Supreme Court No. 97724-1
Court of Appeals No. 51841-4-II

SUPREME COURT OF THE STATE OF WASHINGTON

PATRICIA LANDES,
Petitioner,

v.

PATRICK CUZDEY,
Respondent.

PETITION FOR REVIEW

By:

Drew Mazzeo
Bauer Pitman Snyder Huff Lifetime Legal, PLLC
1235 4th Ave E #200
Olympia, WA 98506
(360) 754-1976
dpm@lifetime.legal

Attorney for Patricia Landes

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1. IDENTITY OF THE PETITIONER

Petitioner, Patricia Landes ("Landes"), respondent/appellee below, asks this Court to review the decision of the Court of Appeals referred to in Section 2.

2. COURT OF APPEALS DECISION

After an unlawful detainer show cause hearing, Thurston County Superior Court granted Landes' complaint praying for a writ of restitution, a judgment for back due rent, and for attorney fees against Patrick Cuzdey ("Cuzdey"), petitioner/appellant below. Division 2 of the Court of Appeals reversed and remanded for a jury trial, finding material issues of fact of whether an enforceable unilateral contract/rental agreement was formed as the basis of the unlawful detainer action. *Landes v. Cuzdey*, 2019 Wash. App. LEXIS 2218, 2019 WL 3938726 (filed August 20, 2019).

3. ISSUES PRESENTED

3.1. Whether as a matter of law a residential tenant residing in a dwelling unit, e.g., mobile home, who is not entitled to residential tenant protections/provisions under chapter 59.20, RCW, is entitled to residential tenant protections/provisions under Chapter 59.18, RCW, where such residential tenant's rental agreement is only for residential use of real property but such agreement "concern[s] the use and occupancy of the dwelling unit," e.g., mobile home, because without the agreement for possession and use of the real property the residential tenant has no lawful access to the dwelling, e.g., mobile home? *See* RCW 59.18.030(29) (formerly RCW 59.18.030(24)). Yes. *See* RAP 13.4(b)(1), (2), (4).

3.2. Whether as a matter of law a holdover tenant-at-will or tenant-at-sufferance, with no legal right to possess a landowner's real

property, enters into an enforceable unilateral contract after performing on the landlord's offer and promise to make such person a month-to-month tenant by choosing to remain on the landlord's property past the date the landlord promised the month-to-month tenancy would begin, if the tenant remained there? Yes. *See* RAP 13.4(b)(1), (2), (4).

3.3. Whether as a matter of law reversal and remand for a jury trial to determine alleged material factual issues after an unlawful detainer show cause hearing is proper when the trial court made specific factual findings supported by substantial evidence, addressing the alleged factual issues, or, alternatively, whether as a matter of law reversal and remand for a jury trial to determine alleged factual issues is proper under CR 56 when all evidence and testimony regarding whether or not an enforceable rental agreement was formed was before the trial court and specifically ruled upon? No. *See* RAP 13.4(b)(1), (2), (4).

3.4. Whether as a matter of law a promisee to a promisor's unilateral contractual promise can change the terms of the unilateral contractual promise by making an (alleged) counteroffer at the same time as performing on the unilateral contractual promise? No. *See* RAP 13.4(b)(1), (2), (4).

3.5. Whether, under an objective manifestation theory of contracts, the subjective intent of a promisee to a unilateral contractual promise, or other extrinsic evidence expressed outside of the written instrument/contractual promise, is admissible to show an intention independent of the unilateral instrument/contractual promise or to vary, contradict, or modify the written words within the unilateral instrument/contractual promise? No. *See* RAP 13.4(b)(1), (2), (4).

4. STATEMENT OF FACTS

4.1. In 2014, Landes terminated Cuzdey's tenancy-at-will with notice. *Landes,* 2019 Wash. App. LEXIS 2218, *3. Cuzdey reacted by suing Landes for ownership of her real property. *Id.* The trial court deemed his complaint frivolous. *Id.* Cuzdey appealed but did not initially stay this quiet title decision. *Id.* Cuzdey refused to vacate Landes' real property and

became a hold over tenant-at-will or tenant at sufferance. *See id.*

4.2. In November of 2015, Landes served a "Notice to Begin Rental" on Cuzdey that in substance was a unilateral contractual promise to rent the non-exclusive use and occupancy of her real property on a month-to-month basis. *Id.* at 4. Landes promised Cuzdey that he could lawfully reside on her real property for $1,500.00 per month if he decided to remain there on and past January 1, 2016. *Id.* She promised that other applicable terms of his month-to-month tenancy would be supplied by Chapter 59.18, RCW, as it was expressly incorporated by reference. *Id.*

4.3. On January 1, 2016, Cuzdey did not communicate with Landes, but performed by remaining on Landes' real property. *See id.*

4.4. On January 19, 2019, Cuzdey sent Landes' counsel "rent in the amount of $1,500.00." *See id.* at 6. He attached to the rental payment a letter stating he did not admit to being a tenant of Landes, he was appealing the quiet title action ruling, he was reserving his arguments from that matter, and that he was paying rent under protest. *Id.*

4.5. In February of 2016, Cuzdey sent Landes rent again in the amount of $1,500. *Id.* The memo line of the money order read "'RENT' FOR FEB 2016." *Id.* No further correspondence was attached.

4.6. In March of 2016, the trial court granted Cuzdey a stay of enforcement of the quiet title action after he posted a supersedeas security.

Id. at 6-7. Cuzdey continued residing on Landes' real property. *Id.*

4.7. In April of 2017, Division 1 affirmed the trial court's decision that Landes owned the real property and remanded as to the mobile home titled in Landes' name, finding material issues of fact remained regarding ownership of the mobile home. *Id.* at 7.

4.8. By October of 2017, Cuzdey's petition for review before this Court regarding the quiet title action was denied. *Cuzdey v. Landes*, 189 Wn.2d 1014, 403 P.3d 42 (2017). Landes demanded rent due or to vacate. *Landes*, 2019 Wash. App. LEXIS 2218 at 7. Cuzdey remained on Landes' real property and she filed an unlawful detainer action. *Id.*

4.9. On November 2, 2017, Landes moved for a show cause hearing and that was granted. (CP at 3-33, 34, 35-36). At the initial show cause hearing, the trial court continued the show cause hearing to January 12, 2019. (RP (January 12, 2018) at 4). Landes filed a motion for summary judgment as a means to present the uncontroverted evidence and testimony to trial court and to give Cuzdey more time to respond than at a typical show cause hearing. (CP at 263-444). Cuzdey responded with his documentary and testimonial evidence. (CP at 258-62, 37-45, 46-57). Landes replied. (CP at 58-157). There was and is no other relevant evidence to present.

4.10. On January 12, 2019, at the show cause hearing, the trial court requested the parties clarify the procedural posture of the case, and the

parties expressly agreed that "*the Court has essentially a correct procedural frame to do anything that the Court could do in a show cause hearing*, which could include moving the case to trial, dismissing the case if there are procedural infirmities, or making a ruling on the merits to enter an eviction." (RP (January 12, 2018) at 4) (emphasis added).

4.11. The trial ruled in favor of Landes finding that Cuzdey entered into an enforceable unilateral contract, and month-to-month rental agreement in January of 2016. *Landes*, 2019 Wash. App. LEXIS 2218 at 8-9. The trial court specifically made two important factual findings:

> Mr. Cuzdey was represented by counsel when his attorney stated Mr. Cuzdey's circumstance was governed by Landlord Tenant Act. Based on transcripts and filings submitted in this action, Mr. Cuzdey's attorney and Mr. Cuzdey understood paying rent in January of 2016 would cause Mr. Cuzdey to enter into a contract governed by the Landlord Tenant Act.
> ***
> The court has proper subject matter jurisdiction over this action based on Mr. Cuzdey entering into an enforceable contract in January of 2016.

Id. at 8. On appeal, Division 2 ruled that "[Mr.] Cuzdey presented issues of fact regarding whether he was a 'tenant' under the unlawful detainer statute that *must be tried by a jury*." *Id.* at 10 (emphasis added).

5. WHY REVIEW SHOULD BE ACCEPTED

5.1. <u>As a Matter of Substantial Public Importance, Where a Residential Tenant has a Rental Agreement Regarding Residential Real Property and that Agreement Concerns the Use and Occupancy of a Dwelling Unit, Chapter 59.18,</u>

RCW, Should Apply When Chapter 59.20, RCW, Does Not.

Courts avoid absurd results and strained consequences. *Wright v. Engum*, 124 Wash.2d 343, 351-52, 878 P.2d 1198 (1994). Statutes and chapters are not read in isolation; rather, they are read in context so that they are in harmony. *Judd v. Am. Tel. & Tel. Co.*, 152 Wn.2d 195, 203, 95 P.3d 337 (2004). The meaning of words are controlled by other associated words. *Cito v. Rios*, Slip Opinion, Case No. 75393-2-1 at 11; *Jongeward v. BNSF Ry. Co.*, 174 Wn.2d 586, 601, 278 P.3d 157 (2012). Advancing the legislative purpose is the primary tenant of statutory interpretation. *Bennett v. Hardy*, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990). The purpose of Chapter 59.18, RCW, is to govern "the rights and remedies of residential landlords and tenants." *Faciszewski v. Brown*, 187 Wn.2d 308, 314, 386 P.3d 711, 714-715 (2016).

Chapter 59.20, RCW, governs residential tenancy agreements where a landlord rents real property to two or more mobile home owning tenants as part of a business. Chapter 59.18, RCW, governs residential tenancy agreements where a landlord owns and rents a mobile home to a tenant. Chapter 59.12, RCW, governs commercial tenancy agreements and rental agreements that are not governed by Chapters 59.18 nor 59.20, RCW. Chapter 59.12 contains no special protections, procedures, or remedies for residential tenants and landlords; whereas, Chapters 59.18 and 59.20, RCW,

contain numerous special protections, procedures, and remedies for residential tenants and landlords.

Division 2 held in an unpublished decision, *Parsons v. Mierz*, 2018 Wash. App. LEXIS 776, 2018 WL 1733519, that Chapter 59.18, RCW, could not apply to rentals of residential real property—only—even if the tenant resided in a mobile home, for residential purposes, on such real property. Under *Parsons* holding, Chapter, 59.18, RCW, only applies to rentals expressly contracted for "dwelling units," and can never apply to rentals for residential real property only, but nonetheless "concerning the use and occupancy of a dwelling unit." *Compare* RCW 59.18.030(29) *with Parsons*, 2018 Wash. App. LEXIS 776, *7. If *Parsons* is correct, thousands of residential tenants residing in a dwelling unit not falling under Chapter 59.20, RCW, do not have available any special protections, procedures, rights, or remedies for residential tenants espoused in Chapter 59.18, RCW.

Here, Landes explicitly challenged *Parsons* on the basis that if a rental agreement entitles a residential tenant to reside on the landlord's real, or other, property for residential purposes, such rental agreement "concern[s] the use and occupancy of a dwelling unit." *See* RCW 59.18.030(29). The strained and narrow test from *Parsons* of whether the landlord explicitly contracted to rent a "dwelling unit" should be overturned. Instead, the law should be that Chapter 59.18, RCW, applies

where (a) a tenant is entitled to use the landlord's residential real property to place a single mobile home, or other dwelling unit, on, and (b) when Chapter 59.20, RCW does not apply. This is an issue of substantial public importance as overturning *Parsons* will protect thousands of residential tenants that have *no residential protections just because of the arbitrary happenstance of the location of a dwelling unit*, e.g., mobile home.

First, *Parsons* does not advance the legislative purpose of Chapter 59.18, RCW, which is to govern "the rights and remedies of residential landlords and tenants." *See Brown*, 187 Wn.2d at 314. It judicially created gaps between Chapters 59.12, 59.18, and 59.20.

Second, *Parsons* does the opposite of harmonizing the statutory scheme set forth in Chapters 59.12, 59.18, and 59.20, RCW, in contradiction to precedent. *See e.g.*, *Randy Reynolds & Assocs. v. Harmon*, 193 Wn.2d 143, 156, 437 P.3d 677, 684, (2019) (holding "it is critical to understand the statutory scheme of unlawful detainer actions.").

Third, *Parsons* conflicts with statements of law in other cases. *See e.g., id.* (holding "Because this case involves a residential tenancy, it is governed by the RLTA"); *Brown*, 187 Wn.2d at 314 (holding "Title 59 RCW sets out Washington's landlord-tenant law. Chapter 59.12 RCW governs unlawful detainer actions, while chapter 59.18 RCW, known as the Residential Landlord-Tenant Act of 1973 (RLTA), governs the rights and

remedies of residential landlords and tenants."); *Indigo Real Estate Servs., Inc. v. Wadsworth*, 169 Wn. App. 412, 280 P.3d 506 (2012) (holding "Because this case involves a residential tenancy, it is governed by the Residential Landlord-Tenant Act of 1973 (RLTA), chapter 59.18 RCW"); *Housing Auth. v. Silva*, 94 Wn. App. 731, 734, 972 P.2d 952, 954 (1999) (holding "The unlawful detainer statutes create a special, summary proceeding for the recovery of possession of real property."); *Vaksman v. Lystad*, 2017 Wash. App. LEXIS 1721, *6, 2017 WL 3169008 (holding "The Residential Landlord-Tenant Act of 1973 (RLTA), chapter 59.18 RCW, creates a special and summary proceeding for the recovery of possession of real property.").

Fourth, *Parsons* leads to absurd results causing residential tenants to have no residential protections. Additionally, placing a residential mobile home tenancy under Chapter 59.12, RCW, is not efficient nor equitable nor just for the residential tenant or landlord. For example, under *Parsons*, residential tenants and landlords lose favorable protections:

- Residential tenants are subjected to double damages. (*Compare* RCW 59.12.170 *with* RCW 59.18);
- No provision for an explicit show cause hearing. (*Compare* RCW 59.12 *with* RCW 59.18.370);
- Residential tenants can be evicted merely by the plaintiff posting bond (*Compare* RCW 59.12.090 *with* RCW §§ 59.18.375, 380);

- Residential landlords do not have to provide receipts of payments, and copies of rental agreements (*Compare* RCW 59.12 *with* RCW §§ 59.18.063, 065);

- Armed service members have no protections (*Compare* RCW 59.12 *with* RCW §§ 59.18.200, 220);

- Residential landlords can seize and sell personal property of the tenant and do not have to store it. (*Compare* RCW 59.12 *with* RCW §§ 59.18.230, 312);

- Residential landlords can bring retaliatory evictions (*Compare* RCW 59.12 *with* RCW §§ 59.18.240, 250);

- Residential tenants have no protections regarding security deposits (*Compare* RCW 59.12 *with* RCW §§ 59.18.253, 260, 270, 280, 285);

- Residential tenants can be evicted without court order, and have their utilities intentionally shut off. (*Compare* RCW 59.12 *with* RCW §§ 59.18.290, 300);

- Residential tenants are not protected from domestic violence and threats by residential cotenants or a residential landlord. (*Compare* RCW 59.12 *with* RCW §§ 59.18.352, 354); and

- Residential landlords nor tenants have any protection from gang violence (*Compare* RCW 59.12 *with* RCW 59.18.510).

Fifth, *Parsons* is based on interpreting the word "property" in isolation from the rest of the chapter. Stated simply, Chapter 59.18, RCW, currently uses the word "property" over 200 times. Just like in 1973 when the act was created, the word "property" still clearly refers to real property, personal property, public property, or rental property, depending on the context. (*See* Appendix 2). However, central to *Parsons* is that the word "property" can never mean "real property." Rather, all 200 plus times the

word "property" is used in Chapter 59.18, RCW, *under Parsons*, it *only means a definition not added to the chapter until 2011*: "all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex." This makes no sense. The better interpretation that harmonizes the statutory scheme of Chapters 59.12, 59.18, and 59.20 is that, in 2011, the legislature *added* a definition of the word "property"—but it did not supplant how the word was previously used in context.

Sixth, and perhaps most dispositive, *Parsons* misinterprets the term "Rental Agreement." The term "Rental Agreement," under RCW 59.18.030(29), "means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions *concerning* the use and occupancy of a dwelling unit." (emphasis added). The definition *does not* state ". . . all agreement which establish or modify the terms . . . [*contracted for*] the use and occupancy of a dwelling unit." Obviously, a rental agreement for the use of residential real property "*concern[s] the use and occupancy*" of a "dwelling unit," i.e., mobile home, placed on the residential real property. *See* RCW 59.18.030(29). The dwelling unit, i.e., the mobile home, and any residents and/or occupants on the real property would be trespassing and unlawfully on the real property but for a rental agreement that expressly or implicitly allows otherwise. Furthermore, nothing in Chapter 59.18, RCW, suggests the residential landlord must own

or expressly contract to rent a "dwelling unit."

Finally, it was argued in *Parsons*, and by Cuzdey, that Chapter 59.18, RCW, places duties on residential landlords that only have to do with dwelling units and that since the residential landlord cannot as a practical matter fulfill those duties, Chapter 59.18, RCW, should not apply. *See* RCW 59.18.060. This argument falls flat as the same RCW states "No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant. . . ." RCW 59.18.060(15). Since a residential tenant causes the mobile home to be placed on the residential real property in situations such as the *Parsons* and the case at hand, those statutory duties simply do not apply. *See* RCW 59.18.060(15).

5.2. Division 2's Decision is in Conflict with Precedent Regarding Unilateral Contract Formation and Prevents Landlords from Placing Holdover Tenants-at-Will Under the Residential Landlord-Tenant Act.

A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. *Everett v. Estate of Sumstad*, 95 Wn.2d 853, 855, 631 P.2d 366, 367 (1981). A contract is an obligation attached by the mere force of law to certain acts of the parties. *Id.* The dispositive difference between bilateral contracts and unilateral contracts is that a promisor's

unilateral contractual promise is accepted by *substantial performance*, not by exchanging *mutual* terms and promises. *See Browning v. Johnson*, 70 Wn.2d 145, 422 P.2d 314, 316 (1967) (holding "A unilateral contract is one in which *a promise is given in exchange for an act or forbearance*.") (emphasis added); *Storti v. Univ. of Wash.*, 181 Wn.2d 28, 36-38, 330 P.3d 159, 163 (2014) (holding "unilateral contracts can be accepted only through performance and not by the making of a reciprocal promise [by the other party]").

The fact that a promisee cannot change a promisor's "unilateral" contractual promise with a counteroffer is what makes the entire contract "unilateral" and *not* "bilateral." *See e.g., Browning*, 70 Wn.2d at 148; *Higgins v. Egbert*, 28 Wn.2d 313, 318, 182 P.2d 58 (1947) (holding promisee to unilateral contract could not make 'what would amount to a new offer' to the promisor). Deviating from common bilateral contract offer and acceptance principles, the parties' "meeting of the minds" in a unilateral contract is demonstrated by examining the promise made with whether the promisee substantially performed. *See Browning*, 70 Wn.2d at 148; *Storti*, 181 Wn.2d at 36-38. That's it. The "meeting of the minds" is *not* demonstrated by examining the parties' (irrelevant and inadmissible) subjective intent as espoused, or not espoused, outside of the *unilateral* promise/instrument. *Browning*, 70 Wn.2d at 148; *Hearst Commc'ns, Inc. v.*

Seattle Times, 154 Wn.2d 493, 503, 115 P.3d 262, 267 (2005) (holding "[S]urrounding circumstances and other extrinsic evidence are to be used 'to determine the meaning of specific words and terms used' and *not to 'show an intention independent of the instrument' or to 'vary, contradict or modify the written word* [within the instrument].'"). Under the context rule, "admissible extrinsic evidence does not include evidence of a party's unilateral or subjective intent as to contract's meaning" and "does not include evidence about the parties' desires." *See Hearst*, 154 Wn.2d at 503.

A tenant-at-will's legal right to be on an owner's real property terminates with any notice. *Najewitz v. Seattle*, 21 Wn.2d 656, 658, 152 P.2d 722, 723 (1944); *Chambers v. Hoover*, 3 Wash. Terr. 107, 111, 13 P. 466, 467 (1887). The tenant-at-will is then a holdover tenant-at-will or tenant at sufferance, with *no right to possession of the property*. 49 Am. Jur. 2d, sec. 140, at 152; *State v. Brumfield*, 1998 Wash. App. LEXIS 1691, *8.

Here, public policy wise, review should be granted because the decision by Division 2 aids in preventing the Residential Landlord-Tenant Act from ever (fairly) governing holdover tenant-at-will situations, ***strongly encourages dangerous self-help evictions and domestic violence***,[1] and

[1] Someone living on your property when the situation has digressed to utter hatred is a powder keg of self-help, crime, and/or domestic violence. Holdover tenancies-at-will are powder kegs as there is no *expedited* procedure to evict such holdover tenants or to protect the rights of such persons or landlords. Chapter 59.18, RCW, fairly handles residential tenancies. Unilateral contracts in this context create periodic tenancies that amicably

conflicts with precedent on the formation of unilateral contracts. *See Storti*, 181 Wn.2d at 36-38.

At to the latter, Division 2 held that Cuzdey "simply remaining" on Landes' property after January 1, 2016, did "not necessarily *reflect an intent to perform* on the offer [and unilateral contractual promise extended to him by Landes']." *Landes*, 2019 Wash. App. LEXIS 2218 at 21. (emphasis added). Thus, Division 2 had the opportunity to bring clarity to this issue of unilateral contract formation in the context of holdover tenants-at-will, but instead only injected more uncertainty.

Division 2 erred by trying to guess at what Cuzdey's irrelevant and inadmissible subjective intent was by remaining on the property on January 1, 2016. That subjective intent did not matter when it came to unilateral contract formation. *See Storti*, 181 Wn.2d at 36-38 (holding "unilateral contracts can be accepted only through performance and not by the making of a reciprocal promise [by the other party]"); *Hearst*, 154 Wn.2d at 503; *Everett*, 95 Wn.2d at 855. Simply put, the inquiry was not whether Cuzdey "inten[ded] to perform." Rather, the proper inquiry was the purely legal, not

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prevent these powder kegs from exploding by placing the tenancy under Chapter, 59.18, RCW and giving the parties statutory rights and remedies. Additionally, it should be noted that nearly always—this case is a rare exception—unwelcomed holdover tenants-at-will move out *before the start of the tenancy offered to them via the unilateral contract*. But that inexpensive, amicable, ability to de-escalate the situation and get the unwelcomed holdover tenant-at-will to voluntarily vacate the landowner's property is severely undermined by Division 2's decision here. Review should be granted.

factual, inquiry of whether Cuzdey *substantially and objectively* performed on the unilateral contract by remaining on the property. Cuzdey plainly did from the perspective of any fair-minded person.

First, Cuzdey was given a notice to vacate in 2014. (CP at 30-32, 296). This terminated his tenancy-at-will. *See e.g., Chambers,* 3 Wash. Terr. at 111. Thereafter, Cuzdey was a holdover tenant-at-will, or tenant at sufferance, with zero legal right to be on Landes' real property. 49 Am. Jur. 2d, sec. 140, at 152; *Brumfield,* 1998 Wash. App. LEXIS 1691 *8.

Second, the Notice to Begin Rental was inarguably a promise extended by Landes for Cuzdey to become a month-to-month tenant. As such, it was a unilateral contractual promise. *Browning,* 70 Wn.2d at 148.

Third, by remaining on Landes' real property on and beyond January 1, 2016, Cuzdey "substantial[ly] perform[ed]" and entered into an enforceable unilateral contract. *See Storti,* 181 Wn.2d at 36-38.

Fourth, there was no deficiency in consideration because Cuzdey remained on the property and did "[some]thing legal which he [wa]s not bound to do" and that "benefited him." *See Browning,* 70 Wn.2d at 149.

Finally, the only other evidence presented by Cuzdey, allegedly otherwise, was his subjective intent expressed to Landes via a letter accompanying a check for "rent." This subjective intent outside the words of Landes' unilateral contract was inadmissible. *See Hearst,* 154 Wn.2d at

503. It was also irrelevant because it was sent to Landes' counsel weeks after Cuzdey had already substantially performed and entered into the unilateral contract by remaining on the property. *See Bowman v. Webster*, 44 Wn.2d 667, 669, 269 P.2d 960, 961 (1954) (holding "Once a party has relinquished a known right or advantage, he cannot reclaim it without the consent of his adversary."). The "context rule" was also no help to Cuzdey because "admissible extrinsic evidence does not include evidence of a party's unilateral or subjective intent as to contract's meaning" and "does not include evidence about the parties' desires." *See Hearst*, 154 Wn.2d at 503. Furthermore, although Division 2's decision somewhat sidestepped the legal question,[2] Cuzdey's primary "counteroffer" argument plainly fails because one cannot make a counteroffer to a unilateral contract. *See e.g.*, *Storti*, 181 Wn.2d at 36-38; *Higgins*, 28 Wn.2d at 318.

5.3. <u>The Court of Appeals Decision is in Conflict with Precedent Regarding Remanding for Trial After an Unlawful Detainer Show Cause Hearing and, Alternatively, with the Application of CR 56</u>.

"[I]t is undisputed that a defendant at [unlawful detainer show

[2] On the other hand, Division 2 appears to agree with Landes that a promisee cannot make a counteroffer to a promisor's unilateral contract promise. *See Landes*, 2019 Wash. App. LEXIS 2218 at 22 (stating "[Cuzdey] performed by paying rent *and* he communicated a counteroffer. Arguably, this constituted the type of conduct – Cuzdey attempting to make 'what would amount to a new offer' to himself from Landes – that the court in *Higgins* stated was not allowed."). Regardless, such injection of ambiguity by Division 2 into an area of law that residential tenants need clarity on supports granting Landes' petition.

cause] hearing is not entitled to a full trial." *Leda v. Whisnand*, 150 Wn. App. 69, 81, 207 P.3d 468, 475 (2009). Witnesses need not testify in person. *Id.* "[C]ourts review a trial court's findings of fact in an unlawful detainer [show cause hearing] for substantial evidence." *Merklinghaus v. Bracken*, 2018 Wash. App. LEXIS 2618, *2, 2018 WL 6046910 (unpublished opinion). "Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise." *Green v. Cmty. Club*, 137 Wn. App. 665, 689, 151 P.3d 1038, 1050 (2007); *Bracken*, 2018 Wash. App. LEXIS 2618, *2. "If that standard is satisfied, [appellate courts] will not substitute [their] judgment for that of the trial court even though [they] might have resolved disputed facts differently." *Green*, 137 Wn. App. at 689; *Bracken*, 2018 Wash. App. LEXIS 2618, *2. "There is a presumption in favor of the trial court's findings, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence." *Green*, 137 Wn. App. at 689; *Bracken*, 2018 Wash. App. LEXIS 2618, *2.

Under CR 56, evidence must be material and admissible at trial. *Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355, 359, 753 P.2d 517, 519 (1988). If it does not "satisfy both standards" it "fails to raise a genuine issue for trial, and summary judgment is appropriate." *Id.* "[S]elf-serving statements of conclusions and opinions are insufficient to defeat

a summary judgment motion." *Id.* at 359-61. Conclusory statements of fact do not raise a question of fact. *Curran v. Marysville*, 53 Wn. App. 358, 367, 766 P.2d 1141, 1145 (1989). When "all of the pertinent documents forming the contract . . . [a]re before the trial court and [a]re genuine and not controverted, [such documents] c[an] properly . .. be[] taken as true by the trial court and that the trial court [i]s correct in granting a summary judgment." *Boman v. Austin Co.*, 2 Wn. App. 581, 587, 469 P.2d 199, 203 (1970).

Here, review should be granted because all evidence regarding unilateral contract formation was before the trial court and Division 2. None was claimed to be not genuine. No party argued there was any *new* evidence. Cuzdey stating that he was not a "tenant" and that he was paying rent in "protest" were "[u]ltimate facts, conclusions of fact, or conclusory statements of fact . . . insufficient to raise a question of fact." *See Curran*, 53 Wn. App. at 367. Additionally, those statements were self-serving, non-sensical, and did not convey any *counter terms* to Landes' unilateral contractual promise/rental agreement at all—even if he could make a counteroffer to the unilateral contract. *See Brown,* 3 Wn. App. at 343; *Mansfield v. Holcomb,* 5 Wn. App. 881, 491 P.2d 672 (1971); s*ee also Landes*, 2019 Wash. App. LEXIS 2218 at 33 n. 6. Thus, "the trial court was correct in granting a summary judgment" as a matter of law, and also correct

in ruling that trial was not necessary. *See Boman*, 2 Wn. App. at 587. Review is appropriate because a "jury trial" is unnecessary.

Furthermore, the parties agreed the procedural posture was an (evidentiary) show cause hearing (RP (January 12, 2018) at 4), and the trial court made findings, supported by substantial evidence that Cuzdey entered into an enforceable unilateral contract in "January of 2016," e.g.:

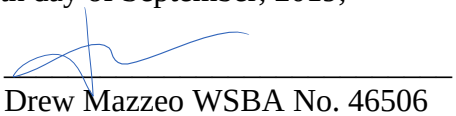
> Mr. Cuzdey enter[ed] into an enforceable contract in January of 2016.

Landes, 2019 Wash. App. LEXIS 2218, at 8. While Division 2 may have disagreed with these findings to the degree it believed material factual issues remained, review is appropriate because these finding were supported by substantial evidence, the trial court was entitled to deference with its findings, trial was not mandated, and remand and reversal was inappropriate. *See Leda*, 150 Wn. App. at 81; *Green*, 137 Wn. App. at 689; *Bracken*, 2018 Wash. App. LEXIS 2618, *2. Unlawful detainer show cause hearings are expedited to protect tenants and landlords alike. *See id*.

6. CONCLUSION

This case raises important issues that need to be resolved by this Court, and Mrs. Landes' requests review under RAP 13.4(b)(1), (2), (4).

Respectfully submitted this 19th day of September, 2019,



Drew Mazzeo WSBA No. 46506

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on September 19, 2019, I caused to served:

- Mrs. Landes' Petition for Review

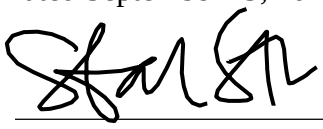
Via email and the court of appeals electronic filing system on counsel for Mr. Cuzdey at:

Jon Cushman
924 Capitol Way South
Olympia, WA 98501
joncushman@cushmanlaw.com

and

Kevin Hochhalter Olympic Appeals, PLLC
4570 Avery Ln. SE #C-217
Lacey, WA 98503
kevin@olympicappeals.com

Dated September 19, 2019, at Olympia, Washington.



Stacia Smith

APPENDIX 1

Filed
Washington State
Court of Appeals
Division Two

August 20, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

PATRICIA LANDES, Respondent, v. PATRICK CUZDEY, and ANY OTHER RESIDENTS, Appellant.	No. 51841-4-II UNPUBLISHED OPINION

MAXA, C.J. – Patrick Cuzdey appeals the trial court's order in Patricia Landes's unlawful detainer action directing issuance of a writ of restitution, granting judgment to Landes for past due rent, and awarding attorney fees to Landes. An unlawful detainer action is available against a "tenant of real property for a term less than life." RCW 59.12.030. The issue here is whether Cuzdey was Landes's "tenant," thereby making the unlawful detainer statute applicable.

We hold that the trial court erred in granting the writ of restitution and final judgment in this unlawful detainer action because Cuzdey presented issues of fact requiring trial regarding (1) whether an enforceable rental agreement was formed between the parties that created a tenancy under the unlawful detainer statute, and (2) whether Landes's waiver and equitable estoppel theories applied. We also hold that the trial court did not abuse its discretion in declining to apply Landes's judicial estoppel theory. Accordingly, we reverse the writ of restitution and the

final judgment in favor of Landes for unpaid rent and attorney fees, and we remand to the trial court for further proceedings.

FACTS

Background

In 1983, Landes and her husband (now deceased) purchased a five-acre parcel of undeveloped property southwest of Olympia. Their daughter Karla[1] and her then husband Cuzdey moved into a mobile home on the property in 1984.

In 1985, the Landeses purchased a newer mobile home for the Cuzdeys to live in. The Cuzdeys repaid the Landeses for the cost of the mobile home by making monthly payments until the amount was paid off in 2005. The Cuzdeys apparently never made rent payments to the Landeses for either the mobile home or the property on which it was located.

In May 2014, Karla and Cuzdey dissolved their marriage. Karla moved off the property, but Cuzdey continued to reside in the mobile home.

Cuzdey's Quiet Title Action

In June 2014, Landes served Cuzdey with a 20-day notice to terminate tenancy of the mobile home and the real property. In response, Cuzdey filed an action to quiet title to the property. Cuzdey alleged that pursuant to a 1984 oral agreement, the Landeses had agreed to sell the property to him and Karla, and that the purchase price had been paid off with cash and work Cuzdey had performed on the property. Cuzdey later added a claim to quiet title to the mobile home, which he claimed was included in the sale of the property.

[1] To distinguish her from Cuzdey, this opinion will refer to Karla by her first name. No offense is intended.

In August 2015, the trial court dismissed Cuzdey's claims on summary judgment. The court also found that Cuzdey's claim was frivolous and awarded Landes $36,000 in attorney fees under RCW 4.84.185. In addition, the court issued an order staying the dismissal of Cuzdey's quiet title claims for 60 days if Cuzdey filed an appeal and also paid into the court's registry a $36,000 bond and rent for two months at $1,500 per month.

Cuzdey filed a notice of appeal. He did not post bond at that time or make a rental payment into the court's registry for either August or September. The stay expired on October 6.

On October 14, Landes filed a complaint for unlawful detainer. On November 13, the trial court entered an agreed order dismissing the unlawful detainer action if Cuzdey scheduled a hearing to determine the amount of security or bond required to stay the judgment in the quiet title action pending appeal. The hearing was to take place no later than December 11, or else Landes was free to obtain a new show cause hearing date on the unlawful detainer action.

Notice to Begin Rental

On November 16, Landes served Cuzdey with a "Notice to Begin Rental Pursuant to Chapter 59.18 RCW." Clerk's Papers (CP) at 23-24. The notice read

> YOU ARE HEREBY NOTIFIED that the terms of your non-exclusive possession and occupancy of [the property's address] are hereby changed as of and after January 1, 2016, as follows:
>
> 1. On or after January 1, 2016, your non-exclusive possession and occupancy of the subject premises will be considered a month-to-month tenancy subject to the provisions of the Residential Landlord-Tenant Act, RCW 59.18.
>
> 2. Rent will be charged for your possession and occupancy of the subject premises, at the rate of $1,500.00 per month, payable in advance on or before the first day of each month, beginning January 1, 2016.

CP at 23. Cuzdey did not respond to this notice at that time.

Supersedeas Bond Hearing on Quiet Title Action

The next day, Cuzdey set a hearing for his motion for stay or alternative security in the quiet title matter while it was pending on appeal. A hearing on Cuzdey's motion occurred on December 11. Cuzdey argued that the quiet title judgment should be stayed without bond because his only assets were personal property and that selling the personal property to raise money for the bond would take too long to effect a stay of the judgment.

The trial court asked the parties whether the unlawful detainer action Landes had filed would move forward if Cuzdey was unable to post a bond in the amount the court set. Landes's attorney replied that it would. The court then asked how long Cuzdey would have to remove his personal property if Landes prevailed in the unlawful detainer action. Landes's attorney responded that "because we served upon him a notice to [begin] rental, you've got to put this under the Landlord Tenant Act and . . . it's 45 days." CP at 410.

The court asked Cuzdey's attorney to answer the same questions. Cuzdey's attorney responded, "I would agree that this would fall under the Landlord Tenant Act," and he stated that Cuzdey would have roughly 45 days to remove his personal property if Landes prevailed in the unlawful detainer action. CP at 411. The court ended the discussion by stating, "Well, okay, I'm not ruling on the landlord tenant matter but I thank you for that clarification." CP at 411.

The trial court ordered that the judgment against Cuzdey would be stayed on the condition that he posted a supersedeas bond or cash in the amount of $75,000 on or before January 11, 2016.

Cuzdey's Response to Notice to Begin Rental

By January 11, Cuzdey had not posted the bond. Landes apparently sent Cuzdey a "3 day pay or vacate notice." CP at 42.

On January 19, Cuzdey wrote to Landes, attaching "a money order satisfying your demand for rent in the amount of $1,500.00 payable to Patricia Landes." CP at 42. Cuzdey further informed Landes that he had "appealed the judgment quieting title and [did] not admit to being a tenant of Landes." CP at 42. Cuzdey stated that he was "paying under protest and under order of the superior court," and that he "reserve[d] all of [his] rights, claims and arguments for purposes of the appeal and remand of the case." CP at 42. Finally, Cuzdey reserved the right to seek reimbursement of the payment if he prevailed on appeal.

In February, Cuzdey sent Landes a second money order for $1,500. The memo line of the money order read " 'RENT' FOR FEB 2016." CP at 27.

In March, the trial court granted Cuzdey a stay of enforcement of the quiet title action after he posted a supersedeas bond. Cuzdey stopped making $1,500 monthly payments to Landes, but he continued living in the mobile home on the property.

In April 2017, Division One of this court affirmed the dismissal of Cuzdey's claim to the real property, but reversed the trial court's dismissal of his quiet title claim to the mobile home because there was a genuine issue of fact regarding title.[2] *Cuzdey v. Landes*, No. 75632-0-I, slip op. at 1-2, 12 (Wash. Ct. App. Apr. 3, 2017) (unpublished), http://www.courts.wa.gov/opinions/pdf/756320.pdf. The court also reversed the trial court's attorney fee award.

Unlawful Detainer Action

In October 2017, Landes sent Cuzdey another 3-day notice to pay or vacate, asserting that rent from January 2016 through October 2017 at $1,500 per month still was owing. Cuzdey remained on the property in the mobile home.

[2] Nothing in the record indicates whether there has been at the time of this opinion a final adjudication on remand of the quiet title action determining which of the parties has title to the mobile home.

In November 2017, Landes filed a new unlawful detainer action against Cuzdey based on his failure to pay rent. Landes also filed a motion for an order to show cause why a writ of restitution and final judgment should not be entered in her favor. The trial court granted the motion and scheduled a show cause hearing.

At the hearing, Landes argued that the parties had an enforceable rental agreement under the terms of her November 2015 Notice to Begin Rental. Cuzdey argued that the trial court lacked subject matter jurisdiction to remove him from the property through an unlawful detainer action because he was a tenant at will, and that no enforceable rental agreement had been formed between the parties.

The trial court orally ruled that Cuzdey's remaining on the property and payment of rent for two months formed a rental agreement between the parties. The court entered the following findings of fact:

> 2.9 Mr. Cuzdey was represented by counsel when his attorney stated Mr. Cuzdey's circumstance was governed by Landlord Tenant Act. Based on transcripts and filings submitted in this action, Mr. Cuzdey's attorney and Mr. Cuzdey understood paying rent in January of 2016 would cause Mr. Cuzdey to enter into a contract governed by the Landlord Tenant Act.
>
> 2.10 The court has proper subject matter jurisdiction over this action based on Mr. Cuzdey entering into an enforceable contract in January of 2016.

CP at 163.

The court entered judgment for Landes in the amount of $43,331, representing $34,500 in back rent, attorney fees of $8,324, and $597 in costs. The court also issued a writ of restitution restoring the property to Landes.

Cuzdey filed a motion for reconsideration. Cuzdey argued that the amount of past due rent awarded to Landes was still a disputed issue and that if the trial court determined he had title

to the mobile home, the total judgment should be reduced to reflect the rental value of only the land where the mobile home was situated. The trial court denied the motion for reconsideration.

The sheriff eventually served the writ of restitution on Cuzdey on March 19. By that date Cuzdey had vacated the property.

Cuzdey appeals the writ of restitution and the judgment for unpaid rent and attorney fees.

ANALYSIS

A. APPLICABILITY OF UNLAWFUL DETAINER STATUTE

Cuzdey argues that the trial court should have dismissed Landes's unlawful detainer action because the unlawful detainer statute did not apply to his occupancy of Landes's property. He claims that the unlawful detainer statute is inapplicable because he was not a "tenant" as required under that statute. Landes argues that a month-to-month tenancy was created when she sent the November 2015 notice that such a tenancy would start on January 1, 2016 and Cuzdey accepted her offer by paying rent and remaining on the property. We hold that Cuzdey presented issues of fact regarding whether he was a "tenant" under the unlawful detainer statute that must be tried by a jury.

1. Unlawful Detainer Action

Chapter 59.12 RCW governs unlawful detainer actions and allows for a summary proceeding that provides an expedited means for landlords and tenants to resolve competing claims to possession of leased property. *Angelo Prop. Co. v. Hafiz*, 167 Wn. App. 789, 808, 274 P.3d 1075 (2012). An unlawful detainer action is an alternative to the common law action of ejectment. *River Stone Holdings NW, LLC v. Lopez*, 199 Wn. App. 87, 92, 395 P.3d 1071 (2017).

RCW 59.12.030 states that a "tenant of real property for a term less than life" can be "guilty of unlawful detainer" under one of seven different circumstances. The circumstance potentially applicable here is found in RCW 59.12.030(3):

> When [the tenant] *continues in possession* in person or by subtenant *after a default in the payment of rent,* and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) [on] behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due.

(Emphasis added.) As noted in this statute, a person is guilty of unlawful detainer if noncompliance continues more than three days after service of a notice to pay rent or surrender the premises. RCW 59.12.030(3).

To regain possession of the property, the landlord may file an unlawful detainer complaint against the tenant, and the complaint can include a claim for damages or compensation for occupation of the property. RCW 59.12.070. After filing the unlawful detainer complaint, the landlord may request the court to issue a writ of restitution restoring the property to the landlord. RCW 59.12.090.

A trial court may address a landlord's unlawful detainer claims in a show cause hearing. *Hous. Auth. of the City of Pasco and Franklin County v. Pleasant*, 126 Wn. App. 382, 390-92, 109 P.3d 422 (2005). However, a show cause hearing is not necessarily the time for a final determination of the parties' rights. *4105 1st Ave. S. Invs., LLC v. Green Depot WA Pac. Coast, LLC*, 179 Wn. App. 777, 786, 321 P.3d 254 (2014). RCW 59.12.130 provides that "[w]henever an issue of fact is presented by the pleadings it must be tried by a jury."

Unlawful detainer actions are "limited to resolving questions related to possession of property and related issues like restitution of the premises and rent." *River Stone Holdings*, 199 Wn. App. at 92. Issues unrelated to possession cannot be resolved in an unlawful detainer

action; those issues must be addressed in a general civil action. *Angelo Prop.*, 167 Wn. App. at 809.

2. Subject Matter Jurisdiction

Cuzdey argues that the trial court erred in failing to dismiss Landes's unlawful detainer action for lack of subject matter jurisdiction. But framing the issue in this case as one of subject matter jurisdiction is incorrect. The trial court clearly had subject matter jurisdiction over Landes's lawsuit. The real issue is whether the trial court had authority under RCW 59.12.030 to *exercise* that jurisdiction.

The Washington Constitution generally provides subject matter jurisdiction in cases involving title or possession of real property to the superior courts. WASH. CONST. art. IV, § 6; *see MHM&F, LLC v. Pryor*, 168 Wn. App. 451, 460, 277 P.3d 62 (2012). In addition, RCW 59.12.050 states, "The superior court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter."

Because of the constitutional grant of jurisdiction, "it is incorrect to say that the court 'acquires' subject matter jurisdiction" only if a lawsuit satisfies the requirements of the unlawful detainer statute. *Hous. Auth. of the City of Seattle v. Bin*, 163 Wn. App. 367, 376, 260 P.3d 900 (2011); *see also MHM&F*, 168 Wn. App. at 460. The proper terminology for when statutory requirements are not met is that a party "may not maintain such action or *avail itself* of the superior court's jurisdiction." *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 254 n.9, 228 P.3d 1289 (2010) (emphasis added). Another formulation of this principle is that noncompliance with the statute "precludes the superior court from *exercising* subject matter jurisdiction over the unlawful detainer proceeding." *Christensen v. Ellsworth*, 162 Wn.2d 365, 372, 173 P.3d 228 (2007) (emphasis added).

The issue here is whether the unlawful detainer statute applies or does not apply based on whether a month-to-month tenancy was created. " '[A] superior court has jurisdiction to determine whether an unlawful detainer action may go forward.' " *Bin*, 163 Wn. App. at 374 (quoting *Tacoma Rescue Mission*, 155 Wn. App. at 254 n.9).

Accordingly, we reject Cuzdey's argument that the trial court did not have subject matter jurisdiction to hear Landes's unlawful detainer action.

3. Scope of Unlawful Detainer Statute

As noted above, RCW 59.12.030 states that a "tenant of real property for a term less than life" can be "guilty of unlawful detainer." The plain language of this statute establishes that an unlawful detainer action is available against only a "tenant of real property for a term less than life." RCW 59.12.030. If the person in possession of real property is not such a tenant, the property owner must seek some other remedy.

At least before 2016, there is no question that Cuzdey's occupancy of Landes's property did not involve a tenancy that was subject to the unlawful detainer statute. Cuzdey's original occupation was with Landes's permission, there was no fixed term of occupancy, and he did not pay any rent. This type of occupancy is referred to as a "tenancy at will." *Turner v. White*, 20 Wn. App. 290, 292, 579 P.2d 410 (1978); *see also* 17 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 6.15 (2d ed. 2004) (stating that a tenancy at will is a tenancy "of indefinite duration, terminable at the will of either landlord or tenant, without advance notice").

A tenancy at will is "terminable only upon demand for possession, allowing the tenant a reasonable time to vacate." *Turner*, 20 Wn. App. at 292. But a tenancy at will does not fall within the scope of RCW 59.12.030. *Id.*

On the other hand, a periodic tenancy is "a leasehold for an indefinite time that is terminable by either landlord or tenant upon some period of advance notice that is governed by a statute." STOEBUCK & WEAVER at § 6.13. When premises are rented for an indefinite time, with monthly rent reserved, the tenancy is construed as a tenancy from month to month. RCW 59.04.020. A person subject to a month-to-month tenancy clearly is a "tenant of real property for a term less than life" as required under RCW 59.12.030. A month-to-month tenant who fails to pay the monthly rent is guilty of unlawful detainer under RCW 59.12.030(3).

4. Alleged Formation of Rental Agreement

The relevant inquiry here is whether RCW 59.12.030 applies to Cuzdey's occupancy of Landes's property. Therefore, the issue is whether Landes's November 2015 Notice to Provide Rental and Cuzdey's actions following that notice converted the initial tenancy at will that was not subject to the unlawful detainer statute to a month-to-month tenancy that was subject to the unlawful detainer statute. We hold that questions of fact regarding the formation of a rental agreement precluded entry of an unlawful detainer judgment and required a trial by jury under RCW 59.12.130.

a. Legal Principles

A unilateral contract is a form of contract that is distinct from a bilateral contract, which is the typical form. *See Storti v. Univ. of Wash.*, 181 Wn.2d 28, 35-36, 330 P.3d 159 (2014). A bilateral contract is formed when one party makes an offer and the other party accepts by promising to perform. *See Multicare Med. Ctr. v. Dept. of Soc. and Health Servs.*, 114 Wn.2d 572, 584, 790 P.2d 124 (1990). In a unilateral contract, one party makes an offer and the other party can accept only through performance of his or her end of the bargain. *Storti*, 181 Wn.2d at 36.

A unilateral contract becomes executed once the offeree performs. *Multicare*, 114 Wn.2d at 584. In other words, performance renders a unilateral contract binding and enforceable. *Higgins v. Egbert*, 28 Wn.2d 313, 317-18, 182 P.2d 58 (1947). And substantial performance is enough to render a unilateral contract enforceable. *Storti*, 181 Wn.2d at 37. However, the offeree cannot create a new contract with the offeror by changing the terms of the offer and then performing those new terms. *See Higgins*, 28 Wn.2d at 318.

As with bilateral contracts, unilateral contracts are defined by traditional contract concepts of offer, acceptance, and consideration. *Storti*, 181 Wn.2d at 36. To be enforceable, unilateral contracts must satisfy these contract requisites. *Id.* at 35. In addition, as with bilateral contracts, unilateral contracts require mutual assent, also known as a meeting of the minds. *Multicare*, 114 Wn.2d at 586-88, 586 n.24.

Regarding mutual assent, we follow the objective manifestation theory of contracts. *Id.* at 586. "[T]he unexpressed subjective intention of the parties is irrelevant; the mutual assent of the parties must be gleaned from their outward manifestations. To determine whether a party has manifested an intent to enter into a contract, we impute an intention corresponding to the reasonable meaning of a person's words and acts." *Id.* at 587 (citations omitted).

In the context of a unilateral contract offer, the court in *Multicare* emphasized that performance of the offered terms shows a manifestation of an intent to agree to those terms. *Id.* at 587.

> The Hospitals were under no obligation to accept the terms of the contract. Upon voluntary performance of those terms, however, the only reasonable intent which can be imputed to their acts is that they assented to the terms of the contract. . . . The Hospitals are not entitled to perform the contract and then argue that there was no mutual intention.

Id. The court refused to accept an argument that the offeree could accept the terms of the contract through performance and then argue for a better contract. *Id.*

The party claiming that a unilateral contract has been created has the burden of proving each essential element of the contract. *Id.* at 584 n.19. The existence of mutual assent generally is a question of fact. *Id.* at 586 n.24.

b. Parties' Arguments

Landes argues that her Notice to Begin Rental constituted a unilateral contract offer to Cuzdey to enter into a month-to-month rental agreement – she offered that he could occupy the property as a tenant and pay monthly rent of $1,500.[3] She claims that Cuzdey accepted by performance when he remained on the property after January 1, 2016, and when he paid the $1,500 rent in January and February 2016.

Cuzdey argues that simply remaining on the property that he already occupied as a tenant at will could not constitute acceptance by performance of Landes's offer of tenancy. In addition, he argues that payment of $1,500 in January and February did not constitute performance because the letter he included with the January 2016 payment expressly stated that the payment was not rent. Instead, the letter constituted a counteroffer that he would pay $1,500 per month for a stay of Landes's attempt to evict him. Cuzdey argues that Landes accepted his counteroffer by depositing his checks.

The parties both rely on *Higgins*, 28 Wn.2d 313, to support their positions. In *Higgins*, a real estate broker sent a client a listing agreement dated February 18, 1946, for her to sign in

[3] The language of the Notice to Begin Rental suggests that Landes claimed the ability to simply impose a tenancy on Cuzdey without his consent. Cuzdey argues that Landes could not convert his tenancy at will to a periodic tenancy simply by sending him the Notice to Begin Rental. On appeal, Landes appears to agree that Cuzdey's acceptance of the offer by performance was required to create a tenancy.

which she promised to pay a commission if he found a buyer for her property within 60 days. *Id.* at 314. On February 27, the client sent back a signed listing agreement in which she changed the listing period to 30 days, but kept the February 18 start date. *Id.* at 315. When the broker received the signed listing agreement he changed with a pencil the start date of the listing period from the original February 18 to February 27, the date the client sent back the signed agreement, but he did not notify the client of this change. *Id.* The broker procured a buyer 32 days after February 18, but the client declined to sell the property to the proposed buyer and refused to pay the broker a commission. *Id.* at 316.

The court in *Higgins* stated that the client's signed listing agreement, including the change to the listing period, constituted a unilateral contract offer to the broker that he could accept by finding a buyer within 30 days of February 18, the date the client left unaltered in the agreement. *Id.* at 317-19. The court stated that when the broker received the instrument he could have (1) made an effort to perform within the time limit the client established in her offer, (2) attempted to persuade her to extend the time allowed, or (3) declined to do anything further regarding the sale of the property. *Id.* at 318. However, "he could not, by changing the date of the instrument, create what would amount to a new offer from the appellant to himself, nor alter the only one she had ever made to him." *Id.* Accordingly, the court held that the broker was not entitled to a commission. *Id.* at 319.

Landes compares Cuzdey's attempt to change the terms of her offer to the broker's attempt to change the terms of the client's offer. She claims that *Higgins* stands for the proposition that the offeree of a unilateral contract offer cannot make a counteroffer; the offeree must either accept by performance, decline to perform, or attempt to negotiate different terms.

Id. at 318. But an offeree cannot change the terms to create what would amount to a new offer from the offeror. *Id.*

Cuzdey compares himself to the client in *Higgins*. Like the client, he received an offer but changed the terms and communicated that change to the offeror. He claims that this constituted a counteroffer, not an acceptance of the original offer. In other words, he tendered performance but under different terms. Cuzdey disagrees that *Higgins* supports the argument that the offeree of a unilateral contract offer cannot make a counteroffer. Instead, he points out that *Higgins* recognized that the broker could have made a counteroffer – the court stated that he could have endeavored to persuade the client to change the terms. *Id.* And Landes could have rejected the tender, but instead she accepted the tender and the revised terms that came with it by depositing Cuzdey's checks.

c. Analysis – Rental Agreement Formation

Landes argues that Cuzdey accepted her unilateral contract offer in two ways. First, he remained on the property past January 1, 2016, after receiving the notice that a month-to-month tenancy would start on that date. Landes's argument would be stronger if Cuzdey had actually moved onto the property after receiving the Notice to Begin Rental. But Cuzdey already had been living on the property for decades and he simply remained there. Merely remaining on the property does not *necessarily* reflect an intent to perform on the offer.

On the other hand, on January 1, 2016, Cuzdey was in a precarious position. The trial court in the quiet title action had ruled that Landes owned the property and the mobile home, and Cuzdey had not posted a bond to stay execution of the court's ruling. Therefore, Landes had the legal right to evict Cuzdey if he did not accept the offer of a tenancy. It could be inferred from

these circumstances that Cuzdey intended to perform on the unilateral contract offer by remaining on the property.

We conclude that the evidence creates a genuine issue of fact regarding mutual assent – whether Cuzdey performed on Landes's unilateral contract offer by remaining on the property where he had lived for years. Therefore, a jury trial is required on this issue under RCW 59.12.130.

Second, Landes claims that Cuzdey performed on her unilateral contract offer by paying $1,500 rent in both January and February 2016. This payment arguably constituted at least part performance of Landes's offer to create a tenancy with monthly rent payments of $1,500. The letter accompanying the January payment stated, "Attached is a money order satisfying your demand for rent." CP at 42. The money order for the February 2016 payment stated " 'RENT' FOR FEB 2016" on the memo line. CP at 27.

Cuzdey emphasizes that he did not accept Landes's terms. He expressly stated in his letter that he did not admit to being Landes's tenant, he was paying under protest, and he was paying under court order.[4] He claims that under *Higgins*, he was entitled to make this counteroffer without being deemed to have performed on Landes's offer because the terms of his offer were different.

The facts of this case are challenging because Cuzdey did not simply perform on Landes's offer without any limitations. And he did not communicate a counteroffer to Landes

[4] Landes is correct that, despite the statements in Cuzdey's letter to the contrary, Cuzdey was under no court order to pay rent to Landes. At the time Landes sent Cuzdey the Notice to Begin Rental, he was a tenant at will on her property who had not attained any stay of the enforcement of the judgment in the quiet title action. In December 2015, the trial court ordered that the judgment against Cuzdey would be stayed on the condition that he posted a $75,000 supersedeas bond on or before January 11, 2016.

before performing on her offer. He did both – he performed by paying rent *and* he communicated a counteroffer. Arguably, this constituted the type of conduct – Cuzdey attempting to make "what would amount to a new offer" to himself from Landes – that the court in *Higgins* stated was not allowed. 28 Wn.2d at 318.

We conclude that the evidence creates a genuine issue of fact regarding mutual assent – whether Cuzdey performed on Landes's unilateral contract offer by paying the offered rent amounts while stating that he did not admit to being a tenant and was paying under protest. Therefore, a jury trial is required on this issue under RCW 59.12.130.

In summary, questions of fact exist regarding whether a rental agreement was formed and therefore whether the unlawful detainer statute applies in this case. Accordingly, we hold that the trial court erred in entering judgment in favor of Landes in the unlawful detainer action.

5. Landes's Equitable Theories Regarding Tenancy

Landes argues that even if questions of fact exist regarding the creation of a rental agreement, Cuzdey is precluded under the doctrines of judicial estoppel, equitable estoppel, and waiver from arguing that he did not enter into a unilateral contract to rent the property month-to-month. We hold that the trial court did not err in rejecting Landes's judicial estoppel theory and that questions of fact exist regarding equitable estoppel and waiver.

a. Judicial Estoppel

Landes argues that judicial estoppel bars Cuzdey from arguing he was not a tenant under the rental agreement because he stipulated in the December 2015 bond hearing on the quiet title matter that the Residential Landlord-Tenant Act (RLTA) would apply. The trial court declined to apply judicial estoppel.

" 'Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.' " *Chonah v. Coastal Vills. Pollock, LLC*, 5 Wn. App. 2d 139, 147, 425 P.3d 895 (2018), *review denied* 192 Wn.2d 1012, 432 P.3d 784 (2019) (quoting *Bartley-Williams v. Kendall*, 134 Wn. App. 95, 98, 138 P.3d 1103 (2006)). In determining whether judicial estoppel applies, a trial court primarily must consider three nonexhaustive "core" factors:

> (1) whether the party's later position is clearly inconsistent with its earlier position, (2) whether acceptance of the later inconsistent position would create the perception that either the first or the second court was misled, and (3) whether the assertion of the inconsistent position would create an unfair advantage for the asserting party or an unfair detriment to the opposing party.

Taylor v. Bell, 185 Wn. App. 270, 282, 340 P.3d 951 (2014). One additional factor that courts usually consider is whether the party's prior inconsistent position was accepted by the first court. *Id.*

We review a trial court's ruling on judicial estoppel for an abuse of discretion. *Chonah*, 5 Wn. App. 2d at 147. A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. *Id.*

Landes relies on the following exchange at the bond hearing:

> THE COURT: And if an unlawful detainer is granted, a person has the right for a reasonable time period to remove personal property, do they not?
>
> [LANDES'S ATTORNEY]: In this case, because we have put in a notice to begin rental, they've got – I think it's 45 days – they've got to ask – once the writ is issued, they can give the landlord a notice that says I want you to store the property. That's – they can do it for 45 days. If not, after that time period it can be sold at auction. Now, the reasonable time period [applies] if there's no rental agreement in effect, and then you resort back to the common law and it's a reasonable time period. However, because we served upon him a notice to [begin] rental, you've got to put this under the Landlord Tenant Act and that's pretty clear. . . .
>
> THE COURT: That matter is not before me but I wanted to ask you that question . . . and I'll allow Mr. Cuzdey's counsel to give m[e] any other details he thinks

> appropriate in that regard. Do you have rebuttal argument or do you want to answer that question?
>
> [CUZDEY'S ATTORNEY]: I would. I would agree that this would fall under the Landlord Tenant Act. I also don't remember if it's 45 days but it sounds right.
>
> The additional detail I would add, though, is that when the landlord gets that right to sell the property it is for the benefit of the tenant. . . . So if the property stays there for the 45 days or whatever the period is and then Landes goes to sell it under the Landlord Tenant Act, the money belongs to Cuzdey.
>
> THE COURT: Well, okay, I'm not ruling on the landlord tenant matter but I thank you for that clarification.

CP at 409-11.

Landes argues that Cuzdey's position at the December 2015 hearing that his tenancy would fall under the RLTA as of January 2016 and his later claim that there was no enforceable rental agreement between the parties were inconsistent and resulted in an unfair advantage for him. She claims that the court accepted Cuzdey's representation at the December 2015 hearing because the court gave him more time than customary to obtain the $75,000 bond in the quiet title matter and store his personal belongings on the property during that time.

But even if Cuzdey's position in December 2015 is inconsistent with his current position, there is no indication that the trial court accepted or relied on Cuzdey's statement about the RLTA or that Cuzdey obtained an unfair advantage. The court expressly stated that it was not ruling on the landlord tenant matter. And the court did not indicate that the 45 days Cuzdey would have to store his belongings on Landes's property under the RLTA after a hypothetical unlawful detainer ruling caused the court to give Cuzdey any more time than it otherwise would have to post the supersedeas bond. In fact, it appears that the approaching holidays might have been more of a factor in the court's ultimate decision regarding setting the deadline for Cuzdey to post bond.

We hold that the trial court did not abuse its discretion in declining to apply judicial estoppel.

b. Equitable Estoppel

Landes argues that Cuzdey is equitably estopped from asserting he did not make rent payments or enter into an enforceable unilateral contract because he remained on the property in January 2016.

Equitable estoppel rests on the principle that a party cannot deny what he or she has already acknowledged. *Nickell v. Southview Homeowners Ass'n*, 167 Wn. App. 42, 53, 271 P.3d 973 (2012). Proving equitable estoppel requires the asserting party to show that (1) another party "made an admission, statement, or act inconsistent with a claim it later asserted"; (2) the asserting party "reasonably relied on [that] admission, statement, or act"; and (3) the asserting party "was injured as a result." *Shelcon Constr. Group, LLC v. Haymond*, 187 Wn. App. 878, 902, 351 P.3d 895 (2015).

Courts disfavor equitable estoppel, and the party asserting estoppel "must prove its elements by clear, cogent, and convincing evidence." *Id.* Clear, cogent, and convincing evidence of estoppel exists when occurrence of all three elements has been shown to be highly probable. *Colonial Imps., Inc. v. Carlton Nw., Inc.*, 121 Wn.2d 726, 735, 853 P.2d 913 (1993). Equitable estoppel is a question for the trier of fact unless the evidence leads to only one reasonable inference. *Id.* at 737.

Here, Landes again relies on Cuzdey's statement to the trial court at the December 2015 bond hearing in the quiet title matter that his tenancy going forward would be under the RLTA. She also argues Cuzdey demonstrated his intent to become a month-to-month tenant by remaining on the property after January 2016 and paying $1,500 rent for two months. Finally,

she argues that she reasonably relied on these representations and was injured as a result because she refrained from bringing an unlawful detainer action in January or February of 2016 because at that point Cuzdey was current on his rent payments.

However, Cuzdey presented evidence that created a genuine issue of fact as to whether Landes could prove each element of equitable estoppel with clear, cogent, and convincing evidence. At the December 2015 hearing, Cuzdey had not yet responded in any way to Landes's Notice to Begin Rental. The trial court asked Cuzdey's counsel at that hearing how long Cuzdey would have to remove his personal property if Landes prevailed in her initial unlawful detainer action. Cuzdey's counsel responded "this would fall under the Landlord Tenant Act," and that Cuzdey would have roughly 45 days to remove his personal property. CP at 411. The court did not rule on the landlord tenant matter at that hearing.

Cuzdey also presented evidence that his continued residence on the property after January 2016 and two payments of $1,500 were not inconsistent with his claim that the parties did not have a rental agreement. Cuzdey's letter expressly stated that he was not Landes's tenant, that he was appealing the judgment in the quiet title action, and that he reserved the right to seek reimbursement of the payments if he won his appeal. Although this proposal essentially amounted to an unorthodox arrangement where Cuzdey paid Landes directly to stay her enforcement of the quiet title judgment, it did arguably convey his refusal to enter a landlord-tenant relationship with her under the Notice to Begin Rental. Moreover, once Cuzdey was able to post bond in March 2016, he stopped making monthly payments to Landes.

Finally, Landes cannot conclusively establish that she reasonably relied on Cuzdey's alleged admissions that he was her tenant under the RLTA because he presented evidence that his letter expressly told her that he did not admit to being her tenant. Nor can she conclusively

establish that she was injured as a result of her reliance. Because Cuzdey was a tenant at will, she could have demanded possession at any point before Cuzdey secured a supersedeas bond to stay enforcement of the quiet title action in March 2016. Instead, she took a calculated risk by sending him the Notice to Begin Rental in an attempt to transform their situation to a landlord-tenant relationship under the RLTA in which Cuzdey paid her rent. This calculated risk did not ultimately pay off, but Cuzdey's actions cannot definitively be said to have injured Landes based on her reasonable reliance.

We hold that equitable estoppel does not support final judgment in favor of Landes's unlawful detainer claim because material issues of fact exist regarding all three of its elements.

c. Waiver of Tenancy at Will Claim

Landes argues that Cuzdey waived any claim that he remained a tenant at will by (1) stating to the trial court in December 2015 that as of January 2016 his presence on the property would be governed by the RLTA, (2) remaining on the property after January 2016, and (3) making rent payments in January and February 2016.

Waiver is the intentional and voluntary relinquishment of a known right. *Schroeder v. Excelsior Mgmt. Group, LLC*, 177 Wn.2d 94, 106, 297 P.3d 677 (2013). Waiver may be express, but it also may be implied through a party's conduct. *224 Westlake, LLC v. Engstrom Props., LLC*, 169 Wn. App. 700, 714, 281 P.3d 693 (2012). Implied waiver occurs when a party's unequivocal acts or conduct demonstrate an intent to waive. *Id.* Waiver cannot be implied from a party's ambiguous conduct. *Id.* And the party's conduct must be inconsistent with any intention other than waiver. *Edmonson v. Popchoi*, 155 Wn. App. 376, 390, 228 P.3d 780 (2010).

The burden of proving intent to waive is on the party claiming waiver and, because waiver is disfavored, the claimant has a "heavy burden of proof." *Saili v. Parkland Auto Ctr., Inc.*, 181 Wn. App. 221, 225, 329 P.3d 915 (2014). Waiver is a mixed question of law and fact. *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 440-41, 191 P.3d 879 (2008). When an issue involves a mixed question of law and fact but the facts are not disputed, the issue is a question of law for this court to resolve. *Id.* at 441.

Here, Cuzdey presented evidence that the actions on which Landes bases her waiver claim did not constitute unequivocal acts or conduct demonstrating his intent to waive his claim to be a tenant at will. As discussed above, Cuzdey's representation to the trial court on December 15 occurred in the context of the court's question about storage of Cuzdey's personal property and occurred before he had made any definitive response to Landes's Notice to Begin Rental.

Likewise, his remaining on the property after January 2016 and payments in January and February 2016 were accompanied by a letter expressly informing Landes that he "[did] not admit to being [her] tenant," that he was "paying under protest," and that he "reserve[d] all of [his] rights, claims and arguments for purposes of the appeal and remand of the case," as well as his right to seek reimbursement of the payment if he prevailed on appeal. CP at 42. Far from unequivocally signaling Cuzdey's intent to waive his status as Landes's tenant at will, his letter expressly reserved his rights.

We hold that waiver does not support final judgment in favor of Landes's unlawful detainer claim because material issues of fact exist regarding whether Cuzdey waived his claim to be a tenant at will.

6. Remedy

Because questions of fact exist regarding application of the unlawful detainer statute, we reverse the trial court's judgment granting unlawful detainer relief. In addition, we vacate the trial court's judgment in favor of Landes for $34,500 in unpaid rent. Finally, we vacate the trial court's award of attorney fees to Landes under the RLTA[5].

Cuzdey no longer lives on Landes's property. The general rule is that if possession no longer is at issue after an unlawful detainer action has been started, "the proceeding may be converted into an ordinary civil suit for damages, and the parties may then properly assert any cross claims, counterclaims, and affirmative defenses." *Munden v. Hazelrigg*, 105 Wn.2d 39, 45-46, 711 P.2d 295 (1985). However, Cuzdey still is asserting his right to possession even after he was forced to vacate the premises. Therefore, he is entitled to have his right to possession determined in the unlawful detainer action. *See Hous. Auth. of the City of Pasco*, 126 Wn. App. at 388-89.[6]

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[5] Cuzdey argues on appeal that even if the unlawful detainer statute applies, Landes cannot recover attorney fees under the RLTA. But Cuzdey did not challenge the trial court's authority to award attorney fees in the trial court, so the trial court has not addressed this issue. We decline to address this argument raised for the first time on appeal. Cuzdey can raise this issue on remand.

[6] Cuzdey also contends that because ownership of the mobile home was still in dispute after the appeal in the quiet title action, a trial was necessary in the unlawful detainer action to determine whether the alleged rental agreement pertained to both the mobile home and the property or to only the property. But this issue is not the proper subject of the unlawful detainer action. An unlawful detainer action is a proceeding that provides an expedited method of resolving the right to *possession* of property. *Faciszewski v. Brown*, 187 Wn.2d 308, 314, 386 P.3d 711 (2016) (emphasis added). As noted above, issues unrelated to possession must be addressed in a general civil action. *Angelo Prop.*, 167 Wn. App. at 809. The resolution of this issue is more properly determined by the trial court in the quiet title action.

B. ATTORNEY FEES ON APPEAL

Both parties request attorney fees on appeal under the RLTA. Two RLTA provisions, RCW 59.18.290(2) and RCW 59.18.410, allow for the recovery of attorney fees to the prevailing party in certain situations.

However, we decline to address whether the RLTA applies here. In addition, a prevailing party is the party that receives judgment in its favor at the conclusion of the entire case. *Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc.*, 160 Wn. App. 728, 739-40, 253 P.3d 101 (2011). Therefore, any determination of the prevailing party when the unlawful detainer action is being remanded for trial would be premature. *See Leda v. Whisnand*, 150 Wn. App. 69, 87, 207 P.3d 468 (2009).

CONCLUSION

We reverse the writ of restitution and the final judgment in favor of Landes for unpaid rent and attorney fees, and we remand to the trial court for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Maxa, C.J.
MAXA, C.J.

We concur:

J.
LEE, J.

Cruser, J.
CRUSER, J.

APPENDIX 2

provision would have the effect of prohibiting the use of the veto power wherever such language appeared. The veto power of the Governor is based in, and authorized by, the State Constitution. To suggest that this language, adopted by a majority vote, could prohibit the exercise of a constitutionally granted power is to suggest that the legislature can amend the Constitution by a majority vote, rather than two-thirds vote, and without referring such amendment to the people. Inasmuch as section 17 is so clearly unconstitutional, and as such is superfluous and constitutes only extra verbiage, I have determined to veto it. Veto Message

With the exception of section 17, which I have vetoed for the reasons set out above, the remainder of Senate Bill No. 2183 is approved."

CHAPTER 207
[Engrossed Substitute Senate Bill No. 2226]
RESIDENTIAL LANDLORD-TENANT
ACT OF 1973

AN ACT Relating to the lease and rental of property; creating a new chapter in Title 59 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Sections 1 through 42 and 46 of this 1973 amendatory act shall be known and may be cited as the "Residential Landlord-Tenant Act of 1973", and shall constitute a new chapter in Title 59 RCW.

NEW SECTION. Sec. 2. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

NEW SECTION. Sec. 3. As used in this chapter:

(1) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

(2) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

(3) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(4) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(5) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(6) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(7) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(8) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(9) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

NEW SECTION. Sec. 4. The following living arrangements are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application, in which event the provisions of this chapter shall control:

(1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, religious, educational, recreational, or similar services, including but not limited to correctional facilities, licensed nursing homes, monasteries and convents, and hospitals;

(2) Occupancy under a bona fide earnest money agreement to purchase, bona fide option to purchase, or contract of sale of the

dwelling unit or the property of which it is a part, where the tenant is, or stands in the place of, the purchaser;

(3) Residence in a hotel, motel, or other transient lodging whose operation is defined in RCW 19.48.010;

(4) Rental agreements entered into pursuant to the provisions of chapter 47.12 RCW where occupancy is by an owner-condemnee and where such agreement does not violate the public policy of this state of ensuring decent, safe, and sanitary housing and is so certified by the consumer protection division of the attorney general's office;

(5) Rental agreements for the use of any single family residence which are incidental to leases or rentals entered into in connection with a lease of land to be used primarily for agricultural purposes;

(6) Rental agreements providing housing for seasonal agricultural employees while provided in conjunction with such employment;

(7) Rental agreements with the state of Washington, department of natural resources, on public lands governed by Title 79 RCW;

(8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises.

NEW SECTION. Sec. 5. The district or superior courts of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter within the respective jurisdictions of the district or superior courts as provided in Article IV, section 6 of the constitution of the state of Washington.

NEW SECTION. Sec. 6. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of

the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weathertight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

NEW SECTION. Sec. 7. If at any time during the tenancy the landlord fails to carry out the duties required by section 6 of this 1973 amendatory act, the tenant may, in addition to pursuit of

remedies otherwise provided him by law, deliver written notice to the person designated in subsection (11) of section 6 of this 1973 amendatory act, or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control;

(1) Not more than twenty-four hours, where the defective condition deprives the tenant of water or heat or is imminently hazardous to life;

(2) Not more than forty-eight hours, where the landlord fails to provide hot water or electricity;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under section 10 (3) of this 1973 amendatory act;

(4) Not more than thirty days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness.

V Where circumstances beyond the landlord's control, including the availability of financing, prevent him from complying with the time limitations set forth in this section, he shall endeavor to remedy the defective condition with all reasonable speed.

NEW SECTION. Sec. 8. The tenant shall be current in the payment of rent including all utilities which the tenant has agreed V in the rental agreement to pay before exercising any of the remedies accorded him under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing.

NEW SECTION. Sec. 9. If, after receipt of written notice, and expiration of the applicable period of time, as provided in section 7 of this 1973 amendatory act, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

(1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with section 28 of this 1973 amendatory act;

(2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or

(3) Pursue other remedies available under this chapter.

NEW SECTION. Sec. 10. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by section 6 of this 1973 amendatory act, and notice of the defect is given to the landlord pursuant to section 7 of this 1973 amendatory act, the tenant may submit to the landlord or his designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to section 7 of this 1973 amendatory act: PROVIDED, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in subsections (6), (9), and (11) of section 6 of this 1973 amendatory act.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any twelve-month period: PROVIDED, That when the landlord must commence to remedy the defective condition within thirty days as provided in subsection (4) of section 7 of this 1973 amendatory act, the tenant cannot contract for repairs for at least fifteen days following receipt of said bids by the landlord: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by section 6 of this 1973 amendatory act within a reasonable time, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: PROVIDED, That repairs under this

subsection are limited to defects within the leased premises: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one-half month's rent of the unit or seventy-five dollars in any twelve-month period, whichever is the lesser.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the workmen's compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter.

NEW SECTION. Sec. 11. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by section 6 of this 1973 amendatory act; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with section 7 of this 1973 amendatory act or such other time as may be alloted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to section 10 of this 1973 amendatory act for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs: PROVIDED, That the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs: V PROVIDED FURTHER, That such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any one calendar year.

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise.

NEW SECTION. Sec. 12. If a court or arbitrator determines a defective condition as described in section 6 of this 1973 amendatory act to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by section 7 of this 1973 amendatory act, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: PROVIDED, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises.

NEW SECTION. Sec. 13. Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so;

(5) Not permit a nuisance or common waste; and

(6) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: PROVIDED, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee.

NEW SECTION. Sec. 14. The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his dwelling unit,

appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each tenant, a new rule of tenancy may become effective upon completion of the term of the rental agreement or sooner upon mutual consent.

NEW SECTION. Sec. 15. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his intent to enter and shall enter only at reasonable times.

(4) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

NEW SECTION. Sec. 16. If, after receipt of written notice, as provided in section 17 of this 1973 amendatory act, the tenant fails to remedy the defective condition within a reasonable time, the landlord may:

(1) Bring an action in an appropriate court, or at arbitration if so agreed for any remedy provided under this chapter or otherwise provided by law; or

(2) Pursue other remedies available under this chapter.

NEW SECTION. Sec. 17. If at any time during the tenancy the tenant fails to carry out the duties required by sections 13 or 14 of this 1973 amendatory act, the landlord may, in addition to pursuit of remedies otherwise provided by law, give written notice to the tenant of said failure, which notice shall specify the nature of the failure.

NEW SECTION. Sec. 18. If the tenant fails to comply with any portion of sections 13 or 14 of this 1973 amendatory act, and such noncompliance can substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance,

or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. Any substantial noncompliance by the tenant of sections 13 and 14 of this 1973 amendatory act shall constitute a ground for commencing an action in unlawful detainer in accordance with the provisions of chapter 59.12 RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorney's fees.

NEW SECTION. Sec. 19. Whenever the landlord learns of a breach of section 13 of this 1973 amendatory act or has accepted performance by the tenant which is at variance with the terms of the rental agreement or rules enforceable after the commencement of the tenancy, he may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the landlord pursues any remedy under this act.

NEW SECTION. Sec. 20. When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of said months or periods, given by either party to the other.

NEW SECTION. Sec. 21. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals.

NEW SECTION. Sec. 22. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

NEW SECTION. Sec. 23. (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in section 36 of this 1973 amendatory act and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific consent of the tenant to such incident of taking or detention, unless the property has been abandoned as described in section 31 of this 1973 amendatory act, and who, after written demand by the tenant for the return of his personal property, refuses or neglects to return the same promptly shall be liable to the tenant for the value of the property retained, and the prevailing party may recover his costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property.

NEW SECTION. Sec. 24. So long as the tenant is in compliance

with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant;

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

(1) Eviction of the tenant other than giving a notice to terminate tenancy as provided in section 20 of this 1973 amendatory act;

(2) Increasing the rent required of the tenant;

(3) Reduction of services to the tenant;

(4) Increasing the obligations of the tenant.

NEW SECTION. Sec. 25. Initiation by the landlord of any action listed in section 24 of this 1973 amendatory act within ninety days after a good faith and lawful act by the tenant as enumerated in section 24 of this 1973 amendatory act, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of

suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them.

NEW SECTION. Sec. 26. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, such lease or rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, or if all or part thereof may be retained by the landlord as a non-returnable cleaning fee, the rental agreement shall so specify. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises.

NEW SECTION. Sec. 27. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

NEW SECTION. Sec. 28. Within fourteen days after the termination of the rental agreement and vacation of the premises the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant for the amount of refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's

damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees.

NEW SECTION. Sec. 29. (1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) 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, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees.

NEW SECTION. Sec. 30. It shall be unlawful for a landlord to intentionally cause termination of any of his tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his actual damages sustained by him, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity or gas, excepting as resulting from the normal occupancy of the premises.

NEW SECTION. Sec 31. If the tenant defaults in the payment of rent and reasonably indicates by words or actions his intention not to resume tenancy, he shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to

rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in a secure place. A notice containing the name and address of landlord and the place where the property is stored must be mailed promptly by the landlord to the last known address of the tenant. After sixty days from the date of default in rent, and after prior notice of such sale is mailed to the last known address of the tenant, the landlord may sell such property and may apply any income derived therefrom against moneys due the landlord, including drayage and storage. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord.

NEW SECTION. Sec. 32. (1) The landlord and tenant may agree, in writing, except as provided in section 23 (2) (e) of this 1973 amendatory act, to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of section 7 of this 1973 amendatory act: PROVIDED, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of section 9 and subsections (1) and (2) of section 16 of this 1973 amendatory act; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: PROVIDED, That the procedures shall comply with the requirements of chapter 7.04 RCW

(relating to arbitration) and of this chapter.

NEW SECTION. Sec. 33. (1) Unless otherwise mutually agreed to, in the event a controversy arises under section 32 of this 1973 amendatory act the landlord or tenant, or both, shall complete an Application for Arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in section 35 of this 1973 amendatory act.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04 RCW.

NEW SECTION. Sec. 34. The administrative fee for this arbitration procedure shall be seventy dollars, and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: PROVIDED, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the

fee may be waived or deferred.

NEW SECTION. Sec. 35. When a party gives notice pursuant to subsection (2) of section 32, he must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to section 32 of this 1973 amendatory act: PROVIDED, That in no event shall the arbitrator have less than ten days to complete the arbitration process.

NEW SECTION. Sec. 36. A landlord and tenant may agree, in writing, to exempt themselves from the provisions of sections 6, 10, 11, 12, 13, and 19 of this 1973 amendatory act if the following conditions have been met:

(1) The agreement may not appear in a standard form lease or rental agreement;

(2) There is no substantial inequality in the bargaining position of the two parties;

(3) The exemption does not violate the public policy of this state in favor of the ensuring safe, and sanitary housing; and

(4) Either the local county prosecutor's office or the consumer protection division of the attorney general's office or the attorney for the tenant has approved in writing the application for exemption as complying with subsection (1) through (3) of this section.

NEW SECTION. Sec. 37. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or its application to other persons or circumstances, is not affected.

NEW SECTION. Sec. 38. The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of said motion, which shall not be less than six nor more than twelve days from the date of service of said order upon defendant. A copy of said order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. Said order shall notify the defendant that if he fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter.

NEW SECTION. Sec. 39. At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: PROVIDED, That within three days after the service of the writ of restitution the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due and all the costs of the action, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: PROVIDED FURTHER, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a

substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper.

NEW SECTION. Sec. 40. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this 1973 amendatory act, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

NEW SECTION. Sec. 41. On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy.

NEW SECTION. Sec. 42. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy

occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

NEW SECTION. Sec. 43. The provisions of this 1973 amendatory act shall not apply to any lease of a single family dwelling for a period of a year or more or to any lease of a single family dwelling containing a bona fide purchase by the tenant: PROVIDED, That an attorney for the tenant must approve on the face of the agreement any lease exempted from the provisions of this act as provided for in this section. —V

NEW SECTION. Sec. 44. The provisions of RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 shall not apply to any rental agreement included under the provisions of Chapter....(SSB No. 2226).

NEW SECTION. Sec. 45. There is added to chapter 59.04 RCW a new section to read as follows:

This chapter does not apply to any rental agreement included under the provisions of chapter ... (SSB No. 2226), Laws of 1973.

NEW SECTION. Sec. 46. There is added to chapter 59.08 RCW a new section to read as follows:

This chapter does not apply to any rental agreement included under the provisions of chapter ... (SSB No. 2226), Laws of 1973.

NEW SECTION. Sec. 47. Sections 1 through 37 of this 1973 amendatory act shall not apply to any lease entered into prior to the effective date of this 1973 amendatory act. All provisions of this 1973 amendatory act shall apply to any lease or periodic tenancy entered into on or subsequent to the effective date of this 1973 —V

V—amendatory act.

Passed the Senate April 13, 1973.
Passed the House April 9, 1973.
Approved by the Governor April 26, 1973, with the exception of certain items in Sections 6, 7, 11, 19, 23, 24, 25 and 31 and all of Sections 43 and 47 which are vetoed.
Filed in Office of Secretary of State April 26, 1973.
Note: Governor's explanation of partial veto is as follows:

"I am filing herewith to be transmitted to the Senate at the next session of the Legislature, without my approval as to certain items, Substitute Senate Bill No. 2226, entitled: Veto Message

"AN ACT Relating to the lease and rental of property."

This act establishes an elaborate set of contractual relationships between landlords and tenants in residential dwellings. The provisions include regulation of security and damage deposits, conditions under which a tenant may be evicted, dispute settlement between landlords and tenant with regard to the conditions of the premises, and other general responsibilites of tenants and landlords.

Section 6 of the bill sets out obligations. Subsection one requires the landlord to maintain the premises in compliance with applicable codes, statutes or ordinances, but only if such conditions substantially endanger or impair the health or safety of the tenant. This creates a difficult burden of proof for any tenant and would not only deter tenants from using these codes, but could also deprive them of a remedy in many cases of code violation. In subsection four, the landlord is required to provide a reasonable program for control of infestation by insects, rodents and other pests, but exempts single family residences. Since the provision does not require the landlord to control infestation caused by the tenant, there is no reason for exempting single family residences from this provision, and consequently I have vetoed it.

In section 7 the landlord is required to commence remedial action to keep the premises of a tenancy fit for human habitation. This section is designed to meet the problem of landlords who repeatedly promise repairs but

fail to meet those promises. The item consisting of the final four lines in this section provides that the time limitation set forth for remedial action will not be applicable where the landlord fails to meet specified deadlines because of circumstances beyond his control. This has the effect of exempting the landlord from the requirements previously set forth without adequate justification, and I have determined to veto it. Veto Message

In section 8 the tenant is required to be current in the payment of rent, including all utilities he has agreed to pay in the rental agreement, before he may exercise any remedies under this act. In an act which is designed to regulate the relationship between landlords and tenants it is inappropriate that there should also be a requirement that the tenant pay his bills to third parties in order to exercise his rights. Consequently I have vetoed that provision.

In section 11 the court or arbitrator may authorize further corrective repairs for a defective condition if the landlord has not corrected them within a specified time. However, the section limits the court or arbitrator's authority to set the actual value of repairs needed. Decisions will vary with individual circumstances and arbitrary restrictions should not be set upon the court or arbitrator in this regard, when the requirements are clearly otherwise. Accordingly, that item establishing that restriction is vetoed.

In section 19 the landlord is required to give notice to the tenant of any tenant-caused defect which the landlord want remedied. The language as it reads implies that where a landlord has accepted performance by the tenant, even though at variance with the terms of the rental agreement, he may nevertheless serve notice that he is instituting steps to require compliance with the rental agreement. This allows landlords to repudiate their own agreements, and is without justification. Consequently, I have vetoed this item.

In section 23 a landlord is prohibited from taking or detaining the personal property of a tenant unless the tenant has given specific consent to such taking or detention. Such provision may well encourage landlords to

coerce tenants into allowing their possessions to be taken as security for overdue rent. In another portion of the same section there is a requirement that the tenant give a written demand to the landlord for the return of his personal property before he may be granted relief. The effect of such language is to allow a landlord to seize the tenants personal property without penalty if the property is returned after receipt of a written notice. These items are unjustified and I have vetoed them. Veto Message

In section 24 the landlord is prohibited from taking retaliatory action against the tenant because of any good faith and lawful complaint to a governmental authority concerning the landlord's failure to comply with applicable codes, statutes or ordinances; but only if such failure would endanger or impair the health or safety of the tenant. Since it is in the interest of regulatory authorities to receive such complaints, this limitation violates public policy. A tenant should be free to make any good faith report of any violation. In addition this section provides that reprisal and retaliatory action, as defined, excludes eviction of the tenant when the landlord has given 20-days notice to terminate such tenancy. This provision clearly renders the prohibition on retaliatory action meaningless. Therefore, both items are vetoed.

Section 25 further defines retaliatory action by the landlord and creates certain presumptions. One presumption is raised against the tenant if the tenant makes a complaint to a government agency within 90 days of an increase in rent. Thus, for 90 days after an increase in rent a tenant would be deterred from making a good faith complaint of any violation of law for fear a landlord might retaliate. Obviously, this would unduly discourage such complaints and is against public policy. Accordingly, I have vetoed this item.

Section 31 establishes the landlords rights where the tenant has abandoned the premises. One item would allow costs incurred in rerenting the premises, together with statutory court costs and reasonable attorneys fees, to be charged back against the tenant. Such a provision goes far beyond even the common law and cannot be justified. I have therefore vetoed it.

Veto Message

Section 43 establishes a procedure for exempting those who rent a single family dwelling from the requirements of the act. Section 36 already establishes such a procedure, and there is no need for this additional provision. Consequently, I have vetoed section 43.

Section 47 provides that this act shall not apply to any lease or periodic tenancy entered into prior to the effective date of the act. Many tenancies are entered on a periodic basis and there is no sufficient reason to exempt existing tenancies from the provisions of this act. Accordingly, I have vetoed this section.

With the exceptions noted above, I have approved the remainder of Substitute Senate Bill No. 2226."

CHAPTER 208
[Engrossed Substitute Senate Bill No. 2365]
EMERGENCY MEDICAL CARE AND HEALTH SERVICES

AN ACT Relating to emergency medical care and health services; creating a new chapter in Title 18 RCW; prescribing penalties; and establishing effective dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. The legislature finds that a state-wide program of emergency medical care is necessary to promote the health, safety, and welfare of the citizens of this state. The intent of the legislature is that the secretary of the department of social and health services develop and implement a program to promote immediate prehospital treatment for victims of motor vehicle accidents, suspected coronary illnesses, and other acute illness or trauma.

The legislature further recognizes that emergency medical care and transportation methods are constantly changing and conditions in the various regions of the state vary markedly. The legislature, therefore, seeks to establish a flexible method of implementation and regulation to meet those conditions.

NEW SECTION. Sec. 2. The legislature further declares its intention to supersede all ordinances, regulations, and requirements promulgated by counties, cities and other political subdivisions of the state of Washington, insofar as they may provide for the regulation of emergency medical care, first aid, and ambulance services which do not exceed the provisions of this chapter; except

APPENDIX 3

Parsons v. Mierz

Court of Appeals of Washington, Division Two

April 10, 2018, Filed

No. 49324-1-II

Reporter
2018 Wash. App. LEXIS 776 *; 2018 WL 1733519

CHARLES PARSONS ET AL., *Respondents*, v. JOHN PAUL MIERZ, *Appellant.*

Notice: RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

Order Denying Motion to Publish May 31, 2018.

Subsequent History: Reported at *Parsons v. Mierz, 3 Wn. App. 2d 1015, 2018 Wash. App. LEXIS 853 (Wash. Ct. App., Apr. 10, 2018)*

Prior History: [*1] Appeal from Pierce County Superior Court. Docket No: 16-2-07585-7. Judge signing: Honorable Philip K Sorensen. Judgment or order under review. Date filed: 07/29/2016.

Core Terms

dwelling unit, attorney's fees, rental agreement, landlord, Space, tenant, trial court, motor home, occupy, rent, argues, costs, prevailing party, Dictionary

Counsel: For Appellant: Kent Roland Van Alstyne, Phillips Burgess PLLC, Tacoma, WA; Mark Morzol, Tacoma-Pierce County HJP, Tacoma, WA.

For Respondent: Shannon R Jones, Campbell Dille Barnett & Smith PLLC, Puyallup, WA.

Judges: Authored by Rich Melnick. Concurring: Linda Lee, Jill Johanson.

Opinion by: Rich Melnick

Opinion

¶1 MELNICK, J. — John P. Mierz appeals the trial court's award of attorney fees under the *Residential Landlord-Tenant Act of 1973 (RLTA)*[1] to Charles and Carol Parsons.[2] Because the RLTA does not apply to this case, the trial court erred by awarding the Parsons attorney fees. We reverse and remand.

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[1] *Chapter 59.18 RCW.*

[2] Mierz also challenges the trial court's conclusion that "[o]n all issues of law, the court finds in favor of the plaintiffs." Clerk's Papers at 20; Br. of Appellant at 2. Mierz has not provided any substantive argument regarding specific legal conclusions other

FACTS[3]

¶2 The Parsons own Harts Lake Resort ("Resort") located in Pierce County. Mierz occupied "Space 9" at the Resort. He had a motor home there. By oral agreement, Mierz paid the Parsons for utilities and a monthly rent of $365. Mierz's motor home was not a permanent structure at the Resort.

¶3 The Parsons served Mierz with written notice terminating his month-to-month tenancy, effective April 30, 2016. Mierz continued to occupy the premises. He did not pay rent [*2] or utilities for May, June, or July, accumulating $1,095 in past due rent and $180 in unpaid utilities. The Parsons filed an unlawful detainer action.

¶4 After a bench trial, the trial court entered judgment in favor of the Parsons, terminating Mierz's tenancy. The trial court ruled in favor of the Parsons for past due rent, utilities, and possession of the premises.

¶5 When the Parsons requested fees and costs, Mierz argued that the RLTA, the only basis for fees and costs, did not apply to the unlawful detainer action. The trial court scheduled another hearing on the issue of fees and signed a writ of restitution, but it held off on issuing findings of fact or conclusions of law until resolution of the attorney fees issue.

¶6 At the hearing, the Parsons moved for an award of $8,043.50 in attorney fees and $1,110.95 in costs under the RLTA. Mierz argued that the trial court should deny the Parsons' request for fees because the RLTA did not apply to the unlawful detainer action. He argued that neither party could be classified as a "landlord" nor a "tenant" under the RLTA and, therefore, it did not apply.

¶7 The trial court concluded that the Resort was an RV Park and that Mierz's eviction occurred [*3] pursuant to the RLTA. The trial court reasoned that the RLTA applied because the term "dwelling unit" included a structure used as a home and a "landlord" meant the owner or lessor of the dwelling unit or "the property of which it is a part." Report of Proceedings (July 29, 2016) at 9. Therefore, the trial court entered judgment against Mierz and awarded the Parsons $7,500 in attorney fees and $1,110.95 in costs.

¶8 Mierz appeals.

ANALYSIS

I. STANDARD OF REVIEW

¶9 "In Washington, '[a]ttorney fees may be recovered only when authorized by statute, a recognized ground of equity, or agreement of the parties.'" *Wiley v. Rehak, 143 Wn.2d 339, 348, 20 P.3d 404 (2001)* (quoting *Perkins Coie v. Williams, 84 Wn. App. 733, 742-43, 929 P.2d 1215 (1997)*). Whether a statute authorizes an award of attorney fees is a question of law we review de novo. *Niccum v. Enquist, 175 Wn.2d 441, 446, 286 P.3d 966 (2012)*.

¶10 The RLTA allows prevailing parties to recover the costs of suit and reasonable attorney's fees. *RCW 59.18.290*. However, where a person does not occupy his or her residence "pursuant to a rental agreement establishing a landlord-tenant relationship," the RLTA is inapplicable and no attorney fees are available to the prevailing party. *Fed. Nat'l Mortg. Ass'n v. Steinmann, 181 Wn.2d 753, 755-56, 336 P.3d 614 (2014)*.

¶11 We review questions of statutory interpretation de novo. *State v. Reeves, 184 Wn. App. 154, 158, 336 P.3d 105 (2014)*. In interpreting statutes, our goal is to "ascertain and carry out the legislature's intent." *Jametsky v. Olsen, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014)*. We give effect to the [*4] plain meaning of the statute as "derived from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'" *Jametsky, 179 Wn.2d at 762* (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC, 146*

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than those concerning attorney fees. Therefore, we do not address this assignment of error. ***RAP 10.3(a)(6)***; *Brownfield v. City of Yakima, 178 Wn. App. 850, 876, 316 P.3d 520 (2013)*.

[3] Because Mierz does not challenge the court's findings of fact, they are considered verities on appeal. *State v. Lohr, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011)*.

Wn.2d 1, 11, 43 P.3d 4 (2002)). We "need not consider outside sources if a statute is unambiguous." *Jametsky, 179 Wn.2d at 762*.

II. THE RLTA

¶12 In this case, neither party disputes that the RLTA, if applicable, would authorize award of attorney fees to the Parsons. *See RCW 59.18.290(2)*. They dispute whether the RLTA applies.

¶13 Mierz contends it does not. Specifically, Mierz argues that he was not a "tenant," the Parsons were not his "landlords," and the parties did not have a "rental agreement" under the definitions of the RLTA. He argues that because the Parsons did not lease him a "dwelling unit," the other statutory definitions are inapplicable, and the trial court erred by awarding the Parsons their attorney fees under the RLTA. We agree.

¶14 The RLTA applies to Mierz's eviction only if Mierz occupied his motor home "pursuant to a rental agreement establishing a landlord-tenant relationship." *Fed. Nat'l Mortg. Ass'n, 181 Wn.2d at 755*. Therefore, the RLTA only applies if (1) there is a rental agreement, (2) Mierz is a tenant, and (3) the Parsons are landlords. *Fed. Nat'l Mortg. Ass'n, 181 Wn.2d at 755*.

A. Dwelling Unit

¶15 Mierz argues that he has only rented Space [*5] 9 from the Parsons and that it is an "arbitrarily designated portion of real property" that does not meet the definition of "dwelling unit." Br. of Appellant at 8. This argument is critical to his other arguments, as the definitions of "rental agreement," "tenant," and "landlord" all incorporate the definition of "dwelling unit." *RCW 59.18.030(14), (25), (27)*.

¶16 The RLTA defines "dwelling unit" as "a structure or that part of a structure which is used as a home, residence, or sleeping place ... including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes." *RCW 59.18.030(9)*. Though the statute does not provide any definition of "structure," nontechnical words may be given their dictionary definition. *State v. Chester, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997)*. Black's Law Dictionary provides that a "structure" is "[a]ny construction, production, or piece of work artificially built up or composed of parts purposefully joined together." BLACK'S LAW DICTIONARY 1464 (8th ed., 2004). Webster's Dictionary defines "structure" to include: "something constructed or built," as well as "something made up of more or less interdependent elements or parts." WEBSTER'S THIRD NEW INT'L DICTIONARY 2267 (2002).

¶17 Space 9 is not a "structure" under any [*6] ordinary meaning of that term. The Parsons' argument that Space 9 constitutes a "sleeping space" ignores the requirement that a dwelling unit be a "structure" or "part of a structure." Br. of Resp't at 7-8. Therefore, the space Mierz rented from the Parsons to park his motor home and hook up utility lines was not a "dwelling unit." We next apply this conclusion to the critical terms in the statute: "rental agreement," "tenant," and "landlord."

B. Rental Agreement

¶18 Mierz argues that his arrangement with the Parsons was not a "rental agreement" under the RLTA.

¶19 "Rental agreement" is defined by the RLTA as "all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit." *RCW 59.18.030(25)*.

¶20 Space 9 is not a "dwelling unit." The agreement between Mierz and the Parsons was for the rental of ground space and utilities. Therefore, there is no "rental agreement" as defined by the RLTA.

C. Tenant

¶21 Mierz argues that he is not a "tenant" of the Parsons because he is not "entitled to occupy a dwelling unit" by nature of his rental agreement with the Parsons. Br. of Appellant at 7. He argues that he may "occupy his recreational [*7] vehicle wherever and whenever he chooses because he owns it." Br. of Appellant at 7.

¶22 The RLTA defines a "tenant" as "any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement." RCW 59.18.030(27). Whether Mierz was the Parsons' "tenant" turns on whether or not the space he rented from them constituted a "dwelling unit" under the RLTA and whether his arrangement with the Parsons was a "rental agreement." RCW 59.18.030(9), (25).

¶23 Again, Space 9 is not a dwelling unit. Although the location of his motor home on Space 9 was controlled by agreement, Mierz's occupancy of the motor home itself was unaffected. Therefore, Mierz was not the Parsons' tenant under the RLTA.

D. Landlord

¶24 Because the Parsons did not rent a "dwelling unit" to Mierz, he argues they are not his "landlord."

¶25 A "landlord" under the RLTA is defined as the "owner, lessor, or sublessor of the dwelling unit or the property of which it is a part." RCW 59.18.030(14). The RLTA further defines "property" as "all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex." RCW 59.18.030(19). Reading these definitions together, therefore, indicates that a "landlord" is someone who owns "the dwelling [*8] unit" or "all dwelling units on a contiguous quantity of land" of which an individual dwelling unit is part. RCW 59.18.030(19).

¶26 Though Space 9 is not a "dwelling unit," the Parsons argue that they are landlords because Space 9 was the "property" of which Mierz's motor home was a part. Their argument ignores that "property" is defined in the RLTA and "'[t]he statutory definition of a term controls its interpretation.'" State v. Evans, 164 Wn. App. 629, 634, 265 P.3d 179 (2011) (quoting State v. Morris, 77 Wn. App. 948, 950, 896 P.2d 81 (1995)). Here, the Parsons owned only the spaces to which motor home owners hooked up their individual units. They neither owned a dwelling unit, nor all of the dwelling units on a contiguous quantity of land. Therefore, they were not landlords under the RLTA.

E. Conclusion

¶27 Where a person does not occupy his or her residence "pursuant to a rental agreement establishing a landlord-tenant relationship," under the RLTA, no attorney fees are available for the prevailing party. Fed. Nat'l Mortg. Ass'n, 181 Wn.2d at 755-56. Because there was no rental agreement for a dwelling unit, Mierz was not a "tenant" as defined in the RLTA, and the Parsons were not "landlords" as defined in the RLTA, the RLTA does not apply to Mierz's eviction and the trial court erred by awarding attorney fees.

III. ATTORNEY FEES

¶28 The Parsons request an award of reasonable [*9] attorney fees and costs on appeal pursuant to the RLTA.

¶29 *RAP 18.1(a)* provides that if "applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses." The request must include argument and citation to authority to advise us of the appropriate grounds for an award of attorney fees and costs. Osborne v. Seymour, 164 Wn. App. 820, 866, 265 P.3d 917 (2011). The Parsons have cited RCW 59.18.290(2) and 59.18.410 as grounds for their recovery of attorney fees.

¶30 The RLTA provides that "'the prevailing party [in an unlawful detainer action regarding a holdover tenant] may recover his or her costs of suit ... and reasonable attorney's fees.'" Faciszewski v. Brown, 187 Wn.2d 308, 324, 386 P.3d 711 (2016) (quoting RCW 59.18.290(2)). Because the Parsons are not prevailing parties on appeal, we decline to award them costs or attorney fees.

¶31 We reverse and remand to the superior court for further proceedings consistent with this opinion.

¶32 A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

LEE, A.C.J., and JOHANSON, J., concur.

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