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NO. 84119-0

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

Sherwood Auburn, LLC,

Plaintiff/Respondent,

v.

Joel Pinzón and Rosa Méndez

Defendants/Petitioners.

AMICI CURIAE BRIEF OF NATIONAL HOUSING LAW PROJECT, MOBILIZATION FOR JUSTICE, AND PROFESSOR KATHRYN A. SABBETH

Joseph Shaeffer, WSBA #33273
MACDONALD HOAGUE & BAYLESS
705 2nd Avenue, Suite 1500
Seattle, WA 98104
(206) 622-1604

Eric Dunn (admitted to practice in Virginia; WSBA #36622, but inactive)
Marie Claire Tran-Leung (admitted to practice in California)
NATIONAL HOUSING LAW PROJECT
1663 Mission Street, Ste. 460
San Francisco, CA 94130
(415) 546-7000

Andrew Darcy (admitted to practice in New York and New Jersey)
MOBILIZATION FOR JUSTICE, INC.
100 William Street, 6th Floor
New York, NY 10038
(212) 417-3733

ATTORNEYS FOR AMICI CURIAE

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IBF, LLC v. Heuft, 141 Wn. App. 624; 174 P.3d 95 (2007) 11, 13, 14, 15

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Metcalfe v. Heslop, 161 Wash. 106; 296 P. 151 (1931) 10, 11, 15

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Provident Mutual Life Ins. Co. v. Thrower, 155 Wash. 613 P. 654 (1930).. 11

Silver v. Rudeen Mngmt. Co, 484 P.3d 1251 Wn.2d 535 (2021)............. 18

Sowers v. Lewis, 49 Wn.2d 891; 307 P.2d 1064 (1957) 10, 11

State ex rel. Needham v. Just. Ct. In & For Twp. & Cnty. of Silver Bow, 119 Mont. 89, 171 P.2d 351 (1946) 13

Union Gospel Mission v. Bauer, __ Wn. App. __; 514 P.3d 710 (2022).. 17

W. Haven Hous. Auth. v. Armstrong, 2021 WL 2775095, at *3 (Conn. Super. Ct. Mar. 16, 2021) 6

Watson v. Vici Cmty. Dev. Corp., No. CIV-20-1011-F, 2022 WL 910155 at *9-10 (W.D. Okla. Mar. 28, 2022).. 6

Wooding v. Sawyer, 38 Wn.2d 381; 229 P.2d 535 (1951)....................... 12

Statutes

15 U.S.C. § 9058... passim
Pub.L. 116-136 (Mar. 27, 2020). 1
RCW 59.12 9
RCW 59.18.057 5
RCW 59.18.380 10
RCW 59.18.640 16
RCW 5912.030(3).. 5, 8, 10

Other Authorities

Ashley Gromis & Matthew Desmond, "Estimating the Prevalence of Eviction in the United States: New Data from the 2017 American Housing Survey," 23 CITYSCAPE 279 (2021) 15

Beth Healy & Simón Rios, Despite Eviction Ban, Some Landlords Pressure Tenants To Leave Amid Pandemic, WBUR (Oct. 15, 2020) 17

Center for Budget & Policy Priorities, "Federal Rental Assistance Fact Sheets" (Jan. 19, 2022) 6

Chester Hartman & David Robinson, Evictions: The Hidden Housing Problem, 14 HOUS. POL'Y DEBATE 461 (2003). 16, 17

Hal Martin, Federal Reserve Bank of Cleveland, "Making Sense of Eviction Trends during the Pandemic" (Aug. 23, 2022) 2

Howlett By & Through Howlett v. Rose, 496 U.S. 356 (1990).................. 7

Kathryn A. Sabbeth, "(Under)Enforcement of Poor Tenants' Rights," 27 GEO. J. ON POVERTY L. & POLICY 97 (2019). 19

Kathryn A. Sabbeth, "Erasing the Scarlet 'E' of Eviction Records," THE LAB (April 2, 2021)... 18

Kathryn A. Sabbeth, Housing Defense as the New Gideon, 41 HARV. J.L. & GENDER 55 (2018)... 18

Laurie Goodman, Karan Kaul, & Michael Neal, "The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units," Urban Institute (Apr. 20, 2020)... 6

Matthew Desmond & Rachel Tolbert Kimbro, "Eviction's Fallout: Housing, Hardship, and Health," 94 SOC. FORCES 295 (2015)... 18, 19

Matthew Desmond & Tracey Shollenberger, "Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences," 52 DEMOGRAPHY 1751 (2015). 15

Matthew Desmond, Carl Gershenshon & Barbara Kiviat, "Forced Relocation and Residential Stability Among Urban Renters," 89 Soc. Serv. Rev. 227 (2015). 19

Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88 (2012) 18

National Housing Law Project, "Evictions Survey: What's Happening on the Ground" (Fall 2021) 1

National Housing Law Project, "July 2020: What's Happening with Evictions? A Survey of Legal Aid Attorneys" (July 2020) 17

National Housing Law Project, "Rising Evictions in HUD-Assisted Housing: Survey of Legal Aid Attorneys" (Spring 2022) 2

Safia Samee Ali, "Some landlords are using harassment, threats to force out tenants during COVID-19 crisis," NBC NEWS DIGITAL (June 14, 2020) 17

U.S. Dept. of Hous. & Urban Dev., Office of Policy Dev. & Research, "Affordable Housing, Eviction, and Health," *Evidence Matters* (Summer 2021) 18

U.S. Dept. of Housing & Urban Dev't, Office of Policy Dev. & Research, "Low-Income Housing Tax Credit (LIHTC): Property Level Data" (Apr. 8, 2022) 6, 19

Wash. State Office of Civil Legal Aid, "Report to the Legislature on Implementation of the Appointed Counsel Program for Indigent Tenants in Unlawful Detainer Cases" at 3 (2022) 16

I. INTRODUCTION

Shortly after Covid-19 arrived in the United States, triggering massive economic disruption and housing insecurity, Congress enacted a package of emergency legislation—the "Coronavirus Aid, Relief, and Economic Security Act," or "CARES Act." *See* Pub.L. 116-136 (Mar. 27, 2020). The CARES Act imposed a 120-day moratorium on eviction lawsuits for nonpayment of rent or other charges in certain federally-related rental properties. *See* 15 U.S.C. § 9058(b). That moratorium has long expired. But the same provision also established a permanent requirement for 30-days' notice before a tenant could be "required to vacate" a covered dwelling unit for nonpayment or rent or other charges. *See id*. at § 9058(c).

Unfortunately, many tenants who should have benefited from that notice provision have been wrongfully evicted due to lack of judicial enforcement. In a national survey of housing advocates in late 2021, 78 percent of respondents reported that courts in their areas did not consistently enforce the CARES Act notice requirement—with 20 percent reporting their local courts did not enforce the provision at all.[1] In a subsequent, Spring 2022, survey, 88 percent reported their area courts did not consistently enforce the CARES Act notice even in cases involving HUD-subsidized housing

[1] National Housing Law Project, "Evictions Survey: What's Happening on the Ground" (Fall 2021), https://www.nhlp.org/wp-content/uploads/NHLP-evictions-survey-2021.pdf.

(where units are categorically covered by the provision).[2] With financial pressures on tenants mounting and eviction rates eclipsing pre-pandemic levels,[3] the widespread ignorance or misapplication of this critical tenant protection is a devastating outrage.

To its credit, the trial court below at least appeared ready and willing to enforce the CARES Act notice provision. But that court committed error when it found the landlord's twin notices—one of which gave just 14 days to pay or vacate, while the other stated no specific deadline to vacate and falsely suggested the tenant could be sued for unlawful detainer within less than 30 days—were sufficient under the Act. This appeal thus presents an important opportunity to make clear that trial courts must enforce the CARES Act notice requirement in nonpayment eviction cases, and that doing so means giving the tenant a clear deadline to vacate that is no sooner than 30 days from service of the notice. *See* 15 U.S.C. § 9058(c).

II. IDENTITIES AND INTERESTS OF AMICI CURIAE

Amicus National Housing Law Project (NHLP) is a nonprofit organization that works to advance tenants' rights, increase housing opportunities for underserved communities, and preserve and expand the

[2] National Housing Law Project, "Rising Evictions in HUD-Assisted Housing: Survey of Legal Aid Attorneys" (Spring 2022), https://www.nhlp.org/wp-content/uploads/HUD-Housing-Survey-2022.pdf.

[3] Hal Martin, Federal Reserve Bank of Cleveland, "Making Sense of Eviction Trends during the Pandemic" (Aug. 23, 2022), https://www.clevelandfed.org/en/newsroom-and-events/publications/economic-commentary/2022-economic-commentaries/ec-202212-making-sense-of-eviction-trends-during-the-pandemic.aspx.

nation's supply of safe and affordable homes. NHLP pursues these goals primarily through technical assistance and support to legal aid attorneys and other housing advocates. NHLP coordinates the Housing Justice Network, which now includes more than 1,600 legal aid lawyers and other housing advocates throughout the U.S. Throughout the Covid-19 pandemic, NHLP has been at the front-line in the struggle to prevent widespread evictions, including by advocating at the federal level and in multiple states for tenant protections and relief funding, creating resources to help tenants learn about and advance rights and protections, providing training for a broad array of advocates and other stakeholders, and supplying leadership through national workgroups, communications, and media. The CARES Act notice requirement is central to the work of NHLP and Housing Justice Network members.

Amicus Mobilization for Justice's (MFJ) mission is to achieve justice for all. MFJ prioritizes the needs of people who are low-income, disenfranchised, or have disabilities as they struggle to overcome the effects of social injustice and systemic racism. They provide the highest-quality free, direct civil legal assistance, conduct community education and build partnerships, engage in policy advocacy, and bring impact litigation. MFJ assists more than 14,000 New Yorkers each year, benefitting over 24,000.

Amicus Kathryn A. Sabbeth is a professor of law at the University of North Carolina at Chapel Hill School of Law. Professor Sabbeth's teaching and research span the areas of landlord-tenant law, legal ethics,

and the civil justice system. She is an expert on eviction court procedures and the experiences of low-income tenants. Professor Sabbeth is interested in providing the Court with current research on the social harms caused by abrupt, involuntary relocation, such as that caused by premature notices to vacate. She also wishes to supplement the Court's understanding of the notice provision that Congress adopted in the CARES Act, highlighting legislative recognition for the negative economic consequences of abrupt relocations and sought to prevent them.

III. STATEMENT OF THE CASE

Amici rely upon the Statement of the Case set forth in Appellant's opening brief, pp. 5-8.

IV. SUMMARY OF ARGUMENT

This unlawful detainer action should have been dismissed because the landlord never served the tenant a proper notice to vacate. Whereas the tenant was entitled to 30 days' notice under the CARES Act, the notices the landlord served gave the tenant only 14 days to pay the rent or vacate and stated that an unlawful detainer action could be filed against her any time after the 14th day. *See* CP 20-21, 26. Those notices were misleading because Washington law does not permit an unlawful detainer action unless and until the tenant continues occupying premises after the deadline to vacate has passed.

Enforcing the full 30-day notice requirement is important not only because deceptive eviction notices violate technical unlawful detainer

rules, but because significant injuries to tenants can result—such as hastily moving out earlier than necessary (perhaps becoming homeless or accepting substandard housing) or acquiring eviction records that impair future access to housing. This court should hold that the landlord's misleading eviction notices were insufficient to confer unlawful detainer jurisdiction and reverse the decision below.

V. ARGUMENT

A. Tenants residing in dwelling units covered by the CARES Act must be given at least 30 days' notice to vacate for nonpayment of rent or other charges.

Washington law ordinarily enables a landlord to terminate a residential tenancy for nonpayment of rent by giving 14 days' notice to pay-or-vacate. *See* RCW 5912.030(3); *see also* RCW 59.18.057. However, in properties covered by the CARES Act, a tenant must be given at least 30 days' notice before being required to vacate for nonpayment of rent or other charges. *See* 15 § U.S.C. 9058(c).

1. CARES Act coverage and notice requirements.

To be clear, the CARES Act does not apply to all rental housing. Rather, the Act applies only to landlords who benefit from certain forms of federal financing or rental subsidies. *Id*. § 9058(a)(2). Those properties are, in the words of the CARES Act, "covered properties." *Id.* Residential units occupied by tenants in covered properties are defined as "covered dwellings." *Id.* § 9058(a)(1). This definition reaches an extensive amount

of rental housing—though precisely which or how many properties are covered is unknown and there is no readily apparent way to find out.[4] Nevertheless, in this case there is no dispute that the tenant resides in a covered dwelling unit.

The CARES Act notice provision states that a "lessor of a covered dwelling unit . . . may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." *Id.* § 9058(c)(1). While this text does not limit application to nonpayment cases, the only reported decisions to consider this provision to date—both from trial courts—have found the notice requirement applicable only to nonpayment cases. *See W. Haven Hous. Auth. v. Armstrong*, 2021 WL 2775095, at *3 (Conn. Super. Ct. Mar. 16, 2021); *see Watson v. Vici Cmty. Dev. Corp.,* No. CIV-20-1011-F, 2022 WL 910155 at *9-10 (W.D. Okla. Mar. 28, 2022).

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[4] By one estimate, approximately 12.3 million rental housing units (28 percent of the 43.8 million overall U.S. units) are covered by virtue of having federally-backed mortgage loans. Laurie Goodman, Karan Kaul, & Michael Neal, "The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units," Urban Institute (Apr. 20, 2020), https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units. The U.S. has about 5.2 million rental units assisted by housing vouchers or other federal subsidies, and more than 3.4 million low-income housing tax credit units. See Center for Budget & Policy Priorities, "Federal Rental Assistance Fact Sheets" (Jan. 19, 2022), https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#US; see U.S. Dept. of Housing & Urban Dev't, Office of Policy Dev. & Research, "Low-Income Housing Tax Credit (LIHTC): Property Level Data" (Apr. 8, 2022). While some units could overlap with coverage through both financing or other federal programs, other (non-participating) housing units can be covered if in properties where other units have vouchers or participate other federal programs. *See* 15 U.S.C. § 9058(a)(2)(A).

2. The CARES Act preempts state law insofar as it enables termination of a tenancy in a covered dwelling unit for nonpayment of rent without 30 days' notice.

In covered dwelling units, Washington's 14-day pay-or-vacate notice period is irreconcilable with the minimum 30-day notice required by the CARES Act. Compliance with federal law is mandatory and state courts have a duty to follow procedures that comply with federal laws. *See Howlett By & Through Howlett v. Rose,* 496 U.S. 356, 367 (1990) ("The Supremacy Clause makes those laws 'the supreme Law of the Land,' and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure."). When a conflict exists, state law must give way to federal law. *See City of Tacoma v. Taxpayers of Tacoma*, 43 Wn.2d 468, 483, 262 P.2d 214 (1953).

Establishing preemption requires showing either congressional intent to preempt state law "or such a 'direct and positive' conflict that the federal and state acts cannot be reconciled or consistently stand together." *Everett Housing Authority v. Terry*, 114 Wn.2d 558, 565, 789 P.2d 745 (1990). While *Terry* found against preemption, its reasoning demonstrates why there is a direct and positive conflict here. *Terry* involved the interplay between a federal statute requiring notice of "a reasonable time, but not to exceed 30 days" for terminating a public housing lease, and a state law requiring notice and a 10–day opportunity to correct a breach of covenant to avoid forfeiture of a tenancy. *See Terry* at 565-66. The housing authority did not give the 10-day "comply-or-vacate" notice but

argued no such notice was required because the federal provision preempted the state statute. *Id*. at 567. The Court disagreed for several reasons—three of which distinguish *Terry* from this case.

First, in *Terry*, the court found the federal and state law were not in conflict because their timeframes could be reconciled—only the state law provided a specific minimum notice period, which the court thought could satisfy the federal requirement for a "reasonable time." *See Terry* at 565-66 ("the state 10–day requirement may be regarded as the Legislature's expression of what it considers "reasonable" under the federal statute."). In contrast, compliance with the state statute here —providing a 14-day pay-or-vacate notice—is inadequate to fulfill the federal 30-day notice requirement. *Compare* RCW 59.18.030(3) *with* 15 U.S.C. § 9058(c). The 30-day notice period from the CARES Act is, of course, a fixed and unequivocal minimum—unlike the more ambiguous "reasonable time" requirement at issue in *Terry*.

The *Terry* court next noted that "the federal notice provisions [for public housing evictions] apply to the federal procedures affording tenants due process before termination of their leases and not to state court proceedings based on those terminations." *Terry* at 567 ("Although the Housing Authority provided notice which may have been sufficient for an action in *ejectment*, it did not provide notice which met the statutory requirements for an *unlawful detainer* action.") (italics in original). Here, in contrast, the CARES Act specifies the minimum amount of notice the landlord must give before requiring the tenant to vacate, hence a landlord

could not establish a right to possession of the premises without first meeting the notice requirement regardless of the procedure used. *See* 15 U.S.C. § 9058(c).

Third, in *Terry* the state law notice provision included not only a minimum time component but also a right to preserve the tenancy by curing the default—hence the Housing Authority urged a form of preemption that would have resulted in public housing tenants having less protection than is generally available under state law. *See Terry* at 568–69 (noting the Legislature had "provided for a tenant to have *at least* one opportunity to correct a breach") (italics in original). Here, however, the federal law is more protective of tenants. And where there is a conflict in the amount of notice required to be given to residential tenants, federal law "preempts state law that is less protective of tenants." *Mik v. Fed. Home Loan Mortg. Corp.*, 743 F.3d 149, 165 (6th Cir. 2014) (federal law relating to post-foreclosure-evictions preempted less protective state law).

B. Inadequate pre-suit notice precludes unlawful detainer jurisdiction and requires dismissal.

The Unlawful Detainer Act, RCW 59.12, sets forth a summary proceeding for quickly adjudicating disputes over the present right to possession of premises. *See Faciszewski v. Brown,* 187 Wn.2d 308, 314; 386 P.3d 711 (2016). The unlawful detainer procedure enables landlords to pursue recovery of leased premises without the necessity of ejectment

lawsuits, which tend to be comparatively lengthy and more expensive.[5] *See FPA Crescent Associates, LLC v. Jamie's, LLC,* 190 Wn. App. 666, 675; 360 P.3d 934 (2015), citing *Terry,* 114 Wn.2d at 563-64. But "to take advantage of its favorable provisions, a landlord must comply with the requirements of the statute." *Terry* at 563-64, *quoting Sowers v. Lewis*, 49 Wn.2d 891, 894; 307 P.2d 1064 (1957).

1. Proper notice is mandatory to invoke jurisdiction under Unlawful Detainer Act.

Serving a lease termination notice is typically the first unlawful detainer step and such notices are mandatory in evictions for nonpayment of rent. *See FPA Crescent Associates,* 190 Wn. App. at 677 (failure to give pay-or-vacate notice defeated unlawful detainer jurisdiction even though contract authorize immediate lease termination for nonpayment of rent). The notice must specify the amount of rent owed and the deadline for the tenant either to cure the rent default or vacate the premises. *See* RCW 59.12.030(3); *see Metcalfe v. Heslop,* 161 Wash. 106, 107; 296 P. 151 (1931) ("The notice itself is insufficient in form, as it does not describe the property, fails to state the amount of rent due, and fixes no time for the surrender of the premises in case of continued failure to pay the rent.").

[5] The Residential Landlord-Tenant Act provides for an (often dispositive) "show cause hearing" on as little as seven days' notice. *See* RCW 59.18.380; *see also Fasciszewksi* at 314-15 (discussing show cause hearings). Counterclaims are not permitted except "when based on facts which excuse a tenant's breach." *First Union Mgmt., Inc. v. Slack,* 36 Wn. App. 849, 854; 679 P.2d 936 (1984). And formal discovery is seldom practical because the full notice and response deadlines (30 days for written discovery and at five least days for depositions) still apply. *See* CR 30(b), 33-36, 45(b).

Though substantial compliance is sufficient for a pre-suit notice, the "notice must also be sufficiently particular and certain so as not to deceive or mislead." *IBF, LLC v. Heuft,* 141 Wn. App. 624, 632; 174 P.3d 95 (2007), *citing Provident Mutual Life Ins. Co. v. Thrower,* 155 Wash. 613, 285 P. 654 (1930).

2. An eviction notice that is misleading or fails to state a particular deadline to vacate is ineffective.

The notices given in this case were misleading and not sufficiently particular. The "CARES Act notice," CP 26, was insufficient because it did not give state-specific deadline to vacate, providing only that "if a court so orders in any unlawful detainer action, [the tenant] may be required to vacate the residential unit in not less than 30 days from the date of this notice." *See Metcalfe* at 107 (notice deficient where it "fixes no time for the surrender of the premises in case of continued failure to pay the rent"). The separate pay-or-vacate notice did state a specific deadline to vacate, but that deadline was only 14 days. CP 20-21. That made the notice misleading and ineffective because the tenant was entitled under the CARES Act to 30 days in which to vacate. *See* 15 U.S.C. § 9058(c); *see also IBF*, 141 Wn. App. at 633 (three-day pay-or-vacate notice was not effective where lease required minimum of ten days' notice to pay or vacate in case of rent default); *Sowers,* 49 Wn.2d at 895 (three-

day notice to comply-or-vacate for non-monetary lease violations was ineffective as statute required at least 10 days' notice).

The combined meaning of the landlord's two notices—that the tenants had 14 days in which to pay the rent or vacate, and if they did not, an unlawful detainer action could then be filed against them any time after the 14th day—which could then result in their physical removal after the 30th day—was contrary to law. A landlord may not lawfully commence an unlawful detainer action until the tenant has held over beyond the deadline to vacate—i.e., is "unlawfully detaining" the premises. *See, e.g., Wooding v. Sawyer,* 38 Wn.2d 381, 387; 229 P.2d 535, 539 (1951) ("Until the notice has been served and has remained uncompiled-with for a period of three days after its service, the tenant, though in arrears in his rent, is rightfully in possession, but thereafter he is guilty of unlawful detainer."); *see also Christensen v. Ellsworth,* 162 Wn.2d 365, 371; 173 P.3d 228, 231 (2007) ("[A] tenant is guilty of unlawful detainer four days after the notice is properly posted and mailed. Once a tenant is guilty of unlawful detainer under RCW 59.12.030(3), a landlord may commence an unlawful detainer action…") (underline added).

Put simply, by giving an eviction notice a landlord "requires" the tenant to vacate—an unlawful detainer action is necessary and appropriate only if a tenant remains despite having been required to vacate. This same scheme is substantially universal in summary proceedings throughout the

U.S.,[6] and Congress should be presumed to have worded the CARES Act provision precisely in prohibiting the lessor of a covered dwelling unit from "requiring the tenant to vacate" without 30 days' notice. *See F.B.I. v. Abramson,* 456 U.S. 615, 635 (1982) (O'Connor dissenting) ("a judge must presume that Congress chose its words with as much care as the judge himself brings to bear on the task of statutory interpretation.").

3. Notice requirements remain jurisdictional even if originating outside the Unlawful Detainer Act.

That the duty to give more than 14 days' notice to vacate for nonpayment arises from outside the Unlawful Detainer Act is of no moment. It is well-established that when a tenant is entitled to more notice than the Unlawful Detainer Act requires, a landlord must afford that greater notice period. *See, e.g., Community Investments, Ltd. v. Safeway Stores, Inc.,* 36 Wn. App. 34, 36–37, 671 P.2d 289 (1983); *see IBF,* 141 Wn. App at 634; s*ee also Hartson P'ship v. Goodwin,* 99 Wn. App. 227, 235–36; 991 P.2d 1211 (2000) (provision of mobile home park landlord-

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[6] For other cases following this rule in Northwest states, *see, e.g., C.O. Homes, LLC v. Cleveland,* 366 Or. 207, 219, 460 P.3d 494, 501 (2020) ("A landlord may not file an action for the return of possession until after the expiration of the time period provided in the notice terminating the tenancy."), citing ORS 105.115(2)(b); *see State ex rel. Needham v. Just. Ct. In & For Twp. & Cnty. of Silver Bow,* 119 Mont. 89, 95, 171 P.2d 351, 354 (1946) ("The relator failed and refused to pay the rent or surrender possession within three days after service of the notice and, by continuing in possession, he became guilty of unlawful detainer."); *see also, accord, Kruger v. Reyes,* 232 Cal. App. 4th Supp. 10, 19–20, 181 Cal. Rptr. 3d 521, 529 (Cal. App. Dep't Super. Ct. 2014); *Hunter v. Porter,* 10 Idaho 72, 77 P. 434, 438 (1904).

tenant act was "the functional equivalent of an unlawful detainer statute. As such, we must construe it strictly in favor of the tenant.").

The Court in *IBF v. Hueft,* for example, held that a landlord's "three-day notice pursuant to RCW 59.12.030(3) to pay rent or quit the premises" was insufficient to establish unlawful detainer jurisdiction when the lease required more notice. *IBF*, 141 Wn. App. at 629, 633 (tenant "received a notice that she had three days to pay rent or quit the premises. However, under the terms of the 'signed lease,' she was entitled to 10 days' notice before she would need to pay rent or quit the premises."). Similarly, in *Community Investments v. Safeway Stores,* the court affirmed the dismissal of an unlawful detainer action filed on the 19th day after notice to a commercial tenant that had negotiated 20 days' notice (to comply-or-vacate) for lease violations other than nonpayment of rent. *See Safeway,* 36 Wn. App. at 37 ("[a]lthough the unlawful detainer statute provides for a 10-day notice . . . CIL was bound by its lease to give Safeway 20 days' notice before it commenced its unlawful detainer action.").

Accordingly, the eviction notices the landlord served in this case were misleading, being based on an inaccurate understanding of the law. Such improper notices frustrated the primary purposes of giving notice—namely, to notify the tenants of their right to cure the rent default within a legally mandated timeframe, or alternatively to know a certain deadline by which to move out. *See Christensen*, 162 Wn.2d at 371 (purpose of pay-or-vacate notice is to provide a minimum opportunity to correct alleged

default); *see Metcalfe,* 161 Wash. at 107 (notice must fix the time for surrender of premises if rent remains unpaid). The trial court should have found the absence of a proper lease termination notice "defeat[ed] trial court's jurisdiction" and dismissed the action. *See IBF* at 632; *see also Christensen* at 372 ("Proper statutory notice under RCW 59.12.030 is a 'jurisdictional condition precedent' to the commencement of an unlawful detainer action.").

C. The confusion resulting from improper notices produces significant downstream harms on tenants and the community.

Inaccurate notice can mislead tenants into giving up their homes prematurely, and with serious consequences. Being forced out of housing abruptly makes tenants more likely to move into dangerous situations and can lead to more dire economic circumstances, negative health impacts, and homelessness.

1. Notice of impending eviction is enough to cause many families to leave.

Renowned eviction researcher Matthew Desmond and his co-authors have highlighted a massive phenomenon of "informal evictions" that occur due to landlords exerting pressure short of filing a court action.[7]

[7] *See* Ashley Gromis & Matthew Desmond, "Estimating the Prevalence of Eviction in the United States: New Data from the 2017 American Housing Survey," 23 CITYSCAPE 279, 281 (2021); Matthew Desmond & Tracey Shollenberger, "Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences," 52 DEMOGRAPHY 1751, 1754 (2015).

The most recent study of tenants' "forced moves" concluded that 72.3 percent were due to "informal evictions," far exceeding the number of formal evictions. *See Gromis & Desmond*, *supra*.[8]

"Tenants move out when the legal process is preceded by a 'termination of tenancy' notice from the landlord . . . [or] at any stage when the process itself is felt to be too intimidating or too expensive to pursue or when the tenant decides there is little likelihood of prevailing."[9] Most tenants lack legal representation, and, if they have fallen behind on rent, may believe that their only option is to move out. The Washington Legislature has in fact recognized tenants' need for legal counsel, RCW 59.18.640, but appointment is provided at the time of filing; thus, most tenants will still not have legal services during the notice period.[10]

Without a lawyer to explain the eviction process, tenants may not understand that a landlord must file a civil action and obtain a court order to obtain possession—but may believe the landlord can just change the locks or shut off the utilities when the notice period expires. Indeed, these fears may be justified even for tenants who are familiar with their rights,

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[8] Formal evictions comprised only 13.1 percent, while building condemnations and landlord foreclosure constituted even less. *Id.*

[9] Chester Hartman & David Robinson, Evictions: The Hidden Housing Problem, 14 HOUS. POL'Y DEBATE 461, 463 (2003).

[10] Wash. State Office of Civil Legal Aid, "Report to the Legislature on Implementation of the Appointed Counsel Program for Indigent Tenants in Unlawful Detainer Cases" at 3 (2022), https://ocla.wa.gov/wp-content/uploads/2022/07/OCLA-Report-to-the-Legislature-Implementation-of-Indigent-Tenant-Right-to-Counsel-FINAL-7-28-22-.pdf.

as landlords sometimes do take matters into their own hands.[11] Ninety-one percent of respondents to a Housing Justice Network advocate survey in July 2020 reported seeing illegal evictions in their service areas, including 53 percent observing lockouts and 18 percent observing intimidation or threats.[12]

Even without such threats, tenants could leave prematurely if they simply believe they must comply with a misleading notice, such as the notices the instant tenants received—requiring them to pay rent or vacate their apartment within just 14 days despite being entitled to 30 days' notice. A tenant who receives such a notice may reasonably believe it to be valid, even though its contents may be false as a matter of law.

Relatedly, the mere filing of an eviction causes damage to tenants' housing opportunities. *See Union Gospel Mission v. Bauer,* __ Wn. App. __; 514 P.3d 710, 712 (2022) (observing that tenant may be "disqualified from the rental market almost entirely due to past eviction lawsuits'

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[11] *See* Hartman & Robinson, *supra*, at 443–64 ("Legal tactics with a threatening impact may give way to harassment that is beyond what the law allows.").

[12] *See* National Housing Law Project, "July 2020: What's Happening with Evictions? A Survey of Legal Aid Attorneys" (July 2020), https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf; *see also* Beth Healy & Simón Rios, Despite Eviction Ban, Some Landlords Pressure Tenants To Leave Amid Pandemic, WBUR (Oct. 15, 2020) (describing dozens of reports of unlawful conduct, including contacting police, calling immigration officials, and even resorting to physical violence and in recent years landlords have engaged in increasingly aggressive behavior), https://www.wbur.org/news/2020/10/15/landlords-rent-eviction-ban-boston-tenants-coronavirus-pandemic; Safia Samee Ali, "Some landlords are using harassment, threats to force out tenants during COVID-19 crisis," NBC NEWS DIGITAL (June 14, 2020) ("[I]ncidences of self-help evictions . . . have been reported by housing organizations across the country"), https://www.nbcnews.com/news/us-news/some-landlords-are-using-harassment-threats-force-out-tenants-during-n1218216.

appearing on screening reports.”).[13] Tenants may rationally move out to avoid acquiring such eviction records, even without sufficient notice.

2. Abrupt evacuations lead to myriad social problems.

Being forced to leave a home quickly can lead to significant social problems, including increased moving costs, missed work and school, a loss of possessions, and extreme anxiety.[14] Moving with inadequate notice is especially challenging for low-income families, as the Supreme Court noted just last year. *See Silver v. Rudeen Mngmt. Co,* 484 P.3d 1251, 1257, 197 Wn.2d 535 (2021) (“for renters experiencing poverty. . . the security deposit and other moving expenses often exceed monthly income.”).

Abrupt moves frequently end in lower-quality neighborhoods, with higher crime rates and fewer public amenities.[15] Time pressure can land

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[13] *See* Kathryn A. Sabbeth, “Erasing the Scarlet ‘E’ of Eviction Records,” THE LAB (April 2, 2021), https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records.

[14] *See* Matthew Desmond & Rachel Tolbert Kimbro, “Eviction’s Fallout: Housing, Hardship, and Health,” 94 SOC. FORCES 295, 299 (2015); *see* Kathryn A. Sabbeth, Housing Defense as the New Gideon, 41 HARV. J.L. & GENDER 55, 66-69 (2018) (summarizing literature on individual and aggregate negative consequences); see also U.S. Dept. of Hous. & Urban Dev., Office of Policy Dev. & Research, “Affordable Housing, Eviction, and Health,” *Evidence Matters* (Summer 2021) (“Forced moves are often stressful, rushed, and undertaken with scant resources for associated expenses such as moving and storage services, application fees, and security deposits. During the eviction process, families might lose their possessions, their job, and their social networks and schools (with potentially negative implications for academic achievement.”), https://www.huduser.gov/portal/periodicals/em/Summer21/highlight1.html.

[15] *See* Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 118 (2012).

families in substandard conditions, either because property defects were overlooked in haste, or simply for lack of better choices.[16] Poor housing conditions can be truly dangerous, causing health problems including asthma, influenza, broken bones, infections or allergic reactions from insect bites, anxiety, depression, or worse.[17] One study showed that the likelihood of being laid off was between "11 to 15 percentage points higher for workers who experienced an eviction or other involuntary move."[18] And of course, tenants unable to find housing alternatives may also become homeless.[19]

Any involuntary loss of housing is likely to result in harms such as these, but the more time that families have to plan, the better they can prevent the most acute damage. Enforcing the 30-day CARES Act notice provision is critical for families who have fallen behind on rent, especially if they will be unable to catch back up and must make arrangements to cope with the loss of their housing. *See* 15 U.S.C. § 9058(c).

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[16] See Matthew Desmond, Carl Gershenshon & Barbara Kiviat, "Forced Relocation and Residential Stability Among Urban Renters," 89 Soc. Serv. Rev. 227, 249–251 (2015).

[17] *See* Kathryn A. Sabbeth, "(Under)Enforcement of Poor Tenants' Rights," 27 GEO. J. ON POVERTY L. & POLICY 97, 110 (2019).

[18] *See* Desmond & Kimbro, note 15 *supra*, at 299–300.

[19] See HUD Office of Policy Dev. & Research, "Affordable Housing, Eviction, and Health," note 14 *supra*.

VI. CONCLUSION

For all of the foregoing reasons, the Court should reverse the judgment of the superior court.

RESPECTFULLY SUBMITTED this 29th day of September, 2022.

/s/ Joseph Shaeffer
Joseph Shaeffer, WSBA #33273
MACDONALD HOAGUE & BAYLESS
705 2nd Avenue, Suite 1500
Seattle, WA 98104
(206) 622-1604

Eric Dunn (admitted to practice in Virginia; WSBA #36622, but inactive)
Marie Claire Tran-Leung (admitted to practice in California)
NATIONAL HOUSING LAW PROJECT
1663 Mission Street, Ste. 460
San Francisco, CA 94130
(415) 546-7000

Andrew Darcy (admitted to practice in New York and New Jersey)
MOBILIZATION FOR JUSTICE, INC.
100 William Street, 6th Floor
New York, NY 10038
(212) 417-3733

ATTORNEYS FOR AMICI CURIAE

Declaration of Service

I declare that on the date noted below I caused a copy of the foregoing **Brief of Amici Curiae National Housing Law Project, Mobilization for Justice, Professor Kathryn A. Sabbeth** to be served via Washington Courts E-Portal:

Counsel for Respondent

Drew Mazzeo
HARBOR APPEALS AND LAW, PLLC
2401 Bristol Court SW, Suite C-102
Olympia, WA 98502
Tel: (360) 539-7156
Fax: (360) 539-7205

Counsel for Petitioners

Edmund Witter; Yuan Ting; Dashiell Milliman-Jarvis; Kaitlin Heinen; Christina Jaccard
KING COUNTY BAR ASSOCIATION
HOUSING JUSTICE PROJECT
1200 5th Ave., Suite 700
Seattle, WA 98101
Tel: (253) 260-5129
Fax: (206) 624-3117

I declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

DATED this 29th day of September, 2022 at Seattle, Washington.

_____s/ *Lucas Wildner*_______
Lucas Wildner, Legal Assistant

MACDONALD HOAGUE & BAYLESS

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Address:
705 2ND AVE STE 1500
SEATTLE, WA, 98104-1745
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