP 22, ¶ 1.[14] It has long been held that a lease for a period of one year does not come within the statute of frauds. *Ward v. Hinckley*, 26 Wash. 539, 541, 67 Pac. 220 (1901); *Pappas v. General Market Co.*, 104 Wash. 116, 119-120, 176 Pac. 25 (1918). The fact that the rental agreement is automatically renewed at the end of the one-year term by operation of statute and the rental agreement itself does not affect this result.[15] The rental agreement continues at the end of the one-year period and renews for another year. That is the meaning of the words "automatically renewed."

Moreover, even if the statute of frauds applied, part performance takes a rental agreement out of the statute of frauds. *Stevenson v. Parker*, 25 Wn. App. 639, 644, 608 P.2d 1263 (1980) (holding that "long acquiescence" of seven years in the terms of the lease was sufficient part performance to take the unacknowledged lease out of the statute of frauds). Part performance thus applies here.

The landlord cites *Lake Limerick Country Club v. Hunt Mfg.*

---

[14]The rental agreement is even entitled "Manufactured Home Lot *One-Year* Rental Agreement" (italics added).

[15]RCW 59.20.090(1) provides: "Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed to." RCW 59.20.090(1). "Renew" means to "become new again" or to "start over." *American Heritage Dictionary of the English Language* 1477 (4th ed. 2000).

Homes, Inc., 120 Wn. App. 246, 254-55, 84 P.3d 295 (2004) for the proposition that the rent limitation clause did not "run with the land" and because the clause does not satisfy the statute of frauds, it is therefore not binding on a subsequent purchaser of the park. RB at 30. However, it has been shown above that the rental agreement in issue does satisfy the statute of frauds, because the rental agreement is for a term not greater than one year.

Moreover, the rent limitation clause does satisfy the requirements for "running with the land" as set forth in *Lake Limerick, supra.* Those requirements are as follows:

> (1) a promise, in writing, which is enforceable between the original parties; (2) which touches and concerns the land or which the parties intend to bind successors; and (3) which is sought to be enforced by an original party or a successor, against an original party or successor in possession; (4) who has notice of the covenant.

Lake Limerick, 120 Wn. App. at 254.

These requirements are satisfied. The rent limitation clause is enforceable between the original parties. The landlord so concedes. RB at 29. The obligation to pay rent does "touch and concern" the land. The obligation is sought to be enforced by an original party, Ms. Tison, against a successor in possession, i.e., the current landlord. The current landlord clearly has notice of the covenant. So under the very

authority cited by the landlord, the rent limitation clause does "run with the land" and is enforceable.

Accordingly, the landlord's statute of frauds argument fails.

E. The Landlord Did Not Act in Good Faith.

The landlord argues that "courts will not find a breach of the duty of good faith when a party stands on its rights to require performance of a contract according to its terms." RB at 31. That is true. However, it is Ms. Tison who is seeking to have the rental agreement enforced in accordance with its terms, and it is the landlord who is seeking to avoid its obligation to comply with the covenants contained in the written rental agreement.

The landlord argues that "equity cannot provide a remedy where legislation denies it." RB at 31-32. That may well be generally true. However, the landlord has conceded that the MHLTA is "silent" as to the landlord's ability to change any term in the rental agreement, so clearly no legislation denies any remedy sought by Ms. Tison in the present case. RB at 18-19. Ms. Tison simply seeks to enforce the rental agreement as written.

Accordingly, the landlord has not overcome Ms. Tison's showing that the landlord here did not act in good faith, as required by RCW 59.20.020.

F. The Landlord Is Estopped to Contest the Validity of the Rental Limitation Clause.

The landlord argues that Ms. Tison "cannot rely on the theory of promissory estoppel in the absence of a legally binding promise." RB at 32. The landlord, however, has not demonstrated why the rent limitation clause in the rental agreement is not a legally binding promise. The promise contained in that clause is not a statement of "future intent," but is a promise expressing the landlord's intent at the time to not raise rent more than a specified amount.

The case cited by the landlord, *Elliott Bay Seafoods, Inc. v. Port of Seattle*, 124 Wn. App. 5, 13, 98 P.3d 491 (2004) supports that conclusion. In that case the court of appeals found that the promise at issue "was not a legally binding promise" and therefore promissory estoppel did not apply. *Elliott Bay*, 124 Wn. App. at 13. The landlord concedes that the rent limitation clause is legally binding during Ms. Tison's "remaining tenancy." RB at 29. *Elliott Bay* is therefore inapplicable.

Although the landlord argues that equitable estoppel does not apply, it cites only one case, *Cornerstone Equip. Leasing, Inc. v. MacLeod*, 159 Wn. App. 899, 907, 247 P.3d 790 (2011), which mirrors the requirements of the doctrine as argued by Ms. Tison. The only difference is that the landlord argues that the "clear, cogent, and

convincing" standard to establish the doctrine has not been met. RB at 33. But the landlord cites no evidence in the record which would cast any doubt on the existence of the rent limitation clause, Ms. Tison's purchase of the home in reliance on that clause, and her subsequent injury in having to pay $100 per month more than she otherwise would have had to pay if the clause were complied with. Ms. Tison thus met the "clear, cogent and convincing" standard, even if that standard were applicable. See, *Estate of Lennon v. Lennon*, 108 Wn.App. 167, 181, 29 P.3d 1258 (2001) ("clear, cogent and convincing" standard not applicable at summary judgment, only at trial).

Equitable estoppel is a defense available in an unlawful detainer action. *Brown v. Baruch*, 24 Wash. 572, 576-77, 64 Pac. 789 (1901); *Josephinium Associates v. Kahli,* 111 Wn. App. 617, 625, 45 P.3d 627 (2002). The trial court erred in not applying it here.

II. CONCLUSION

This Court should therefore reject the landlord's arguments and grant the relief requested in Ms. Tison's opening brief.

RESPECTFULLY SUBMITTED this 14th day of December, 2012.

Law Offices of Dan R. Young

By Dan R. Young

Dan R. Young, WSBA # 12020
Attorney for Appellant Tison

DECLARATION OF SERVICE

I, Dan R. Young, declare to be true under penalty of perjury under the laws of the State of Washington as follows:

1. I am an attorney representing the appellant Norma Tison in this action.

2. On December 14, 2012, I sent by the USPS, first class mail with pre-paid postage affixed, a copy of the foregoing Reply Brief of Appellant to the following:

Olsen Law Firm PLLC
Walter H. Olsen, Jr., Esq.
205 S. Meridian
Puyallup, WA 98371

Dated: December 14, 2012, at Seattle, Washington.

Dan R. Young

Dan R. Young