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No. 72611-1-I

COURT OF APPEALS, DIVISION I
FOR THE STATE OF WASHINGTON

STEPHEN FACISZEWSKI and VIRGINIA KLAMON,

Respondents,

v.

JILL A. WAHLEITHNER and MICHAEL R. BROWN,

Appellants.

RESPONSE BRIEF

LOEFFLER LAW GROUP PLLC

Christopher D. Cutting
Attorney for Respondents Faciszewski & Klamon

500 Union Street, Suite 1025
Seattle, WA 98101
206-443-8678
WSBA No. 41730

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II. INTRODUCTION

The heart of this case is interpreting the tenant's protections in Seattle's Just Cause Eviction Ordinance (JCEO). SMC 22.206.160(C).[1] Under state law, a landlord of a month-to-month tenant may terminate the tenancy for any reason or no reason at all. RCW 59.12.030(2); RCW 59.18.200. Seattle restricted this right by requiring that a landlord of residential tenants have one of 16 "just causes" before they can terminate this type of tenancy. A landlord has just cause if he "seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person's principal residence." SMC 22.206.160(C)(1)(e).

The ordinance provides a tenant with two remedies if he doubts the landlord's sincerity. First, he or she may make a complaint to the city. SMC 22.206.160(C)(4). The city will then require the landlord to "complete and file with the Director a certification stating the owner's intent to carry out the stated reason for the eviction. The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground." SMC 22.206.160(C)(4). Second, if the landlord does not carry out the stated just cause after the tenant vacates, the tenant may sue the landlord in a private cause of action for damages. *Id.* at .160(C)(7).

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[1] A copy of the relevant section of the ordinance is included as an appendix to this brief.

Both remedies allow the tenant to show action or inaction by the landlord in a method specifically articulated by the statute. The Appellants ask this court to create a third remedy beyond those provided for in the statute. The Appellants ask this court to look into the heart of the landlord and create a third remedy based on his intent, ignoring his actions or inaction.

III. STATEMENT OF THE CASE

This case is a residential unlawful detainer concerning possession of property located at 3251 44th Avenue West, Seattle (the Premises). CP at 1. It is undisputed that the Defendants rent the Premises from the Plaintiff as month-to-month tenants. CP at 1, 14. It is also undisputed that, on June 29, 2014, Plaintiff Stephen Faciszewski went to the Premises to serve on the Defendants with a notice of termination of tenancy (the "Notice"). CP at 170-71; Appellant's Brief, at 7. The Notice required the Defendants to vacate the premises on or before July 31, 2014, and stated that Plaintiffs sought possession of the Premises so one or more members of their immediate family could occupy the Premises. CP at 172. Mr. Faciszewski attempted to personally serve the Defendants, but was unsuccessful. CP at 170-71. Ms. Wahleithner and Mr. Brown both state that they were home when Mr. Faciszewski

attempted to serve them. CP at 118-19, 153. It is not disputed that he posted and mailed the notice to the Premises. Appellant's Brief, at 7.

It is undisputed that the Defendants failed to vacate the Premises. CP at 15. Following the Defendant's failure to vacate, they responded to the Plaintiff's complaint by asserting they were "suspicious" of the Plaintiff's stated reason for terminating their tenancy and asserted no just cause existed for the termination. CP at 17, ¶ 3.9; *see* CP at 15-18.

The Plaintiffs set a show cause hearing for August 12, 2014. CP at 12. At the show cause hearing, the Defendants' alleged retaliation as a defense to their unlawful detainer. RP, Aug. 12, 2014, at 4 (alleging "retribution," but, in context, intending retaliation). Rather than take testimony or rule on that legal issue, the court commissioner set the matter for trial. *Id.* at 7-8.

The Plaintiffs moved for revision of the court commissioner. CP at 32-39. The superior court ruled that there was no substantial material dispute of fact that the Plaintiff had provided the necessary notice specifying just cause and "complied with the City investigation by providing a statement under penalty of perjury that a relative would move into the premises." CP at 243-45. The Defendants unsuccessfully sought reconsideration and now appeal.

IV. ARGUMENT

A. The Just Cause Eviction Ordinance Does Not Allow A Tenant to Remain in Possession Once the Owner Certifies Compliance

The Unlawful Detainer Act creates an expedited procedure "to give landlords a speedy, efficient action to evict a tenant for breach or for certain activities on the premises." *Duvall Highlands v. Elwell*, 104 Wn. App. 763, 768, 19 P.3d 1051 (2001). As a special proceeding, the issues are limited to possession and incidental claims arising directly out of possession of the property. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985); *see generally Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 288 P.3d 1289 (2009).

The Residential Landlord-Tenant Act modifies the unlawful detainer procedures and provides for a summary show cause hearing where the landlord may prevail by showing that there is "no substantial issue of material fact." RCW 59.18.380. The majority of unlawful detainers are summarily at the show cause hearing. In most instances, the unlawful detainer act "does not contemplate a full-blown trial." *Peoples Nat'l Bank of Wash. v. Ostrander*, 6 Wn. App. 28, 30, 491 P.2d 1058 (1971).

In Washington, a residential landlord may terminate a month-to-month tenant for any reason or no reason at all. RCW 59.12.030(2); RCW

59.18.200(1)(a). In the City of Seattle, the JCEO strips landlords[2] of this right. *See* SMC 22.206.160(C)(1). A Seattle landlord must have one of the 16 "just causes" identified in the JCEO to terminate a month-to-month tenancy. *Id.* One of those causes allows a landlord to terminate a tenancy when he or an immediate family member seeks to occupy the unit as his or her primary residence. SMC 22.206.160(C)(1)(e). Lack of just cause is an affirmative defense to unlawful detainer, not a component of the landlord's case in chief. *See* SMC 22.206.160(C)(5) ("it shall be a defense to the action"); *Hous. Auth. v. Silva*, 94 Wn. App. 731, 734, 972 P.2d 952 (1999) (absence of just cause is a defense).

When interpreting a statute, the court looks to its plain meaning. *Jakowski v. Borchelt*, 174 Wn.2d 720, 732, 278 P.3d 1100 (2012). The same rules for interpreting statutes are applied to interpreting ordinances. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643, 151 P.3d 990 (2006). The available remedies are clear from the plain meaning of the statute.

If a tenant receives a notice of termination that identifies owner-occupancy as the relevant just cause and wishes to dispute the assertion, he has two avenues available to him. He may make a complaint to the Seattle Department of Planning and Development, who may in turn

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[2] The JCEO refers to the "owner" of a dwelling, but the definition is synonymous with that of "landlord" in the Residential Landlord-Tenant Act for all purposes relevant to this appeal. RCW 59.18.030(9); SMC 22.204.160(D).

require the landlord to certify that he will carry out the stated intent. SMC 22.206.160(C)(4). If the landlord fails to make the required certification, the landlord loses just cause and the tenant may remain in occupancy. *Id.*

In addition, or in the alternative, after the tenant vacates, he may sue the landlord for damages if the landlord does not, in fact, carry out the stated intent. *Id.* at .160(7). The tenant does not have the right to remain in possession after the termination date once the landlord signs the certification that he will carry out the stated reason for termination.

The Defendants seek to create a third remedy beyond the two provided for by Seattle that allows them to remain in possession while they dispute the owner's certification. The Defendants ask the court to investigate the landlord's sincerity, not his actions.

The court follows the plaint meaning of the statute. The language of the JCEO is clear that, to have just cause, the landlord only needs to "seek possession so that [he or she] or a member of his or her immediate family may occupy the unit." SMC 22.206.160(C)(1)(e). The JCEO goes on to explain when this just cause does not apply: there is a violation "if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice of termination or eviction." *Id.* The statute identifies two

instances where, notwithstanding an otherwise valid notice, the landlord loses just cause, and both look to the omitted *acts* of the landlord, not to the *intentions* of the landlord.

Before vacating, the tenant's remedy is to request the landlord certify that he will occupy the unit after the tenant vacates. SMC 22.206.160(C)(4). If the landlord does not take the required action, he loses just cause. *Id.* Once he files the certification, there is nothing to dispute until the tenant vacates. If he refuses to file the certification, his failure to act grants the tenant a remedy. This remedy can be exercised while the tenant remains in possession, but there is no dispute that the Plaintiff satisfied this requirement. CP at 77; Appellant's Brief, at 9-10.

After vacating, the tenant's remedy is to sue for damages if the landlord fails to actually occupy the unit. SMC 22.206.160(C)(7). Again, the landlord's failure to act grants the tenant a remedy. CP at 77. This remedy can only be exercised after the tenant vacates. There is no dispute that the Defendant had not vacated when the orders being appealed were issued.

The Defendant sought to have the matter set for trial so that he could show the landlord or his mother would not occupy the Premises for 60 of the following 90 days. *See* RP, August 12, 2014, at 6. It would be impossible to show whether the landlord or his family would occupy the

unit for 60 of the 90 days following the date the tenant vacates *until the tenant vacates*. The Defendants cannot exercise this remedy while remaining in possession.

The was no substantial dispute of fact and the superior court properly entered judgment following revision. The Defendants demonstrated that they do not believe the Plaintiff's stated reason for the termination, and presented evidence in support of their belief. The Defendant's belief is not material to the issues before the court in an unlawful detainer. The material issues were whether the Plaintiff properly stated a reason under the JCEO[3] and, when requested by the Defendant, whether the Plaintiff certified the same to the City of Seattle. The Plaintiff met its burden and this court should affirm the judgment.

B. Ambiguities in the Just Cause Eviction Ordinance Should Be Strictly Construed in Favor of the Landlord

If the court determines the JCEO is ambiguous, it must determine how to interpret the ordinance. There are no reported cases addressing

[3] The Defendants assert for the first time in their Opening Brief that the notice did not contain facts in support of the termination. *See* SMC 22.206.160(C)(3). The Defendants did not raise this argument in any of their briefs before the trial court. *See* CP 158-67; RP *passim*. The Court will not consider arguments raised for the first time on appeal. RAP 2.5(a); *E. Gig Harbor Improvement Ass'n v. Pierce County*, 106 Wn.2d 707, 709 n.1, 724 P.2d 1009 (1986). Should this court consider the argument, the notice states the factual basis for the termination is so that "at least one immediate family member (or, in the alternative, one of us) may occupy the property." CP at 22. Only substantial compliance with the "form and content" of a notice of termination is required. *Marsh-McLennan Bldg., Inc. v. Clapp*, 96 Wn. App. 636, 640 n.1, 980 P.2d 311 (1999); *Sowers v. Lewis*, 49 Wn.2d 891, 895, 307 P.2d 1064 (1957).

this issue. *See Carlstrom v. Hanline*, 98 Wn. App. 780, 990 P.2d 986 (2000); *Silva*, 94 Wn. App. 731. This court should strictly interpret the JCEO in favor of the landlord.

It has long been the rule in Washington that a landlord who uses the unlawful detainer act to obtain possession of real property must strictly comply with the act's procedures to benefit from this expedited remedy. *Wilson v. Daniels*, 31 Wn.2d 633, 643-44, 198 P.2d 496 (1948); *Silva*, 94 Wn. App. at 735. Because the act is in derogation of the common law, granting landlords a right they did not previously have, it is strictly interpreted in favor of the tenant. *Wilson*, 31 Wn.2d at 643-44.

The court should adopt this same reasoning and strictly interpret the Just Cause Eviction Ordinance in favor of the landlord. Just as the unlawful detainer act grants landlords an accelerated eviction process unknown at common law, the Just Cause Eviction Ordinance grants tenants additional procedural and substantive rights unknown at common law.

At common law, either party may terminate a periodic or at will tenancy at any time without cause. *See Peoples Park & Amusement Ass'n, Inc. v. Androony*, 200 Wash. 51, 56-57, 93 P.3d 362 (1939); *Najewitz v. City of Seattle*, 21 Wn.2d 656, 658, 152 P.2d 722 (1944). This right is

reaffirmed in both the unlawful detainer act, RCW 59.12.030(2), and the Residential Landlord-Tenant Act, RCW 59.18.200.

By local ordinance, the City of Seattle took away this common law and statutory right. *See* SMC 22.206.160(C)(1). Just as the state legislature's act which takes substantive and procedural rights away from a tenant are strictly interpreted in the tenant's favor, the city council's ordinance which takes substantive rights away from a landlord should be strictly interpreted in the landlord's favor.

The only remedies *specifically* afforded to the tenant in the JCEO are the request for certification and the post-vacation lawsuit. SMC 22.206.160(C). Viewed strictly, these are the only existent remedies and the court should reject the new remedy the Defendant seeks to create.

C. The Notice of Termination was Properly Served

The Defendants allege the notice was not served because they were home when the Plaintiff attempted to personally serve them. The Defendant's mere presents at the Premises does not create a substantial dispute of fact. The Defendants do not dispute that the Plaintiff posted and mailed the notice of termination in the method prescribed by the statute. Appellant's Brief, at 7, *citing* CP at 16 ¶ 3.5, 170-71, 191. The sole issue of service in this appeal is whether a tenant may defeat a

landlord's attempt to serve a notice by refusing to answer the door and hiding within his or her home when service is attempted.

The legislature created a much more forgiving process for serving an unlawful detainer preeviction notice than a summons in a civil action. A summons shall be served by handing a copy "to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein." RCW 4.28.080(15). If the defendant is at the place where service is attempted but refuses to come to the door to accept the documents, service cannot generally be affected. *Weiss v. Glemp*, 127 Wn.2d 726, 729, 903 P.2d 455 (1995).

For example, in *Weiss*, a process server went to the rectory where the defendant was visiting, but the defendant refused to come to the door to accept service when a process server requested enquired. 127 Wn.2d at 729. The process server saw the defendant through a window and left the documents for him. *Id.* The court found this was insufficient because the documents must be given to someone and they were not left with anyone, merely left where they would be found. *Id.* at 732.

By contrast, if the same situation were presented when a landlord attempted service of a preeviction notice, he could affect service handing it to any person of suitable age and discretion then present. *See* RCW

59.12.040. If no one had come to the door, he could affect service by posting the notice on the premises and mailing a copy. *See id.*

The unlawful detainer act provides three alternative methods for service of a notice of termination of tenancy. RCW 59.12.040. A landlord may personally serve the tenant; may leave a copy with any person of suitable age and discretion and the premises and mail a copy to the tenant; or may post the notice on the premises and mail a copy to the tenant.[4] *Id.*

This issue was recently addressed by this court. *Hall v. Feigenbaum*, 178 Wn. App. 811, 319 P.3d 61 (2014). In *Hall*, the landlord posted a three day notice to pay rent or vacate at the premises unlawfully held and mailed a copy to that premises when he knew the premises were no longer operating. 178 Wn. App. at 816, 820. The tenant argued this was insufficient because the landlord knew his home address but did not mail the notice there. *Id.* at 820. This court held that options (1), (2), and (3) are not a hierarchy, but that the landlord may use *any of the three alternatives* for service. *Id.* at 820-21. Because the tenant did

[4] The unlawful detainer act distinguishes between premises that are a tenant's home and those unlawfully detained. RCW 59.12.040. Here, they are one in the same. Appellant's Brief, at 23. Therefore, the mailing requirement of both subparts (2) and (3) were met.

not provide evidence that he provided his home address to the landlord, service of the notice was proper.[5] *Id.*

Finding of Fact number 4 is supported by the evidence. It is not disputed that the Plaintiff attempted to hand deliver the notice and was unsuccessful. CP at 171. It is also not disputed that he then posted the notice on the front door and mailed a copy. CP at 171, 191. It is also not disputed that the notice was mailed properly.

Posting the notice on the Premises or handing a copy to a person of suitable age and discretion "are equal alternatives for notice under chapter 59.12 RCW." *Hall*, 178 Wn. App. at 820. The Plaintiff's declaration makes clear that he could not hand-deliver the notice to the Defendants.[6] CP 171.

The Defendants argue their mere present in the home was sufficient to defeat the Plaintiff's attempt at service, but this is not the case. The only people proposed as being of "suitable age and discretion" and possibly available at the Premises were the Defendants. *See* CP at 191. For the Plaintiff's service to be defective, the Defendants must have

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[5] The Defendant raises a procedural question also with respect to adequacy of the evidence. The *Hall* court reached its ruling and was affirmed on appeal following a show cause hearing, just as it did here.

[6] The Defendants allege Mr. Faciszewski's act of striking out a portion of the form declaration means *de jure* that he did not take these actions. However, they offer no authority in support of this proposition. Any argument that is not supported by authority is waived. *Weyerhauser Co. v. Comm. Union Ins. Co.*, 142 Wn.2d 654, 692–93, 15 P.3d 115 (2000).

been present *and* presented themselves for service. *See* RCW 59.12.040. The Plaintiff's declaration makes clear that he attempted to give the notice to the Defendants personally, but "was unable to do so." CP at 171. The evidence shows the Defendants were home but refused to make themselves available for service. They offered no evidence disputing that Mr. Faciszewski attempted to serve them.

Unlike original service of a summons and complaint, if a person of suitable age and discretion does not make himself available for service, the statue gives the landlord an alternative method of service via posting the notice. The statute does not place any particular requirements on how a person establishes that a person of suitable age and discretion cannot be found. *See* RCW 59.12.040.

In *Hall*, the tenant argued the landlord should have mailed a copy of the notice to his home, but provided no evidence that the landlord knew his home address. *Hall*, 178 Wn. App. at 820. Similarly here, the Defendants allege the Plaintiff should have found them at home, but offers no evidence that they responded to any of the Plaintiff's attempts to find them or that he knew they were home. The statute requires that the landlord may post the notice when he *cannot find* a suitable individual to serve, not that he may post the notice only when no one is present. RCW 59.12.040. The Plaintiff's declarations states that he attempted personal

service and was unsuccessful. No contrary evidence was offered. Finding of Fact number 4 is supported by the evidence.

D. The Defendant's Argument that They Are Excused from Paying Rent During the Period of Unlawful Detainer is Without Merit

The Defendants argue that they are excused from paying rent after August 1, 2014, because their tenders were rejected. Appellant's Brief, at 37. This argument is without merit.

A landlord who prevails in unlawful detainer is entitled to a judgment for "the damages arising out of the tenancy occasioned to the plaintiff by any. . . unlawful detainer." RCW 59.18.410. Rental value is a reasonable measure of the Plaintiff's damages for the period he was unable to use the Premises as a result of the Defendant's unlawful detainer.

E. The Plaintiff Requests Attorney's Fees on Appeal

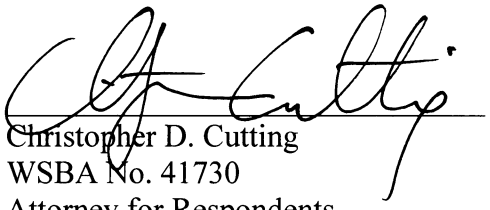
The Residential Landlord-Tenant Act provides for attorney's fees if the landlord prevails in litigation. RCW 59.18.410. When attorney's fees are available before the trial court, they are likewise available on appeal. The Plaintiff requests attorney's fees and costs should they prevail in this appeal.

V. CONCLUSION

The heart of this case is whether a tenant may litigate a landlord's intentions, not his actions, regarding moving into a rented premises while remaining in possession. Both the plain language and the meaning of the JCEO make clear that a tenant may not unlawfully detain premises while advancing a defense not found in the ordinance. The judgment of the trial court should be affirmed.

Respectfully submitted this 10th day of July, 2015.

LOEFFLER LAW GROUP PLLC



Christopher D. Cutting
WSBA No. 41730
Attorney for Respondents

Certificate of Service

I hereby certify that on July 10, 2015, I caused to be served the foregoing on the following parties by delivering to the following address:

T. Jeffrey Keane
Keane Law Offices
100 NE Northlake Way, Suite 200
Seattle WA 98105

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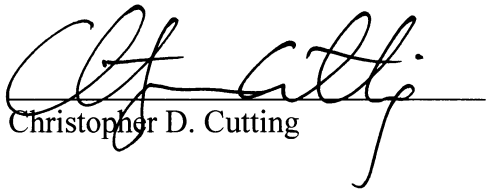
DATED 10th day of July, 2015, at Seattle, Washington



Christopher D. Cutting

Appendix of Seattle Municipal Code

SMC 22.206.160 (C) Just Cause Eviction.

1. Pursuant to provisions of the state Residential Landlord-Tenant Act (RCW 59.18.290), owners may not evict residential tenants without a court order, which can be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction (RCW 59.18.380). Owners of housing units shall not evict or attempt to evict any tenant, or otherwise terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause exists. Owners may not evict residential tenants from rental housing units if the units are not registered with the Department of Planning and Development as required by Section 22.214.040, regardless of whether just cause for eviction may exist. An owner is in compliance with this registration requirement if the rental housing unit is registered with the Department of Planning and Development before entry of a court order authorizing eviction or before a writ of restitution is granted. A court may grant a continuance in an eviction action in order to give the owner time to register the rental housing unit. The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this Section 22.206.160:
   (a) The tenant fails to comply with a three day notice to pay rent or vacate pursuant to RCW 59.12.030(3); a ten day notice to comply or vacate pursuant to RCW 59.12.030(4); or a three day notice to vacate for waste, nuisance (including a drug-related activity nuisance pursuant to RCW Chapter 7.43) or maintenance of an unlawful business or conduct pursuant to RCW 59.12.030(5);
   (b) The tenant habitually fails to pay rent when due which causes the owner to notify the tenant in writing of late rent four or more times in a 12 month period;
   (c) The tenant fails to comply with a ten day notice to comply or vacate that requires compliance with a material term of the rental agreement or that requires compliance with a material obligation under RCW 59.18;
   (d) The tenant habitually fails to comply with the material terms of the rental agreement which causes the owner to serve a ten day notice to comply or vacate three or more times in a 12 month period;
   (e) The owner seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building. "Immediate family" shall

include the owner's domestic partner registered pursuant to Section 1 of Ordinance 117244 [12] or the owner's spouse, parents, grandparents, children, brothers and sisters of the owner, of the owner's spouse, or of the owner's domestic partner. There shall be a rebuttable presumption of a violation of this subsection 22.206.160.C.1.a if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice of termination or eviction using this subparagraph as the cause for eviction;

(f) The owner elects to sell a single-family dwelling unit and gives the tenant at least 60 days written notice prior to the date set for vacating, which date shall coincide with the end of the term of a rental agreement, or if the agreement is month to month, with the last day of a monthly period. For the purposes of this Section 22.206.160, an owner "elects to sell" when the owner makes reasonable attempts to sell the dwelling within 30 days after the tenant has vacated, including, at a minimum, listing it for sale at a reasonable price with a realty agency or advertising it for sale at a reasonable price in a newspaper of general circulation. There shall be a rebuttable presumption that the owner did not intend to sell the unit if:
    1) Within 30 days after the tenant has vacated, the owner does not list the single-family dwelling unit for sale at a reasonable price with a realty agency or advertise it for sale at a reasonable price in a newspaper of general circulation, or
    2) Within 90 days after the date the tenant vacated or the date the property was listed for sale, whichever is later, the owner withdraws the rental unit from the market, rents the unit to someone other than the former tenant, or otherwise indicates that the owner does not intend to sell the unit;

(g) The tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated;

(h) The owner seeks to do substantial rehabilitation in the building; provided that, the owner must obtain a tenant relocation license if required by Chapter 22.210 and at least one permit necessary for the rehabilitation, other than a Master Use Permit, before terminating the tenancy;

(i) The owner (i) elects to demolish the building, convert it to a cooperative, or convert it to a nonresidential use; provided that, the

owner must obtain a tenant relocation license if required by Chapter 22.210 and a permit necessary to demolish or change the use before terminating any tenancy, or (ii) converts the building to a condominium provided the owner complies with the provisions of Sections 22.903.030 and 22.903.035;

(j) The owner seeks to discontinue use of a housing unit unauthorized by Title 23 after receipt of a notice of violation thereof. The owner is required to pay relocation assistance to the tenant(s) of each such unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:
   1) $2,000 for a tenant household with an income during the past 12 months at or below 50 percent of the County median income, or
   2) Two months' rent for a tenant household with an income during the past 12 months above 50 percent of the County median income;

(k) The owner seeks to reduce the number of individuals residing in a dwelling unit to comply with the maximum limit of individuals allowed to occupy one dwelling unit, as required by Title 23, and:
   1) a) The number of such individuals was more than is lawful under the current version of Title 23 or Title 24 but was lawful under Title 23 or 24 on August 10, 1994;
      b) That number has not increased with the knowledge or consent of the owner at any time after August 10, 1994; and
      c) The owner is either unwilling or unable to obtain a permit to allow the unit with that number of residents.
   2) The owner has served the tenants with a 30 day notice, informing the tenants that the number of tenants exceeds the legal limit and must be reduced to the legal limit,
   3) After expiration of the 30 day notice, the owner has served the tenants with and the tenants have failed to comply with a ten day notice to comply with the limit on the number of occupants or vacate, and
   4) If there is more than one rental agreement for the unit, the owner may choose which agreements to terminate; provided that, the owner may either terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants, or, at the owner's option, terminate only those agreements involving the minimum number of occupants necessary to comply with the legal limit;

(l) 1) The owner seeks to reduce the number of individuals who reside in one dwelling unit to comply with the legal limit after receipt of a notice of violation of the Title 23 restriction on the number of individuals allowed to reside in a dwelling unit, and:

a) The owner has served the tenants with a 30 day notice, informing the tenants that the number of tenants exceeds the legal limit and must be reduced to the legal limit; provided that, no 30 day notice is required if the number of tenants was increased above the legal limit without the knowledge or consent of the owner;

b) After expiration of the 30 day notice required by subsection 22.206.160.1.1.a above, or at any time after receipt of the notice of violation if no 30 day notice is required pursuant to subsection 22.206.160.1.1.a, the owner has served the tenants with and the tenants have failed to comply with a 10 day notice to comply with the maximum legal limit on the number of occupants or vacate; and

c) If there is more than one rental agreement for the unit, the owner may choose which agreements to terminate; provided that, the owner may either terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants, or, at the option of the owner, terminate only those agreements involving the minimum number of occupants necessary to comply with the legal limit.

2) For any violation of the maximum legal limit on the number of individuals allowed to reside in a unit that occurred with the knowledge or consent of the owner, the owner is required to pay relocation assistance to the tenant(s) of each such unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:

a) $2,000 for a tenant household with an income during the past 12 months at or below 50 percent of the county median income, or

b) Two months' rent for a tenant household with an income during the past 12 months above 50 percent of the county median income;

(m) The owner seeks to discontinue use of an accessory dwelling unit for which a permit has been obtained pursuant to Sections 23.44.041 and 23.45.545 after receipt of a notice of violation of the

development standards provided in those sections. The owner is required to pay relocation assistance to the tenant household residing in such a unit at least two weeks prior to the date set for termination of the tenancy, at the rate of:

1) $2,000 for a tenant household with an income during the past 12 months at or below 50 percent of the county median income, or
2) Two months' rent for a tenant household with an income during the past 12 months above 50 percent of the county median income;

(n) An emergency order requiring that the housing unit be vacated and closed has been issued pursuant to Section 22.206.260 and the emergency conditions identified in the order have not been corrected;

(o) The owner seeks to discontinue sharing with a tenant of the owner's own housing unit, i.e., the unit in which the owner resides, seeks to terminate the tenancy of a tenant of an accessory dwelling unit authorized pursuant to Sections 23.44.041 and 23.45.545 that is accessory to the housing unit in which the owner resides or seeks to terminate the tenancy of a tenant in a single-family dwelling unit and the owner resides in an accessory dwelling unit on the same lot. This subsection 22.206.160.C.1.o does not apply if the owner has received a notice of violation of the development standards of Section 23.44.041. If the owner has received such a notice of violation, subsection 22.206.160.C.1.m applies;

(p) A tenant, or with the consent of the tenant, his or her subtenant, sublessee, resident or guest, has engaged in criminal activity on the premises, or on the property or public right-of-way abutting the premises, and the owner has specified in the notice of termination the crime alleged to have been committed and the general facts supporting the allegation, and has assured that the Department of Planning and Development has recorded receipt of a copy of the notice of termination. For purposes of this subsection 22.206.160.C.1.p a person has "engaged in criminal activity" if he or she:

1) Engages in drug-related activity that would constitute a violation of RCW Chapters 69.41, 69.50 or 69.52, or
2) Engages in activity that is a crime under the laws of this state, but only if the activity substantially affects the health or safety of other tenants or the owner.

2. Any rental agreement provision which waives or purports to waive any right, benefit or entitlement created by this subsection 22.206.160.C.1.p shall be deemed void and of no lawful force or effect.
3. With any termination notices required by law, owners terminating any tenancy protected by this section 22.206.160 shall advise the affected tenant or tenants in writing of the reasons for the termination and the facts in support of those reasons.
4. If a tenant who has received a notice of termination of tenancy claiming subsection 22.206.160.C.1.e, C.1.f, or C.1.m as the ground for termination believes that the owner does not intend to carry out the stated reason for eviction and makes a complaint to the Director, then the owner must, within ten days of being notified by the Director of the complaint, complete and file with the Director a certification stating the owner's intent to carry out the stated reason for the eviction. The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground.
5. In any action commenced to evict or to otherwise terminate the tenancy of any tenant, it shall be a defense to the action that there was no just cause for such eviction or termination as provided in this section 22.206.160.
6. It shall be a violation of this section 22.206.160 for any owner to evict or attempt to evict any tenant or otherwise terminate or attempt to terminate the tenancy of any tenant using a notice which references subsections 22.206.160.C.1.e, 1.f, 1.h, 1.k, 1.l, or 1.m as grounds for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy.
7. An owner who evicts or attempts to evict a tenant or who terminates or attempts to terminate the tenancy of a tenant using a notice which references subsections 22.206.160.C.1.e, 1.f or 1.h as the ground for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy shall be liable to such tenant in a private right for action for damages up to $2,000, costs of suit or arbitration and reasonable attorney's fees.