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Supreme Court No. _____
Court of Appeals No. 84964-6

Case #: 1034342

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

VALLEY CITIES COUNSELING AND CONSULTATION,

Respondent,

v.

EZRA EDDINES,

Petitioner.

ON APPEAL FROM KING COUNTY SUPERIOR COURT

Honorable Ken Schubert

PETITION FOR REVIEW

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I. INTRODUCTION

A little over three decades ago, this Court rejected a conflict preemption challenge to a Seattle ordinance that limited a landlord's ability to evict houseboat occupants to six specific reasons, holding that local lawmakers could narrow permissible reasons for eviction and thus prohibit within their jurisdictions certain evictions that were allowed under state unlawful detainer law. *Kennedy v. City of Seattle*, 94 Wn.2d 376, 384, 617 P.2d 713 (1980). Consistent with the Court's holding in *Kennedy*, many local jurisdictions across the state have exercised their expansive police powers to regulate permissible grounds for eviction, and both state and local lawmakers have increasingly legislated in this area in recent years in response to the growing affordable housing crisis.

In 2021, the state legislature amended the Residential Landlord Tenant Act ("RLTA") and the unlawful detainer statute to prohibit a landlord from evicting a tenant without a reason enumerated in the statute. LAWS OF 2021, ch. 212 § 2 (codified at

RCW 59.18.650), § 6 (codified at RCW 59.12.030). The state's just cause law was aimed at promoting housing stability by significantly narrowing the circumstances when landlords can terminate a residential tenancy at the expiration of a lease term and by eliminating landlords' ability to evict a month-to-month tenant without any reason after issuing the tenant a notice 20 days prior to the end of the month. Several municipalities, including the City of Auburn, have also enacted local just cause ordinances that similarly prohibit eviction without an enumerated reason and, in some instances, provide narrower just cause grounds than state law.

In this case, the Court of Appeals held that Auburn's just cause ordinance was preempted by state law and thus unconstitutional to the extent it does not allow eviction for one of the causes enumerated in the state just cause statute. The Court of Appeals' holding conflicts with this Court's decision in *Kennedy*, creates confusion about the validity of many local ordinances and the extent to which local jurisdictions can

regulate grounds for eviction, and unduly restricts the ability of local governments to legislate in response to local concerns. This Court should grant review pursuant to RAP 13.4(b)(1), (3), and (4) to provide much-needed certainty to landlords, tenants, and local lawmakers about whether more protective just cause ordinances that narrow permissible grounds for eviction irreconcilably conflict with and thus are preempted by state law.

II. IDENTITY OF PETITIONER

Petitioner Ezra Eddines asks this Court to accept review of the Court of Appeals decision terminating review designated in Part III of this petition.

III. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(1), (3), and (4), Mr. Eddines seeks review of the published Court of Appeals decision in *Valley Cities Counseling and Consultation v. Eddines*, No. 84964-6, filed on August 5, 2024. A copy of the decision is in the Appendix at pages A-1 through A-13.

IV. ISSUE PRESENTED FOR REVIEW

A. Whether RCW 59.18.650 and RCW 59.12.030 irreconcilably conflict with and thus preempt local just cause ordinances that are more protective of tenants and narrow permissible grounds for eviction. (No.)

V. STATEMENT OF THE CASE

Mr. Eddines rents an apartment from the Landlord in Auburn, Washington. In February 2022, the Landlord gave Mr. Eddines a notice requiring him to vacate his housing in just over 30 days. CP 3. The notice stated:

> Valley Cities Landing is a supportive housing program for residents that are at 30% or below Area Median Income and would otherwise be homeless. You no longer meet the criteria for VCL supportive housing. You have not utilized VCL supportive housing services in the past year.

Id. Several months later, the Landlord initiated this unlawful detainer action alleging just cause for eviction under RCW 59.18.650(2)(j). *See* CP 1-6, 9. That provision provides in relevant part:

> (1)(a) A landlord may not evict a tenant, refuse to continue a tenancy, or end a periodic tenancy except for the causes enumerated in subsection (2) . . .
>
> (2) The following reasons listed in this subsection constitute cause pursuant to subsection (1) of this section:
>
> (j) The tenant continues in possession of a dwelling unit in transitional housing after having received at least 30 days' advance written notice to vacate in advance of the expiration of the transitional housing program, the tenant has aged out of the transitional housing program, or the tenant has completed an educational or training or service program and is no longer eligible to participate in the transitional housing program. . . .

RCW 59.18.650. At a show cause hearing, Mr. Eddines asked the court to dismiss the case for the Landlord's lack of just cause under Auburn City Code 5.23.070.A, which similarly prohibits a landlord from evicting a tenant without an enumerated reason but does not include the reason enumerated in RCW 59.18.650(2)(j). CP 7, 28-40; RP (Vol. I) 5-10. The Landlord did not dispute that it lacks just cause under the city code but argued that Auburn's just cause ordinance is preempted by RCW 59.18.650 to the extent it does not include an analog to RCW 59.18.650(2)(j). CP

9-10; RP (Vol. I) 10-11. A commissioner agreed and declined to dismiss the case but continued the remainder of the show cause hearing on the Landlord's motion for a writ of restitution to recover possession of the apartment so that Mr. Eddines could move for revision of the commissioner's decision. CP 44-45; RP (Vol. I) 20. A trial judge denied Mr. Eddines's motion to revise but certified the decision for interlocutory review under RAP 2.3(b)(4). CP 72-76, 102-105. The Court of Appeals granted discretionary review and affirmed the trial court. Mr. Eddines now petitions this Court for review.

VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED

A. Review should be granted under RAP 13.4 (b)(1) because the Court of Appeals' decision conflicts with this Court's decision in *Kennedy*.

The Court of Appeals' holding that the Auburn ordinance is preempted to the extent it prohibits an eviction allowed under state law directly conflicts with this Court's holding in *Kennedy* that municipalities may limit the permissible grounds for eviction in their jurisdictions *without* coming into conflict with

state unlawful detainer laws in chapter 59.12 RCW and chapter 59.18 RCW. In *Kennedy*, this Court rejected a conflict preemption challenge to a Seattle ordinance that limited a landlord's ability to evict houseboat occupants to six specific reasons. *See* 94 Wn.2d at 384.. Contrary to the Court of Appeals' characterization of the opinion, *Kennedy* concerned the precise question at issue here — "whether a city ordinance is preempted by state law if it categorically removes a cause for eviction that is permitted by state law." Slip op. at 7. Specifically, the ordinance in *Kennedy* made it unlawful for a moorage owner to remove a houseboat, or to evict a houseboat except for:

> (1) failure to pay rent; (2) breach of covenant (excluding the obligation to surrender the site); (3) failure to abate a nuisance or causing a substantial damage to the moorage or substantially interfering with the comfort, safety or enjoyment of other floating home properties at the moorage; (4) failure to execute a lease not in excess of 5 years at a reasonable rent; (5) a change in use of the moorage (with several further restrictions) with 6 months advance notice; and (6) if the moorage owner, with 6 months' notice, wishes to occupy the moorage site and finds the displaced houseboat owner another lawful moorage site within the City of Seattle.

Id. at 379-380. In so restricting the permissible substantive grounds for eviction, the ordinance prohibited landlords from evicting a tenant of a moorage site when the tenant was liable for unlawful detainer and thus could be evicted under RCW 59.12.030(1) (providing a tenant is liable for unlawful detainer for holding over after the expiration of a lease term). *See* RCW 59.12.030 (1953). Notwithstanding this "categorical removal" of a cause for eviction that was permitted by state law, this Court held that there was no irreconcilable conflict between the ordinance and the unlawful detainer statutes because "[t]he ordinance does not raise further procedural barriers between landlord and tenant" but rather, creates a substantive defense for the tenant, which does not conflict with the unlawful detainer statutes since "[a] defendant in an unlawful detainer action may assert any defenses available." *Kennedy*, 94 Wn.2d at 384 (citing RCW 59.18.380).

In so holding, this Court adopted the reasoning of a California Supreme Court decision, which also upheld a

municipal ordinance limiting permissible grounds for eviction. *See id.* at 385 (citing *Birkenfeld v. Berkeley*, 17 Cal. 3d 129 (1976)). In *Birkenfeld*, as in *Kennedy*, state law made a tenant's possession of the premises after expiration of the term of tenancy a form of unlawful detainer for which the landlord could recover possession in summary proceedings, but a city charter provision prohibited the eviction of a tenant who was in good standing at the expiration of the term. 17 Cal. 3d at 148-49. The California court held that the state and local laws did not conflict and rather could be harmonized because they each served a separate purpose:

> The purpose of the unlawful detainer statute is procedural. The statutes implement the landlord's property rights by permitting him to recover possession once the consensual basis for the tenant's occupancy is at an end. In contrast the charter amendment's elimination of particular grounds for eviction is a limitation upon the landlord's property rights under the police power, giving rise to a substantive ground of defense in unlawful detainer proceedings. The mere fact that a city's exercise of the police power creates such a defense does not bring it into conflict with the state's statutory scheme.

Id. at 149. In other words, the state unlawful detainer statute is intended to create an expedited procedure for regaining possession of property and not to create substantive rights for landlords to evict whenever there is a ground under the statute.

As this Court concluded in *Kennedy*, RCW 59.12.030 is a procedural statute that does not create affirmative substantive property rights for landlords. Similarly, the subsequently enacted just cause statute does not create an unqualified right for landlords to evict a tenant. To the contrary, by its plain language, RCW 59.18.650 provides a minimum floor of safeguards from eviction for tenants. It is prohibitory rather than permissive in nature, providing that "[a] landlord may not evict a tenant, refuse to continue a tenancy, or end a periodic tenancy except for the causes enumerated in subsection (2)." RCW 59.18.650(1)(a). As neither RCW 59.12.030 nor RCW 59.18.650 create an affirmative right to evict, local jurisdictions may prohibit evictions that are allowed under state law without irreconcilably conflicting with the unlawful detainer statutes.

Since *Kennedy*, this Court has reaffirmed that the unlawful detainer statute is procedural and not substantive, upholding a Seattle ordinance that imposed a rental registration requirement and precluded property owners who failed to register from evicting tenants. *See Margola Assocs. v. City of Seattle*, 121 Wn.2d 625, 651-52, 854 P.2d 23 (1993), *abrogated on other grounds by Chong Yim v. City of Seattle*, 194 Wash. 2d 682, 451 P.3d 694 (2019). This Court rejected the argument that the ordinance was preempted because it prohibited evictions that were permissible under state law and reasoned that the registration ordinance was not preempted because it created a defense for a tenant in an unlawful detainer action without raising further procedural barriers within the action. *Id.*

Despite this Court's holding in *Kennedy*, the Court of Appeals here concluded directly to the contrary that where an eviction is not substantively prohibited at the state level under RCW 59.18.650, "RCW 59.12.030 . . . create[s] an affirmative right [for the landlord to evict,] that conflicts with a local law,

such as ACC 5.23.070, that categorically eliminates this right." Slip op. at 11. The Court of Appeals' decision simply cannot be squared with this Court's rejection of the conflict preemption challenge in *Kennedy* or with this Court's other conflict preemption cases where, as in *Kennedy*, the Court has undertaken a nuanced analysis and considered the purpose of a state statute to determine whether it creates rights that cannot be restricted at the local level. *See Cannabis Action Coal. v. City of Kent*, 183 Wn.2d 219, 227, 351 P.3d 151 (2015) ("Though the rule [for conflict preemption] may be easily stated, the analysis is often nuanced.").

B. Review is warranted under RAP 13.4(b)(3) and (4) because the extent to which local jurisdictions can limit permissible grounds for eviction is an issue of substantial public interest and raises a significant question of state constitutional law.

By ignoring the purpose of the state's unlawful detainer statutes, failing to undertake the requisite nuanced analysis, and departing from this Court's holding in *Kennedy*, the Court of Appeals' decision severely restricts the significant regulatory

powers local governments wield under article XI, section 11 of our state constitution. Exercising these powers to legislate for the health and welfare of their residents, many Washington municipalities have enacted just cause ordinances and other tenant protections that go beyond what is required by state law. *See, e.g.*, Kenmore Ord. No. 22-0544 (2022) (codified at Kenmore Municipal Code 8.55.075) (limiting permissible grounds for eviction to just causes enumerated in the section); Burien Ord. 716 (2019) (codified at Burien Municipal Code 5.63.070) (same); Federal Way Initiative Measure No. 19-001, §8 (2019) (codified at Federal Way Revised Code 20.05.020(5)) (same); Tacoma Ord. 28559 (2018) (codified at Tacoma Municipal Code 1.95.070.C) (limiting permissible grounds for eviction to just causes enumerated in the section) and 1.95.070.D (imposing additional notice requirements with which a landlord must comply before a tenant can be evicted)); Seattle Municipal Code (SMC) 22.205.010 (originally enacted 1987) (limiting permissible grounds for eviction to just causes enumerated in the

section); SMC 22.206.195.D (imposing additional notice requirements); SMC 22.206.180.K (same); SMC 22.205.100.A, .B (creating additional defenses to eviction for tenants who suffered financial hardship during the city's civil emergency due to COVID-19); SMC 22.205.100.C (imposing additional notice requirements).

These local tenant protection efforts have increased in recent years as jurisdictions have responded to the worsening housing affordability crisis in the region. *See* Kenmore Ord. No. 22-0544 ("[O]ver the past several years rents in Kenmore and King County have increased, and vacancies for affordable rental housing are at low levels, making it difficult for tenants, especially those with low incomes, to locate affordable rental housing" and "the City Council finds and declares that this ordinance is necessary to stabilize rental housing within Kenmore and reduce homelessness by building upon and supplementing the state's just cause protections."); Burien Municipal Code 5.63.010 ("This chapter strives to ensure

housing security for current and future residents"); Federal Way Revised Code 20.05.010 ("The people of the city of Federal Way hereby adopt the citizen initiative codified in this chapter for the purpose of protecting families and tenants and reducing homelessness. . . . The city of Federal Way faces an unprecedented housing affordability and homelessness crisis. . . . To protect families, promote community, stabilize the rental market, and reduce homelessness, landlords must comply with tenant protection laws and show good cause before evicting a tenant); Tacoma Municipal Code 1.95.010 ("This chapter strives to ensure housing security for current and future residents").

The Court of Appeals opinion calls into question the validity of these vital protections and creates confusion about the extent to which local jurisdictions can regulate substantive property rights to improve housing stability. This Court should grant review to provide much-needed certainty for landlords, tenants, and local lawmakers and ultimately to uphold these valid exercises of municipal authority. Especially as the rate of

eviction cases continues to increase because of the expiration of COVID-era protections, landlords and tenants need certainty about what laws apply, and as local jurisdictions continue responding to the housing crisis in their communities, local lawmakers need guidance about the extent to which they can regulate in this area.

VII. CONCLUSION

For the foregoing reasons, this Court should accept review of the Court of Appeals' decision in this case and reverse.

This document contains 2,660 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 4th day of September, 2024.

Respectfully submitted,

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VALLEY CITIES COUNSELING AND CONSULTATION, Respondent, v. EZRA L. EDDINES, Appellant.	No. 84964-6-I DIVISION ONE PUBLISHED OPINION

FELDMAN, J. — In 2021, Washington adopted an amendment to the Residential Landlord Tenant Act (RLTA) allowing landlords to evict a tenant who "continues in possession of a dwelling unit in transitional housing after having received at least 30 days' advance written notice to vacate . . . [when] the tenant has completed an educational or training or service program and is no longer eligible to participate in the transitional housing program." RCW 59.18.650(2)(j). Acting pursuant to this provision, Valley Cities Counseling and Consultation (Valley) attempted to evict Ezra Eddines after he no longer met the criteria for the applicable transitional housing program. In response, Eddines argued that Auburn City Code (ACC) 5.23.070.A forbids eviction in these same circumstances. Because the city ordinance categorically forbids what state law permits, the superior court correctly concluded that the ordinance is preempted by

state law. On interlocutory review, we affirm and remand for proceedings consistent with this opinion.

I

Eddines is a tenant in a transitional housing unit as part of a program run by Valley. The program provides transitional housing to tenants who have an income of 30 percent or below the area median income and who would otherwise be unhoused. On February 25, 2022, Valley gave Eddines notice that his tenancy would be terminated because his income was more than 30 percent of the area median income and he had not accessed program services in the past year, making him ineligible for the transitional housing program.

When Eddines refused to vacate and surrender his transitional housing unit, Valley filed a complaint for unlawful detainer. A superior court commissioner scheduled a show cause hearing. In support of its unlawful detainer action, Valley argued that RCW 59.18.650(2)(j) (quoted below) permits a landlord to evict a tenant where, as here, the tenant continues in possession of a transitional housing unit after the tenant is no longer eligible for the transitional housing program. In response, Eddines argued that Auburn's just cause ordinance, ACC 5.23.070.A (also quoted below), does not permit a landlord to evict a tenant in this circumstance.

The commissioner ruled in favor of Valley, concluding that ACC 5.23.070 is "pre-empted to the extent that it conflicts with RCW 59.18.650(2)(j)." Eddines thereafter filed a motion for revision. The superior court denied the motion, stating:

> Applying the rules of conflict pre-emption, this Court agrees with Commissioner Hillman that the state law and city ordinance cannot

> be harmonized, an irreconcilable conflict exists, and that his order below is correct. This Court DENIES Eddines' Motion for Revision.

The superior court subsequently certified its ruling for interlocutory review under RAP 2.3(b)(4). This court accepted the superior court's certification and granted discretionary review.

II

Eddines claims the superior court erred in ruling that ACC 5.23.070.A is preempted by RCW 59.18.650. We disagree.

A

"[A] state statute preempts an ordinance on the same subject [1] if the statute occupies the field, leaving no room for concurrent jurisdiction, or [2] if a conflict exists such that the statute and the ordinance may not be harmonized." *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010). The first part of this quote describes field preemption, and the second part describes conflict preemption. Here, Valley argues only conflict preemption, which "arises when an ordinance permits what state law forbids or forbids what state law permits." *Id.* at 682. Whether ACC 5.23.070.A is preempted by RCW 59.18.650 is a question of law and is reviewed de novo. *Rental Hous. Ass'n v. City of Seattle*, 22 Wn. App. 2d 426, 437, 512 P.3d 545 (2022) (*RHA*).

Applying conflict preemption principles to the state statute and local ordinance at issue here, the superior court correctly concluded that the state statute preempts the local ordinance. The state statute at issue, RCW 59.18.650, prohibits residential landlords from evicting a tenant, refusing to continue a tenancy, or ending a periodic tenancy except in enumerated circumstances that

constitute just cause. One of the enumerated circumstances is when:

> The tenant continues in possession of a dwelling unit in transitional housing after having received at least 30 days' advance written notice to vacate . . . [when] the tenant has completed an educational or training or service program and is no longer eligible to participate in the transitional housing program.

RCW 59.18.650(2)(j). Auburn's ordinance, ACC 5.23.070.A, contains a similar just cause restriction:

> Owners of housing units shall not evict or attempt to evict any tenant, refuse to renew or continue a tenancy after expiration of the rental agreement, or otherwise terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause exists. . . . *The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this section*.

(Emphasis added.) The ordinance lists 14 circumstances that constitute just cause under the provision, but lacks any transitional housing exception as provided in the state statute. *Id.*

Because the Auburn ordinance specifies that *no* reason beyond the 14 specified reasons is just cause for eviction, it forbids what state law permits, which is eviction of tenants from transitional housing units when, as here, they are no longer eligible to participate in the transitional housing program. Thus, as the superior court concluded, "the state law and city ordinance cannot be harmonized" and "an irreconcilable conflict exists." Accordingly, the superior court correctly ruled, by denying Eddines' motion for revision, that the city ordinance is preempted by RCW 59.18.650.[1]

[1] Valley relies heavily on our unpublished opinion in *Rental Housing Association of Washington v. City of Burien*, No. 82782-1-I (Wash. Ct. App. Aug. 29, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/827821.pdf. (City of Burien). "No matter how well reasoned, unpublished opinions of this court lack precedential value, in part because they merely restate well established principles." *State v. Nysta*, 168 Wn. App. 30, 44, 275 P.3d 1162 (2012). Consistent with this observation, *City of Burien* is in accord with our analysis and holding

B

At oral argument in this matter, Eddines effectively conceded that ACC 5.23.070.A forbids what RCW 59.18.650(2)(j) permits.[2] He nevertheless raises three arguments why preemption does not apply here. First, he argues that the result here is controlled by three cases that avoid preemption by harmonizing local and state law. Second, he claims that the state statute at issue here does not provide an affirmative right for landlords to evict tenants. Third, he contends that the Washington legislature did not intend to preempt local ordinances. Each of these arguments fails.

1

Starting with Eddines' argument that the result here is controlled by three cases where the court was able to harmonize local and state law, the first case cited by Eddines is *Kennedy v. City of Seattle*, 94 Wn.2d 376, 617 P.2d 713 (1980), which is one of the seminal cases on this topic. The plaintiffs there owned two houseboat moorage sites in Seattle, one of which hosted the defendant's houseboat which the plaintiffs sought to evict. *Id*. at 378. Seattle had adopted an ordinance that made it unlawful to evict a houseboat from a moorage site except for six specified reasons, and the plaintiffs argued that the ordinance was preempted by state statutes regarding forcible entry and forcible and unlawful detainer actions. *Id.* at 379-84 (citing RCW 59.12 and RCW 59.18 (the RLTA)).

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here. The city ordinance at issue in that case (Burien Municipal Code 5.63.070(1)) prohibited all evictions at the end of a rental agreement without cause while the two state statutes at issue (RCW 59.12.030 and RCW 59.18.290) expressly allowed for termination and eviction to take place at the end of a rental agreement. Given this categorical conflict, we held in *City of Burien*—similar to our holding here—that the Burien ordinance was preempted by state law. Slip op. at 6.

[2]Wash. Ct. of Appeals oral argument, *Valley Cities Counseling and Consulting v. Eddines*, No. 84764-6-I (June 11, 2024) 1 min., 8 sec. through 1 min., 32 sec. (on file with court).

Although the court ultimately concluded that the ordinance was unconstitutionally prohibitory and confiscatory, it rejected the plaintiffs' preemption argument, stating, "The ordinance does not raise further procedural barriers between landlord and tenant but simply represents another defense." *Id.* at 384.

The second case Eddines claims is controlling here is *Margola Associates v. City of Seattle*, 121 Wn.2d 625, 854 P.2d 23 (1993), *abrogated on other grounds by Chong Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019), which expands on the brief discussion of conflict preemption in *Kennedy*. The plaintiff in *Margola* argued that state law preempted a Seattle ordinance that required owners of buildings with multiple housing units to obtain and post each year a certificate establishing that the building was registered with the City and created an affirmative defense to eviction if the landlord did not register the rental unit in accordance with the ordinance. *Id.* at 632. The court rejected the preemption argument, reasoning that there was no conflict between the state statute and the city ordinance because the city ordinance only added an additional requirement to the eviction process established by the RLTA. *Id.* at 651-54.

The third case Eddines claims is controlling here is *RHA*. The plaintiff there challenged both Seattle's "winter eviction ban," which created a defense to eviction if the tenant would have to vacate the housing unit between December 1 and March 1, and its six-month extension of the eviction moratorium during the COVID-19 pandemic. 22 Wn. App. 2d at 432-36. In holding that the Seattle ordinances were not preempted, the court emphasized that the ordinances merely provided "a temporary defense to evictions," noting that "a landlord can file an unlawful detainer action, obtain an order finding the tenant to be in unlawful detainer status,

and ask the court to schedule the issuance of a writ of restitution" once the moratorium has passed. *Id.* at 441. The court emphasized, "There is nothing in the unlawful detainer statute that requires an eviction occur within any specific period of time." *Id.*

These cases do not control the result in this case. Starting with *Kennedy*, the court there did not elaborate on what constitutes a "procedural barrier," addressed an argument premised on field preemption as opposed to conflict preemption,[3] and never reached the issue that is dispositive here, which is whether a city ordinance is preempted by state law if it categorically removes a cause for eviction that is permitted by state law. 94 Wn.2d at 384. Turning to *Margola* and *RHA*, Eddines' argument overlooks important differences between the Auburn ordinance and the ordinances at issue in those two cases. The ordinance in *Margola* does not preclude the landlord from ever bringing the eviction proceeding; instead, it merely adds a requirement for landlords to be registered with the city and, once the landlord is so registered, no longer prohibits eviction. Similarly, the ordinance in *RHA* does not preclude a landlord from obtaining a writ of restitution; it only narrows when the writ can be executed. In both *Margola* and *RHA*, the defense provided by local law is temporary and either the passage of time or some action by the landlord will allow the eviction to proceed. When a city merely imposes a temporary prohibition on a landlord's ability to evict a tenant, the

[3] While the court's analysis in *Kennedy* refers to conflict preemption principles, its opinion indicates that the plaintiffs' argument was premised solely on field preemption. *See* 94 Wn.2d at 384 ("Plaintiffs claim RCW 59.12, dealing with forcible entry and forcible and unlawful detainer, preempts the field.").

landlord can still do what state law permits, allowing "harmonization" of ordinance and statute.

In contrast, Auburn provides no way for a landlord that owns and operates a transitional housing unit to evict a tenant due to ineligibility, a circumstance in which RCW 59.18.650 expressly permits eviction. The landlord's claim of unlawful detainer is not merely delayed like it would be under the defenses provided in *Margola* and *RHA*; rather, the claim is categorically unavailable. In other words, instead of the state law saying, "this is permitted," and the local ordinance saying, "this is permitted if…," when RCW 59.18.650 says, "this is permitted," the Auburn ordinance says, "this is forbidden." Because a categorical conflict exists here that was not present in *Kennedy*, *Margola*, and *RHA*, these cases are distinguishable.

2

Eddines next claims that RCW 59.18.650 does not provide an affirmative right for landlords to evict tenants. We reject this argument because it does not account for the broader statutory scheme of the state's landlord-tenant laws.

Eddines cites two cases in support of his interpretation of RCW 59.18.650, the first of which is *Rabon v. City of Seattle*, 135 Wn.2d 278, 957 P.2d 621 (1998). Rabon had previously been convicted of owning "vicious" dogs in violation of a Seattle ordinance making it unlawful to own a vicious animal with knowledge that the animal is vicious or with reckless disregard to the animal's viciousness. *Id*. at 283. When the city notified Rabon that it intended to destroy the dogs pursuant to the ordinance, he argued he should be able to register the dogs in accordance with RCW 16.08.080, which provides that "it is unlawful to own a 'dangerous' dog unless it is registered with local animal control authorities." *Id.* Rabon claimed the

ordinance was preempted by the statute because the latter read, "the animal control authority . . . *shall* issue a certificate of registration" when certain statutory requirements for keeping a dangerous dog were met. *Id.* at 289-90 (emphasis added). The court rejected this argument because the statutory scheme as a whole indicated that the legislature had not intended to preempt local ordinances. *Id.* at 290. The court focused on RCW 16.08.090(2), which provided that only local authorities had power to regulate "potentially dangerous" dogs. The court reasoned that if the legislature intended to preempt local authority, it would have stated that only state authorities can regulate "dangerous dogs." *Id.* at 290-91.

Rabon further argued that the ordinance prohibited what state law allowed, triggering conflict preemption. *Id.* at 292. The court also rejected this argument, reasoning that just because an activity *may* be licensed under state law does not mean it *must* be permitted by local law. *Id.* The court disagreed with Rabon's argument that the use of "shall" in the statute created an affirmative right, reasoning that, in the context of the statute and in light of its purpose, "shall" was not a command to issue licenses if the criteria were met but was instead meant to establish minimum requirements for a lawful license under state law. *Id.* at 293. Accordingly, the court concluded that a more protective city ordinance prohibiting ownership of vicious or dangerous dogs could be harmonized with state law. *Id.* at 293-94.

In the second case cited by Eddines, *Emerald Enterprises, LLC v. Clark County*, 2 Wn. App. 2d 794, 800, 413 P.3d 92 (2018), the Washington legislature, pursuant to a voter initiative to decriminalize cannabis, created a regulatory licensing scheme for the sale of cannabis through the Washington State Liquor

and Cannabis Board (Board). The Board established requirements for cannabis retailer licenses, including a maximum number of stores per county and mandatory background checks for applicants. *Id.* In response, Clark County passed Clark County Code 40.260.115(B)(3), which forbade the sale of recreational cannabis in unincorporated Clark County. *Id.* at 801. Emerald Enterprises challenged the ordinance, arguing it was preempted by the state's licensing requirements. *Id.* Following *Rabon*, the court rejected this preemption argument because the statute's language that "[t]here shall be a marijuana retailer's license" (RCW 69.50.325(3) and "retail licenses 'may be licensed'" (RCW 69.50.354) indicated there was no underlying, affirmative right to obtain a license or requirement that local governments must issue licenses. *Id.* at 805. The fact that retailer licenses were limited regardless of the number of qualified applicants also implies that no such right exists. *See id.* at 800.

Relying on *Rabon* and *Emerald Enterprises*, Eddines argues that landlords do not have an affirmative right to evict tenants under RCW 59.18.650 and that Auburn may therefore provide additional protection from eviction that is not provided by state law. But unlike the statutes at issue in *Rabon* and *Emerald Enterprises*, the larger statutory scheme of the RLTA does provide a right for landlords to evict tenants. RCW 59.18.290(2) provides, "[a]ny landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him or her." By permitting landlords to recover possession in specified circumstances, RCW 59.18.290(2) creates an affirmative right to do so and thus preempts a local ordinance that categorically forbids eviction in the exact same circumstances.

Eddines' argument also fails because it ignores the overall statutory scheme of the RLTA and the other landlord-tenant statutes in chapter 59 RCW. In *Rabon* and *Emerald Enterprises*, the relevant state law and city ordinance could be harmonized because the state law provided what was necessary for a valid license, but neither the dangerous dog nor the cannabis retailer licensing laws were embedded in statutory schemes that provided affirmative rights to the activity, leaving the question of whether to license those activities up to the local governments. Here, in contrast, the state law entitles Valley to evict someone from its property. Although RCW 59.18.650 imposes just cause restrictions on residential evictions in most cases, it deliberately carves out an exception for landlords of transitional housing units seeking to evict a tenant who is ineligible for the transitional housing program. These carveouts do not create gaps where the law has not spoken, but rather designate spaces where the default rules still apply. Thus, statutes such as RCW 59.12.030 and RCW 59.18.290, which permit landlords to recover possession, create an affirmative right that conflicts with a local law, such as ACC 5.23.070, that categorically eliminates this right.

3

Lastly, Eddines asserts that the legislative history of RCW 59.18.650 indicates the legislature did not intend to preempt local ordinances but rather to set a baseline protection for tenants upon which local governments could expand. We disagree.

The goal of statutory analysis is to carry out the legislature's intent. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). The first step is to examine the statute's plain meaning, and if that meaning is unambiguous then our

inquiry ends. *Id.* Plain meaning "is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id.* (quoting *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009)).

Here, neither the text nor the surrounding context of RCW 59.18.650 suggests the legislature intended to authorize local governments to provide additional protections for tenants that would render state law meaningless. Although RCW 59.18.650 exists to restrict evictions without cause, it exists within the RLTA, which aims to balance tenant and landlord rights, not merely protect tenants.[4] To that end, RCW 59.18.650(2) deliberately carves out exceptions to its general prohibition, including an exception for landlords of transitional housing units seeking to evict a tenant who is ineligible for the transitional housing program. RCW 59.18.650(2)(j). Absent such an exception, transitional housing programs may face penalties, lose funding, and be shut down if they cannot remain compliant with their funding grants. We decline to read Eddines' proffered legislative intent into the statute where there is no evidence for it in the statute's text or broader context. Eddines' final argument against conflict preemption, like the others, thus fails.

III

Both parties request attorney fees on appeal. Because this is an interlocutory appeal and neither party has yet prevailed in the matter, we decline

[4] *Compare* RCW 59.18.290(1) (requiring a court order before a landlord may recover possession of a housing unit from a tenant at the end of a rental agreement) *with* RCW 59.18.290(2) (allowing a landlord to recover possession of property when a tenant has unlawfully remained after the end of a rental agreement).

to award attorney fees on appeal at this time. *See Leda v. Whisnand*, 150 Wn. App. 69, 87, 207 P.3d 468 (2009) ("Because . . . no party has yet prevailed on the merits, any determination of the prevailing party on appeal would . . . be premature."). Instead, we remand this issue to the superior court to award attorney fees to the prevailing party, including fees on appeal, if appropriate under the RLTA and/or the parties' rental agreement, when prevailing party status can properly be determined.

Affirmed and remanded.

Feldman, J.

WE CONCUR:

Chung, J.

Cohen, J.

KING COUNTY BAR ASSOCIATION

September 04, 2024 - 10:56 AM

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