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Court of Appeals No. 72611-1-I

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WASHINGTON STATE
SUPREME COURT

SUPREME COURT
OF THE STATE OF WASHINGTON

STEPHEN FACISZEWSKI and VIRGINIA L. KLAMON,
Respondents

v.

MICHAEL R. BROWN and JILL A. WAHLEITHNER,
Petitioners

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

Petitioners Michael R. Brown and Jill A. Wahleithner ask this Court to accept review of the Court of Appeals' decisions terminating review designated in Part II of this petition.

II. COURT OF APPEALS DECISIONS

The published Opinion of the Court of Appeals was filed February 1, 2016. See Appendix A. The court denied Brown and Wahleithner's motion for reconsideration on February 23, 2016. See Appendix B.

III. ISSUES PRESENTED FOR REVIEW

1. The Seattle Just Cause Eviction Ordinance bars owners from evicting residential tenants "unless the owner can prove in court that just cause exists." There is just cause if "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." Where the tenant in an unlawful detainer action presents evidence that this is not the owner's actual intent, can the owner establish "just cause," thereby allowing the eviction to proceed, merely by filing a sworn statement of his or her intent?

2. The owner's notice to the tenant must state the reasons for terminating the tenancy "and the facts in support of those reasons." Is the notice sufficient if it merely recites one of the reasons recognized by the ordinance as just cause, without stating any supporting facts?

3. Must an unlawful detainer action be dismissed as a matter of law if the landlord presents no evidence showing that the notice to quit the premises was served in the manner required by RCW 59.12.040?

4. RCW 59.12.040(3) permits service by posting the notice on the premises and mailing a copy to the tenant, only if two conditions are satisfied: (1) that "a person of suitable age and discretion there cannot be found," and (2) that a copy is also delivered "to a person there residing, if such a person can be found." To avoid dismissal of the unlawful detainer action as a matter of law when service was attempted by posting and mailing,

must the landlord present evidence that neither a person of suitable age and discretion nor a resident could be found at the premises?

5. Where a pleading or the evidence establishes an issue of fact as to whether service of the notice complied with RCW 59.12.040, is the tenant in an unlawful detainer action entitled to a trial on that issue?

IV. STATEMENT OF THE CASE

The Court of Appeals' opinion omits key facts required for this Court's decision. This more complete Statement of the Case is necessary.

Brown and his wife Wahleithner (collectively "Brown") rented a house in Seattle from Stephen Faciszewski and his wife Virginia Klamon (collectively "Faciszewski"). Op. at 1. At the time relevant to this case, the tenancy was on a month-to-month basis. Id. at 1-2. Faciszewski and Klamon lived together in a house adjacent to the rental property. CP 14, 192, 223.

One day another neighbor pounded on Brown's door, screaming and telling him not to park in front of the Browns' own home. CP 194-95.[1] On another occasion the same neighbor yelled at Wahleithner for parking on the public street in front of the neighbor's home, CP 224-225, even though the neighbor routinely parked in front of the Brown home. CP 199. The

[1] The neighbor, Lainie Cosgrove, lived in a house just south of the Brown home. CP 195. A large tree marked the approximate boundary line. Id. A car which turned out to be owned by Ms. Cosgrove's mother was parked in front of the Brown home, leaving very little space to park still another car in front of the Brown home. CP 197. Not wishing to park in front of the Cosgrove home, Wahleithner parked the Brown car behind and close to the car owned by Ms. Cosgrove's mother. Id. Wahleithner parked north of the tree – i.e., in front of the Brown home. CP 194. Ms. Cosgrove yelled at Brown, telling him this was unacceptable, even though the Brown car was parked in front of the Brown home. CP 195, 197.

neighbor complained to Faciszewski, who in turn commanded the Brown family to park nearly a block away from the Brown home. CP 189-190.[2]

Faciszewski's demand was unjustified because the street was a public road. CP 190. Nevertheless, Brown tried to accommodate the neighbor's wishes. CP 190, 199. But Faciszewski was unsatisfied. CP 190. He repeatedly complained that the Brown cars -- legally parked on the public street -- were parked in locations that were unacceptable to Faciszewski. Id.

On June 5, 2014, Faciszewski told Brown that absent compliance with his demands about parking, Faciszewski would terminate the tenancy. CP 190, 214. Brown refused to comply with Faciszewski's demands. CP 190.

Less than a month after threatening to evict the Brown family for parking in places on the public street that Faciszewski considered off limits, Faciszewski taped a "Notice of Termination of Tenancy" on Brown's door. CP 225. Brown and Wahleithner were at home when Faciszewski did this. CP 191, 225. Faciszewski did not personally deliver the notice to anyone. CP 170-171. Brown received another copy in the mail. CP 191, 225.

Asserting one of the "just causes" described in the Seattle ordinance,[3] Faciszewski's notice said "We seek to possess the Property so that at least

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[2] The Court of Appeals' opinion suggests that the dispute was about disabled parking. Op. at 2. It is undisputed, however, that there was no designated disabled parking space at issue. There is no evidence in the record that the person in question, Ms. Cosgrove's mother, had a disabled parking placard or license plate on her car or any other form of disabled parking status.

one immediate family member (or, in the alternative, one of us) may occupy the Property as a principal residence." CP 22. But his stated reasons changed over time. Through his attorney, Faciszewski stated on July15, 2015 that he needed the house for his mother and father. CP 191. Ten days later Faciszewski's attorney told Brown that Faciszewski's father had died and that his mother would be occupying the house. Id. The purported reason changed again on August 7, 2014, when Faciszewski signed a certification that *he "or/and" his mother"* intended to occupy the property. CP 222.

Faciszewski, however, was already living with Klamon in a house next to the rental property. CP 14, 192. The house he shared with Klamon had been Faciszewski's residence for nearly twenty years. CP 192. Faciszewski's parents owned a home in Colorado, and it was not listed for sale. CP 191. There was no "for sale" or "for rent" sign at the Colorado house. CP 228. The Colorado community center where Faciszewski's mother was scheduled to teach classes in the fall of 2014 had not been informed that she planned to leave Colorado. CP 191, 217-218. She continued to volunteer at a hospital in Denver, and the hospital was unaware that she had any plans to move. CP 225-226. Concluding that Faciszewski asserted reason for ending the tenancy was only a pretext, Brown refused to vacate the property. CP 15-17, 191-192.

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[3] See Appendix C for the full text of the Seattle Just Cause Eviction Ordinance, SMC 22.206.160(C)

Faciszewski filed an unlawful detainer action. CP 1-3. Based on the evidence, the experienced commissioner set the matter for trial. RP Aug. 12, 2014, at 8-9.[4] The trial court revised the commissioner's ruling, struck the trial date, entered an order for a writ of restitution, and entered judgment in favor of Faciszewski for attorneys' fees and costs. Op. at 3.

The Court of Appeals affirmed. It held that by certifying that he or a family member intends to occupy the property, the owner conclusively establishes the just cause necessary to evict the tenant. Op. at 13-14.[5] It held that the tenant has no right to challenge the truth of that certification in the unlawful detainer action. Id. at 13. But it also held that "to defend the unlawful detainer action, the Tenants must prove that the Landlords did not comply with Seattle's ordinance." Op. at 12. And it held that the tenant's only remedy is a post-eviction action for a maximum of $2,000 in damages if the landlord does not fulfill the stated reason for the eviction. Id. at 14.

In addition to "the reasons for the termination," the notice must state "the facts in support of those reasons." SMC 22.206.160(C)(3). The Court of Appeals held that a notice satisfies this requirement even if it simply repeats the definition of one of the "just causes" in the ordinance. Op. at 10-11.

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[4] The commissioner ruled that there was an issue of fact as to whether Faciszewski or any family member intended to move into the house. RP Aug. 12, 2014, at 8. The commissioner also noted "There are some questions here of retaliation." Id.

[5] If the tenant complains to the City that the owner does not intend to carry out the stated reason, the landlord must file a certification of his or her intent. SMC 22.206.160(C)(4).

Faciszewski's declaration of service consisted of a pre-printed form which he then edited by hand. The end product was:

> x I attempted to deliver a copy of said Notice into the hands of the defendants but ~~I did not find them person~~ [sic] ~~at the premises, nor did I find any person present at the premises.~~ was unable to do so. I then, on the same date, posted said Notice prominently onto the front door of the premises. Also I mailed the Notice as set forth below.

CP 171 (Faciszewski's deletions in strikethrough font; additions underlined).[6] It does not state that Faciszewski attempted delivery at the premises. Id.

Service by posting and mailing is authorized only "if a person of suitable age and discretion there cannot be found." RCW 59.12.040(3). The record contains no evidence that such person could not be found at the property. Effectively holding that the tenant in an unlawful detainer action bears the burden of proving that a suitable person *could* be found at the premises, the Court of Appeals held that service was proper. Op. at 5-8, 16.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Court of Appeals Erroneously Held that the Owner Established Just Cause Merely by Filing a Certification of His Intent; a Trial Was Required to Determine Whether the Owner Had "Proven in Court that Just Cause Exists"

The Seattle ordinance prohibits owners of residential rental units from evicting tenants "*unless the owner can prove in court that just cause exists.*" SMC 22.206.160(C)(1) (emphasis added). Only the reasons set forth in the

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[6] Faciszewski offered no other evidence concerning attempted service.

ordinance constitute just cause. Id. In its declaration of findings and intent, the City Council stated that "arbitrary eviction of responsible tenants imposes upon such tenants the hardship of locating replacement housing and provides no corresponding benefit to property owners." SMC 22.200.020(D).

In 2014, the latest year for which Census Bureau statistics are available, there were an estimated 165,926 occupied rental housing units in the City of Seattle. See Appendix D. An estimated 310,281 people lived in rental housing. Id.[7] The rental vacancy rate was a miniscule 1.2%. Because the Just Cause ordinance protects the rights of hundreds of thousands of people, its interpretation in this case raises issues of substantial public interest that this Court should decide. RAP 13.4(b)(4).

Where an applicable ordinance or statute requires the landlord to prove good cause for eviction, and where the landlord fails to do so, the tenant is not guilty of unlawful detainer. *Housing Authority of the City of Seattle v. Silva*, 94 Wn.App. 731, 734-736, 972 P.2d 952 (1999). In an action to evict the tenant, "it shall be a defense to the action that there was no just cause." SMC 22.206.160(C)(5).

Ignoring the Seattle ordinance's "prove in court" language, the Court of Appeals mistakenly held that if the owner signs a certification of intent to carry out the stated reason for the eviction, then the owner has conclusively proven the just cause necessary to evict the tenant. Op. at 14. This

[7] 165,926 units multiplied by the average rental household size of 1.87. = 310,281 people.

interpretation renders meaningless the provision that the owner must "*prove* in court that just cause exists." SMC 22.206.160(C)(1). When the words in a statute or ordinance are clear and unequivocal, the court must assume that the legislative body meant exactly what it said and must apply the statute as written. *Town of Woodway v. Snohomish County,* 180 Wn. 2d 165, 174, 322 P.3d 1219 (2014). Whenever possible, the court must give effect to every word, clause and sentence of a statute. *Cox v. Helenius*, 103 Wn.2d 383, 387-388, 693 P.2d 683 (1985). "No part should be deemed inoperative or superfluous unless the result of obvious mistake or error." Id. at 388.

If -- as here -- there is evidence that just cause does *not* exist, the landlord's certification doesn't "prove" anything.[8] If the drafters of the ordinance had intended that an owner's certification would constitute absolute proof of his intent, they would have said so. They did not. The requirement that the owner certify his or her intent serves to deter landlords from asserting false reasons for evicting a tenant. But this additional requirement does not erase the text that plainly obligates the landlord to "prove in court that just cause exists" before the tenant may be evicted. Faciszewski's certification is evidence of his intent, but it by no means

[8] Faciszewski owned and had lived in the house next door for nearly twenty years. CP 2, 14, 192, 223. He had no reason to occupy the rental house as his primary residence. His mother owned and lived in a home in Colorado that was not for sale or rent. She continued to be involved in community activities there and had done nothing to suggest she was moving to Seattle. CP 191, 217-218, 225-226, 228.

conclusively establishes that he or his mother actually intended to occupy the property.[9] That proposition, under the plain language of the ordinance, he must prove in court.

The Court of Appeals also mistakenly held that "to defend the unlawful detainer action, the Tenants must prove that the Landlords did not comply with Seattle's ordinance." Op. at 12. This would require time travel. The tenant would have to travel forward in time, gather evidence that the landlord or a family member did not occupy the property after the tenant had been evicted, and then travel backward in time to offer that evidence in the unlawful detainer action. In real life, of course, the unlawful detainer action will be concluded and the tenant will be out on the street long before it is possible to determine whether the landlord or a relative actually occupied the property. The court's holding requires the tenant to do the impossible.

The solution to this dilemma is to apply the ordinance as it is written – i.e., to require the landlord to prove his or her intent in a trial in the unlawful detainer action. *Before* the owner can evict the tenant, the owner must prove just cause in court. SMC 22.206.160(C)(1),(7). When the

[9] Obviously, if a party's testimony about his or her intent were conclusive on that issue, the opposing party could never prevail. The law allows the trier of fact to determine intent not only from a party's words, but also from his or her conduct. *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 274, 285 P.3d 854 (2012); *State v. Read*, 163 Wn.App. 853, 868-870, 873-874, 261 P.3d 207 (2011).

asserted just cause is the owner's claimed plan to occupy the property, the issue necessarily becomes this: What is the owner's actual *bona fide* intent?

The Court of Appeals erroneously held that the right to contest the truth of the owner's certification in the unlawful detainer action is an "additional remedy" not currently included in the ordinance. Op. at 13. On the contrary, this right is firmly embedded in the clear requirement that the owner must "prove in court that just cause exists." Inherent in this requirement is the tenant's right to a trial -- in the eviction action -- on the issue of the owner's actual intent.

Finally, the Court of Appeals incorrectly held that a post-eviction action for a maximum of $2,000 is the tenant's exclusive remedy for the owner's false certification.[10] The ordinance does not say that this remedy is exclusive. Nothing in the ordinance suggests that this later opportunity to recover a minimal amount of damages is a substitute for the protection that the ordinance gives the tenant in the earlier battle over possession. And again, when the asserted reason is that the owner or a relative will occupy the property, the ordinance does not exempt the owner from proving just cause in court. To exempt the owner from this requirement because the tenant can bring a post-eviction action for $2,000 is not only to ignore the language of the ordinance but also to undercut its purpose. The City acted to protect

[10] With regard to certain reasons that constitute just cause, SMC 22.206.160(C)(7) subjects the landlord to a private right of action for damages up to $2,000 if the landlord fails to fulfill or carry out "the stated reason for or condition justifying the termination" of the tenancy.

responsible tenants from arbitrary evictions that subject them to the hardship of locating replacement housing. SMC 22.200.220(D). Under the court's holding, the landlord can complete the eviction based on a false certification of his or her intent to occupy the property, subject only to a minimal post-eviction liability. This neither deters arbitrary evictions (i.e., those without just cause), nor protects the tenant from the resulting hardship.

Consistent with both the text and the purpose of the ordinance, this Court should hold that the landlord may not prevail in the unlawful detainer without proving his or her actual intent in a trial. This is exactly the approach taken by the New Jersey courts in interpreting a statute similar to the Seattle ordinance. In *Durruthy v. Brunert*, 228 N.J.Super. 199, 549 A.2d 456, 458 (1988), the court held that in an action for possession on the alleged ground that the owner seeks to occupy the property, the issue is "the factual question whether plaintiffs had adequately proved their asserted *bona fide* intention to occupy defendant's" unit. (Italics in original).

B. Ignoring the Language of the Ordinance, the Court Held that the Notice Is Sufficient Even If It States No Supporting Facts

The notice must state "the reasons for the termination *and the facts in support of those reasons*." SMC 22.206.160(C)(3) (emphasis added). By requiring the owner to state facts supporting the asserted just cause, the ordinance assists the tenant in ferreting out whether the eviction is supported by *bona fide* reasons. Here, the notice simply parroted the relevant reason

recognized in the ordinance as just cause. CP 22; SMC 22.206.160(C)(1) (e). It recited no "facts in support of" the asserted reason. Id. It did not identify the putative occupant by name or by nature of the relationship to the owner. It did not state whether the occupant would be the owner or one of the owner's family members. And it said nothing about why one of the owners or a family member was going to occupy the property.

When interpreting a statute or ordinance, a court must give effect to all of its language. *Cox*, 103 Wn.2d at 387-388. Here, however, the Court of Appeals gave no effect to the requirement that the landlord state not only the reason for the termination (i.e., the particular just cause asserted), but also "the facts in support of those reasons." SMC 22.206.160(C)(3).

C. The Court's Decision on Service Conflicts with Decisions of this Court and Raises an Issue of Substantial Public Interest

1. The court erroneously placed the burden on the tenant to prove that the notice was improperly served

In an unlawful detainer action the burden is on the plaintiff to prove the right to possession. *Duprey v. Donahoe*, 52 Wn.2d 129, 135, 323 P.2d 903 (1958); *Indigo Real Estate Services, Inc. v. Wadsworth*, 169 Wn.App. 412, 421, 280 P.3d 506 (2012); *FPA Crescent Associates, LLC v Jamie's LLC*, 190 Wn.App. 666, 675, 360 P.3d 934 (2015). Because the action is purely statutory, the landlord must comply with the requirements of the

statute to prevail. *Housing Authority of Everett v. Terry*, 114 Wn.2d 558, 563-564, 789 P.2d 745 (1990); *FPA*, 190 Wn.App. at 675.

RCW 59.12.030 describes the factual scenarios that constitute unlawful detainer. With regard to most of these, the tenant is guilty of unlawful detainer only if he or she remains in possession after the landlord has served the tenant with the required notice to quit the premises. Id.

The landlord bears the burden of proving that proper notice was served. Service of the required notice "is a condition precedent to an unlawful detainer action . . . [and] a fact to be established upon the trial before the court may pronounce a judgment of unlawful detainer." *Little v. Catania*, 48 Wn.2d 890, 891-892, 297 P.2d 255 (1956). If notice is insufficient, the landlord cannot not prove unlawful detainer or avail itself of the court's jurisdiction. *Terry*, 114 Wn.2d at 564; *Tacoma Rescue Mission v. Stewart*, 155 Wn.App. 250, 254 n.9, 228 P.3d 1289 (2010).

Faciszewski proceeded under RCW 59.12.030(2). Under that subsection, a tenant is guilty of unlawful detainer when he or she remains on the property more than twenty days after the landlord "*has served notice (in manner in RCW 59.12.040 provided*) requiring him or her to quit the premises." (Emphasis added). Thus, the notice required by RCW 59.12.030 is proper *only* if served in accordance with RCW 59.12.040. Since *Little* and *Terry* place the burden of proving proper notice on the landlord, then the

landlord also bears the burden of proving proper *service* of the notice under RCW 59.12.040.

Faciszewski attempted service under RCW 59.12.040 (3), which provides in pertinent part:

> *(3) . . . if a person of suitable age and discretion there cannot be found* then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant . . . .

(emphasis added).[11] The landlord may use the method described in this subsection *only* "if a person of suitable age and discretion there cannot be found." RCW 59.12.040(3). Since Faciszewski bore the burden of proving that service was proper, he was required to present evidence that no person of suitable age and discretion could be found at the house.

Brown and Wahleithner were of suitable age and discretion. But there was no evidence that they could not be found at the house when Faciszewski taped the notice on the door. Faciszewski's declaration says merely "I attempted to deliver a copy of said Notice into the hands of the defendants but was unable to do so." CP 171. He does not say *where* he made this attempt at personal delivery. Thus, there is no evidence that he attempted to find Brown or Wahleithner *at the house*, but could not do so.

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[11] See Appendix E for the full text of RCW 59.12.040.

Even if there was evidence that Faciszewski could not find Brown or Wahleithner at the house (and again, there was no such evidence), Faciszewski still had the burden of proving that no *other suitable person* could be found there. But there was no evidence to establish this proposition. His declaration mentions only his attempt to deliver the notice - at some unnamed location -- to Brown and Wahleithner. It does not say that no other suitable person could be found at the house. As a matter of law, this condition of RCW 59.12.040(3) was not satisfied.

In conformance with the decisions of this Court, the Court of Appeals should have held that as a matter of law, service under RCW 59.12.040(3) was invalid because there was no evidence that a suitable person could not be found at the house. Instead, the Court of Appeals affirmed the eviction. The court noted that Brown and Wahleithner in their declarations say "nothing more" than that while they were at home, Faciszewski taped a notice on the door. Op. at 7. The court went on to say that these declarations "make no claim that Faciszewski did not take some action to attempt service before taping the notice" on the door. Id.

In making this pronouncement and in holding that service was proper, the court in effect held that the *tenants* bore the burden of proving that the landlord made no attempt to find a person of suitable age and discretion at the premises and that in fact such a person could be found there. By holding that

the notice was properly served -- despite the absence of any evidence that a person of suitable age and discretion could not be found at the premises -- the court effectively required the *tenants* to prove that service was improper. In other words, the Court of Appeals erroneously reversed the burden of proof.[12]

2. The Court of Appeals failed to construe the statute strictly in favor of the tenant

The unlawful detainer statutes hasten the recovery of possession by allowing the landlord to avoid the common-law remedy of an action for ejectment and the attendant delays and expenses. *Terry*, 114 Wn.2d at 563. But to take advantage of the unlawful detainer action, the landlord must comply with the requirements of the statute. Id. 563–64. Because they are in derogation of common law, the unlawful detainer statutes are strictly construed in favor of the tenant. Id. at 563; *Wilson v. Daniels*, 31 Wn.2d 633, 643, 198 P.2d 496 (1949); *FPA*, 190 Wn.App. at 675-676.

Here, the Court of Appeals ignored the plain language of the statute and, to the extent any portion of the statute is ambiguous, construed it in favor of the landlord, not the tenant. Again, the landlord may serve the notice by the method described in RCW 59.12.040(3) (posting and mailing) *only* "if a person of suitable age and discretion there cannot be found." By holding that the notice was properly served -- despite the absence of any evidence that

[12] The unlawful detainer statute affects every tenant in the state. The issues regarding service are of substantial public interest and should be decided by this Court. RAP 13.4(b)(4).

a suitable person could not be found at the premises -- the court effectively wrote this requirement out of the statute.

The Court of Appeals also ignored another element of RCW 59.12.040(3). That subsection requires three separate acts. First, the landlord must post the notice at the premises. Second, he or she must mail a copy to the defendant. And third, the landlord must deliver a copy "*to a person there residing, if such a person can be found.*" RCW 59.12.040(3) (emphasis added). When proceeding under this subsection,

> the person serving notice should affix a copy in a "conspicuous place" on the premises; hand a copy to any person "there residing" if such a person is present; *and* mail a copy to the tenant at the *demised* premises. These three steps will accomplish service by the third mode.

17 Stoebuck & Weaver, *Washington Practice, Real Estate* § 6.80 (2d ed.) (italics in original; underlining added).

Faciszewski did not deliver a copy "to a person there residing." And nothing in the record supports a finding that no resident of the house could be found there. Because there was no such evidence, service was invalid as a matter of law for this reason as well.

But the Court of Appeals ignored this requirement entirely. If there is any ambiguity in the requirement that the landlord deliver a copy of the notice "to any person there residing if such a person is present," the court was

required to construe this language strictly in favor of the tenant. This it did not do.

3. Brown was entitled to a trial on the issue of service

As noted above, there was no evidence that the conditions for service under RCW 59.12.040(3) were satisfied. Thus, the Court of Appeals erred by failing to hold that service was *improper* as a matter of law. The court then compounded this error by holding that service was *proper* as a matter of law and that Brown was not entitled to a trial on this issue.

In an unlawful detainer action, "Whenever an issue of fact is presented by the pleadings it must be tried by a jury . . ." RCW 59.12.130. In such an action, "as with any suit, where the written or oral presentations of the parties disclose a material issue of fact" the issue must be resolved at trial. *Indigo*, 169 Wn.App. at 421.

Evidence supported a finding that a suitable person could indeed be found at the house. First, Brown and Wahleithner were at home. CP 191, 225. Second, Faciszewski's declaration does not say that he knocked on the door, that he rang the doorbell, or that he made any attempt to find anyone at the house. CP 171.[13]

[13] The Court of Appeals suggests that Brown refused to answer the door. Op. at 7. There is no evidence to support this conclusion because there is no evidence that Faciszewski knocked or in any other way asked Brown to answer the door. There is not even any evidence that his "attempt" to deliver the notice took place at the house.

Third, his declaration affirmatively indicated that he *did find* Brown and Wahleithner at the house. Faciszewski crossed out this sentence: "I did not find them [the defendants] person [sic] at the premises, nor did I find any person present at the premises." CP 171. The act of crossing out pre-printed language means that the language does not apply or that it is incorrect under the relevant circumstances. E.g., *State v. Langford*, 260 Or.App. 61, 69-70, 317 P.3d 905 (2013). By crossing out the statement that he did not find the defendants at the premises, Faciszewski effectively said he *did find* them there. By crossing out the phrase "nor did I find any person present at the premises," Faciszewski effectively said that he *did* find someone else there.[14]

Despite the evidence to the contrary, the Court of Appeals held as a matter of law that "Faciszewski could not find them." Op. at 8. In doing so it violated the well-established rule that the defendant in an unlawful detainer action is entitled to a trial on any material issue of fact.

VI. CONCLUSION

This Court should grant review and reverse the decision of the Court of Appeals. This Court should hold that Brown and Wahleithner are entitled to recover all sums they paid in satisfaction of the erroneous judgment, plus

[14] The evidence showed that yet another person "of suitable age and discretion" could be found at the house. Such a person need not be an adult. *American Express Centurion Bank v. Stratman*, 172 Wn.App. 667, 672, 292 P.3d 128 (2012) (16-year-old was of "suitable age and discretion"). Brown and Wahleithner's son Christopher lived at the house, was old enough to drive, and was a suitable person to receive the notice. CP 127, 189, 224.

interest, as well as the attorneys' fees they were required to pay in the Court of Appeals. This Court should also direct the entry of judgment in favor of Brown and Wahleithner. In the alternative, the Court should remand the case for trial. Finally, this Court should award Brown and Wahleithner the reasonable attorneys' fees and costs they incurred in the trial court, the Court of Appeals, and this Court. RCW 59.18.290; *Council House, Inc. v. Hawk*, 136 Wn.App. 153, 157, 147 P.3d 1305 (2006); RAP 18.1.

Respectfully submitted this 24th day of March, 2016.

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEPHEN FACISZEWSKI and VIRGINIA L. KLAMON, Respondents, v. MICHAEL R. BROWN and JILL A. WAHLEITHNER, Appellants.	)	No. 72611-1-I DIVISION ONE PUBLISHED OPINION FILED: February 1, 2016

2016 FEB -1 AM 8:5

J. LEACH — Michael Brown and his wife, Jill Wahleithner (Tenants), appeal the trial court's decision evicting them from a house owned by Stephen Faciszewski and his wife, Virginia Klamon (Landlords). The Tenants challenge the sufficiency of the service and the contents of the notice terminating their tenancy and the award of unpaid rent, attorney fees, and cost to Landlords. The Landlords properly served the termination notice and it provided the Tenants with adequate notice about the Landlords' just cause for eviction. And because the trial court properly awarded the Landlords unpaid rent for the period of unlawful detainer, along with attorney fees and court costs, we affirm.

FACTS

The Tenants leased a house in Seattle from the Landlords. The Landlords lived in a house next door. After the lease expired, Tenants continued to live in

the house on a month-to-month basis. In February 2014, the Tenants had a parking dispute with neighbors about a disabled person's access to those neighbors' house. The Landlords intervened and asked the Tenants not to park in a certain area that blocked access.

Faciszewski unsuccessfully attempted to serve the Tenants personally with a notice terminating tenancy. Faciszewski then taped a copy of the notice to the front door of the rental property. He also mailed a copy to the Tenants at the same address. The notice required the Tenants to vacate the house on or before July 31 so that one or more members of Landlords' immediate family could use it as a primary residence.

The Tenants claim to have been at the rental property when Faciszewski taped the notice to the door. The Tenants actually received the notice and did not vacate the rental premises on or before July 31.

On August 1, the Landlords filed a complaint for unlawful detainer and requested a show cause hearing.[1] At the show cause hearing, the Tenants alleged retaliation as a defense to the complaint. A court commissioner rejected this defense. But the commissioner set the case for trial because of "subsequent questions at issue" as to who was going to live in the house. The Landlords filed a motion to revise the commissioner's ruling.

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[1] RCW 59.18.365.

The trial court revised the commissioner's decision, struck the trial date, and entered an order for a writ of restitution. The trial court found that the Landlords provided the Tenants with adequate notice to vacate and satisfied the just cause provision of the Seattle Municipal Code (SMC).[2] The trial court concluded that the Landlords were entitled to possession of the rental property, a writ of restitution, unpaid rent, court costs, and attorney fees. The trial court also concluded that the Tenants' subjective belief about the Landlords' stated reason for the eviction did not excuse the Tenants' noncompliance with the termination notice. The trial court denied the Tenants' motion for reconsideration.

The trial court entered judgment in favor of the Landlords, awarding them unpaid rent from August 1 to September 19, attorney fees, and court costs. The Tenants appeal.

STANDARD OF REVIEW

Generally, if the parties base their trial court arguments entirely on written materials, we review the record de novo.[3] Interpretation of a statute presents a question of law that we review de novo.[4] The adequacy of a notice terminating tenancy presents a mixed question of law and fact that we also review de novo.[5]

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[2] SMC 22.206.160(C).

[3] Indigo Real Estate Servs., Inc. v. Wadsworth, 169 Wn. App. 412, 417, 280 P.3d 506 (2012).

[4] Ruvalcaba v. Kwang Ho Baek, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012).

[5] Hall v. Feigenbaum, 178 Wn. App. 811, 819, 319 P.3d 61, review denied, 180 Wn.2d 1018 (2014); RCW 59.12.030.

ANALYSIS

The Tenants assert two reasons why the trial court should have dismissed the Landlords' complaint or conducted a trial before evicting them: the Landlords did not properly serve the termination notice and the notice did not state sufficient facts in support of the reason for termination. The Tenants also claim that the trial court should not have awarded the Landlords back rent because the Landlords refused to accept payment offered after service of the termination notice. We disagree with each of the Tenants' assertions.

A statutory unlawful detainer action provides a summary process for resolving a dispute between a landlord and a tenant about the right to possession of leased property.[6] At the beginning of this action or anytime later in the proceedings, the landlord may ask the court for a writ of restitution restoring to it possession of the property.[7] For residential property, a landlord who wants a writ of restitution must schedule a show cause hearing.[8] At the show cause hearing, the court decides if the landlord has shown that no substantial issue of material fact exists about the landlord's right to possession and any other relief requested.[9] If so, the court grants this relief. If not, the court sets the case for

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[6] Munden v. Hazelrigg, 105 Wn.2d 39, 45, 711 P.2d 295 (1985); RCW 59.12.030.

[7] RCW 59.12.090.

[8] Indigo, 169 Wn. App. at 421; RCW 59.18.370.

[9] RCW 59.18.380.

trial unless the court decides the landlord has no legal right to the relief requested and dismisses the case.[10]

Although a show cause hearing is not the final determination of the rights of the parties in an unlawful detainer action, the trial court frequently decides the necessity of a trial at the hearing.[11] As occurred here, the show cause hearing often provides the only opportunity for a tenant to present any evidence.[12]

The Tenants contend that substantial material issues of fact exist about adequate service, the content of the notice, and just cause for terminating the tenancy. As a result, they claim that the trial court should have dismissed this case or set it for trial.

Sufficiency of Service

The Tenants contend that the Landlords did not properly serve the notice terminating their tenancy. The Tenants also assert that even if the time and manner of service was proper, Faciszewski's declaration of service did not comply with the statutory form and content requirements.

RCW 59.12.040 controls service of the termination notice and provides three methods of service:

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[10] RCW 59.18.380.

[11] Indigo, 169 Wn. App. at 421; Carlstrom v. Hanline, 98 Wn. App. 780, 788, 990 P.2d 986 (2000); Leda v. Whisnand, 150 Wn. App. 69, 81-82, 207 P.3d 468 (2009).

[12] Indigo, 169 Wn. App. at 421; Carlstrom, 98 Wn. App. at 788; Leda, 150 Wn. App. at 82.

> Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he or she be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his or her place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his or her place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated.

A court has no power to give a landlord relief from a holdover tenancy unless the landlord gives a tenant proper notice.[13]

The Tenants claim that the Landlords could not use the third service alternative because they were home when the Landlords taped the notice to their door. Thus, they contend, because they could be found at their residence, service by posting and mailing was not available. We disagree.

As this court has previously observed, the repeated use of the word "or" in RCW 59.12.040 implies that (1), (2), and (3) are equal alternatives for notice.[14] In Hall v. Feigenbaum,[15] the landlord posted a three-day notice to pay rent or vacate at the unlawfully held premises. The landlord also mailed a copy to that address, even though he knew the commercial tenant was no longer doing

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[13] Leda, 150 Wn. App. at 85.
[14] Hall, 178 Wn. App. at 820.
[15] 178 Wn. App. 811, 816, 820, 319 P.3d 61 (2014).

business at that location.[16] The tenant in Hall argued that service was insufficient because the landlord knew his home address but did not mail the notice there.[17] This court held that service of the notice was proper because the tenant did not provide evidence that he provided the landlord with his home address.[18]

Here, the Tenants contend the Landlords did not properly serve the notice because they were home when Faciszewski taped it to their door. Faciszewski stated in his declaration of service, "I attempted to deliver a copy of said Notice into the hands of the defendants but was unable to do so." Tenants offer no evidence challenging the truth of this statement. Instead, in their respective declarations, they state, "While we were home on June 29, 2014, Mr. Faciszewski taped a notice of termination on our door," and nothing more. They make no claim that Faciszewski did not take some action to attempt service before taping the notice on it. They cite no authority supporting their claim that Faciszewski needed to provide greater detail in his declaration of service about his attempt.

Accepting the Tenants' argument would allow a tenant to refuse to answer the door and completely avoid service. The Tenants do not reconcile their view with any ordinary meaning of the word "found" or the statutory provision giving

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[16] Hall, 178 Wn. App. at 816, 820.
[17] Hall, 178 Wn. App. at 820.
[18] Hall, 178 Wn. App. at 820-21.

the landlord an alternative method of service by posting and mailing a notice to quit the premises.[19] The Landlords complied with RCW 59.12.040 by taping a copy of the notice to the front door and sending a copy through the mail addressed to the Tenants because Faciszewski could not find them.

Tenants rely on Weiss v. Glemp,[20] where our Supreme Court held that the plaintiff's service did not satisfy the requirements for serving a civil summons[21] because the process server saw the defendant through a window, did not give the documents to the defendant's secretary who came to the door, and left the documents for the defendant on an outside windowsill. In Weiss, the court analyzed RCW 4.28.080(15),[22] a statute that does not apply to this case. Instead, as the parties agree, RCW 59.12.040 applies. Unlike RCW 4.28.080(15), RCW 59.12.040 provides for service of a notice by affixing a copy of the notice to a conspicuous place on the premises and sending a copy by mail if a suitable person "cannot be found."[23] The legislature created a more forgiving process for serving an unlawful detainer preeviction notice[24] as opposed to a summons in a civil action.[25]

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[19] RCW 59.12.040(3).
[20] 127 Wn.2d 726, 731-33, 903 P.2d 455 (1995).
[21] See RCW 4.28.080(15).
[22] Weiss, 127 Wn.2d at 731.
[23] RCW 59.12.040(3).
[24] RCW 59.12.040.
[25] RCW 4.28.080(15).

Adequate Notice

The Tenants challenge the sufficiency of the content of Landlords' termination notice. They claim it did not give adequate notice because it failed to state sufficient facts in support of the reason for terminating the tenancy. The Tenants also contend that the Landlords did not have just cause to terminate the tenancy, as required by the applicable city ordinance. Again, we disagree.

A landlord must obtain a court order to evict a residential tenant.[26] Before a court grants this relief, the tenant must receive an opportunity to contest the eviction at a show cause hearing.[27] In Seattle, a landlord cannot evict, or attempt to evict, a residential tenant unless the landlord can prove in court that just cause exists.[28] With a termination notice, the landlord must provide a written statement of the reason for the termination and facts supporting that reason.[29] The reasons for just cause include the following:

> 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. . . . There shall be a rebuttable presumption of a violation of this subsection . . . 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

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[26] RCW 59.18.290(1).
[27] SMC 22.206.160(C); RCW 59.18.380.
[28] SMC 22.206.160(C).
[29] SMC 22.206.160(C)(3).

> pursuant to a notice of termination or eviction using this subparagraph as the cause for eviction.[30]

If a tenant believes that the owner does not intend to carry out the stated reason for eviction and complains to the city, the landlord must file a certification with the city stating the owner's intent to carry out the stated reason for eviction.[31] A tenant has a private claim for damages against an owner who evicts, or attempts to evict, the tenant because an immediate family member or owner intends to use the premises but does not fulfill or carry out this reason for terminating the tenancy.[32]

The Landlords served a notice to quit at the rental property. The Landlords' notice to quit the premises stated, "[W]e seek to possess the Property so that at least one immediate family member (or, in the alternative, one of us) may occupy the Property as a principal residence." After the Tenants complained to the city, the Landlords filed a certified declaration with the city of Seattle, stating that the Landlords intended to use the property as a primary residence for an immediate family member[33]

Tenants contend that the notice "simply parroted the language" of the statute[34] and that the Landlords must provide specific information. Copying the

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[30] SMC 22.206.160(C)(1)(e).
[31] SMC 22.206.160(C)(4).
[32] SMC 22.206.160(C)(6), (7).
[33] SMC 22.206.160(C)(4).
[34] SMC 22.206.160(C)(1)(e).

language of SMC 22.206.160(C)(1)(e) without adding more detailed, specific information does not make the notice insufficient. The plain language of SMC 22.206.160(C)(3) does not require a landlord to provide more specific information, such as the name of the person or people moving in, when they are moving in, or why they are moving to the premises. The Tenants have not provided any authority indicating that the Landlords were required to disclose this type of specific information. We conclude that the Landlords included sufficient facts to support their reason for terminating the tenancy in the notice because the language complied with the requirements stated in SMC 22.206.160(C)(1)(e) and SMC 22.206.160(C)(3).

The Tenants also claim that the Landlords did not have just cause to terminate the tenancy because of conflicting information about Faciszewski's mother's plans. However, the Tenants have only demonstrated that they do not believe the Landlords' stated reason for terminating the tenancy, not that the Landlords did not carry out the stated reason.

In Housing Authority v. Silva,[35] the landlord commenced an unlawful detainer action alleging that the tenant had habitually failed to comply with his lease obligations by causing four disturbances over a 3.5-year period. To terminate the tenancy for just cause, the landlord had to serve the tenant with

[35] 94 Wn. App. 731, 736, 972 P.2d 952 (1999).

three 10-day notices within a 12-month period.[36] The landlord only provided two 10-day notices within the 12-month period.[37] This court held that the landlord failed to prove just cause for eviction.[38]

Unlike the landlord in Silva, the Landlords here could not carry out the stated reason for eviction because the Tenants did not vacate the rental property. In Silva, the tenant could point to a specific way in which the landlord did not meet the just cause requirement. Here, the Tenants can only point to a parking dispute involving the neighbors and background information about Faciszewski's parents to question the Landlords' sincerity. Although the Tenants may doubt this sincerity, to defend the unlawful detainer action, the Tenants must prove that the Landlords did not comply with Seattle's ordinance. They have not raised any substantial material question of fact about compliance.

The Tenants assert that the information they presented to the trial court at least raised a question of fact about the Landlords' just cause because the claimed immediate family member did not intend to move in. However, the Tenants' reliance on the evidence they presented is misplaced.

With SMC 22.206.160, the city provides tenants added protections not available to them under Washington law.[39] The city has adopted substantive

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[36] Silva, 94 Wn. App. at 736.
[37] Silva, 94 Wn. App. at 736.
[38] Silva, 94 Wn. App. at 736.
[39] Ch. 59.18 RCW, Residential Landlord-Tenant Act of 1973.

provisions and procedures applicable to the eviction process and safeguards to ensure landlord compliance.[40] The city also has provided remedies for a tenant who questions the landlord's intent or compliance with Seattle's ordinance.[41] The tenant can demand a certification of the reason for termination. The landlord's failure to provide the certification provides a defense to an eviction action. The landlord's failure to carry out the reason stated in the certification provides the tenant with a claim for damages up to $2,000. We decline the Tenants' request that we rewrite the ordinance to provide another remedy.

Seattle's ordinance reflects policy decisions made by its legislative body. The Tenants make policy arguments for an additional remedy that body did not provide. They ask for the right to contest the truthfulness of the certification in the unlawful detainer action. The city's legislative body has the authority to consider this policy choice. That authority does not belong to this court, whose fundamental function is review of lower court decisions.[42]

Because the Tenants did not believe the Landlords, they sought the remedy provided by SMC 22.206.160(C)(4). Faciszewski filed the proper certification with the city. After Faciszewski filed the certification, Seattle's

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[40] SMC 22.206.160(C).
[41] SMC 22.206.160(C)(4), (7).
[42] Hale v. Wellpinit Sch. Dist. No. 49, 165 Wn.2d 494, 505, 198 P.3d 1021 (2009).

ordinance provided the Tenants with an exclusive remedy for a false certification, a private action for damages up to $2,000.[43]

Unlawful detainer actions are summary proceedings.[44] If a tenant does not believe a landlord's stated reason for eviction, that tenant can file a complaint with the city.[45] The tenant's disbelief, even if justified, does not provide a defense to an unlawful detainer action. Once the landlord files the proper certification with the city, the tenant's remedy is limited to a private right of action if the landlord does not fulfill the stated reason for eviction.[46]

Damages

The Tenants contend that they do not owe any unpaid rent. The Tenants sent a check for the August 2014 rent after it was due. The Landlords rejected the payment. On revision, the trial court concluded that the Tenants owed the Landlords unpaid rent. RCW 59.18.290(2) states,

> It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him or her, and the prevailing party may recover his or her costs of suit or arbitration and reasonable attorney's fees.

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[43] SMC 22.206.160(C)(7).
[44] Indigo, 169 Wn. App. at 421; Carlstrom, 98 Wn. App. at 788.
[45] SMC 22.206.160(C)(4).
[46] SMC 22.206.160(C)(6), (7).

A landlord who prevails in an unlawful detainer action is entitled to judgment for the damages caused by an unlawful detainer.[47] The Tenants assert that "'[one] who prevents a thing may not avail himself of the nonperformance which he has occasioned,'"[48] but that did not happen here. The Landlords are entitled to recover damages.

The Tenants' attempt to pay August rent was not an attempt to perform an existing contract that the other party frustrated. The Landlords had terminated that contract, and the Tenants unlawfully detained the property. Therefore, the Landlords have not "availed" themselves of any nonperformance that they caused. The judgment for unpaid rent payment placed the Landlords in the position they would have been in had the Tenants not unlawfully detained the rental property.

Attorney Fees

The Residential Landlord-Tenant Act of 1973, chapter 59.18 RCW, allows the prevailing party in an unlawful detainer action to recover reasonable attorney fees and costs.[49] The trial court properly awarded the Landlords reasonable attorney fees and costs. We award attorney fees and costs on appeal to Landlords, as the prevailing party, provided they comply with RAP 18.1.

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[47] RCW 59.18.290(2).
[48] Payne v. Ryan, 183 Wash. 590, 597, 49 P.2d 53 (1935).
[49] RCW 59.18.290.

CONCLUSION

Because the Landlords properly served a factually sufficient notice to quit the premises that provided the Tenants with a notice containing sufficient facts to support just cause to terminate the tenancy and the trial court properly awarded the Landlords the unpaid rent, attorney fees, and costs, we affirm.

Leach, J.

WE CONCUR:

Spearman, C.J.

Ian, J.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEPHEN FACISZEWSKI and VIRGINIA L. KLAMON, Respondents, v. MICHAEL R. BROWN and JILL A. WAHLEITHNER, Appellants.	)	No. 72611-1-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellants, Michael R. Brown and Jill A. Wahleithner, having filed a motion for reconsideration herein, and the hearing panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 23rd day of February, 2016.

FOR THE COURT:

Judge

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APPENDIX C

22.206.160 - Duties of owners

A. It shall be the duty of all owners, regardless of any lease provision or other agreement that purports to transfer the owner's responsibilities hereunder to an operator, manager or tenant, to:

1. Remove all garbage, rubbish and other debris from the premises;
2. Secure any building which became vacant against unauthorized entry as required by Section 22.206.200 of this Code;
3. Exterminate insects, rodents and other pests which are a menace to public health, safety or welfare. Compliance with the Director's Rule governing the extermination of pests shall be deemed compliance with this subsection 3;
4. Remove from the building or the premises any article, substance or material imminently hazardous to the health, safety or general welfare of the occupants or the public, or which may substantially contribute to or cause deterioration of the building to such an extent that it may become a threat to the health, safety or general welfare of the occupants or the public;
5. Remove vegetation and debris as required by Section 10.52.030;
6. Lock or remove all doors and/or lids on furniture used for storage, appliances, and furnaces which are located outside an enclosed, locked building or structure;
7. Maintain the building and equipment in compliance with the minimum standards specified in Sections 22.206.010 through 22.206.140 and in a safe condition, except for maintenance duties specifically imposed in Section 22.206.170 on the tenant of the building; provided that this subsection 7 shall not apply to owner-occupied dwelling units in which no rooms are rented to others;
8. Affix and maintain the street number to the building in a conspicuous place over or near the principal street entrance or entrances or in some other conspicuous place. This provision shall not be construed to require numbers on either appurtenant buildings or other buildings or structures where the Director finds that the numbering is not appropriate. Numbers shall be easily legible, in contrast with the surface upon which they are placed. Figures shall be no less than 2 inches high;
9. Maintain the building in compliance with the requirements of Section 3403.1 of the Seattle Building Code; [11]
10. Comply with any emergency order issued by the Department of Planning and Development; and
11. Furnish tenants with keys for the required locks on their respective housing units and building entrance doors.

B. It shall be the duty of all owners of buildings that contain rented housing units, regardless of any lease provision or other agreement that purports to transfer the owner's responsibilities hereunder to an operator, manager or tenant, to:

1. Maintain in a clean and sanitary condition the shared areas, including yards and courts, of any building containing two or more housing units;
2. Supply enough garbage cans or other approved containers of sufficient size to contain all garbage disposed of by such tenants;
3. Maintain heat in all occupied habitable rooms, baths and toilet rooms at an inside temperature, as measured at a point 3 feet above the floor and 2 feet from exterior walls, of at least 68 degrees Fahrenheit between the hours of 7:00 a.m. and 10:30 p.m. and 58 degrees Fahrenheit between the hours of 10:30 p.m. and 7:00 a.m. from September 1st until June 30th, when the owner is contractually obligated to provide heat;

4. Install smoke detectors on the ceiling or on the wall not less than 4 inches nor more than 12 inches from the ceiling at a point or points centrally located in a corridor or area in each housing unit and test smoke detectors when each housing unit becomes vacant;

5. Make all needed repairs or replace smoke detectors with operating detectors before a unit is reoccupied; and

6. Instruct tenants as to the purpose, operation and maintenance of the detectors.

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). In addition, 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. 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.

(Ord. 123564, § 3, 2011; Ord. 123546, § 4, 2011; Ord. 123141, § 1, 2009; Ord. 122728, § 1, 2008; Ord. 122397, § 2, 2007; Ord. 121408 § 1, 2004; Ord. 121276 § 19, 2003; Ord. 119617 § 1, 1999; Ord. 118441 § 2, 1996; Ord. 117942 § 2, 1995; Ord. 117570 § 2, 1995; Ord. 115877 § 1, 1991; Ord. 115671 § 17, 1991; Ord. 114834 § 2, 1989; Ord. 113545 § 5(part), 1987.)

APPENDIX D

DP04 | SELECTED HOUSING CHARACTERISTICS

2014 American Community Survey 1-Year Estimates

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Data and Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Subject	Seattle city, Washington			
	Estimate	Margin of Error	Percent	Percent Margin of Error
HOUSING OCCUPANCY				
Total housing units	324,490	+/-4,291	324,490	(X)
Occupied housing units	304,564	+/-4,479	93.9%	+/-1.0
Vacant housing units	19,926	+/-3,279	6.1%	+/-1.0
Homeowner vacancy rate	1.6	+/-0.8	(X)	(X)
Rental vacancy rate	1.2	+/-0.6	(X)	(X)
UNITS IN STRUCTURE				
Total housing units	324,490	+/-4,291	324,490	(X)
1-unit, detached	141,489	+/-3,356	43.6%	+/-1.1
1-unit, attached	13,040	+/-1,653	4.0%	+/-0.5
2 units	10,827	+/-2,062	3.3%	+/-0.6
3 or 4 units	14,521	+/-2,036	4.5%	+/-0.6
5 to 9 units	20,288	+/-2,686	6.3%	+/-0.8
10 to 19 units	25,766	+/-2,757	7.9%	+/-0.8
20 or more units	97,819	+/-4,212	30.1%	+/-1.2
Mobile home	667	+/-433	0.2%	+/-0.1
Boat, RV, van, etc.	73	+/-119	0.0%	+/-0.1
YEAR STRUCTURE BUILT				
Total housing units	324,490	+/-4,291	324,490	(X)
Built 2010 or later	14,181	+/-1,846	4.4%	+/-0.6
Built 2000 to 2009	44,087	+/-3,629	13.6%	+/-1.1
Built 1990 to 1999	24,618	+/-2,228	7.6%	+/-0.7
Built 1980 to 1989	24,803	+/-2,369	7.6%	+/-0.7
Built 1970 to 1979	28,510	+/-2,939	8.8%	+/-0.9
Built 1960 to 1969	31,982	+/-2,899	9.9%	+/-0.9
Built 1950 to 1959	36,828	+/-2,932	11.3%	+/-0.9
Built 1940 to 1949	29,138	+/-2,483	9.0%	+/-0.8
Built 1939 or earlier	90,343	+/-3,849	27.8%	+/-1.2
ROOMS				
Total housing units	324,490	+/-4,291	324,490	(X)
1 room	24,063	+/-3,007	7.4%	+/-0.9
2 rooms	27,913	+/-2,919	8.6%	+/-0.9

	Estimate	Margin of Error	Percent	Percent Margin of Error
3 rooms	57,344	+/-4,015	17.7%	+/-1.2
4 rooms	59,049	+/-4,056	18.2%	+/-1.2
5 rooms	40,199	+/-2,608	12.4%	+/-0.8
6 rooms	32,550	+/-2,750	10.0%	+/-0.8
7 rooms	27,487	+/-2,377	8.5%	+/-0.7
8 rooms	23,025	+/-2,459	7.1%	+/-0.8
9 rooms or more	32,860	+/-2,715	10.1%	+/-0.8
Median rooms	4.4	+/-0.1	(X)	(X)
BEDROOMS				
Total housing units	324,490	+/-4,291	324,490	(X)
No bedroom	28,210	+/-3,105	8.7%	+/-0.9
1 bedroom	81,838	+/-4,104	25.2%	+/-1.2
2 bedrooms	94,856	+/-4,026	29.2%	+/-1.1
3 bedrooms	68,889	+/-3,475	21.2%	+/-1.1
4 bedrooms	36,201	+/-2,510	11.2%	+/-0.8
5 or more bedrooms	14,496	+/-1,824	4.5%	+/-0.6
HOUSING TENURE				
Occupied housing units	304,564	+/-4,479	304,564	(X)
Owner-occupied	138,638	+/-3,739	45.5%	+/-1.1
Renter-occupied	165,926	+/-4,409	54.5%	+/-1.1
Average household size of owner-occupied unit	2.42	+/-0.05	(X)	(X)
Average household size of renter-occupied unit	1.87	+/-0.05	(X)	(X)
YEAR HOUSEHOLDER MOVED INTO UNIT				
Occupied housing units	304,564	+/-4,479	304,564	(X)
Moved in 2010 or later	162,240	+/-4,583	53.3%	+/-1.2
Moved in 2000 to 2009	80,606	+/-3,772	26.5%	+/-1.2
Moved in 1990 to 1999	31,108	+/-2,633	10.2%	+/-0.8
Moved in 1980 to 1989	16,072	+/-1,720	5.3%	+/-0.6
Moved in 1970 to 1979	7,065	+/-934	2.3%	+/-0.3
Moved in 1969 or earlier	7,473	+/-1,178	2.5%	+/-0.4
VEHICLES AVAILABLE				
Occupied housing units	304,564	+/-4,479	304,564	(X)
No vehicles available	53,146	+/-3,699	17.4%	+/-1.1
1 vehicle available	130,445	+/-5,236	42.8%	+/-1.5
2 vehicles available	91,630	+/-3,823	30.1%	+/-1.3
3 or more vehicles available	29,343	+/-2,432	9.6%	+/-0.8
HOUSE HEATING FUEL				
Occupied housing units	304,564	+/-4,479	304,564	(X)
Utility gas	108,956	+/-4,186	35.8%	+/-1.3
Bottled, tank, or LP gas	2,758	+/-729	0.9%	+/-0.2
Electricity	168,025	+/-5,484	55.2%	+/-1.5
Fuel oil, kerosene, etc.	17,460	+/-2,026	5.7%	+/-0.7
Coal or coke	0	+/-193	0.0%	+/-0.1
Wood	703	+/-417	0.2%	+/-0.1
Solar energy	67	+/-111	0.0%	+/-0.1
Other fuel	2,836	+/-765	0.9%	+/-0.3
No fuel used	3,759	+/-1,139	1.2%	+/-0.4
SELECTED CHARACTERISTICS				
Occupied housing units	304,564	+/-4,479	304,564	(X)
Lacking complete plumbing facilities	2,266	+/-959	0.7%	+/-0.3
Lacking complete kitchen facilities	3,137	+/-1,025	1.0%	+/-0.3
No telephone service available	7,229	+/-1,223	2.4%	+/-0.4

Subject	Estimate	Margin of Error	Percent	Percent Margin of Error
OCCUPANTS PER ROOM				
Occupied housing units	304,564	+/-4,479	304,564	(X)
1.00 or less	296,940	+/-4,673	97.5%	+/-0.5
1.01 to 1.50	4,097	+/-1,036	1.3%	+/-0.3
1.51 or more	3,527	+/-1,142	1.2%	+/-0.4
VALUE				
Owner-occupied units	138,638	+/-3,739	138,638	(X)
Less than $50,000	2,526	+/-724	1.8%	+/-0.5
$50,000 to $99,999	750	+/-397	0.5%	+/-0.3
$100,000 to $149,999	1,399	+/-465	1.0%	+/-0.3
$150,000 to $199,999	3,030	+/-685	2.2%	+/-0.5
$200,000 to $299,999	15,700	+/-1,816	11.3%	+/-1.3
$300,000 to $499,999	52,363	+/-2,815	37.8%	+/-1.6
$500,000 to $999,999	52,157	+/-2,833	37.6%	+/-1.8
$1,000,000 or more	10,713	+/-1,354	7.7%	+/-1.0
Median (dollars)	473,300	+/-10,123	(X)	(X)
MORTGAGE STATUS				
Owner-occupied units	138,638	+/-3,739	138,638	(X)
Housing units with a mortgage	99,776	+/-3,842	72.0%	+/-1.6
Housing units without a mortgage	38,862	+/-2,313	28.0%	+/-1.6
SELECTED MONTHLY OWNER COSTS (SMOC)				
Housing units with a mortgage	99,776	+/-3,842	99,776	(X)
Less than $300	357	+/-250	0.4%	+/-0.3
$300 to $499	429	+/-286	0.4%	+/-0.3
$500 to $699	1,301	+/-521	1.3%	+/-0.5
$700 to $999	2,495	+/-688	2.5%	+/-0.7
$1,000 to $1,499	11,967	+/-1,280	12.0%	+/-1.2
$1,500 to $1,999	21,141	+/-2,312	21.2%	+/-2.1
$2,000 or more	62,086	+/-3,143	62.2%	+/-2.3
Median (dollars)	2,278	+/-45	(X)	(X)
Housing units without a mortgage	38,862	+/-2,313	38,862	(X)
Less than $100	346	+/-261	0.9%	+/-0.7
$100 to $199	1,008	+/-503	2.6%	+/-1.3
$200 to $299	824	+/-411	2.1%	+/-1.1
$300 to $399	2,457	+/-746	6.3%	+/-2.0
$400 or more	34,227	+/-2,427	88.1%	+/-2.6
Median (dollars)	717	+/-26	(X)	(X)
SELECTED MONTHLY OWNER COSTS AS A PERCENTAGE OF HOUSEHOLD INCOME (SMOCAPI)				
Housing units with a mortgage (excluding units where SMOCAPI cannot be computed)	99,173	+/-3,844	99,173	(X)
Less than 20.0 percent	39,863	+/-2,525	40.2%	+/-2.2
20.0 to 24.9 percent	18,073	+/-2,095	18.2%	+/-2.1
25.0 to 29.9 percent	11,508	+/-1,566	11.6%	+/-1.5
30.0 to 34.9 percent	7,219	+/-1,174	7.3%	+/-1.2
35.0 percent or more	22,510	+/-2,441	22.7%	+/-2.1
Not computed	603	+/-391	(X)	(X)
Housing unit without a mortgage (excluding units where SMOCAPI cannot be computed)	38,644	+/-2,292	38,644	(X)
Less than 10.0 percent	15,845	+/-1,900	41.0%	+/-3.9
10.0 to 14.9 percent	8,017	+/-1,280	20.7%	+/-3.2
15.0 to 19.9 percent	5,220	+/-1,076	13.5%	+/-2.7

	Estimate	Margin of Error	Percent	Percent Margin of Error
20.0 to 24.9 percent	3,145	+/-742	8.1%	+/-1.8
25.0 to 29.9 percent	1,922	+/-644	5.0%	+/-1.7
30.0 to 34.9 percent	636	+/-313	1.6%	+/-0.8
35.0 percent or more	3,859	+/-895	10.0%	+/-2.3
Not computed	218	+/-206	(X)	(X)
GROSS RENT				
Occupied units paying rent	162,702	+/-4,535	162,702	(X)
Less than $200	2,608	+/-966	1.6%	+/-0.6
$200 to $299	5,877	+/-1,396	3.6%	+/-0.8
$300 to $499	6,035	+/-1,289	3.7%	+/-0.8
$500 to $749	12,312	+/-1,651	7.6%	+/-1.0
$750 to $999	30,600	+/-2,957	18.8%	+/-1.6
$1,000 to $1,499	54,008	+/-3,153	33.2%	+/-1.9
$1,500 or more	51,262	+/-3,407	31.5%	+/-2.0
Median (dollars)	1,202	+/-26	(X)	(X)
No rent paid	3,224	+/-844	(X)	(X)
GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME (GRAPI)				
Occupied units paying rent (excluding units where GRAPI cannot be computed)	157,353	+/-4,662	157,353	(X)
Less than 15.0 percent	20,270	+/-2,548	12.9%	+/-1.6
15.0 to 19.9 percent	25,044	+/-2,785	15.9%	+/-1.7
20.0 to 24.9 percent	20,492	+/-2,456	13.0%	+/-1.6
25.0 to 29.9 percent	19,193	+/-1,810	12.2%	+/-1.1
30.0 to 34.9 percent	14,871	+/-1,978	9.5%	+/-1.2
35.0 percent or more	57,483	+/-3,717	36.5%	+/-2.0
Not computed	8,573	+/-1,881	(X)	(X)

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see Accuracy of the Data). The effect of nonsampling error is not represented in these tables.

Households not paying cash rent are excluded from the calculation of median gross rent.

While the 2014 American Community Survey (ACS) data generally reflect the February 2013 Office of Management and Budget (OMB) definitions of metropolitan and micropolitan statistical areas; in certain instances the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB definitions due to differences in the effective dates of the geographic entities.

Estimates of urban and rural population, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2010 data. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Source: U.S. Census Bureau, 2014 American Community Survey 1-Year Estimates

Explanation of Symbols:

1. An '**' entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.
2. An '-' entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution.
3. An '-' following a median estimate means the median falls in the lowest interval of an open-ended distribution.
4. An '+' following a median estimate means the median falls in the upper interval of an open-ended distribution.
5. An '***' entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.

7. An 'N' entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.
8. An '(X)' means that the estimate is not applicable or not available.

APPENDIX E

West's RCWA 59.12.040
59.12.040. Service of notice--Proof of service
Effective: June 10, 2010
Currentness

Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he or she be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his or her place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his or her place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: PROVIDED, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders, or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent, or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent, or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. RCW 59.18.375 may also apply to notice given under this chapter.

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STEPHEN FACISZEWSKI and VIRGINIA L. KLAMON, Plaintiffs, vs. MICHAEL R. BROWN and JILL A. WAHLEITHNER, Defendants.	**No. 72611-1-I** **CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below a copy of Petitioners Petition for Review was served as follows:

Evan L. Loeffler
Loeffler Law Group, PLLC
500 Union Street, Suite 1025
Seattle, WA 98101

☐ U.S. Mail, First Class Postage Prepaid
☐ Fax
☑ Legal messenger
☐ Express mail

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

KEANE LAW OFFICES
100 NE Northlake Way, Suite 200
Seattle, Washington 98105
206-438-3737 • Facsimile 206-632-2540

DATED at Seattle, Washington this 24th day of March, 2016.

Donna M. Pucel

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