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COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON
Case No.: 69798-6-1
(King County Superior Court No.: 11-2-13730-9 SEA)

LINCOLN WARREN LEE II and CARLENE TUDOR LEE,
Appellants,

v.

DOHENY HOMES, LLC, et al.,
Respondents.

APPELLANTS' OPENING BRIEF

MICHELE K. MCNEILL
Attorney of Record for Appellants

SKYLINE LAW GROUP, PLLC
2155 - 112th Ave. NE
Bellevue, WA 98003

Tel: (425) 455-4307
Fax: (425) 401-1833

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I. INTRODUCTION

This case involves a landlord-tenant dispute between the Appellants, Lincoln Warren Lee and Carlene Tudor-Lee, a now-married couple, and Respondents, Doheny Homes, and Brian and Trina Doheny, also a married couple. Appellants lived together at the residence (the “Condo” or “Property”) that is the subject of this dispute, but did not actually get married until after the actions that gave rise to this lawsuit occurred. Respondent, Doheny Homes, LLC, is a property management company and rental depository, and was the landlord of the residence that Appellants rented. Brian and Trina Doheny are the owners of Doheny Homes and the Property in question. Appellant Lincoln Lee fathered a child with Trina Doheny in 1995.

The central issue in this case concerns compliance with the Washington Residential Landlord-Tenant Act (“RLTA”). Mr. Lee executed a lease agreement with a term of eight years with Doheny Homes to rent the Property. Mrs. Lee (then Ms. Tudor) moved into the Property in January 2010, but was never added to the lease, which provided that the Property could have two occupants residing within.

On the morning of December 26, 2010, Appellants awoke to a very cold condo, and an investigation of the premises revealed that the radiant heating system was not working. Appellants were current on rent and otherwise in full compliance with the terms of the lease. The following day, Monday, December 27, 2010, Appellants sent a Notice Requesting

Repairs via certified mail to the same address to which they had sent all rental payments, which was also the same address to which the lease agreement required such notices be sent. The Dohenys admit, and United States Postal Service Track and Confirm webpage confirms, that the Notice Requesting Repairs was delivered to Doheny Homes at 12:43 p.m. on December 28, 2010.

Respondents failed to commence remedial action or so much as even visit the property within the mandatory 24-hour period within which a landlord must commence remedial action when a tenant is left without heat. Mr. Doheny did walk through the property after the 24-hour period had expired, but did not bring a repairman, did not investigate the heating system and gave no timeline on when the heat would be fixed.

On December 30, 2010, Mr. Doheny informed Mr. Lee that Brennan Heating, Doheny Homes' preferred heating company, would not be investigating the heating system until January 4, 2011. The Dohenys admitted that this was the only service company they called and they did not request 24-hour emergency services.

On December 30, 2010, Appellants sent a "Notice to Vacate Because of Unmade Repairs" to Doheny Homes' address, with an expected delivery date of December 31, 2010. Unbeknownst to Appellants, Mrs. Doheny refused to accept the letter.

Appellants vacated the Property on December 31, 2010. Because Respondents had rejected the Notice to Vacate, they were unaware that

Appellants had requested a final walkthrough of the Property on January 1, 2011. When the Dohenys failed to show for the walkthrough, Appellants had a neighbor, David Pry, witness the walkthrough. The Property was left in broom-clean condition.

On March 2, 2011, Mr. Lee initiated a small claims action against Respondents to recover his initial rental deposit, which had never been returned to him as required by the RLTA. At the April 15, 2011 hearing on the small claims action, Respondents informed the court that they had filed an action in Superior Court alleging Breach of Lease and that the issues raised in small claims would be dealt with in Superior Court. Appellants counterclaimed for Constructive Eviction, and Violations of the RLTA. The action proceeded to a bench trial, after which the trial court entered Findings of Fact and Conclusions of Law and a Judgment in favor of Respondents. Appellants now appeal many of those findings of facts and conclusions of law, as well as the judgment.

The key issue for appeal is whether Respondents complied with the RLTA when they failed to commence remedial action within 24 hours to repair Appellants' heating system and/or failed to remedy the defect promptly, and whether Appellants complied with the RLTA by terminating the lease when Respondents failed to do so. The RLTA requires a landlord to commence remedial action within 24 hours of a tenant's notification that the tenant is without heat and that the work be completed promptly. If a landlord fails to do so, a tenant has a number of

remedies, including termination of the lease. The court strained to find in favor of Respondents, in spite of acknowledging that they did not commence remedial action within 24 hours, by concluding that their response was "reasonable," and found it significant that Appellants' Notice Requesting Repairs did not indicate emergency or imminent harm, in spite of the fact that there is no requirement in the RLTA that such notice must do so. The RLTA itself provides that lack of heat is in fact an emergency and potentially life-threatening condition that requires prompt response and repair. The court should have held that Appellants complied with the RLTA and that the Respondents failed to comply with the RLTA.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in its Findings of Fact paragraphs 13-14, 24-26, 28-29, 34-35, and 39.
2. The trial court erred in its Conclusions of Law paragraphs 1-24, and 26-36.
3. The trial court erred by entering its Judgment dated March 2, 2013.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err in finding that Respondents were entitled to judgment in spite of the fact that Respondents did not comply

with the RLTA? (Findings of Fact ("FOF") 29); (Conclusions of Law ("COL") 9-23).

2. Did the trial court err in concluding that Appellants Notice Requesting Repairs was inadequate because it did not indicate an emergency or that the lack of heat threatened the safety of the occupants? (FOF 24-26) (COL 21-22)

3. Did the trial court err in concluding that the Notice Requesting Repairs was "significantly different" than past practice of communications between the parties? (FOF 34) (COL 7-8).

4. Did the court err in concluding that because the means of notification was supposedly different than the past practice of communication between the parties that Appellants' Notice Requesting Repairs was inadequate under the RLTA? (FOF 34) (COL 7-8)

5. Did the trial court err in concluding that Appellants had did not act in "good faith" in terminating their lease agreement and regarding the failure of the heating system at the property? (COL 4, 6, 8, 27-30)

6. Did the trial court err in concluding that Appellants unreasonably delayed Respondents' attempts to fix the heating system? (COL 11-16)

7. Did the trial court err in concluding that the Respondents acted in "good faith" and were "reasonable" in their attempts to repair Appellants broken heating system? (COL 3, 9-12, 17-18, 20).

8. Did the trial court err when it applied the improper standards of "good faith" and "reasonableness" because RCW 59.18.070 requires a landlord to commence remedial action to repair a broken heating within 24 hours and promptly repair and "good faith" and "reasonableness" are not the standards to which landlords are held under the RLTA? (COL 3, 9-12, 17-18, 20)

9. Did the trial court err in concluding that Appellants failed to properly terminate the lease, breached their lease, and were liable for said breach? (COL 5, 26, 31-32)

10. Did the trial court err in assigning significance to the fact that Appellants did not demand that the heating issue be repaired more quickly or expeditiously after learning of the plan for inspection by Brennan Heating? (COL 19)

11. Did the trial court err when it concluded that Respondents met the requirements of RCW 59.18.060(10), which provides that landlords must provide facilities adequate to supply heat? (COL 23)

12. Did the trial court err when it concluded that Respondents properly sent Appellants a statement of deposit within fourteen days of Appellants' termination of the lease under RCW 59.18.280? (COL 24)

13. Did the trial court err when it concluded that the Respondents' damages are the direct result of Appellants' termination of the lease agreement? (COL 33)

14. Did the trial court err when it concluded that Respondents are entitled to damages where the court also concluded that the Respondents failed to mitigate their damages? (COL 25, 34-35)

15. Did the trial court err when it concluded that “the Lees” were liable to Respondents, when Mrs. Lee was not a party to the lease and was not married to Mr. Lee at the time the alleged breach occurred? (COL 31-32)

16. Did the trial court err when it concluded that “the Lees” were liable to Respondents when such a conclusion is unsupported by any finding of fact demonstrating that Mrs. Lee is liable? (COL 31-32).

IV. STATEMENT OF THE CASE

A. Execution and Terms of Lease Agreement

In August 2006, Mr. Lee signed an eight-year lease agreement concerning the Property. Exh. 1. The rental term was for 8 years at \$1,800 per month. *Id.* When the Dohenys asked him for an 8-year term he thought nothing of it at the time, since the parties were all getting along and he had planned to remain in the area for his son that he had fathered with Mrs. Doheny. RP 208-209. After execution of the lease, Mr. Lee was given an unsigned copy of the rental agreement. Exh. 14. His copy had only one address listed for the landlord, Doheny Homes: 600 - 108th Ave NE, Ste. 536, Bellevue, WA 98004. *Id.* His signature was never acknowledged, but Mr. Lee does not dispute that he signed the lease with an 8-year term. RP 202.

Mr. Lee delivered all of his monthly payments to Doheny Homes pursuant to the rental agreement to 600 - 108th Ave NE, Ste. 536, Bellevue, WA 98004. RP 202-209; Exh. 14. The parties agreed that Mr. Lee would pre-pay the last month's rent in the amount of \$1,800 over the course of several months. RP 202-209. \$300 was due at the start of the tenancy, and the remaining \$100 per month was payable over fifteen (15) months. RP 202-203.

On August 7, 2006, Mr. Lee paid the first month's rent in the amount of \$1,800 and included an additional \$300 to be applied towards last month's rent. RP 202-209, Exh. 16. Mr. Lee further paid towards his last month's rent an additional \$100 over and above the rental rate on sixteen (16) rental payments occurring between August 28, 2006 and December 1, 2007 for a total payment of \$1,900. *Id.* Mr. Lee has not received a refund of his last month's rent deposit. *Id.*

On or about January 3, 2010, Appellant Carlene Tudor-Lee (then-Ms. Tudor) moved into the residence but was never added to the lease. RP 309, 320. The lease agreement allowed up to "2 occupants." Exh. 1. Mrs. Lee has two children from her former marriage who were living with their father in California in 2010. RP 309. Mrs. Lee wanted her children to reside with her in Washington. RP 310. In early 2010, she and Mr. Lee discussed with the Dohenys the idea of Mr. Lee being released from his lease or subletting the lease to someone else so they could find a larger place. RP 311-312. The Dohenys would not agree to either option. *Id.*

B. Mrs. Doheny Vowed to Make Mr. Lee's Life "Hell."

From 2003 until 2010, Mr. Lee worked for Trina Doheny at her company, Extend Networks, from which he voluntarily resigned on July 6, 2010. RP 196. Upon Mr. Lee's resignation from Extend Networks in July 2010, the relationship between Mr. Lee and Mrs. Doheny had soured to the point that Mrs. Doheny told Mr. Lee that she would make his life "hell" for doing so. RP 196-197.

On or about August 1, 2010, Mrs. Doheny filed a frivolous petition against Mr. Lee with DSHS Division of Child Support to collect back child support. RP 197. On November 10, 2010, Mrs. Doheny, through her company, Extend Networks, sued Mr. Lee, alleging several claims with no evidentiary support. RP 198. Mr. Lee countersued, and the parties eventually settled the matter out of court in 2011 without costs or fees to either side. RP 198. On December 13, 2010, DSHS ruled that Mrs. Doheny had agreed that Mr. Lee would support his son directly, for which he had ample proof of having done so, and Mrs. Doheny's request for back child support was denied. RP 198; Exh. 40.

C. Appellants' Inquiries Into Other Rental Properties.

In mid-December, Ms. Tudor and her ex-husband agreed that their children, who resided in California at the time, would move to Washington to live with Ms. Tudor sometime in early 2011. RP 310. In mid-December 2010, Mrs. Lee began looking at some residential properties available to rent for herself and her children on Craigslist,

because the Property she lived at with Mr. Lee was too small to accommodate both her and her children. RP 310-313. On or around December 21, 2010, Appellants made some inquiries into one of the rental properties to get information on the property. RP 348.

D. The Radiant Heating System at the Property Stopped Working and Appellants Attempted to Have the Heat Repaired by Respondents.

On Sunday, December 26, 2010, the Appellants and Mrs. Lee's children, who were visiting for the holidays, awoke to a very cold home. RP 216. A quick inspection revealed that the radiant heating system had failed. *Id.* They attempted to light the gas fireplace in the living room, but that was not working, either. Exh. 3. Appellants made arrangements to view one of the properties that Ms. Lee had previously found on Craigslist. RP 317. Mrs. Lee was interested in the property for herself and her children, but Mr. Lee was also interested in the property because he was certain that the Respondents would do everything in their power to make him suffer without heat in retaliation for losing the DSHS petition and for him quitting his job at Extend Networks. RP 249, 310-313. Mr. Lee signed a rental agreement for the second property on the condition that he had 72 hours to back out in the event the heat at his condo was timely restored. Exh. 2, RP 249. Mrs. Lee did not sign the new lease as her credit was not very good. *Id.*, RP 345.

On Monday, December 27, 2010, Mrs. Lee mailed a "Notice Requesting Repairs" via certified mail to Respondents at the only address

listed on Mr. Lee's copy of the rental agreement, which was also the principal business address for Doheny Homes. Exh. 3. Among the items listed in the Notice were: "The radiant heat system is not working and the unit has no heat," and "[t]he gas fireplace will not ignite and is inoperable." *Id.* The Doheny lease agreement required that all notices regarding repairs be sent to Doheny Homes via certified mail. Exh. 1. The address provided for Doheny Homes in Mr. Lee's copy of the rental agreement was the same address that he had mailed or delivered his rent since the inception of his lease. *Id.*

Respondents admit, and the United States Postal Service online Track and Confirm webpage confirms, that the Notice Requesting Repairs was delivered to Doheny Homes on December 28, 2010, at 12:43 p.m. Exh. 19. After confirming receipt online, Mrs. Lee remained in the condo with her son from 12:43 p.m. on December 28, 2010, until 12:50 p.m. the following day, December 29, 2010. RP 322-324. When no one arrived to inspect or repair the heating system within the first 24 hours, she left the condo to run a quick errand. RP 324. Shortly thereafter, Mr. Doheny knocked on the door. *Id.* Mrs. Lee's teenage son was not comfortable answering the door to deal with Mr. Doheny by himself, and since no other person had arrived with Mr. Doheny, Mrs. Lee's son did not answer the door. *Id.*

Mr. Doheny claims to have stopped by the condo early in the evening on December 28, 2010, but there is nothing in the record other

than self-serving testimony to support this. RP 142. Phone records show that he did not call or text the Appellants until 2:28 p.m. on December 29, 2010, or roughly 25.5 hours after he received notice that the Appellants were without heat. Exh. 20. He then sent a text to Mr. Lee at 3:04 p.m. where he mentioned stopping by the Property but no one was home, and he wanted to set up a time for him to go over and “address the things in your letter”. *Id.*

If Mr. Doheny is to be believed, he would have stopped at the condo the night before when he says no one was home but then waited over 21 hours before contacting Mr. Lee by phone. Exh. 20. Mrs. Lee was home during the time that Mr. Doheny claims he stopped by, and she and her son are certain that no one came to the condo until after Mrs. Doheny left to run her errand at 12:50 p.m. on December 29, 2010. RP 322-324. Mrs. Lee’s version of events and the phone records support the fact that Mr. Doheny did not stop by the condo or contact the Appellants until after the initial 24-hour period had expired on December 29, 2010. RP 322-324; Exh. 20.

Shortly after receiving contact from Mr. Doheny on 3:04 p.m. on December 29, 2010, Mr. Lee called Mr. Doheny and they agreed that Mr. Doheny would come to the Property at 5:30 p.m. RP 236. Mr. Doheny eventually arrived at the Property later that evening at about 8:00 p.m. *Id.* He arrived alone without a repairman. *Id.* He briefly walked through the Property. He did not check or inspect the thermostat. *Id.* He did not

check or inspect the heating equipment in the garage. RP 237-239. He did not check or inspect the electrical panel. *Id.* He had no working knowledge of the radiant heating system and only intended to confirm that the heat was actually not working before he called a repair company. RP 238. He was told about the fireplace not working and stated that he was not responsible for fixing the gas fireplace. RP 237.

The Lees had set up a space heater in the living room, but it did not generate enough heat to keep them warm. RP 270. Mr. Doheny did not offer to bring in any additional heaters and expressed doubt that there was actually a heating issue. RP 238. He was confrontational and verbally assaulted Mrs. Lee's teenage son. RP 237. Before he left, Mr. Doheny was given a key to the condo. RP 239. The lock had previously been changed with Trina Doheny's permission, and Mr. Lee had already provided Mrs. Doheny with a copy of the key. RP 239, 254.

Mr. Doheny left the Property without providing the Appellants with any timeline for when the heating system would be inspected or repaired, nor did he tell them he intended to fix it. RP 238. He did exactly what Mr. Lee had anticipated back on December 26, 2010. RP 217.

E. Appellants Terminated Their Lease with Respondents.

On Thursday, December 30, 2010, at or near 12:41 p.m., with no inspection having been performed and no repair plan in place after 48 hours has passed since they notified Respondents of the lack of heat at the condo, Appellants mailed Respondents a "Notice of Intent to Vacate

Because of Unmade Repairs,” pursuant to RCW 59.18.070. Exh. 4. Unbeknownst to Appellants, Respondents refused to accept delivery of the Notice. Exh. 26. Mrs. Doheny would later send a text message to Mr. Lee on January 3, 2011, that she would only accept mail at the Doheny Homes business address via FedEx or UPS overnight. Exh. 29. However, this is not what the lease agreement or the RLTA required and by then Appellants had terminated the lease and vacated the premises. RP 246; Exh. 1.

On December 30, 2010, at 2:03 p.m., Mr. Lee filed a complaint with the King County Department of Development and Environmental Services (DDES) for substandard housing based on lack of heat and his landlord’s failure to communicate any intent to diagnose or repair the heating system. Exh. 23.

On December 30, 2010 at 2:45 p.m., 50 hours after the Dohenys received notice that the heating system had failed, Mr. Lee sent a text message to Mr. Doheny asking him when he could expect to have the heating system repaired. Exh. 20. Mr. Doheny responded that his preferred provider, Brennan Heating, would be out to inspect the heating system on January 4, 2011. *Id.*

The average nighttime temperature between December 26, 2010 and January 1, 2011 was near or below freezing. RP 216. Despite the freezing temperatures, the Dohenys did not contact any other heating repair company other than Brennan Heating, nor did they request

emergency service from Brennan Heating or any other company. RP 114. Mr. Doheny acknowledged in his testimony that Respondents would not have contacted any repairman prior to December 30, 2010, and that Mrs. Doheny did not contact Brennan Heating until that same date. RP 157, 160-161. Mr. Doheny also acknowledged that his visit to the condo on December 29, 2010, was for the purpose of verifying whether the heating system was actually not working, and that he is "certainly not a heating expert." RP 149.

The Appellants vacated the property on December 31, 2010. RP 246. Had the Respondents not rejected delivery of the Appellants' Notice of Intent to Vacate Because of Unmade Repairs, they would have seen Appellants' request for a final walkthrough on January 1, 2011, that was included in the Notice to Vacate. Exh. 4. When the Dohenys failed to show for the final walkthrough on January 1, 2011, Mr. Lee asked a neighbor, David Pry, to witness a walkthrough of the Property. RP 247. Mr. Pry noted the general condition of the unit, which was left in a broom-clean condition, the location of the door keys and garage door opener that were left behind, the thermostat reading at the lowest it could go, and that the radiant heat registered a temperature of 0 degrees. Exh. 28.

On or before January 3, 2011, Mr. Doheny went to the Property to repair the gas fireplace and discovered that the Lees had vacated the premises. RP 184. Despite having the ability to repair the gas fireplace,

he had made no offer to do so when he did his walk-through at the Property on the evening of December 29, 2010. RP 237.

On January 4, 2011, a technician from Brennan Heating went to the Property and inspected the heating system and ordered parts. RP 168-169. The heating system was repaired on January 10, 2011. Exh. 45. Had Appellants not vacated the Property on December 31, 2010, they would have been without heat in sub-freezing temperatures for a total of 15 days. As it was, they had lived without heat for a total of 5 days.

On January 6, 2011, Doheny Homes mailed a letter to Mr. Lee for January's rent and late fees. Exh. 31. The letter listed the address for Doheny Homes as "600 108th Ave NE Suite 536" in Bellevue, Washington. Exh. 31. This is the same address that the Lees used when mailing their rent and notices.

F. Respondents Failed to Refund Mr. Lee's Security Deposit and Respondents Were Untimely in Providing a Basis for Retaining the Deposit.

On January 18, 2011, Respondents mailed a statement of their basis for retention of the deposit to Appellants, a full 18 days after the written notice of termination arrived at Doheny Homes' business address, and at least 15 days after Mr. Doheny visited the Property to fix the fireplace and Respondents had actual notice that Appellants had vacated the Property. Exh. 30.

G. Respondents Failed to Mitigate Their Damages

The Dohenys listed the Property for rent on or about May of 2011 on Craigslist, an online classified advertising site. Exh. 9. The ad had no photographs of the Property until mid-August of 2012. *Id.* Rent was listed at \$1,800 per month until it was dropped to \$1,675 on or about July 30, 2012. Exhs. 34-36. The ads did not allow pets even though Mr. Lee had a cat with him at the Property that he received from Mrs. Doheny. RP 252-253. Respondents used no other means of advertising the Property for rent. Respondents ran ads on Craigslist up until early September 2012, when it was finally re-rented for \$1,600 per month. Exh. 36.

V. ARGUMENT

A. Standard of Review.

The Court of Appeals reviews a trial court's findings of facts to determine whether substantial evidence supports those factual findings, and, if so, whether those findings support the trial court's conclusions of law. *Hegwine v. Longview Fibre Co., Inc.*, 132 Wn. App 546, 555, 132 P.3d 789 (2006). "Substantial evidence" exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true. *In re Estate of Jones*, 152 Wn.2d 1, 8, 100 P.3d 805 (2004). The Court of Appeals reviews questions of law and conclusions of law de novo. *Hegwine*, 132 Wn. App at 556.

B. Appellants' Termination Of The Tenancy Due To Lack Of Heat In The Middle Of A Cold Winter Was Lawful Because Respondents Failed To Commence Remedial Action Within 24 Hours and/or Failed to Promptly Remedy the Defect.

1. Respondents Breached Their Duty To Commence Remedial Action Within 24 Hours and/or Failed to Promptly Remedy the Defect.

RCW 59.18.060 provides in relevant part:

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

...

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

...

(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;

...

RCW 59.18.070 provides in relevant part:

If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him or her by law, deliver written notice to the person designated in RCW 59.18.060(14), 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. The landlord shall commence remedial action after receipt of such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control:

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

...

In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. If completion is delayed due to circumstances beyond the landlord's control, including the unavailability

of financing, the landlord shall remedy the defective condition as soon as possible.

While there is no Washington case that defines what constitutes “remedial action” as that term is used in RCW 59.18.070, the word “remedial” is defined by Encyclopedia Britannica’s Merriam-Webster dictionary as “intended to remedy”¹. Here, the Respondents received a Notice Requesting Repairs from Appellants at 12:43 p.m. on December 28, 2010. Among the items listed in the Notice were: "The radiant heat system is not working and the unit has no heat," and "[t]he gas fireplace will not ignite and is inoperable." However, Respondents did not even show up to the Property until after the 24-hour window to commence remedial action had expired, a fact that the trial court does not dispute.

When Mr. Doheny did finally show up on the evening of December 29, 2010 at around 8:00 p.m., he did so without a repairman, had no working knowledge of the radiant heating system, and did not offer to provide Appellants with any alternative heating devices despite the fact that Appellants had only one small space heater in the living room on the main level (all the bedrooms were located on another floor) and the evening temperature was below freezing. When Mr. Doheny left the Property on December 29, 2010, he did so without providing Appellants any information as to what he or his wife intended to do to repair the heating system.

¹ See <http://www.merriam-webster.com/dictionary/remedial> (last viewed May 19, 2013).

50 hours after Respondents received Appellants notice of needed repairs, the Appellants were finally informed that a heating company would be coming out to diagnose the heating problem, but that they would not be coming out for another 5 days. The Dohenys admitted that they contacted no other heating company and did not request 24-hour emergency services from Brennan Heating. When Brennan Heating arrived at the Property on January 4, 2011 to diagnose the problem, the Property had been without heat for 9 days. It took them another 6 days beyond that to complete the remedial work. Had Appellants not terminated the lease, they would have been left without a functional heating system in below-freezing temperatures for a total of 15 days.

Based on the foregoing, Respondents breached their duties under RCW 59.18.060 (7) and (10) by failing to keep the Property fit for human habitation at all times during the tenancy. Specifically, they failed to maintain the heating system in good working order, and failed to provide facilities adequate to supply heat as reasonably required by the Appellants. Respondents violated the requirements of RCW 59.18.070 when they failed to take remedial action within 24 hours after receiving Appellants' written notice that the Property's heating system had stopped working, and when they failed to take steps necessary to complete the remedial work promptly.

2. *Appellants Properly Terminated The Lease Based on Respondents Failure to Commence Remedial Action Within 24 Hours and/or Failure to Promptly Remedy the Defect.*

If, after receipt of written notice and expiration of the applicable period of time provided for in RCW 59.18.070, a landlord fails to remedy the defective condition within the time allowed, the tenant may in relevant part:

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 or she 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 RCW 59.18.280;

...

RCW 59.18.090(1). The phrase “upon written notice to the landlord” is not specifically defined by the RLTA or Washington case law. While RCW 59.18.070 requires a landlord to have actual notice of the defective condition, RCW 59.18.090(1) simply authorizes termination “upon” written notice to the landlord. Appellants’ position is that this language authorizes termination by mail, postage prepaid, to the last known address of the landlord, and that the termination is effective either upon mailing or delivery of the letter to the landlord regardless of whether the landlord reads or rejects the letter.

The trial court erred in concluding that Appellants breached the terms of Mr. Lee’s lease with Respondents, by amongst other things,

"failing to provide Doheny Homes with proper notice of intention to vacate." COL 26. Appellants' elected to terminate their tenancy and quit the premises in accordance with RCW 59.18.070 and .090. They did so by mailing a "Notice of Intent to Vacate Because of Unmade Repairs" to Doheny Homes to the same address they had mailed their Notice of Requested Repairs. It was the same address that Mr. Lee used to pay his rent, the same address listed on his copy of his lease agreement, and it was the same address listed with the Department of Revenue and the Secretary of State as Doheny Homes' primary place of business. The letter arrived at this address on December 31, 2010. Unbeknownst to Appellants, Mrs. Doheny refused to accept the delivery of the termination letter, and it was returned by the post office weeks later. Mr. Doheny discovered that the Appellants had vacated the Property on or about January 2, 2011 when he went to the Property to repair the gas fireplace.

The termination was based on Respondents failure to commence remedial action within the first 24 hours of receiving notice that the heating system had stopped working and their failure to promptly complete the necessary repairs. It took Respondents 50 hours after receipt of the notice of defects to inform the Appellants that they had scheduled a heating repair company to come out to inspect the heating system, and that it would be another 5 days before they would arrive. When Appellants' mailed their written notice of termination to Doheny Homes, they had been without a working heating system for 4 days in sub-freezing

temperatures. Respondents planned to leave Appellants without heat for another 5 days beyond that, and in the end would have left them without heat for a total of 15 days if the Appellants had not terminated the lease. To add insult to injury, the Respondents never asked for 24-hour emergency services, provided no evidence that they could not afford such services, and made no attempts to contact another heating company who might have been able to get to the Property sooner. The RLTA allows for termination of a tenancy under these types conditions, and personal service of the written termination notice is not required. As such, the trial court erred in concluding that Appellants did not properly terminate the lease.

C. The Trial Court Erred in Concluding that Respondents Did Not Have a Duty to Commence Remedial Action Within 24 Hours Because Appellants Did Not Indicate the Condition Was an Emergency and Did Not Demand that the Heat Be Fixed More Quickly.

In its Conclusions of Law, the trial court concluded that "[t]here was no testimony or evidence presented at trial that the heating issue was a threat to the life, health, or safety of the occupants of the property," and that "[t]here was no testimony or evidence presented at trial that the lack of heat impaired the health or safety of the occupants." COL 21-22. The trial court also concluded that Appellants did not demand that the heat be fixed more quickly. COL 19. However, there is absolutely no requirement in the RLTA that a tenant must "demand" or otherwise request that a landlord fix such a condition "more quickly" in order for a

landlord to be required to commence remedial action to fix a broken heating system within 24 hours. Furthermore, there is no requirement that showing must be made by a tenant or that a Notice Requesting Repairs must indicate that the condition threatens health and safety. As set forth above, RCW 59.18.070 provides that:

If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him or her by law, deliver written notice to the person designated in RCW 59.18.060(14), 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. The landlord shall commence remedial action after receipt of such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control:

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

...

In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. If completion is delayed due to circumstances beyond the landlord's control, including the unavailability of financing, the landlord shall remedy the defective condition as soon as possible.

As the statute clearly states, the burden is on the landlord to ensure that the repairs are completed promptly, and the tenant does not have to demand that a landlord complete such repairs more expeditiously. Furthermore, a condition does not have to be "imminently hazardous to life" to trigger the landlord's duty to commence remedial action within 24

hours. Other conditions, such as lack of heat or electricity, trigger the same duty, without proof that they are imminently hazardous.

Here, Appellants fully complied with the statute when they delivered written notice to Doheny Homes, and the notice specified the nature of the defective condition, which was the radiant heating system had stopped functioning and the gas fireplace was inoperable. Appellants were also not required to demand that Respondents complete repairs more quickly in order for Respondents to be required to comply with the RLTA. Accordingly, the trial court's Conclusions of Law that Respondents were not obligated to commence remedial action within 24 hours and complete repairs promptly because there was no evidence that the lack of heat was threat to the health and safety of the occupants, and because Appellants did not demand that Respondents complete repairs more quickly, are in error and should be overturned.

D. The Trial Court Erred in Concluding That the Method Used by Appellants to Notify Respondents of the Heating Issue was "Significantly Different" Than Past Practice of Communication Between the Parties.

1. Appellants Had Delivered All Rent Payments to the Same Address to Which They Provided The Notice Requesting Repairs.

As set forth above, the only address listed for Doheny Homes in the copy of the lease provided to Mr. Lee was 600 - 108th Ave. NE, Ste. 536, Bellevue, WA 98004. Mr. Lee delivered all of his rent payments to this address throughout the duration of the lease. There simply wasn't anything "different" or unusual about sending the Notice Requesting

Repairs to the same address. Although Mr. Lee may have previously communicated the need to repair an unrelated minor defect at the condo verbally, such communication was made many months before Mrs. Doheny filed a frivolous complaint against Mr. Lee for back child support and sued Mr. Lee for an alleged noncompetete violation after he terminated his employment with Mrs. Doheny. At the time Appellants sent the Notice Requesting Repairs, the Respondents and the Appellants were not on speaking terms.

Accordingly, because the Notice Requesting Repairs was sent to the same address to which Mr. Lee sent his rent and was the only address provided for Doheny Homes in the lease, there was nothing "significantly different" about sending the Notice to this address.

2. *The Notice Requesting Repairs was Provided as Required by the Lease Itself.*

Mr. Lee's copy of the lease required that all notifications or requests for repair be sent by certified mail to Doheny Homes "at the address shown below." Mr. Lee's lease did not have an "address shown below." The only address in Mr. Lee's lease was the same address he had sent his rent, which was the primary business address for Doheny Homes. By sending the Notice Requesting Repairs to the only known and actual principal place of business for Doheny Homes, Mr. Lee complied with the terms of his lease.

3. *Even if, Arguendo, the Method for Providing Notice of the Heating Issue was "Significantly Different," the Notice Still Fully Complied with the RLTA.*

Even if the trial court's Conclusion of Law that the method of Notice was "significantly different" than past practice of communication between the parties is correct, it is irrelevant to the question of whether Appellants' Notice Requesting Repairs complied with the RLTA. As set forth above, when there is a defective condition at a residential rental property, a tenant may notify the landlord by sending written notice of the defective condition to the person who collects the rent, specifying the premises and the nature of the defect. RCW 59.18.070. There is no requirement anywhere in the RLTA that such notice must be consistent with past practice of communication between the parties.

Appellants fully complied with RCW 59.18.070 when they sent the Notice Requesting Repairs to the same address to which Mr. Lee had delivered all of his rent payments, and said Notice specified the premises and nature of the defect, namely that "[t]he radiant heat system is not working and the unit has no heat," and "[t]he gas fireplace will not ignite and is inoperable." It is irrelevant whether this method of notice differed from the past practice of communication between the parties, because it is not a condition of the RLTA that such notice be consistent with anything other than the terms of RCW 59.18.070 itself.

Because Appellants' Notice Requesting Repairs was compliant with the terms of RCW 59.18.070, and the RLTA does not require that

such notice be consistent with past practices of communication, the trial court's conclusions on this issue are in error and should be overturned.

E. The Trial Court Erred in Concluding That Appellants Unreasonably Delayed Respondents' Attempts to Fix the Heating System.

1. Respondents' Ability to Access the Property and Inspect the Heating Issue Was Not Delayed by Mr. Lee's Changing of the Locks.

The trial court erred in concluding that Respondents' ability to access the Property was delayed by Mr. Lee's having previously changed the locks without permission. While Mr. Doheny contends that he attempted to access the Property on the same day the Respondents receive the Notice Requesting Repairs, his self-serving testimony is contravened by the balance of the record.

First, while it is true that Mr. Lee had previously changed the locks on the Property, he notified Mrs. Doheny of this fact and provided Doheny Homes with a copy of the new key prior to the time that the heating issue arose. If Mr. Doheny did not bring the proper key with him to the Property when he allegedly tried to access it on December 28, 2010, that is not the fault of Appellants, and does not constitute an "unreasonable delay" that prevented Respondents from commencing remedial action within 24 hours.

Second, Mr. Doheny's testimony that he attempted to access the Property on December 28, 2010 is in direct contradiction of the testimony of two witnesses and the phone records in evidence. Ms. Lee and her son,

Miles, were present at the condo for the entire 24-hour period after the Respondents received the Notice Requesting Repairs, and neither Mr. Doheny nor anyone else visited the condo during that period. Furthermore, phone records show that Mr. Doheny did not contact Mr. Lee until 3:04 p.m. the following day. It does not make sense that Mr. Doheny would attempt to access the condo on December 28, 2010, be unable to enter, and then delay contacting Mr. Lee to gain access until a full day later.

Because Doheny Homes had a copy of the key to the new locks, and because there is no credible evidence that Mr. Doheny actually attempted to access the property on December 28, 2010, the trial court's Conclusion of Law that Respondents' ability to access the property was delayed by Mr. Lee's changing of the locks is in error and should be overturned.

2. *The Respondents' Ability to Timely Inspect the Heating Issue was Not Delayed Due to Mrs. Lee's Son Not Answering the Door to Let Mr. Doheny Inside the Property.*

As set forth above, Mrs. Lee and her son, Miles, were present at the condo for the entire 24-hour period after Respondents received the Notice Requesting Repairs. Once that period had expired, Mrs. Lee briefly left the property to run an errand. During that time that Mrs. Lee was gone, Mr. Doheny knocked on the door of the condo. Miles, being a minor at home with his younger sister, was not comfortable opening the

door to an adult who was essentially a stranger to him, and did not answer the door.

However, the fact that Miles did not answer the door is irrelevant, because the 24 hour period for Respondents to commence remedial action had already expired. The language of RCW 59.18.070 is unambiguous that a landlord must commence remedial action to repair a lack of heat at its property within 24 hours. "Plain language that is not ambiguous does not require construction." *State v. Evans*, 298 P.3d 724, 727 (2013). Accordingly, even if Miles had answered the door, Respondents had already breached the RLTA by failing to commence remedial action within 24 hours of notification of the failed heating system. Therefore, the fact the Miles did not let Mr. Doheny in is irrelevant and the trial court's conclusion that this unreasonably delayed Respondents' ability to access the property is in error.

F. The Trial Court Improperly Applies "Reasonableness," "Good Faith," and "Bad Faith" Standards That Have No Basis in RCW 59.18.070.

The trial court based its judgment in part on multiple conclusions that Respondents acted "reasonably" and in "good faith," while Appellants acted in "bad faith" and "unreasonably." COL 3-4, 6-12, 16. The court also assigned significance to the fact that Appellants had initiated a lease agreement to reside at another property once the heating issue arose. COL 29. However, such Conclusions of Law have no basis in the 59.18.070

itself, as these are not the standards to which landlords and tenants are held under the RLTA.

1. A Landlord Must Commence Remedial Action No Later Than 24 Hours After Notice that the Heating System Has Failed.

Upon notification from a tenant that the defective condition deprives the tenant of heat, a landlord must commence remedial action as soon as possible, "but not later than" 24 hours. RCW 59.18.070, *Supra*. There is no supplemental language in the RLTA that relieves a landlord of this duty if they act "reasonably" or in "good faith," nor is there case law in Washington that supports this position taken by the trial court. Furthermore, there is nothing in the RLTA that denies a tenant the ability to exercise their rights under the law simply because exercising those rights could also give them an opportunity to attain a more favorable living situation elsewhere. Motives and intentions are simply not contemplated by 59.18.070 and are irrelevant.

The fact is that Appellants provided written notice to Respondents that the heating system had failed that complied fully with the RLTA, and Respondents failed to do anything to remedy the defect within 24 hours. Their failure to do so was not due to circumstances beyond their control. The evidence shows that Mr. Doheny did not even visit the condo until after the 24 hour period had expired, and that he had no working knowledge of heating systems yet went to the Property alone. It was not until after his initial visit that a heating company was scheduled to inspect

the heating system and they were scheduled to arrive 7 days after the Respondents had received notice that the Appellants were without heat. The Respondents admitted that they contacted only one heating company, and that they did not request 24-hour emergency services. Although our courts have yet to define what it means to “commence remedial action,” surely it requires something more than just visiting the property to confirm that the heater is not working or scheduling a repair company to arrive 7 days after notice that the tenant is without adequate heat in the dead of winter. Here, the repair work commenced when Brennan Heating came out to the Property on January 4, 2011, examined the system, and ordered parts. The remedial work was then completed on January 10, 2011. Unfortunately, this was too late according to the RLTA, and the Appellants were well within their rights to terminate the lease and move out.

Therefore, even if, *arguendo*, Respondents did act in good faith and were reasonable in their attempts to commence remedial action, they still failed to meet the standard of the 59.18.070, which imposes on a landlord the duty to commence remedial action to restore heat within 24 hours and to complete the repairs promptly. Accordingly, the trial court erroneously applied the standards of "good faith" and "reasonableness" and the decision should be overturned.

2. *In the Alternative, Respondents Did Not Act Reasonably or in Good Faith.*

In the alternative, should this Court find that "good faith" and "reasonableness" are somehow the standards to which landlords and tenants are held under the RLTA, Respondents' actions in response to Appellants' Notice Requesting Repairs were anything but reasonable or undertaken in good faith. Respondents failed to commence remedial action to fix the heat within 24 hours, as required by the RLTA. When Mr. Doheny did finally visit the Property, after the 24 hour window had expired, Mrs. Lee teenage son was home alone and too intimidated by Mr. Doheny to open the door and face him alone. Mr. Doheny sent a text message to Mr. Lee about an hour later, and they agreed that he would come by the Property at 5:30pm. When Mr. Doheny finally arrived around 8pm, he had no idea that the Property had a radiant heating system or how to repair one. When asked about the non-functional gas fireplace, he told Appellants that fixing the fireplace was "not (his) problem." He then verbally assaulted Mrs. Lee's teenage son who was simply trying to explain why he had not opened the door earlier that day, and Appellants asked Mr. Doheny to leave. Mr. Doheny left the Property without telling the Appellants when the heat would be restored or if the heat would be restored.

The following day, a full 50 hours after notification of the defect was received, Mr. Lee sent a text message to Mr. Doheny to find out when the heat would be fixed, Mr. Doheny responded that his preferred heating company would not be inspecting the system until January 4, 2011 or 6

days after the notice of defects was received. The Appellants did not contact any other heating company other than their preferred company, and they did not make any request for 24-hour emergency services.

Contrary to acting reasonably or in good faith, Respondents behavior was in fact precisely the type of landlord activity the RLTA was designed to address, which is why it imposes a duty on a landlord to commence remedial action to repair a defective heating system within 24 hours of notification of the defective condition and that the work must be completed promptly. Accordingly, should this Court determine that good faith and reasonableness are the appropriate standards to which a landlord is held by the RLTA, the trial court erred in concluding that Respondents acted reasonably and in good faith.

G. Although the Trial Court Properly Concluded that Respondents Failed to Mitigate Their Damages, It Erred When it Concluded that Respondents Were Entitled to the Very Damages They Failed to Mitigate.

1. If the Appellants Did Abandon the Property, Respondents Failed to Mitigate Their Damages.

The trial court held that the Appellants did not lawfully terminate their tenancy but rather they abandoned the Property. COL 26. The trial court also held that the Respondents "did not make a reasonable effort to mitigate their damages and re-rent the property." COL 25. Abandonment requires both a default in rent and vacating the property. RCW 59.18.310. A tenant's voluntary abandonment of a long-term lease gives rise to damages that are the lesser of: 1) the rent due through remainder of the

term; or 2) rent accrued during the period reasonably necessary to rerent the premises at a fair rental value, plus the difference between such fair rental value and the rent agreed to in the prior agreement. *Id.*

A landlord can recover the rent that would be due for the remainder of the term less the amount actually received from subsequent tenants during that time, so long as the landlord makes an “honest and reasonable attempt” to relet the property. *Exeter Co. v. Samuel Martin, Ltd.*, 5 Wn.2d 244, 249, 105 P.2d 83 (1940); *Crown Plaza Corp. v. Synapse Software Sys., Inc.*, 87 Wn. App. 495, 503, 962 P.2d 824, 828 (1997). Also, a landlord should not be allowed damages for any portion of the lease that has not yet occurred on the day of trial where the lease agreement has no acceleration clause. *Myers v. W. Farmers Ass'n*, 75 Wn. 2d 133, 136, 449 P.2d 104, 107 (1969) (trial court erred in giving a judgment which in effect accelerated the due dates of the rent which had not accrued at the time of the judgment).

In the present matter, the Lees lawfully terminated the lease pursuant to RCW 59.18.090, so the abandonment statute RCW 59.18.310 does not apply and Respondents are not entitled to damages. If the termination was unlawful, then the Dohenys had an obligation to mitigate their damages, which they did not do, and Mr. Lee had paid his rent in full through the end of January 2011. Mr. Doheny knew or should have known on or before January 3, 2011 that the Appellants had vacated the Property. Appellants Notice of Intent to Vacate was delivered to Doheny

Homes' principal place of business on December 31, 2010. Mr. Doheny went to the Property to repair the gas fireplace on or before January 3, 2011. The Appellants fully vacated the Property on December 31, 2010, and all keys were left on the kitchen counter. For the next 4 months, the Dohenys did nothing to try and relet the Property. They took no action against the Lees other than to try and collect rent for January until Mr. Lee filed his small claims action on March 2, 2011.

When the Dohenys did finally try and find another tenant, they listed the Property on Craigslist with no photographs. They did not advertise the property anywhere else other than Craigslist. They finally added photographs to their Craigslist ad in August of 2012, more than one year later. They advertised that "no pets" were allowed, which further reduced the rental pool despite the fact that Mrs. Doheny had given Mr. Lee a cat early into his tenancy. They also did not lower the rental rate until July of 2012. Accordingly, the trial court properly held that Respondents failed to make a reasonable attempt to mitigate their damages.

2. Respondents are Not Entitled to Recover Damages Which They Failed to Mitigate.

In spite of concluding that Respondents failed to mitigate their damages, the trial court concluded that Respondents were entitled to damages for a four-month period of time for which they did not even attempt to re-let the Property, plus an additional \$200 per month for the 44

months remaining on Mr. Lee's lease (the difference between Mr. Lee's rental amount and the new tenant's lease amount). COL 34-36. This Conclusion of Law makes no sense in light of the trial court's conclusion that the Respondents did not make a reasonable effort to mitigate their damages.

A landlord may only recover lost rent if the landlord makes an "honest and reasonable attempt" to relet the property. *Exeter Co., Supra*, Wn.2d at 249 (1940); *Crown Plaza Corp., Supra*, 87 Wn. App. at 503 (1997). A landlord is also not allowed damages for any portion of the lease that has not yet occurred on the day of trial where the lease agreement has no acceleration clause. *Myers v. W. Farmers Ass'n*, 75 Wn. 2d 133, 136, 449 P.2d 104, 107 (1969) Here, the lease agreement does not have an acceleration clause, and the trial court properly concluded that Respondents did not make an honest and reasonable attempt to relet the property. Despite this, the trial court awarded Respondents damages for the full lease term and failed to give Appellants any credit for the rent they paid for January 2011. Accordingly, the trial court's award of damages to the Respondents should be reversed.

H. Appellants are Entitled to Recover Mr. Lee's Security Deposit, and Respondents Were Untimely in Providing a Basis For Retaining the Deposit

1. Mr. Lee Paid Doheny Homes a Deposit to Secure Payment of His Last Month's Rent.

The agreed-upon rental rate was \$1,800 per month. Appellants mailed all monthly rental payments to Doheny Homes at 600 - 108th Ave

NE, Ste. 536, Bellevue, WA 98004, the same address listed in Mr. Lee's copy of the Rental Agreement. The parties agreed that Mr. Lee would pay a deposit to secure his last month's rent in the amount of \$1,800 in installments. \$300 was due at the start of the tenancy, and the remaining \$100 per month was payable over fifteen (15) months.

On August 7, 2006, Mr. Lee paid his first month's rent in the amount of \$1,800 and included an additional \$300 to be applied towards his last month's rent. Mr. Lee further paid additional amounts over and above the rental rate on sixteen (16) rental payments occurring between August 28, 2006, and December 1, 2007, for a total deposit of \$1,900.

2. Mr. Lee is Entitled to Recover His Security Deposit.

Respondents have not alleged any damages to the premises that would provide a basis for withholding the deposit, and the statement they did provide to Appellants was not mailed until 18 days after Respondents terminated the rental agreement.

RCW 59.18.280 (Monies Paid as Deposit or Security) provides:

Within fourteen days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within fourteen days after the landlord learns of the abandonment, 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 landlord complies with this section if the required statement or payment, or both, are deposited in the United States mail

properly addressed with first-class postage prepaid within the fourteen days

The notice shall be delivered to the tenant personally or by mail to his or her 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 or she shall be liable to the tenant for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the fourteen days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or 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.

Here, Respondents received Appellants' Notice of Intent to Vacate via certified mail on December 31, 2010 but refused to accept delivery. Respondents did not mail their statement regarding retention of the deposit to Appellants until January 18, 2011, a full 18 days after the notice of termination was delivered to Doheny Homes. Furthermore, the statement did not account for the full deposit amount.

Because the Doheny's failed to provide Mr. Lee with a statement of their basis for retaining the deposit within 14 days after the Appellants terminated the rental agreement or vacated the Property, Mr. Lee is entitled to a full refund of his \$1,900 deposit.

I. Appellants Should Be Awarded Double the Amount of the Security Deposit.

As set forth above, under RCW 59.18.280, a landlord must provide a statement of deposit within fourteen days from the date of the termination of the lease or the date the tenant vacates or abandons the property. RCW 59.18.280 also provides, in relevant part:

The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. . .

Mr. Lee paid Doheny Homes a total deposit of \$1,900. Doheny Homes received Appellants' certified Notice of Intent to Vacate on December 31, 2010, which Mrs. Doheny refused to claim. The Dohenys did not mail a Statement of Deposit until January 18, 2011, or 18 days after the notice of termination was rejected. The Dohenys knew or should have known that Mr. Lee had paid a deposit of \$1,900. The Dohenys knew or should have known that the Lees had terminated Mr. Lee's lease on December 31, 2010. Mrs. Doheny intentionally refused to accept delivery of Appellants' certified Notice of Intent to Vacate. The Dohenys intentionally refused to give Mr. Lee a statement of deposit when due and to refund his deposit. Accordingly, the Lees should be awarded double the deposit in the amount of \$3,800, plus their costs and reasonable attorneys' fees.

J. Appellants Are Entitled to Recover Costs And Reasonable Attorneys' Fees.

In an action to recover a deposit, the prevailing party is entitled to recover costs and reasonable attorneys' fees. RCW 59.18.280. On appeal,

a commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review. RAP 14.2. Statutory attorney fees and reasonable expenses incurred by the prevailing party are amongst the costs the appellate court will award. RAP 14.3. Additionally, the lease agreement between the parties has an attorney's fee provision at Paragraph 27. Under RCW 4.84.330, Attorneys fees and costs are awarded to the prevailing party even when the contract containing the attorneys' fee provision is invalidated. *Labriola v. Pollard Group, Inc.*, 152 Wn. 2d 828, 839, 100 P.3d 791, 796 (2004); *Herzog Aluminum, Inc. v. General American Window Corp.*, 39 Wn.App. 188, 195-197, 692 P.2d 867 (1984) (interpreting RCW 4.84.330). RCW 4.84.330 provides in relevant part:

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

The "prevailing party" means the party in whose favor final judgment is rendered. RCW 4.84.330. Additionally, RCW 4.84.010 allows recovery of certain costs to the prevailing party.

Should the Lees prevail in this matter, then they are entitled to recover the double the \$1,900 deposit that the Respondents held as security for last months' rent, as well as costs and attorneys' fees pursuant

to the lease agreement, RCW 4.84.330, RCW 59.18.280, RCW 4.84.010 and RAP

K. The Trial Court Erred In Concluding that Mrs. Lee Was Liable for Any Damages Because Mrs. Lee Was A Month-to-Month Tenant and Is Not Liable for the Alleged Abandonment That Occurred Prior to Her Marriage.

The trial concluded that “the Lees” are liable to the Dohenys for breach of the agreement, abandonment and default in rent. However this is unsupported by any Finding of Fact as to why Carlene Tudor-Lee should be held liable when she was not a party to the lease and was not married to Mr. Lee at the time the alleged breach occurred. Carlene Tudor-Lee did not sign a written lease with the Dohenys. She did not move into the Property with Mr. Lee until January 3, 2010. She did not marry Mr. Lee until after she and Mr. Lee had moved out of the Property. At most, Carlene Tudor-Lee was a month-to-month tenant, and since the Doheny lease agreement allowed “two persons” to occupy the Property, her occupancy was not in violation of the lease.

As a month-to-month tenant, she terminated her tenancy in writing at the end of December and the rent for January 2011 had been pre-paid by Mr. Lee. Even if this Court should find that there was a breach on the part of Mr. Lee, the Court should find that Mrs. Lee has no personal liability in this matter and she cannot be held liable for any debt or wrongdoing of Mr. Lee that occurred prior to their marriage. RCW 26.16.200 states:

Neither person in a marriage or state registered domestic partnership is liable for the debts or liabilities of the other incurred before marriage or state registered domestic partnership, nor for the separate debts of each other . . . PROVIDED, That the earnings and accumulations of the spouse or domestic partner shall be available to the legal process of creditors for the satisfaction of debts incurred by such spouse or domestic partner prior to the marriage

The Dohenys have no valid claim against Carlene Tudor-Lee and the trial court erred when it concluded that “the Lees” were liable to the Dohenys when this conclusion is unsupported by any Findings of Fact. Mrs. Lee also seeks recovery of her attorneys’ fees and costs pursuant to the lease agreement, RCW 4.84.330, RCW 59.18.280, RCW 4.84.010, and RAP 14.2-14.3.

VI. CONCLUSION

Based on the analysis set forth above, Appellants respectfully requests that this Court reverse the trial court’s holdings and award damages, attorneys’ fees and costs to Appellants.

Respectfully submitted this 20th day of May, 2013.


MICHELE K. MCNEILL
Attorney for Appellants
WSBA #32052

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON
Case No.: 69798-6-1
(King County Superior Court No.: 11-2-13730-9 SEA)

LINCOLN WARREN LEE II and CARLENE TUDOR LEE,
Appellants,

v.

DOHENY HOMES, LLC, et al.,
Respondents.

CERTIFICATE OF SERVICE

MICHELE K. MCNEILL
Attorney of Record for Appellants

SKYLINE LAW GROUP, PLLC
2155 - 112th Ave. NE
Bellevue, WA 98003
Tel: (425) 455-4307
Fax: (425) 401-1833

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COURT OF APPEALS, DIVISION 1
STATE OF WASHINGTON

I, Patti Pugh, certify that I directed Appellants' Opening Brief to be served by

Legal Messenger on May 20, 2013, to the following:

Shawna Lydon
Betts Patterson Mines
One Convention Place
701 Pike Street
Suite 1400
Seattle, WA 98101
Slydon@bpmlaw.com
(206) 268-6747

Dated: May 20, 2013.



Patti Pugh
Assistant to Michele K. McNeill
Skyline Law Group
WSBA # 32052
2155 112th Ave. NE
Bellevue, WA 98004
425-455-4307
Attorney for Appellants