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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

RENTAL HOUSING ASSOCIATION; ELENA
BRUK; SCOTT DOLFAY; CJD
INVESTMENTS, LLC; ZELLA
APARTMENTS LLC,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

No.

COMPLAINT FOR INJUNCTIVE
RELIEF/DECLARATORY JUDGMENT

Plaintiffs Rental Housing Association (of Washington) (“RHAWA”), Elena Bruk, Scott Dolfay, CJD Investments, LLC, and Zella Apartments LLC (collectively “plaintiffs”) through their attorneys assert the following claims for injunctive relief and declaratory judgment against the City of Seattle.

I. INTRODUCTION

1. Respect for core foundations of law is a cornerstone of a constitutional democracy both here in Seattle and in the United States. Certain cornerstones of principled constitutional democracy, including both the legal principles that safeguard them, and the rule of law, are now being trampled upon by the City Council of the City of Seattle.

2. As a teenager, plaintiff Elena Bruk escaped communism in the Soviet Union to start a new life in the United States, here in Washington. Here, she was told, a person could strive for a better life; that individuals have certain rights that the government cannot take away; that individuals have the ability and right to buy, hold and enjoy private property; and

1 that an independent judiciary exists to protect citizens if the government wrongfully curtails
2 those private rights. She attended the University of Washington and pursued a career in
3 public service. For her retirement, she planned to live on retirement funds, savings and
4 income from a triplex residential property she purchased with hard-earned money. The
5 triplex is in the City of Seattle. She lives in one unit. Her adult son, who helps care for her,
6 lives in another unit. The third unit is rented to a tenant who has not paid rent in full since
7 March of 2020. The Seattle Ordinances at issue in this lawsuit, if given effect, would bar
8 eviction of this tenant for failure to pay. Plaintiff Elena Bruk has two mortgage loans on the
9 triplex; pays insurance; pays taxes; pays utilities; and pays for maintenance, all out of her own
10 pocket. The City of Seattle recently passed a series of Ordinances that collectively dictate
11 that Ms. Bruk alone must bear the non-payment of rent by her tenant for up to a year and
12 potentially more, by barring her from evicting the non-paying tenant—not just during the
13 COVID-19 emergency, but also for at least another six months after the expiration of the
14 emergency period. Her faith in fairly applied law and the law’s protection of her rights and
15 property has been shattered. She fears that her adopted city is turning into the kind of place
16 she escaped from. The City is forcing her to house a non-paying tenant.

17 3. Plaintiff Scott Dolfay likewise owns a rental property in Seattle. His tenant for
18 a single family rental house is more than \$5,000 in arrears on rent and utilities. Income from
19 the rent assists with taxes, maintenance on the property and provides additional income for his
20 family. The rental was to be an asset to help fund lifetime assistance to his special needs
21 child. The Seattle Ordinances, if given effect, would bar eviction for failure to pay even after
22 the COVID emergency, force a non-paying tenant to be housed at Mr. Dolfay’s own expense
23 and keep Mr. Dolfay from renting to a tenant who does have an ability and willingness to pay.

24 4. Plaintiff CJD Investments, LLC (“CJD”) is a Washington LLC. It operates 23
25 apartments in Seattle. CJD has worked to assist tenants and inform them regarding tenant
26 assistance programs. The no-eviction bans are having a damaging effect. For example, one

1 tenant stopped paying rent in April 2020, but continues to reside in the apartment. The tenant
2 frequently gets retail deliveries reflecting that the tenant has disposable income, with
3 packages coming in from Amazon, Whole Foods, and other retailers. The tenant was offered
4 payment plans, but has refused them. The tenant's rent is behind by more than \$7,000 dollars.
5 CJD is being forced to house this non-paying tenant and that forced occupation will continue
6 beyond expiration of the COVID orders because of the Ordinances challenged in this lawsuit.

7 5. Plaintiff Zella Apartments LLC is a Washington LLC. It has dozens of units in
8 Seattle. It too has offered flexible arrangements to tenants with need for emergency relief.
9 However, it too is suffering from a tenant who is abusing eviction bans, bans which will
10 continue to force Zella to suffer occupation of rent-free tenants under the Ordinances. One
11 particular tenant gave notice that when his lease expired in April 2020, he would move out.
12 However, when the first mayoral eviction ban was put in place in late March 2020, he refused
13 to turn in his keys and still in name occupies the unit. He does not actively live in the unit
14 himself, but encouraged and allowed others to move in to his rental unit, despite not paying
15 rent, which precludes others from being able to lawfully rent it. The occupying persons have
16 regularly violated community policies and have been disruptive to other residents. This
17 holdover tenant is in arrears on rent by over \$7,000. The Ordinances at issue in this suit will
18 bar eviction of this tenant for half a year, at least, beyond the COVID order expiration, which
19 will keep this housing unit from being available for someone who needs housing and is
20 willing and able to pay.

21 6. Certain tenants, even with an ability to pay have proclaimed a rent strike. One
22 tenant known to RHAWA declared a rent strike beginning in May of 2020, stating that he had
23 the ability to pay, but would not. The Seattle Ordinances, if given effect, would bar eviction
24 for failure to pay well after the emergency is over and tying the hands of landlords to use
25 otherwise available legal remedies to enforce the terms of their leases, or oust non-paying
26 tenants.

1 13. Plaintiff Elena Bruk is a resident of Seattle, Washington. She is a member of
2 RHAWA. She is retired. She owns a triplex located in Seattle. She resides in one unit of the
3 triplex, and she rents another unit to her son. The third unit is rented to a tenant. The last
4 time the tenant paid full rent was March 2020. The tenant would be subject to eviction at the
5 end of the COVID orders if the Ordinances were not given effect.

6 14. Plaintiff Scott Dolfay owns a rental property in Seattle. He has a tenant who
7 has not paid rent and who would be eligible under preexisting law for eviction at the end of
8 the emergency moratoriums if the Ordinances were not given effect.

9 15. Plaintiff CJD Investments, LLC is a Washington LLC. It operates 23
10 apartments in Seattle. CJD has worked to assist tenants and inform them regarding tenant
11 assistance programs. The no-eviction bans are having a damaging effect. For example, one
12 tenant stopped paying rent in April 2020, but continues to reside in the apartment. The tenant
13 frequently gets retail deliveries reflecting that the tenant has disposable income with packages
14 coming in from Amazon, Whole Foods, and other retailers. The tenant was offered payment
15 plans, but has refused. The tenant's rent is behind by more than \$7,000 dollars. The
16 Ordinances, if given effect, will now continue to ban eviction beyond the expiration of the
17 emergency orders.

18 16. Plaintiff Zella Apartments LLC is a Washington LLC. It has dozens of units in
19 Seattle. It too has offered flexible arrangements to tenants with need for relief. However, it
20 too is suffering from a tenant who is abusing eviction bans, bans which will be extended
21 under the Ordinances. This particular tenant gave notice that when his lease expired in April
22 2020, he would move out. However, when the first eviction ban was put in place in late
23 March 2020, he refused to turn in his keys and still nominally occupies the unit. He does not
24 actively live in the unit himself, but encouraged and allowed others to move in to his rental
25 unit, despite not paying rent, which precludes others from being able to lawfully rent it. The
26 occupying persons have regularly violated community policies and have been disruptive to

1 other residents. This holdover tenant is in arrears on rent by over \$7,000. The Ordinances at
2 issue in this suit will bar eviction of this tenant who is keeping this housing unit from being
3 available for someone else.

4 17. Defendant City of Seattle is a municipal corporation under the laws of the State
5 of Washington. Its powers are limited by the State Constitution and state law.

6 **III. JURISDICTION AND VENUE**

7 18. This Court has jurisdiction over the parties and matter pursuant to RCW
8 2.08.010, RCW 7.24.010 and RCW 7.40.010.

9 19. Venue is proper in King County because the defendant City of Seattle is
10 located in King County.

11 **IV. STANDING**

12 20. RHAWA has associational standing to challenge the Ordinances. It also has a
13 direct interest in protecting its members from unlawful Ordinances that affect rental property
14 owners. It has over three thousand members in Seattle. They will suffer immediate, concrete
15 and specific economic injury from the Ordinances unless they are struck down before
16 enforcement of them begins. The Ordinances burden the RHAWA members by barring
17 recourse for non-paid monthly rent, abolishing payment of interest, and exposing them to
18 unreimbursed expenses and no near-term recoupment of outlaid expenses on mortgages,
19 taxes, insurance, utilities and maintenance.

20 21. Ms. Bruk, Mr. Dolfay, CJD Investments, LLC, and Zella Apartments LLC
21 each have individual standing to bring challenges to the Ordinances to the extent each
22 Ordinance will have a near-term effect on them. Because the Ordinances are applicable to
23 them unless the Ordinances are enjoined or declared unlawful, all plaintiffs have standing to
24 challenge them.

25 22. The Court may also adjudicate this matter because it involves a controversy of
26 substantial public importance. There are approximately 174,400 rental housing units in

1 Seattle, which is approximately 53 percent of all housing in Seattle, according to City of
2 Seattle published statistics.

3
4 **V. BACKGROUND FACTS**

5 **A. The Winter Eviction Ban.**

6 23. The Seattle City Council passed an annual, recurring three-month eviction ban
7 in February of 2020, which became Ordinance 126041. This was enacted before the COVID-
8 19 crisis erupted in Washington. It is unrelated to the crisis. The Mayor refused to sign the
9 bill, objecting that the Ordinance would not achieve its goal of reducing homelessness or
10 evictions, and would only lead to a costly legal challenge. *See* Mayor’s letter of February 24,
11 2020, which returned the bill unsigned. However, by operation of law, the Ordinance went
12 into effect pursuant to SMC 1.04.020.

13 24. In summary, Ordinance 126041 provides that if certain tenants fail to pay rent,
14 it is nevertheless a “defense” to an eviction proceeding if the eviction is sought against a
15 protected tenant in the months of December, January or February. Ordinance 126041 is
16 commonly referred to as the winter eviction ban.

17 25. A tenant qualifies for protection if they are a moderate income household and
18 reside in a unit owned by a person who owns more than four rental units in Seattle.

19 26. The winter eviction ban was reported to be the first of its kind in the United
20 States.

21 **B. The Governor and Mayor Respond to COVID-19 As Does Congress.**

22 27. Shortly after passage of the Seattle winter eviction ban, the COVID-19
23 pandemic hit worldwide, including in Washington and Seattle. In response, Washington’s
24 Governor ordered the shutdown of many, but not all, private-sector businesses. However,
25 many government functions, healthcare and grocery industry workplaces and employees were
26 deemed essential and both allowed and encouraged to stay open and to continue operating
with workers receiving full, and sometimes enhanced, pay. The Governor’s shutdown

1 affected private employment to a vastly higher degree than government, healthcare, or
2 grocery industry employment. The Ordinances enacted by the City challenged here, however,
3 do not take into account or differentiate between the many Seattle renters who did not
4 experience loss of pay during the COVID-19 crisis and those that did.

5 28. In national response to the pandemic and similar governor-ordered shutdowns
6 in other states, the Congress of the United States passed, and the President signed into law,
7 various federal economic relief laws that injected trillions of dollars into relief programs.
8 Some federal relief flowed directly to individuals, some of whom are tenants, in the form of
9 stimulus checks; some went directly to affected unemployed workers; and some, like the
10 Paycheck Protection Program, provided loans to small and mid-sized businesses that provided
11 strong financial incentives for those loans to be used to continue paying employees. Many
12 Seattle renter-households, regardless of need, received federal stimulus checks, and many
13 Seattle-area renters who became unemployed during the pandemic received enhanced
14 unemployment benefits such that those benefits actually exceeded what their weekly
15 compensation had been. Yet, the City's Ordinances challenged here do not take into account
16 that for many Seattle residential tenants the combined effects of the federal relief ameliorated,
17 and in some cases eliminated, the financial consequences of the COVID-19 pandemic.

18 29. During this time, the Governor of Washington and the Mayor of Seattle issued
19 executive orders banning residential evictions for failure to pay rent. The Mayor of Seattle
20 issued a moratorium on residential evictions for non-payment of rent on March 16, 2020,
21 which ran to June 3, 2020, and which later was extended to December 31, 2020. The
22 Governor, on March 18, 2020, ordered a state-wide eviction ban which initially was to expire
23 on June 4, 2020, but was later extended, and will now expire in October 2020.

24 30. Those emergency orders from the Mayor and Governor state that they address
25 the COVID-19 emergency.
26

1 31. Beginning in late May and continuing in June 2020, the Governor allowed, to
2 varying degrees, counties within the state to reopen their economies, thus allowing for
3 businesses to reopen and many employees to return to work. And, many tenants were never
4 out of work. On June 19, King County, including Seattle, moved to reopening Phase 2. In
5 this phase, many businesses were allowed to and did reopen following guidance to safely do
6 so. Businesses reopening meant that employees and other service providers could also return
7 to work. Also, real estate services were permitted to reopen with in-person contact, which
8 meant that on-site and in-person leasing transactions were allowed so that units could be
9 readily viewed and rented to new tenants. Just as the challenged Ordinances did not take the
10 relief packages into account, the Ordinances do not take the reopening of businesses and
11 reemployment of thousands of Seattle residents into account.

12
13 **C. The Council Passes an Additional Six-Month Eviction Ban for Post-Emergency
14 Non-Payment of Rent.**

15 32. Despite these executive orders directed at the impact of COVID-19 and related
16 shutdowns, the Seattle City Council enacted Ordinance 126075 in May 2020. This Ordinance
17 provides that failing to pay rent during the declared emergency moratorium and for six
18 months thereafter, is labeled a “defense” to a residential rental eviction proceeding. The first
19 part—an eviction moratorium during the declared COVID-19 emergency—is redundant. Both
20 the Mayor’s and the Governor’s executive orders already provide for that. The second part—
21 extending the moratorium six months beyond the declared emergency—goes beyond the
22 emergency without any justification or rationality.

23 33. Ordinance 126075 in pertinent part states: “[I]t is a defense to eviction if the
24 eviction would result in the tenant having to vacate the housing unit within six months after
25 the termination of the Mayor’s eviction moratorium, and if the reason for terminating the
26 tenancy is: 1) The tenant fails [to pay rent]” Ordinance 126075 § 9(a).

1 34. Ordinance 126075 applies to any tenant, rich or poor, employed or
2 unemployed, in a single tenant rental property or a larger apartment complex, and it applies
3 without any requirement that a tenant provide, let alone for a court to determine, that there is
4 objective proof of financial inability or even difficulty to pay rent due to COVID-19-related
5 issues. A tenant, for example could choose to buy a luxury SUV rather than pay rent owed
6 under a written lease. Indeed, the Ordinance does not even require the tenant’s self-
7 proclaimed need for the “defense” be COVID-19-related. This is a distinguishing feature of
8 the six-month eviction ban—it is intentionally not COVID-related. Nor is the winter eviction
9 ban COVID-related. And the Ordinance does not take into account whether the landlord can
10 afford to carry the burden of a non-paying tenant.

11 35. Ordinance 126075 further says that no attorneys’ fees or statutory court costs
12 are to be awarded against a tenant for any eviction action for failing to pay rent. Ordinance
13 126075 is referred to as the “additional six months eviction ban.”

14 36. The effect of Ordinance 126075 is that residential rental evictions for failure to
15 pay rent are barred from March of 2020 to July 2021 *for all rental units* in Seattle. Thus,
16 property owners face the realistic prospect of no rent payments for over a year, with no
17 recourse to the state’s unlawful detainer law (RCW Chs. 59.12 and 59.18).

18 **D. The Council Dictates a Forced, Interest-Free, Payment Plan for Rent.**

19 37. The City Council was not done. Later in May, the Council passed and the
20 Mayor signed, Ordinance 126081. This too is intentionally not tied to COVID. This
21 Ordinance requires rental unit owners to accept mandated payment plans for past due rent,
22 with no showing of need, no showing of COVID-19-related hardship, and no showing or any
23 consideration of the individual circumstances of the tenant or property owner. For example, if
24 a tenant used rent money to instead buy a luxury car, the tenant is fully afforded a mandated
25 interest-free payment plan under this Ordinance.
26

1 38. If a tenant fails to pay rent during the time period of the emergency, or within
2 six months afterwards, a rental unit owner must accept an interest-free payment plan. The
3 dictated plan calls for three monthly installments if one month or less of rent is due; five
4 monthly installments if up to two months of rent is due; or six monthly installments if over
5 two months of rent is due. Notably, there is no mechanism to determine if the tenant has the
6 ability to pay sooner, or ability to pay on the decreed schedule, or no ability or intention to
7 pay at all, because no individual circumstances are taken into account. Moreover, there is no
8 mechanism in Ordinance 126081 to take into account whether the lease term for the tenant's
9 unit is less time than the mandatory payment plan term.

10 39. In addition, despite the reality that the rent arrearage, if it is ever received,
11 could be delayed for up to and beyond a year, no late fee, interest or other charge can accrue.
12 Nor can any attorneys' fees or court costs be awarded in an eviction proceeding under
13 Ordinance 126081 even after the six-month period has run if the non-payment leading to the
14 eviction occurred during that period. The City has mandated zero-percent financing with no
15 showing of creditworthiness, all at the expense of luckless landlords and regardless of a
16 landlord's ability to survive such long term losses.

17 40. A rental unit owner's failure to accept and abide by the mandatory payment
18 plan is, under the Ordinance, decreed to be a "defense" to eviction.

19 **E. The City Council Has Trampled on the Legal Rights of Lessors.**

20 41. While there is no question that the COVID-19 pandemic was a situation of
21 great public concern, the City of Seattle has gone too far astray of state law in unnecessarily
22 and unreasonably imposing on owners of residential rental real property the public burden that
23 city government believes it faces. It has favored the special private interests of residential
24 tenants at the expense of private property owners; it has trampled state law; and it has torn up
25 and discarded written lease agreements that would otherwise control the rights and obligations
26

1 of the contracting parties. The City has put the expense of implementing its social ideals—
2 unrelated to COVID-19—squarely on rental unit property owners and not on other citizens.

3 42. One of those now substantially burdened property owners is Elena Bruk. She
4 came to the United States in 1975 and has resided in Seattle since then. She attended the
5 University of Washington. She worked for decades as a social worker/social service provider.
6 She purchased a triplex property in Northeast Seattle. She occupies one unit herself. She has
7 increasing health issues and had surgery in 2019. Her adult son lives in another of the units.
8 He moved, in part, to help his mother. The third unit is rented out pursuant to a lease
9 agreement. The tenant of the third unit paid rent up to March, but has not paid full rent in
10 April, May, June, July, August, or September 2020.

11 43. The rent on the unit, which includes a fenced, maintained yard, is \$1,750 plus
12 utilities. The property has two mortgages. The combined monthly mortgage payments are
13 approximately \$2,620. Insurance on the property is approximately \$1,800 per year, utilities
14 are approximately \$100 per month, and maintenance is \$200 per month. Ms. Bruk pays the
15 taxes on the property as well.

16 44. Without rental income from the third unit, Ms. Bruk must draw from her
17 savings to pay the mortgages, insurance, utilities, maintenance and taxes. She will be injured
18 and damaged by the Ordinances. If she could evict the tenant, she would be able to promptly
19 re-rent the unit to a paying tenant. However, the City of Seattle has ordered her, pursuant to
20 its Ordinances, to house the tenant on her property through at least July of 2021, even if the
21 tenant does not pay a single additional dollar of rent ever.

22 45. All the plaintiffs also face loss of income from non-paying tenants and will
23 similarly be injured.

24 46. In an early Supreme Court case setting out the limits of the powers of the
25 states, a unanimous Supreme Court held that states do not have the power to create and
26 enforce “a law that takes property from A and gives it to B: It is against all reason and justice,

1 for a people to entrust a Legislature with such powers.” *Calder v. Bull*, 3 U.S. 386 (1798).
2 This is an example of an act “state legislatures cannot do without exceeding their authority.”
3 *Id.* This same principle is carried over to the Washington Constitution and this lawsuit seeks
4 relief only under state law and the State Constitution.

5 47. By its Ordinances, the City of Seattle has taken away from the property owner
6 the right to control who occupies their rental unit, and it has transferred that right to the
7 tenant, without requiring the fundamental, bedrock counter obligation of contemporaneously
8 paid monthly rent.

9 48. The Seattle eviction bans deprive property owners of remedies available under
10 state law to restore their ownership interest in occupancy of their own real property. Just as
11 the six-month ban offends state law and the State Constitution, so does the three-month winter
12 eviction ban. The winter-eviction ban, the six-month eviction ban and the forced payment
13 plan Ordinances are each in conflict with state law and offend the State Constitution.

14 49. RHAWA has thousands of members in the same circumstances and who will
15 be suffering the same losses as Ms. Bruk, and the other plaintiffs. And these are not hard-
16 hearted landlords. Each offered to consider and accommodate a partial or flexible payment
17 plan on reasonable terms.

18
19 **VI. CAUSES OF ACTION**
FIRST CAUSE OF ACTION: DECLARATORY RELIEF

20 50. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
21 herein.

22 51. Plaintiffs’ rights, status and legal relationships have been affected by the City’s
23 Ordinances.

24 52. Pursuant to RCW 7.24, plaintiffs are entitled to have the Court review the
25 existing controversy and declare the rights, status and other legal relations of the plaintiffs in
26 regard to the City’s Ordinances. The Ordinances create an actual, present and existing dispute

1 with the City due to the Ordinances' foreseeable impact on plaintiffs should no change in the
2 status quo take place.

3 53. Pursuant to RCW 7.24, plaintiffs petition for declaratory judgment that
4 Ordinances 126041, 126075 and 126081 are invalid for the reasons alleged herein.

5 **SECOND CAUSE OF ACTION: PROCEDURAL DUE PROCESS**

6 54. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
7 herein.

8 55. The City's Ordinances unlawfully deprive plaintiffs of property interests,
9 including contractually required timely paid rent, interest, fees and forced sufferance of
10 involuntary physical occupation of owned space, along with forfeiture of legal rights without
11 due notice and an opportunity to be heard as required by the State Constitution. "[S]ome type
12 of hearing prior to a deprivation is required by due process." *Tellevik v. Real Property*
13 *Known as 31641 W. Rutherford St.*, 120 Wn.2d 68, 82, 838 P.2d 111 (1992). Such a
14 proceeding must include a hearing before an impartial decisionmaker, the right to appear, the
15 right to present evidence and the right to confront witnesses. *Rogoski v. Hammond*, 9 Wn.
16 App. 500, 506, 513 P.2d 285 (1973). It is for these due process reasons that the state unlawful
17 detainer statutes require a show cause hearing before an impartial decisionmaker where both
18 the landlord and the tenant can present evidence and argument to a judge or other judicial
19 officer. Thereafter, the parties also have a right to a revision of the initial show cause ruling
20 or have a right to proceed to a full jury trial of their dispute. For example, a property owner
21 should have the ability to challenge whether a tenant truly does not have means to pay.

22 56. There was no legitimate need for the Seattle Ordinances because recently the
23 Washington Legislature added to the rights of both parties in an unlawful detainer proceeding.
24 Notably, under RCW 59.18.410 a Superior Court can hear claims of hardship and take into
25 account evidence presented by both sides to fashion appropriate relief:
26

1 [A]t the time of the show cause hearing or trial, or upon subsequent motion of the
2 tenant but before the execution of the writ of restitution, [the court] may stay the writ
3 of restitution upon good cause and on such terms that the court deems fair and just for
4 both parties. In making this decision, the court shall consider evidence of the
5 following factors:

- 6 (i) The tenant's willful or intentional default or intentional failure to pay
7 rent;
- 8 (ii) Whether nonpayment of the rent was caused by exigent circumstances
9 that were beyond the tenant's control and that are not likely to recur;
- 10 (iii) The tenant's ability to timely pay the judgment;
- 11 (iv) The tenant's payment history;
- 12 (v) Whether the tenant is otherwise in substantial compliance with the rental
13 agreement;
- 14 (vi) Hardship on the tenant if evicted; and
- 15 (vii) Conduct related to other notices served within the last six months.

16 RCW 59.18.410(3)(a). The court can then, if appropriate, establish a payment plan. *Id.* at
17 3(c).

18 57. In contrast, under the City of Seattle Ordinances there is no due process
19 protection—none whatsoever. For example, there is no opportunity to contest any self-
20 proclaimed financial hardship, and there is no hearing or other proceeding before an impartial
21 decisionmaker where there is a balancing of the landowners' needs with the tenants' needs.
22 Instead, the Ordinances act with a sledgehammer in all instances regardless of whether a
23 tenant has in fact, experienced any COVID-19-related or other financial hardship. That a
24 tenant actually has the means to pay cannot be heard under the sledgehammer of the City's
25 Ordinances. The City precludes exercising due process by decreeing that, if a tenant claims a
26 hardship, then it shall conclusively be deemed so, with no hearing or any determination by an
impartial decisionmaker regarding either the merits of the claimed hardship or the
individualized circumstances of both affected parties. Examples of facts that cannot be
considered are if the tenant is a healthcare worker who in fact had no loss of income; did the
tenant receive unemployment supplements or other relief aid such that there was no loss of
income; was the tenant re-employed in Phase 1.5 or Phase 2 and can pay now; what hardship
does the landlord face, such as inability to pay the property mortgage or taxes if the tenant

1 pays nothing for a year or more. No individualized facts, and no objective proof of financial
2 hardship is required and no rebutting proof of lack of financial hardship is permitted. This
3 lack of due process is found in all three Ordinances challenged. This and other aspects of the
4 Ordinances violate plaintiffs' right to procedural due process.

5 58. Unless the City is enjoined and restrained from enforcing or threatening to
6 enforce the Ordinances, plaintiffs will be injured.

7 **THIRD CAUSE OF ACTION: PREEMPTION**

8 59. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
9 herein.

10 60. The City Ordinances conflict with and are preempted by RCW Chapter 59.12,
11 RCW Chapter 59.18, RCW Chapter 19.52 and RCW Chapter 4.84.

12 61. The Ordinances try to disguise the eviction bans and the other prohibitions as
13 "defenses" to try and avoid preemption. However, the label the City ascribes to the
14 Ordinances' provisions do not control. Their substance is what controls. The Ordinances
15 conflict, obstruct and defeat application of clear state law under RCW Chapter 59.12 and
16 RCW Chapter 59.18, as well as Washington statutes regarding interest, attorneys' fees and
17 court costs.

18 62. For example, state law makes the failure to timely pay rent regardless of time
19 of year the very definition of and cause for unlawful detainer and thus eviction. RCW
20 59.12.030(3) states "[a] tenant of real property for a term less than life is liable for unlawful
21 detainer ... [w]hen he or she continues in possession in person or by subtenant after a default
22 in the payment of rent" In direct conflict, the Ordinances purport to make the same failure
23 to pay rent a "defense" to eviction, whether in the winter, six months after the end of the
24 COVID emergency or during the repayment plan period. For example, Ordinance 126075 in
25 pertinent part states: "[I]t is a defense to eviction if the eviction would result in the tenant
26 having to vacate the housing unit within six months after the termination of the Mayor's

1 eviction moratorium, and if the reason for terminating the tenancy is: 1) The tenant fails [to
2 pay rent]” Ordinance 126075 § 9(a).

3 63. No prior Washington eviction “defense” case allows such a direct and
4 specifically intended conflict to evade preemption by simply ignoring the substance of the
5 infringed state law, the substance of the local ordinance and by the artifice of labeling the
6 local ordinance a “defense.”

7 64. State law also expressly provides that, if there is a failure to pay rent, then
8 judgment should declare that there is a “forfeiture of the lease, agreement, or tenancy.” RCW
9 59.12.170. In direct conflict with those state laws, the Ordinances purport to make failure to
10 pay rent a “defense.”

11 65. Similarly, under RCW 59.18.080, payment of rent is a condition precedent to
12 the tenant exercising rights under the Residential Landlord Tenant Act. And under RCW
13 59.18.130, it is the duty of a tenant to pay rent. In direct conflict with these provisions, the
14 Ordinances purport to make non-payment a “defense.” The state law says it is a duty; the
15 local law says it is a defense. That is a conflict and the local law is preempted.

16 66. The Ordinances also conflict with RCW 59.18.410, which establishes
17 procedures for hearing from the tenant regarding particular hardships and places the power
18 and discretion with the court to fashion an appropriate payment plan if warranted based on
19 individualized facts, including whether the tenant will in any near term have the ability to
20 repay the back-due rent:

21 [A]t the time of the show cause hearing or trial, or upon subsequent motion of the
22 tenant but before the execution of the writ of restitution, [the court] may stay the writ
23 of restitution upon good cause and on such terms that the court deems fair and just for
24 both parties. In making this decision, the court shall consider evidence of the
following factors:

- 25 (i) The tenant’s willful or intentional default or intentional failure to pay
rent;
26 (ii) Whether nonpayment of the rent was caused by exigent circumstances
that were beyond the tenant’s control and that are not likely to recur;
(iii) The tenant’s ability to timely pay the judgment;

- (iv) The tenant's payment history;
- (v) Whether the tenant is otherwise in substantial compliance with the rental agreement;
- (vi) Hardship on the tenant if evicted; and
- (vii) Conduct related to other notices served within the last six months.

RCW 59.18.410(3)(a). The court can then, if appropriate, establish a payment plan. *Id.* at 3(c). However, by state law, the court cannot delay eviction by more than 90 days. *Id.* The State Legislature put in place a system that empowers a judicial officer to balance tenant interests and interests of the lessor. This balance takes into account what led to the non-payment and whether the tenant is in a position to make it back into compliance or whether it is better for both parties to move on to another arrangement. The burden of a tenant that is unlikely to ever recover the ability to pay should not fall only on the lessor. Falling endlessly deeper into debt does not help the tenant and comes only at the cost of the lessor.

67. In contrast to this balanced scheme with judicial involvement established by state law, the City Council has arrogated to itself all such power. Without any hearing or individualized evidence, the City Council has imposed a mandatory one-size-fits-all outcome applicable to all rental property owners in Seattle who would otherwise have cause for obtaining an order of eviction.

68. The Ordinances also conflict with provisions of state law that provide for attorneys' fees and court costs to the prevailing party found in RCW Chapters 59.12, 59.18 and 4.84.

69. The payment plan Ordinance's bar on the running and collection of interest is in conflict with RCW 19.52.010, which provides that interest on any forbearance shall be at the rate agreed to by the parties or 12 percent if there is no agreed rate.

70. These are just some of the conflicts. The fundamental relationship between lessor and lessee is that the tenant will pay to have permission to be on the property. The Ordinances are in conflict with this fundamental, legally enforced relationship.

1 71. In table format some of the most significant conflicts are:
2

<u>State Law</u>	<u>Ordinance</u>
Failure to pay is grounds for eviction. RCW 59.12.030(3).	Cannot evict for failure to pay.
Failure to pay is forfeiture of lease and tenancy. RCW 59.12.170.	Cannot evict or terminate lease for failure to pay.
Payment of rent required before invoking RLTA protections. RCW 59.18.080.	Cannot evict for failure to pay and can raise “defense” in an RLTA proceeding to block proceeding.
Payment of rent is legal duty of a tenant. RCW 59.18.130.	Payment of rent excused for six months or more.
Procedures and court hearing on reasons for non-payment and ability to pay. RCW 59.18.140.	No hearing permitted; failure to pay with self-proclaimed hardship bars access to court hearing and no individualized relief.

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13 72. As a consequence, all three Ordinances should be declared preempted and
14 therefore void and unenforceable, otherwise, plaintiffs will be injured.

15 **FOURTH CAUSE OF ACTION: IMPAIRMENT OF CONTRACT**

16 73. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
17 herein.

18 74. The Contracts clause of the State Constitution prohibits the City from
19 impairing contractual obligations by legislation. Article I § 23 states: “No ... law impairing
20 the obligations of contracts shall ever be passed.” The Ordinances create a “substantial
21 impairment” of a “contractual right” because they seek to rewrite the core and foundational
22 exchange of contractual promises between a lessor and residential tenant—payment of rent in
23 return for the right of residential occupancy. They also rewrite the parties’ contract insofar as
24 payment of late fees, interest, attorneys’ fees and the grounds for eviction. The impairment is
25 not an appropriate or reasonable way to advance a significant and legitimate public purpose.
26 No case regarding impairment of residential leases or mortgages has gone so far as to excuse

1 the on-going contemporaneous payment of rent or interest on past due rent or that portion of
2 the costs and taxes of the property attributable to the property occupied by the tenant. The
3 Ordinances do more than affect a remedy; they impair timely payment of rent and destroy the
4 right to interest on obligations owed.

5 75. Unless the City is enjoined and restrained from enforcing or threatening to
6 enforce the Ordinances, plaintiffs will be injured.

7 **FIFTH CAUSE OF ACTION: SEPARATION OF POWERS**

8 76. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
9 herein.

10 77. The City's Ordinances intrude upon and take away powers of the Superior
11 Courts of the State of Washington to hear and adjudicate unlawful detainer and eviction
12 actions under RCW Chapter 59.12 and RCW Chapter 59.18, which provide for hearings
13 before a judicial officer and grant both parties hearings and jury trial rights. The Ordinances
14 also interfere with judicial powers for award of attorneys' fees and court costs. The
15 Ordinances also take away inherent judicial discretion to fashion relief based upon the parties
16 appearing before the court. In contrast to the protected right to petition courts for relief under
17 the State Constitution, the Ordinances instead dictate the outcome of certain classes of cases.

18 78. As such, the Ordinances should be declared void as violating the state law
19 doctrine of separation of powers, otherwise, plaintiffs will be injured.

20 **SIXTH CAUSE OF ACTION: EQUAL PROTECTION/PRIVILEGES**
21 **AND IMMUNITIES**

22 79. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
23 herein.

24 80. The City has treated plaintiffs' property and all residential rental properties
25 differently from other similarly situated persons without legitimate purpose in violation of
26 plaintiffs' rights to equal protection of the laws under the more particularly and uniquely

1 enforced privileges and immunities clause of the State Constitution. Article I § 12 of the
2 Washington Constitution provides that “[n]o law shall be passed granting to any citizen, class
3 of citizens, or corporation other than municipal, privileges or immunities which upon the
4 same terms shall not equally belong to all citizens, or corporations.” Washington’s privileges
5 and immunities clause is concerned with avoiding favoritism and preventing discrimination.
6 The Ordinances intrude upon one or more fundamental rights of citizenship in the State such
7 as the carrying on of business, property rights, seeking court review and access to legal
8 remedies. A privilege is an exemption from law. Such privileges can also be characterized as
9 an immunity as to applicable law granted to a special interest group. Here, the City served the
10 special interests of just one group of citizens—residential rental tenants—and granted them a
11 privilege and immunity from unlawful detainer and eviction law and procedures. There is no
12 “reasonable ground,” as that term is understood in the law, for granting this special treatment
13 to residential tenants after expiration of the COVID-19 emergency and imposing it on
14 residential rental property owners. The Ordinances also establish disfavored and
15 discriminatory status for rental property owners by depriving them of rights that other contract
16 holders, service providers and debt holders enjoy. “[O]ur state constitution's particular
17 concern [is] with the ‘undue political influence’ exercised by a privileged few....” *Schroeder*
18 *v. Weighall*, 179 Wn.2d 566, 572, 316 P.3d 482 (2014). For example, the Ordinances give
19 relief to those who owe rent, but not for those same persons’ bills for cable or internet, cell
20 phones, groceries, taxes, autos, insurance or the like. The Ordinances do not give relief to
21 those who are under financial strain to make home mortgage payments, even though that too
22 could lead to displacement from housing. Renters are preferred, landlords burdened and
23 home mortgage payers ignored under these Ordinances. Landlords, are given disfavored
24 status, but not mortgage lenders. Moreover, residential renters are given special status and
25 privilege to avoid interest payment on overdue rent debt obligations even though others are
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1 not given such a special privilege. Even under a traditional equal protection analysis the
2 Ordinances fail even the basic rational basis review because they are arbitrary and irrational.

3 81. Pursuant to the State Constitution’s privileges and immunities clause, the
4 Ordinances should be declared void. Unless the City is enjoined and restrained from
5 enforcing or threatening to enforce the Ordinances, plaintiffs will be injured.

6 **SEVENTH CAUSE OF ACTION: TAKING OF PROPERTY**

7 82. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
8 herein.

9 83. The Ordinances are an illegal taking under the Constitution of the State of
10 Washington.

11 84. The taking results from the City’s commandeering the right to exclusive
12 possession of real property vested in the landowner and transferring that possessory right to
13 the tenant. The City is ordering the property owner to allow the non-paying tenant to occupy
14 the property. A threshold question in this takings analysis is whether an attempt at taking
15 property has been made by the City for private uses, here the tenant. This itself is a question
16 that should invalidate the Ordinances because the Ordinances serve a private interest, not a
17 public one. *See* Wash. Const. art. I § 16. In other regards, the state constitutional takings
18 analysis now follows the federal analysis. By its actions, the City is in effect substantively
19 “occupying” or commandeering the owners’ property and then giving a subsidiary possession
20 interest from the government to tenants by operation of its Ordinances. Although this is not a
21 federal claim, the analysis in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419
22 (1982) (state law requiring landlords to permit cable companies to install cable facilities in
23 apartment buildings effected a taking) is instructive to the interpretation of Washington’s
24 Article I § 16. The Washington Constitution’s takings law now mirrors federal law and such
25 takings occur when there are “actions that are functionally equivalent to the classic taking in
26 which government directly appropriates private property or ousts the owner from his domain.”

1 *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005). Here, the City is appropriating
2 private property and ousting owners from their domain.

3 85. Further, the Ordinances permanently take interest on rental income from the
4 property owner. Interest is property that is subject to per se taking analysis and interest
5 cannot be taken away by the government. *Dean v. Lehman*, 143 Wn.2d 12, 34-35, 18 P.3d
6 523 (2001).

7 86. The taking further results from the regulations which grant tenants benefits at
8 the disproportionate impact on the property owners.

9 87. Pursuant to the State Constitution, the Ordinances should be declared void.
10 Unless the City is enjoined and restrained from enforcing or threatening to enforce the
11 Ordinances, plaintiffs will be injured.

12 **EIGHTH CAUSE OF ACTION: SUBSTANTIVE DUE PROCESS**

13 88. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth
14 herein.

15 89. The City acted in an arbitrary and capricious manner and without legitimate
16 fact finding or purpose in violation of plaintiffs' rights to substantive due process under the
17 State Constitution. The fundamental right to exclude others from one's own property is
18 overridden by the Ordinances. The City's Ordinances are unreasonable, overbroad and
19 unequally place a burden on residential landlords. Moreover, the Ordinances do not safeguard
20 or provide any mechanism for a reasonable return during the interference with property and
21 statutory rights.

22 90. Pursuant to the State Constitution, the Ordinances should be declared void.
23 Unless the City is enjoined and restrained from enforcing or threatening to enforce the
24 Ordinances, plaintiffs will be injured.

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PRAYER FOR RELIEF

Plaintiffs therefore seek the following relief under state law and the State Constitution:

- A. Declaratory judgment that the Ordinances are invalid and unenforceable;
- B. A preliminary and permanent injunction against enforcement and threats of enforcement of the Ordinances;
- C. Costs and attorneys' fees as allowed by law; and
- D. Other and further relief as may be deemed just and equitable.

Plaintiffs are not seeking relief under federal law or the United States Constitution.

DATED this 17th day of September, 2020.

BYRNES KELLER CROMWELL LLP

By /s/ John A. Tondini

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