Supreme Court No. 1029926
Court of Appeals No. 85901-3-I

SUPREME COURT
OF THE STATE OF WASHINGTON

EIGHT IS ENOUGH,

Petitioner/Cross-Respondent,

v.

CYNTHIA OHLIG,

Respondent/Cross-Petitioner.

RESPONSE TO CYNTHIA OHLIG'S PETITION FOR REVIEW

By:

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1. IDENTITY OF RESPONDENT

EIGHT IS ENOUGH, is the Petitioner and Cross-Respondent that hereby responds to Cynthia Ohlig's Petition for Review.

2. ANSWER TO ISSUES PRESENTED TO REVIEW

2.1. There is no conflict between Division Two's decision regarding a trial court's authority to issue a judgment for back owed rent and holdover amounts at a show cause hearing and any other published (or unpublished) case law.

2.2. Because there is no legitimate nor meritorious argument regarding whether a trial court may enter a judgment for back owed rent at a show cause hearing—they can, have done so for decades, and no legitimate reason exists for them not to be able to—there is no substantial public interest or policy justifying this Court take review.

3. RESTATEMENT OF THE CASE

3.1. Eight is Enough rented to Ohlig in 2015. (CP at 73). The rent for this three-bedroom single family home has never

increased and remained far below market rates at $895.00 per month. (CP at 7). Over 120 days of notice was given notifying Ohlig that the owners of the property were selling it. (CP at 162). The termination date of the notice was September 30, 2022. (CP at 15-16).

3.2. Ohlig paid rent June of 2022 (CP at 4, 182). Ohlig then stopped paying rent in July of 2022 and never paid rent thereafter. (CP at 4, 182).

3.3. Ohlig did not vacate on September 30, 2022. As required by the termination notice. (CP at 4, 182). A reasonable payment plan for back owed rent was offered on October 1, 2022, but she ignored it and refused to make payments on back owed rent due. (CP at 4, 19, 182).

3.4. Eight is Enough filed its verified Complaint on October 17, 2022. (CP at 4, 7, 182). At the time the Complaint was filed, Ohlig, owed "Back due rent/holdover charges in the amount of $895.00 per month, for the months of July of 2022 through October of 2022, totaling $3,580.00." (CP at 4, 7, 182).

The basis of the complaint was the 90 day notice to sell the property that terminated the tenancy on a date certain and did not provide any opportunity for a tenant to cure (there is no ability for the tenant to cure; rather, the tenant must vacate by the termination date stated in the notice because the property is being sold) or reinstate the tenancy. (CP at 4, 16, 182).

3.5. On November 10, 2022, Ohlig answered the complaint with appointed counsel. (CP at 64). As Division Two noted in its decision, she did not contest any amount of any back owed rent or holdover amounts owed. (CP at 64).

3.6. A show cause hearing was set for November 18, 2022. (CP at 29-30). The trial court issued an order for a writ of restitution finding no genuine issues of fact, including as towards back owed rent and holdover amounts. (RP at 8, 101-04). Under RCW 59.18.380 and decades of case law, the trial court entered a judgment for back owed rent, holdover amounts, attorney fees, and costs. (CP at 101-04).

3.7. In pertinent part on appeal, Ohlig argued that a

judgment for back owed rent and holdover amounts was error because the eviction notice was not a pay or vacate notice. (Brief of Appellant, filed 04/21/23).

3.8. As to this issue on appeal, Division Two held "[u]nlawful detainer actions under RCW 59.18 are special statutory proceedings with the limited purpose of hastening recovery of possession of rental property . . . *plus incidental issues such as restitution and rent, or damages*." *Eight Is Enough, LLC. v. Ohlig*, 85901-3-I, 2024 WL 913857, at *8 (Wash. Ct. App. Mar. 4, 2024) (emphasis in original) (citing *Phillips v. Hardwick*, 29 Wn. App. 382, 385-86, 628 P.2d 506 (1981)). "In other words, a landlord may seek owed rent under the RLTA not only in evictions based upon the tenant's failure to pay; actions based on a failure to pay rent are one of many instances where rent can be sought." *Id.*; *see also Webster v. Litz*, 18 Wn. App. 2d 248, 253, 491 P.3d 171 (2021) (citing RCW 59.18.380). In affirming the trial court's authority to award back owed rent and holdover amounts in a judgment obtained at a

show cause hearing, Division Two noted that no issues of fact existed as "Ohlig . . . d[id] not contest the landlord's assertion that she stopped paying rent in July of 2022 nor the amount of rent owed." *Eight Is Enough*, 85901-3-I, 2024 WL 913857, at *8.

3.9. In her Petition for Review, Ohlig argues that Division Two erred in affirming the trial court's authority to enter a judgment for back owed rent and holdover amounts for the following reasons:

- There is substantial public interest in "determining" whether trial courts have the authority enter judgments for damages including back owed rent and holdover amounts when the eviction notice issued is not one for failure to pay rent.

- Tenants should have the ability to reinstate tenancies by paying rent in all cases seeking a judgment for back owed rent or holdover amounts; therefore, if a landlord seeks a judgment for back owed rent or holdover amounts they must serve a failure to pay notice in addition to any other eviction

notice.

- The show cause hearing provided no meaningful opportunity for Ohlig to contest the amount of back owed rent or holdover amounts sought by the landlord.

4. ARGUMENT IN RESPONSE TO PETITION FOR REVIEW

4.1. Petitioner Fails to Provide a Legitimate Basis for Review Under RAP 13.4.

A petition for review will be accepted by the Supreme Court:

> only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4.

Here, Ohlig argues that review should be accepted for two reasons under RAP 13.4. First, she claims an issue of substantial public interest. Second, she claims that Divisions Two's decision on the issue of the trial court's authority of entering a judgment for back owed rent and holdover amounts at a show cause hearing conflicts with published decisions of the court of appeals.

The problem for Ohlig is that Division Two's decision on this issue plainly is in concert with all case law and statutes governing the issue. As there is no conflict, nor meritorious argument supporting her position taken taken in her Petition, no substantial issue of public interest exists. Division Two's decision on this issue is not controversial nor in error. Ohlig's arguments otherwise are based on extremely strained and flatly incorrect readings of a couple cases on appeal.

4.2. There is No Conflict Between Division Two's Decision Regarding a Trial Court's Authority to Issue a Judgment for Back Owed Rent and Holdover Amounts at a Show Cause Hearing and Any Other Published (or Unpublished) Case Law.

The limited jurisdiction invoked in unlawful detainer

proceedings authorizes the trial court to address only "the primary issue of the right of possession, plus incidental issues such as restitution and rent, or damages." *Phillips*, 29 Wash.App. at 385–86. This is because under RCW 59.18.380 "if there is no substantial issue of material fact of the right" then the trial court may enter a judgment for "relief as prayed for in the complaint and provided for in this chapter":

> 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. . . .

In other words, "regardless of whether the landlord is successful in obtaining the writ of restitution, the statute permits the landlord to seek 'other relief' as part of the unlawful detainer process, such as a final judgment for damages or termination of the tenant's lease." *Webster*, 18 Wn. App. 2d at 253 (citing RCW 59.18.380; *Faciszewski v. Brown*, 187 Wn.2d 308, 314-15, 386

P.3d 711 (2016); *Hous. Auth. of City of Pasco & Franklin Cnty. v. Pleasant*, 126 Wn. App. 382, 390-91, 109 P.3d 422, 426 (2005); *Phillips*, 29 Wash.App. at 385–86. Only if there are substantial issues of material fact as to amounts owed is it inappropriate for the trial court to enter a judgment for back owed rent or holdover amounts. *See Webster*, 18 Wn. App. 2d at 253–54. (holding RCW 59.18.380 "allows the landlord such 'other relief' at the show cause hearing only 'if it shall appear to the court that there is no substantial issue of material fact' affecting the landlord's right to that relief.").

Ohlig argues otherwise, incredibly claiming that (1) a landlord cannot obtain a judgment for back owed rent unless he or she serves a failure to pay notice, and (2) tenants should have the ability to reinstate tenancies by paying back owed rent in non-failure to pay cases. The problem of Ohlig is that no case law that support her arguments.

In fact, the first case law she cites, *Sprincin King St. Partners v. Sound Conditioning Club, Inc.*, 84 Wn. App. 56, 66,

925 P.2d 217, 222 (1996), states the exact opposite of what she argues in her Petition for Review: "*By using the special summons required by the unlawful detainer statute, a lessor invokes a special, limited jurisdiction of the superior court*. . . . *[and t]hat jurisdiction* . . . *includes the power to decide* the right of possession, and *the incidental issues of restitution, lease forfeiture,* ***rent, and damages***. *Id.* (emphasis added).

Thus, Ohlig is plainly taking the holding in *Sprincin King St. Partners*—having to do with a double damages provision in Chapter 59.12, RCW, and having nothing to do with residential unlawful detainer actions—out of context. In actuality, as to the issue she wishes to have heard on review, *Sprincin King St. Partners* expressly states, and stands for, the opposite of Ohlig's arguments in her Petition for Review. It is of no help to her. The case expressly states that trial courts have "the power to decide the right of possession, and the incidental issues of restitution, lease forfeiture, rent, and damages. *Sprincin King St. Partners*, 84 Wn. App. at 66.

The second case that Ohlig cites, *Castellon v. Rodriguez*, 4 Wn. App. 2d 8, 418 P.3d 804 (2018) is even more inapplicable. *Castellon* does not stand for the proposition Ohlig contends whatsoever. Her argument is a gross misreading of *Castellon*. There, the landlord filed a complaint for unlawful detainer in September of 2016, but the tenant at issue had moved out of the property months early in April of 2016. *Id.* at 11-19. Not only were there personal service issues since the tenant's wife was served, not him, but *possession of the property was not at issue either at the time of the filing or the show cause hearing because the tenant at issue had vacated the property prior to the filing of the complaint and summons*. *Id.*

Consequently, *Castellon* correctly held that without converting the unlawful detainer action to a regular civil action for damages, the trial court lacked statutory authority to enter a judgment for back owed rent, holdover amounts, or damages. *Id.* (*citing Munden v. Hazelrigg*, 105 Wn.2d 39, 45–46, 711 P.2d 295, 298 (1985) (holding "Where the right to possession ceases

to be at issue at any time between the commencement of an unlawful detainer action and trial of that action, the proceeding may be converted into an ordinary civil suit for damages.").

Stated simply, nothing is controversial about *Castellon's* holding and the case does not support Ohlig's arguments at all. Rather, *Castellon* repeats the long decided black letter law *that when possession of the property in an unlawful detainer action ceases to be at issue*, the only thing a trial court can do to keep any incidental claims alive is convert the action into a civil claim for damages. That repeated black letter law in *Castellon* has nothing to do with the trial court's authority to issue a judgment for back owed rent and holdover amounts as well as a writ of restitution *when possession is still at issue* during the show cause hearing as it was in this case.

Division Two clearly pointed this out: "Indeed, *Castellon* still stands for the proposition that the landlord has avenues to seek the unpaid rent within the narrow scope of unlawful detainer [when possession is still at issue]." *Eight Is Enough*, 85901-3-I,

2024 WL 913857, at *8.

Consequently, Ohlig's has not provided any conflict with any published (or unpublished) cases and the case at hand. This Court should deny review.

4.3. Ohlig's Statutory Interpretation Argument Under RCW 59.18.410 Has No Merit and There is No Reason to Take Review of this Erroneously Asserted Issue.

Under RCW 59.18.410(1), in all unlawful detainer actions, the trial court *"shall also assess"* and enter a judgment for back owed rent and other damages *if such damages* are *proved* . . . :

> The jury, or the court, if the proceedings are tried without a jury, *shall also assess* the damages arising out of the tenancy occasioned to the landlord by . . . unlawful detainer, alleged in the complaint *and proved at trial*.

(emphasis added). In other words, in all eviction actions if any damages are sufficiently proved the trial court enters a judgment regarding them in favor of the plaintiff, including for back due rent or holdover amounts. The trial court is not mandated to do so, however, if those damages are not sufficiently proved.

On the other hand, the specific exception is failure to pay cases; in those cases where the sole basis of eviction is failure to pay rent, the trial court must or "*shall"* determine the amount of back owed rent:

> judgment *shall* be rendered against the tenant liable for . . . unlawful detainer for the amount of damages thus assessed, for the rent, if any, found due, and late fees . . . ."

RCW 59.18.410(1) (emphasis added). The reason for this is obvious. Under RCW 59.18.410(2), in failure to pay cases, the tenant has the ability to reinstate his or her tenancies by paying the rent owed (among other amounts) within five days. This is so even after the judgment is entered. To do so, however, such tenant obviously must know how much he or she owes. That is the sole reason RCW 59.18.410(1) mandates the trial court to determine the amount of past due rent in casea filed solely based on failure to pay rent. The tenant necessarily needs to know how much money it will take to reinstate the tenancy—so the trial court must determine that amount. Nothing about this reality

changes the fact that reinstatement is not an option available in other unlawful detainer cases based on termination notices other than failure to pay. Nothing about this reality changes the fact that a trial court may enter a judgment for back owed rent, holdover amounts, and other damages in cases based on termination notices other than failure to pay so long as at trial the amount is proved or so long as that the show cause hearing there is no substantial issue of material fact as to the amount owed. RCW 59.18.380; RCW 59.18.410(1), (2).

Here, as applied to this case, it is noteworthy that Ohlig's statutory interpretation argument under RCW 59.18.410 is directly contrary to not only the plain language of the statute but also contrary to prior published cases such as *Phillips*, *Webster*, *Faciszewski*. There is no reason for this Court to take review of this issue.

RCW 59.18.410(1)—as it has always been interpreted and with its first couple of provisions largely unchanged for the last few decades—allows a trial court to enter a judgment for

sufficiently proven damages, including back owed rent and holdover amounts, in all unlawful detainer cases. The trial court does not have to, however, if damages such as back owed rent and holdover amounts are not sufficiently proven. The exception to this is failure to pay to cases. The statute specifically mandates that the damages of back owed rent must be determined in failure to pay cases. This is a necessary and common-sense requirement because tenants may, under RCW 59.18.410(2), reinstate their tenancy in cases based solely on failing to pay rent by tendering past due rent within five days of the judgment. To do so, though, the tenant needs to know how much to pay, and that is why the statute requires the calculation in failure to pay cases:

> When the tenant is liable for unlawful detainer after a default in the payment of rent, execution upon the judgment shall not occur until the expiration of five court days after the entry of the judgment. Before entry of a judgment or until five court days have expired after entry of the judgment, unless the tenant provides a pledge of financial assistance letter from a government or nonprofit entity, in which case the tenant has until the date of eviction, 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 or to the landlord the amount of the rent due, any court costs incurred at the time of payment, late fees if such fees are due under the lease and do not exceed $75 in total, and attorneys' fees if awarded, in which event any judgment entered shall be satisfied and the tenant restored to his or her tenancy.

RCW 59.18.410(2).

Accordingly, Ohlig's statutory interpretation argument fails and has no support either in the plain language of the statute nor in any case law. This Court should deny review of this issue.

4.4. Ohlig Had Meaningful Opportunity to Be Heard on the Issue of How Much She Owed in Back Owed Rent and Conceded the Point Both at the Trial Court and on Appeal as Division Two Held.

Under RCW 59.18.380, "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." The trial court only sets matters for trial "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. . . . *Id.*

Here, the trial court found no substantial issue of material fact as to the fact that Ohlig owed past due rent/holdover amounts as it was uncontested that she stopped paying rent in July of 2022. Indeed, Division Two recognized that "Ohlig also does not contest the landlord's assertion that she stopped paying rent in July 2022 nor the amount of rent owed." *Eight Is Enough*, 85901-3-I, 2024 WL 913857, at *8. The holding that on remand "the landlord may obtain this back rent as appropriate "other relief"" under RCW 59.18.380 is not controversial and supported by decades of caselaw unchanged by recent statutorily revisions.

As provided above, reinstatement of a tenancy by rent is only available in cases solely based on failure to pay rent. It is plainly not available in cases for other termination reasons. In

fact, allowing a tenant to reinstate a tenancy by paying rent when the tenant is being evicted because the home is being sold would completely defeat the purpose of allowing the landlord to terminate to sell the property. Ohlig's argument to not allow a landlord to obtain a judgment for back owed rent in a case based on the sale of the property, when there is no issue as to the amount owed, is not supported by case law or statute. Her argument would also result in the absurd result of an incredible waste of judicial resources. Landlords should not be required to file brand new actions for back due rent when there is no factual issue as to how much is owed. Ohlig's arguments otherwise are non-sensical and absurd bordering on frivolity.

In sum, Ohlig's argument that "She was left . . . saddled with a judgment for rent that she had no meaningful opportunity to contest and that will serve as a barrier to housing for years to come" is baseless and meritless. She chose to not contest the amount owed in back owed rent and she has never made any specific due process claim because it would be frivolous. Rather,

if Ohlig wished to not have a judgment for back owed rent entered against her—she should have done what everyone else in society is required to do and pay for their own living expenses, most importantly her rent. The reality is that if had she genuinely contested the amount of back due rent owed—she could have and would have done so before the trial court. She chose not to because she knew she owed the back owed rent. This Court has no reason to grant review on this erroneously claimed issue.

5. CONCLUSION

Pursuant to RAP 13.4, the Eight as Enough respectfully requests this Court deny review, for the reasons stated herein

Respectfully submitted this 3rd day of May, 2024,

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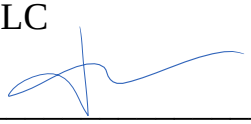

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