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NO. 98024-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THOMAS SILVER,

Petitioner,

v.

RUDEEN MANAGEMENT COMPANY, INC.,

Respondent.

AMICUS BRIEF

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

Northwest Consumer Law Center ("NWCLC") is a nonprofit law firm aimed at advancing economic justice. NWCLC is the only organization in Washington State that focuses solely on consumer legal issues. While based in Seattle, NWCLC has represented and counseled thousands of low and moderate income consumers throughout Washington State since opening its doors in 2013. NWCLC frequently represents consumers facing loss of their housing or collection of landlord/tenant debt, recognizing these issues are the primary barrier to secure safe and stable housing for NWCLC clients. As a result of this work, NWCLC is well versed in issues related to Washington's housing and rental markets, especially as they are experienced by low-income Washingtonians.

As the tenant addresses in his brief, the language of Washington's Residential Landlord Tenant Act ("RLTA") and related case law favor a three-year statute of limitations. This brief offers additional authority supporting that conclusion and provides the Court with additional information about the policies underlying the RLTA and modern day landlord-tenant issues. NWCLC seeks to protect not only the interests of our clients—who, as low and moderate income renters, will likely be impacted by the Court's selection of a statute of limitations for RCW 59.18.280 — but also the public's interest in the proper development of

the law. Pursuant to Washington Rule of Appellate Procedure 10.6(a), NWCLC certifies that all parties have consented to the filing of this brief.

II. INTRODUCTION

When a landlord keeps a tenant's deposit, and the tenant sues to recover that lost money, it is fundamentally an "action for the specific recovery" of detained "personal property" governed by RCW 4.16.080(2)'s three-year statute of limitations. The fact that the legislature recognized that such abuses were pervasive in landlord tenant relationships and included a specific provision in the RLTA that offers additional protections for tenants in recovering their deposits does not change the fundamental property right at stake.

The nature of the RLTA as a remedial statute also justifies considering its pro-tenant policies and modern-day housing issues in selecting an appropriate statute of limitations. The growing affordable housing crisis in Washington renders the RLTA's protections both more necessary and more difficult to access now than when the Act was passed. The more forgiving three-year statute of limitations under RCW 4.16.080(2) better allows tenants a chance to avail themselves of the protections that the RLTA promises.

III. ARGUMENT

A. The Court of Appeals failed to analyze the right invaded and whether there was a legal obligation imposed by law as required under this Court's precedent.

The Court of Appeals correctly identified that the "ultimate question" with respect to the proper statute of limitations "concerns the nature of the right invaded." *Silver v. Rudeen*, 10 Wn.App.2d 676, 680, 449 P.3d 1067, 1069 (2019). But rather than focusing on the invaded right—the tenant's interest in his deposit, the court simply decided that because the tenant brought his claims under the RLTA, this was not an action for the return of personal property.[1] The Court of Appeals decision is at odds with this Court's decision in *Seattle Professional Engineering Employees Association v. Boeing*, 139 Wn.2d 824, 991 P.2d 1126 (2000) ("*SPEEA*"), *opinion corrected on denial of reconsideration*, 1 P.3d 578 (Wash. 2000). *SPEEA* involved an appeal related to claims that Boeing violated Washington's minimum wage statute.[2] Similar to this case, the parties contested which statute of limitation applied, RCW 4.16.080 or RCW 4.16.130. This Court focused on the right at issue—the employees' right to be paid based on a "legal obligation imposed in law." *Id.* at 838.

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[1] The Court of Appeals also based its opinion on the erroneous finding that Mr. Silver did "not assert that he did less than $300 damage to the apartment." *Silver*, 10 Wn.App.2d at 680. This is incorrect. As Mr. Silver points out in his supplemental brief, he disputed the amount alleged due. *See* Pet'rs' Suppl. Br. 8.

[2] *Seattle Professional* also involved contract allegations but this Court held that the contract limitations period did not apply because there was no contract for the labor. *Seattle Prof'l*, 139 Wn.2d at 837.

Ultimately, this Court held that the three-year statute applied because "the employees are in essence seeking recovery under an obligation imposed by law, and the WMWA, for Boeing's unjust enrichment." *Id.*

Here, tenant seeks to recover his property, the deposit, under an obligation imposed by law and the RLTA. As the tenant asserted in his briefing, the RLTA makes it clear that a tenant retains a property interest in her deposit because it requires that the landlord place the deposit in a separate trust account. *See* Pet'rs' Suppl. Br. 1–3 (citing RCW 59.18.270). The tenant's view is supported by commentators in Washington and beyond. *See* 17 *Wash. Practice*, *Real Estate* § 6.53 (2d ed.) ("No part of the deposit belongs to the landlord unless and until the tenant breaches."); *Restatement (Second) of Prop.: Landlord & Tenant.* § 12.1 (1977) ("In the absence of a manifestation of a contrary intent, the landlord becomes a debtor of the tenant in the amount of the deposit . . . On the termination of the lease, unless the obligations of the tenant that are secured by the security deposit extend beyond the termination, the landlord is obligated to pay to the tenant the amount of his indebtedness.").

The Court of Appeal's analysis of whether the action was based on a statutory versus common law right is more akin to the analysis in *Cannon v. Miller*, 22 Wn.2d 227, 155 P.2d 500 (1945), which this Court overruled in *SPEEA*. 139 Wn.2d at 837. In *Cannon*, the Court's analysis

centered on whether the action was created by statute or contract and "did not address whether the violation fell within the "injury to persons or rights of another" language of the three-year statute of limitations. *SPEEA*, 139 Wn.2d at 837; *Cannon*, 22 Wn.2d at 248–49. *SPEEA* made it clear that the focus of the analysis is the nature of the right at issue and whether there is a "legal obligation imposed in law." 139 Wn.2d at 838; *see also Sorey v. Barton Oldsmobile,* 82 Wn. App. 800, 805, 919 P.2d 1276, 1278 (1996) ("All of the discussion about 'a liability created by statute' is a red herring . . . . [A]n action on a liability created by statute may, or may not, fall within the two-year catchall statute.") (quoting *State ex rel. Bond v. State*, 59 Wn.2d 493, 497–98, 368 P.2d 676 (1996)).

The landlord acknowledges that the fundamental question is "whether there is a legal obligation imposed at law," Resp't Suppl. Br. 16, and that a "violation of a statute supplementing [a person's right] is also afforded the three-year statute of limitations." Resp't Br. 4. The relief sought by the tenant was the return of his deposit. Yet, the landlord asserts that a landlord has no legal obligation, absent the RLTA, to return a deposit at the close of a tenancy. Resp't Suppl. Br. 11. This is not so. As noted above, and throughout the tenant's briefing, it is well established that a tenant has a property right in his deposit. That the deposit may be forfeited under certain circumstances does not change the tenant's essential rights or the legal obligation of the landlord to return to the

tenant the tenant's property. This is underscored by the Court of Appeals' acknowledgement that the tenant would have a common law right to seek the return of his deposit. *See Silver*, 10 Wn. App. 2d at 680.

The language of the RLTA also supports the tenant's claimed property interest in the deposit. Specifically, in RCW 59.18.285 the legislature differentiated deposits from nonrefundable fees and provided that the latter must be clearly defined as such. If deposits were not designed to be refundable there would be no need for this provision.

The fact that the RLTA contains provisions that supplement a tenant's common law rights does not diminish those rights. The RLTA was created to supplement the common law on landlord tenant relations. 17 *Wash. Practice, Real Estate* § 6.1 (2d ed.) ("The great bulk of Washington law on landlord-tenant relations is contained in decisions of the Washington State Supreme Court and the Washington State Court of Appeals . . . Statute law, though important, is supplemental."). The deposit provisions were created as "a response to complaints that landlords were wrongfully retaining damage and security deposits, which has probably been the most frequent form of landlord-tenant dispute." William Stoebuck, *The Law Between Landlord and Tenant in Washington: Part II*, 49 Wash. L. Rev. 1013, 1032 (1974); *see also* Don Clocksin, *Washington's Residential Landlord-Tenant Act of 1973*, 27 Wash. St. B. News 4, 6 (1973) ("The Washington act finally gives some statutory

attention to the problem of deposits.”). The act itself explicitly reserves the right to seek remedies otherwise provided by law. RCW 59.18.070, .090, .160, .170.

This Court recently affirmed that the RLTA supplements rather than supersedes common law tenant rights in *Gerlach v. Cove Apartments, LLC*, 97325-3, 2020 WL 5048574 at *7 (Wash. Aug. 27, 2020). In *Gerlach*, this Court analyzed the relationship between the habitability duties imposed on landlords under the RLTA versus common law. This Court acknowledged similarities in the duties the statute and common law impose, but emphasized that it “[has] never held that that statutory language creates a warranty, much less that it subsumes the common law warranty of habitability.” *Id*. at *7. The provisions of the RLTA add supplemental protections for tenants and disincentivize landlords from invading tenants’ property interests. They do not, however, subsume the property interest at the core of the tenants’ claim.

Because the fundamental right at issue is the return of the tenant’s property, the three-year statute of limitations in RCW 4.16.080(2) should apply. *See Stenberg v. Pac. Power & Light Co., Inc.*, 104 Wn.2d 710, 720, 709 P.2d 793 (1985) (“The language of RCW 4.16.080(2) is clear and should apply to any other injury to the person or rights of another not enumerated in other limitation sections.”); *see also Sorey*, 82

Wn. App. at 802 (1996) (applying three-year statute where claim "f[e]ll[] generally within the purview of 'any other injury to the person . . . .'").

B. A three-year statute of limitations comports with the liberal policies underlying the deposit provision of the RLTA.

Principles of justice and contemporary needs also inform the statute of limitations analysis under Washington law. In *Stenberg v. Pacific Power & Light Co*., this Court counseled that

> [i]n applying a limitation statute, this court has insisted on a careful scrutiny of the changing conditions and needs of the times to prevent any application of the common law as an instrument of injustice. When there is uncertainty as to which statute of limitation governs, the longer statute will be applied.

104 Wn.2d at 714–15. The present case provides more than uncertainty. In addition to the property rights at issue, considerations of public policy render the three-year statute of limitations the most logical choice. In *Lewis v. Lockheed Shipbuilding & Construction Co*., this Court underscored the relationship between the policies underlying a statute and the appropriate statute of limitations, stating:

> Further support for applying the 3-year statute is found in the Legislature's directive that RCW 49.60 be liberally construed. Thus, even if the arguments favoring application of the 2 and 3-year statutes were otherwise fairly equal, applying the 3-year statute better supports the liberal policies underlying the Law Against Discrimination.

36 Wn. App. 607, 613, 676 P.2d 545, 548 (1984) (internal citations omitted).

The RLTA is a remedial statute. Its purpose is "to protect several tenant interests susceptible to the landlord's 'upper hand,' which is especially strong in times of housing shortages." Thomas Bothwell, Comment, *Washington Tenant Remedies and the Consumer Prot. Act*, 10 Gonz.L.Rev. 559, 561–62; *see also id.* at 575 ("The legislative and case law developments [related to the RLTA] offer Washington tenants several potential means of enforcing rights unavailable to their predecessors" and reflect[] a 'pro-tenant' public policy . . . that is cognizant of and disturbed by the landlord's traditional power to dictate terms of the rental agreement and the (inevitable?) abuse of that power."); Stoebuck, *supra*, at 1092 ("most who advocated and voted for the . . . wanted to help out tenants, particularly lower-income ones, who were suffering the ill effects of rundown housing."). As such, the RLTA should be "construed liberally in order to accomplish the purpose for which it is enacted." *C.f. State v. Douty,* 92 Wn.2d 930, 936, 603 P.2d 373, 376 (1979) (analyzing the Uniform Parentage Act RCWA 26.26.010). The plain language of the statute, its history, and public policy support a liberal construction of the deposit provision and application of the three-year statute of limitations.

1. <u>The RLTA generally and the deposit section specifically evidence legislative intent to protect tenants.</u>

When construing a statute, "[t]he court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain

meaning as an expression of legislative intent." *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9–10, 43 P.3d 4, 9 (2002). This does not mean looking only at the words of the provision at issue. *Id*. Instead, Washington courts look to the entire "context of the statute in which the provision is found, [as well as] related provisions, amendments to the provision, and the statutory scheme as a whole." *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 789, 432 P.3d 805, 809 (2019), *cert. denied*, 139 S. Ct. 2647, 204 L. Ed. 2d 284 (2019) (internal quotations omitted).

Where, as here, the legislature provides for costs and attorneys' fees, it indicates a strong legislative intent to assure that the provisions of the Act are enforced. In *Schilling v. Radio Holdings, Inc.*, this Court explained: "By providing for costs and attorney fees, the Legislature has provided an effective mechanism for recovery even where wage amounts wrongfully withheld may be small. This comprehensive legislative system with respect to wages indicates a strong legislative intent to assure payment to employees of wages they have earned." 136 Wn.2d 152, 159, 961 P.2d 371, 374–75 (1998) (internal citations omitted). This Court looked to these enforcement mechanisms in reaching its conclusion that the wage statute "must be liberally construed to advance the Legislature's intent to protect employee wages and assure payment." *Id*.

The RLTA, like the wage statute in *Schilling*, offers a comprehensive remedial system. It allows for costs and attorney fees in four circumstances: retaliatory actions (RCW 59.18.250), wrongful exclusion from leasehold (RCW 59.18.290), intentional termination of utilities (RCW 59.18.300) and recovery of deposits (RCW 59.18.280). The recovery of deposits also allows for double damages. RCW 59.18.280(2). Like the wage amounts at issue in *Schilling*, deposits are typically small quantities of money. The inclusion of a provision allowing for attorney fees, costs, and multiplication of damages suggests that RCW 59.18.280 should be liberally construed to advance the legislature's intent to protect tenants' deposits.

2. Public policy supports application of the three-year statute.

As noted above, the RLTA was originally created to protect tenant interests susceptible to the landlord's 'upper hand,' which is especially strong in times of housing shortages. Bothwell, *supra*, at 559; *see also* William H. Clarke, *Washington's Implied Warranty of Habitability: Reform or Illusion*, 14 GONZ. L. REV. 1, 8 (1978) ("the 'well documented' inequality of bargaining power between landlord and tenant in the typical modern residential setting... is partly due to the frequent severe shortage of adequate housing found in many areas.") (internal citations omitted).

The importance of the RLTA's pro-tenant protections are perhaps more important now than at any time in the state's history. Soaring rent prices, stagnant wages, and housing shortages have combined to create a serious housing crisis in Washington State. In its 2019 report on homelessness in Washington State, the State Department of Commerce noted that "[r]ents have increased 48% in the past eight years, primarily due to growing incomes and an undersupply of new units to house Washington's growing population" Washington State Department of Commerce, *Homelessness in Washington 2019 Annual Report on Homelessness in Washington State*, 2 (2019), (internal citations omitted).[3] A report by the the National Law Center on Homelessness & Poverty observed that the number of renters nationwide has spiked since the 2007-2008 housing crash, that the majority of these renters are low income, and that presently, "the rise of renter households has led to historically low rental vacancy rates...its lowest level in thirty years." Nat'l Law Ctr on Homelessness & Poverty, *Protect Tenants, Prevent Homelessness*, 10– 11 (2018).[4] The report spotlighted Seattle for its sparse rental market and the fact that its median rents having risen at twice the national pace and identified Seattle as one of four cities having

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[3] *Available at* https://www.commerce.wa.gov/wpcontent/uploads/2020/02/Homelessness-in-Washington-State_final.pdf.

[4] *Available at* https://nlchp.org//wpcontent/uploads/2018/10/ProtectTenants2018.pdf.

a “particularly strong” relationship between rental costs and homelessness. *Id*.

Despite this crisis and the remedial intent of the RLTA, many tenants face significant barriers in enforcing their rights. *See State v. Schwab*, 103 Wn.2d 542, 554, 693 P.2d 108, 114 (1985) (Justice Dore dissenting). “The tenant confronting the difficulty of finding an available dwelling, or the tenant impressed by the psychological hardships often associated with relocating a family, may be reluctant to fully assert his rights.” Bothwell, *supra*, at 562. The difficulty in securing affordable housing can have collateral consequences by complicating tenants’ ability to receive regular mail. Tenants may be delayed in learning that a landlord has violated their deposit rights while their housing situation is in flux. The statute acknowledges the issue of finding former tenants – requiring landlords to either deliver the deposit and or accounting in person or to the tenant’s last known address. 59.18.280 (1)(b). There is no guarantee however that a tenant’s last known address will still be accessible to him or her.

Compounding the scarcity of affordable housing is a scarcity of legal aid for low income families. Washington has only 1.09 legal aid attorneys for every 10,000 people in poverty. Nat’l Center for Access to Justice, *Findings: Attorney Access Index* (2016) https://justiceindex.org/2016-findings/attorney-access/#site-navigation.

A 2018 study found that more than half of tenants facing eviction in Seattle did not receive any kind of legal assistance during the course of the process. Seattle Women's Commission & KCBA, *Losing Home: The Human Cost of Eviction*, 80 (2018) https://www.seattle.gov/Documents/Departments/SeattleWomensCommission/LosingHome_9-18-18.pdf. Considering that the majority of renters are low income, and that approximately 27.8% of renters state wide experience at least one rental housing legal problem per year, the lack of legal aid resources can prohibit renters from enforcing their rights under the RLTA. Office of Civil Legal Aid & Washington State Supreme *2015 Civil Legal Needs Study Update*, 10 https://ocla.wa.gov/wpcontent/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf. Further complicating a tenant's ability to bring actions under the RLTA is a lack of awareness of tenants' rights. A 2018 study on the rate of evictions and tenant issues found that the City of Seattle has not made "anywhere near" a sufficient level of tenants' rights education. Seattle Women's Commission & KCBA, *supra*, at 81. Even where tenants understand their rights, their priorities are likely first to secure new housing in a difficult market before expending time and money on litigation against a previous landlord.

The NLCHP report concluded that "[s]trong renters' rights can help prevent and end homelessness by promoting housing affordability,

limiting housing displacement through eviction, and prohibiting discriminatory barriers to new housing access." NLCHP, *supra*, at 48. "Careful scrutiny of the changing conditions and needs of the times" urges a protective holding, one that allows tenants three years to bring actions under the deposit section of RLTA. *Stenberg*, 104 Wn.2d at 714–15.

IV. CONCLUSION

For the foregoing reasons, the Court should overturn the lower court's decision and apply RCW 4.16.080's three-year statute of limitations to claims arising from the deposit section of the RLTA, RCW 59.18.280. Such a ruling comports with the liberal policies underlying the RLTA and accounts for the increasing difficulties faced by tenants in enforcing the RLTA's provisions.

RESPECTFULLY SUBMITTED AND DATED this 4th day of September, 2020.

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 4th day of September, 2020.

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