

No. 84964-6

COURT OF APPEALS, DIVISION I
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

Appellant's Opening Brief

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I. Introduction

In 2021, the legislature amended the Residential Landlord Tenant Act (“RLTA”) to prohibit a landlord from evicting a tenant or terminating a tenancy without a reason enumerated in the statute. LAWS OF 2021, ch. 212 §2 (codified at RCW 59.18.650). The state’s just cause law was aimed at promoting housing stability for Washington renters by significantly narrowing the circumstances when landlords can terminate a 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 Auburn, have also enacted local just cause ordinances that similarly prohibit eviction without an enumerated reason and, in some instances, provide greater protection and stability to tenants.

In this unlawful detainer case, Respondent Valley Cities Counseling and Consultation (“the Landlord”) seeks to evict Appellant Ezra Eddines based on its allegation that Mr. Eddines

no longer qualifies for a transitional housing program, which is a permissible reason for eviction under the RLTA but not under the Auburn City Code. Mr. Eddines asked the court to dismiss the case for lack of just cause under the city code, but the trial court erroneously concluded that Auburn's just cause ordinance irreconcilably conflicts with and is thus preempted by the RLTA to the extent the ordinance does not permit eviction based on a tenant's no longer qualifying for a transitional housing program.

Auburn's decision not to allow eviction on this basis is a valid exercise of the city's expansive power to legislate for the health, safety, and welfare of its citizens in response to its local circumstances. *See* WASH. CONST. art. XI, § 11. Our state supreme court has long held that local governments can narrow the permissible grounds for eviction in their jurisdictions without coming into conflict with state unlawful detainer laws. The RLTA's just cause provision does not alter that ability. The statute is a restriction on landlords' substantive property rights at the state level, and nothing in the statute guarantees landlords an

affirmative right to evict a tenant on state law just cause grounds or limits the ability of local governments exercising their police power to create additional substantive limits on eviction in response to local circumstances. The state just cause statute can be harmonized with more protective local laws because it sets a minimum level of protection for tenants statewide, and more protective ordinances further the statute's objective of limiting evictions and promoting housing stability.

Because Auburn's just cause ordinance is a constitutionally valid exercise of local police power, this Court should vacate the trial court's order and remand for dismissal.

II. Assignments of Error

Assignments of Error

1. Whether the trial court erred in finding that Auburn's just cause ordinance, ACC 5.23.070.A, is preempted by the state just cause statute, RCW 59.18.650, to the extent ACC 5.23.070.A does not permit eviction for the reason enumerated in RCW 5.18.650(2)(j). (Yes.)

Issues Pertaining to Assignments of Error

1. RCW 59.18.650 prohibits landlords from evicting tenants without a reason enumerated in the statute. Does RCW 59.18.650 irreconcilably conflict with and thus preempt local just cause ordinances that are more protective of tenants and narrow permissible grounds for eviction?
(No.)

III. 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 (Oct. 27, 2022) (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. This Court granted discretionary review. Further trial court proceedings have been stayed pending further order of the court.

IV. Argument

A. Standard of Review

On a revision motion, a trial court reviews a commissioner's ruling de novo based on the evidence and issues presented to the commissioner. Williams v. Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010). On appeal from an order

denying revision of a commissioner's decision, this Court reviews the superior court's decision, not the commissioner's. Id. "Constitutional preemption challenges are reviewed de novo." Emerald Enterprises, LLC v. Clark Cnty., 2 Wn. App. 2d 794, 803, 413 P.3d 92 (2018).

B. State Unlawful Detainer and Just Cause Law

1. Background of State Unlawful Detainer Laws

An unlawful detainer action is a statutorily created proceeding in derogation of the common law that gives landlords an expedited method of resolving the right to possession of property between a landlord and a tenant. *See generally* ch. 59.12 RCW; Christensen v. Ellsworth, 162 Wn.2d 365, 370-71, 173 P.3d 228 (2007). The unlawful detainer procedure replaced the landlord's common law right of personal re-entry for breach but relieved a landlord of having to file an expensive and lengthy common law action of ejectment. FPA Crescent Assocs., LLC v. Jamie's, LLC, 190 Wn. App. 666, 675, 360 P.3d 934 (2015). The general unlawful detainer statute, chapter 59.12 RCW, sets out

procedures for expedited proceedings and defines seven circumstances where a tenant can be found liable for unlawful detainer. RCW 59.12.030. Grounds for unlawful detainer include, for example, when the tenant continues in possession after failing to perform a covenant of the lease, other than one for the payment of rent, and after receiving notice requiring the tenant to come into compliance with the lease or vacate in 10 days. RCW 59.12.030(4).

Where, as here, an unlawful detainer action involves a residential tenancy, it is governed by the RLTA, chapter 59.18 RCW. The procedures in chapter 59.12 “apply to the extent they are not supplanted by those found in the Residential Landlord-Tenant Act.” Hous. Auth. of City of Pasco & Franklin County v. Pleasant, 126 Wn. App. 382, 390, 109 P.3d 422 (2005). The RLTA requires that a landlord seeking a prejudgment writ of restitution to be restored to possession must request a show cause hearing, which is an expedited evidentiary hearing at which the tenant may answer the landlord’s complaint orally or in writing

and raise any legal or equitable defenses. *See* RCW 59.18.370; RCW 59.18.380; RCW 59.18.420; Faciszewski v. Brown, 187 Wn.2d 308, 314-15, 386 P.3d 711 (2016). At the show cause hearing, the court must examine the parties and witnesses to ascertain the merits of the complaint and answer, and if the court determines the landlord has proved its right to possession by a preponderance of the evidence, the landlord is entitled to a prejudgment writ of restitution upon posting a bond to indemnify the tenant. RCW 59.18.380. Disputed factual issues at a show cause hearing necessitate a trial before the court can enter a final judgment on possession or damages. RCW 59.18.380; Webster v. Litz, 18 Wn. App. 2d 248, 251-54, 491 P.3d 171 (2021).

2. Just Cause Statute

In 2021, the legislature amended the RLTA to add a just cause provision that limits the reasons for which a landlord may evict a residential tenant or terminate a tenancy. *See* LAWS OF 2021, ch. 212 § 2 (codified at RCW 59.18.650). The just cause statute prohibits a landlord from “evict[ing] a tenant, refus[ing]

to continue a tenancy, or end[ing] a periodic tenancy except for the causes enumerated in subsection (2) of this section and as otherwise provided in this subsection.” RCW 59.18.650(1)(a). RCW 59.18.650(2) enumerates sixteen causes, which include violations of a tenant’s duties, *see, e.g.*, RCW 59.18.650(2)(a) (tenant continues in possession after defaulting on rent and receiving 14 days’ notice to pay or vacate), .650(2)(b) (tenant continues in possession after substantially breaching a material lease term and receiving 10 days’ notice to comply or vacate), .650(2)(c) (tenant continues in possession after having received at least three days’ notice to quit after committing waste or nuisance), and other narrow reasons related to a landlord’s circumstances, *see e.g.*, RCW 59.18.650(2)(d) (tenant continues in possession after receiving 90 days’ notice that the landlord or the landlord’s immediate family member intends to occupy the unit and no substantially equivalent unit is available in the same building), .650(2)(e) (tenant continues in possession after the

owner elects to sell a single-family residence and has provided at least 90 days' notice).

The just cause legislation also amended RCW 59.12.030 to expressly limit a residential tenant's liability for unlawful detainer consistent with the just cause statute by providing that "[e]xcept as limited under RCW 59.18.650 relating to tenancies under chapter 59.18 RCW, a tenant of real property for a term less than life is liable for unlawful detainer" under the grounds set forth in that provision. LAWS OF 2021, ch. 212 § 6. Accordingly, to evict a tenant using the unlawful detainer procedures, a landlord must prove liability under RCW 59.12.030 *and* a basis under RCW 59.18.650.

The aim of the just cause statute was to reduce evictions and promote housing stability for tenants. *See* LAWS OF 2021, ch. 212 ("AN ACT Relating to protecting residential tenants from the beginning to end of their tenancies by . . . limiting the reasons for eviction, refusal to continue, and termination; . . ."). Prior to the enactment of the legislation, a landlord was not required to

continue a tenancy after the expiration of a periodic lease term and could evict a tenant for holding over after the term. RCW 59.12.030(1) (providing that a tenant is in unlawful detainer when the tenant continues in possession of property after the expiration of the term for which it is let to them); RCW 59.18.290(2) (making it unlawful for a tenant to hold over after the termination of the rental agreement and authorizing a landlord so deprived of possession to recover possession and damages). A landlord could also terminate a month-to-month tenancy for no reason by serving the tenant a notice 20 days prior to the end of the month and could evict a tenant who did not vacate in response to the notice. RCW 59.12.030(2) (providing that a month-to-month tenant is in unlawful detainer when they continue in possession after the end of a month when the landlord served, more than 20 days prior to the end of such month, a notice requiring them to vacate at the end of the month). As the bill's primary sponsor stated in introducing the legislation at a public

hearing in the House Housing, Human Services and Veterans
Committee,

Too many households in Washington do not go to bed at night in a home that they can be assured will be there for them tomorrow. . . . Washington state law allows landlords to end a month-to-month lease and evict a tenant with a 20-day notice without even telling the tenant why. Once the moratorium expires, landlords will again be able to do this. . . . The COVID pandemic has exposed that the status quo is leaving too many people vulnerable. We cannot go back to a system where renters can easily be forced into homelessness for no fault of their own.

Hr'g on H.B. 1236 Before the H. Hous., Hum. Servs., & Vets.
Comm., 67th Leg., Reg. Sess. (Wash. Jan. 26, 2021) at 31 min.,
29 sec. through 33 min., 15 sec., video recording by TVW,
Washington State's Public Affairs Network, <http://tvw.org>,
available at <https://tvw.org/video/house-housing-human-services-veterans-committee-2021011498/?eventID=2021011498>.
98. In considering the bill, the legislature heard extensive testimony from tenants and community members about the harmful impacts of no-cause evictions under RCW 59.12.030(2).

See H.B. Rep. on E.S.H.B. 1236, 67th Leg., Reg. Sess. (Wash. 2021) at 5-6 (staff summary of public testimony).

The just cause statute banned no-cause evictions of month-to-month tenants. RCW 59.18.650(1)(a), (d) (prohibiting landlords from evicting a month-to-month tenant without an enumerated cause). The just cause statute also banned evictions based on holding over after a lease term with only narrow exceptions. *See* RCW 59.18.650(1)(b) (setting out narrow circumstances where a landlord may refuse to continue a periodic tenancy and is not prohibited from evicting without an enumerated cause), .650(1)(c) (same), .650(1)(d) (providing that for all other tenancies of a specified period, a landlord is prohibited from ending the tenancy without one of the enumerated causes under RCW 59.18.650(2) and that “[u]pon the end date of the tenancy of a specified period, the tenancy becomes a month-to-month tenancy”).

When the legislature enacted the just cause statute, several municipalities, including Auburn, had already acted to address

their local housing stability crises by passing local just cause ordinances similarly limiting the reasons for eviction. During a public hearing on the bill in the House Housing, Human Services, & Veterans Committee, a member of the committee noted the absence of a provision preempting local ordinances on the subject of just cause. In response, the primary sponsor of the bill explained the sponsors' view that state law was "a good platform for issuing across the board protections statewide" and that if "elected leaders in cities or counties . . . would like to add additional protections," it would be "up to the voters and representatives in those areas." Hr'g on H.B. 1236 Before the H. Hous., Hum. Servs., & Vets. Comm., 67th Leg., Reg. Sess. (Wash. Jan. 26, 2021) at 41 min., 18 sec. through 42 min., 27 sec., video recording by TVW, Washington State's Public Affairs Network, <http://tvw.org>, available at <https://tvw.org/video/house-housing-human-services-veterans-committee-2021011498/?eventID=2021011498>. Following that committee discussion, two amendments were proposed that

would have preempted more protective local just cause statutes, but both chambers of the legislature rejected the proposed amendments. *See* 1236-S.E AMS FORT POPO 141 (not adopted 4/8/2021), *available at* <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Amendments/Senate/1236-S.E%20AMS%20FORT%20POPO%20141.pdf>; 1236-S AMH DUFA BROD 073 (not adopted 3/7/2021), *available at* <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Amendments/House/1236-S%20AMH%20DUFA%20BROD%20073.pdf>.

C. Auburn’s Just Cause Ordinance

The City of Auburn enacted its local just cause provision in 2020 less than a year before the state legislation. *See* Ord. 6786 (codified at ACC chapter 5.23). The ordinance created a new chapter in the Auburn City Code to address Auburn’s housing crisis and improve housing security. *See* ACC 5.23.010. Under Auburn’s ordinance, a landlord “shall not evict or attempt to evict any tenant, refuse to renew or continue a tenancy after the 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.” ACC 5.23.070.A. The ordinance states that “[t]he reasons for termination of tenancy listed below, and no others, shall constitute just cause under this section” and proceeds to set out fourteen reasons. Id. A landlord’s lack of just cause for eviction is specifically made a defense in any eviction action. ACC 5.23.070.E.

Many of the just cause grounds in the Auburn City Code overlap with those in RCW 59.18.650(2), but ACC 5.23.070.A does not contain an analog to RCW 59.18.650(2)(j) regarding transitional housing programs.

D. Auburn’s decision not to allow eviction on the basis that a tenant no longer qualifies for a transitional housing program is a valid exercise of municipal legislative authority and is not preempted by the RLTA’s just cause provision.

1. Courts presume a municipal ordinance is valid, and conflict preemption will only be found where a statute and ordinance irreconcilably conflict and cannot be harmonized.

Local governments wield significant regulatory powers. Our state constitution grants every local government the power to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” WASH. CONST. art. XI, § 11. Within this authority, a municipality may enact an ordinance addressing the same matter as state law unless a state enactment preempts the field, leaving no room for concurrent jurisdiction, or an irreconcilable conflict exists between the ordinance and a statute which cannot be harmonized. Brown v. City of Yakima, 116 Wn.2d 556, 559, 807 P.2d 353 (1991). “[A] heavy burden rests upon the party challenging [the ordinance’s] constitutionality” and “[e]very presumption will be in favor of constitutionality.” HJS Dev., Inc. v. Pierce County, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003); Brown, 116 Wn.2d at 559 (“The ordinance is presumed constitutional and the ‘burden of showing otherwise rests heavily’ on Brown.”) (quoting Louthan v. King Cnty., 94 Wn.2d 422, 428, 617 P.2d 977 (1980)).

It is undisputed in this case that there is no field preemption, and the Landlord argues only conflict preemption. Unconstitutional conflict is found “where an ordinance permits that which is forbidden by state law, or prohibits that which state law permits.” Rabon v. City of Seattle, 135 Wn.2d 278, 292, 957 P.2d 621 (1998). Washington appellate courts recognize that “[t]hough the rule may be easily stated, the analysis is often nuanced.” Cannabis Action Coal. v. City of Kent, 183 Wn.2d 219, 227, 351 P.3d 151 (2015). Conflict preemption is found only if the state and local provisions “cannot coexist.” Viking JV, LLC v. City of Puyallup, 22 Wn. App. 2d 1, 17, 509 P.3d 334 (2022) (quoting State v. Kirwin, 165 Wn.2d 818, 826, 203 P.3d 1044 (2009)). “[I]f the statute and ordinance may be read in harmony, no conflict will be found.” Id. (quoting Watson v. City of Seattle, 189 Wn.2d 149, 171, 401 P.3d 1 (2017)). Applying the rule, courts do not ask merely whether state law permits that which is prohibited by the local ordinance, but rather, whether state law grants an “affirmative right” to engage in that

prohibited activity. *See, e.g., Emerald Enterprises, LLC*, 2 Wn. App. 2d at 805 (holding that a county ordinance prohibiting the retail sale of marijuana in unincorporated areas did not conflict with state law authorizing the retail sale of recreational marijuana because the legislature did not intend to create an affirmative right to sell marijuana upon obtaining a retail license); *Weden v. San Juan Cnty.*, 135 Wn.2d 678, 694-95, 958 P.2d 273 (1998), abrogated on other grounds by *Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019) (holding that a local ordinance banning the use of motorized personal watercraft on all marine waters and one lake in the county was not preempted by the state vessel registration statute because the legislature did not enact the registration statute to grant personal watercraft owners “an unabridged right to operate [personal watercraft] in all waters throughout the state”). If a statute and an ordinance are both prohibitory in nature, and the ordinance goes further in its prohibition, the statute and ordinance are not “contradictory in the sense that they cannot coexist” and are not “deemed

inconsistent because of mere lack of uniformity in detail.”

Brown, 116 Wn.2d at 562.

2. The Washington Supreme Court has held that local just cause ordinances limiting substantive grounds for eviction do not conflict with RCW 59.12.030.

Washington appellate courts have consistently held that municipalities may enact defenses to eviction, including substantive defenses that limit the permissible grounds for eviction, without coming into conflict with RCW 59.12.030. In Kennedy v. City of Seattle, our state supreme court rejected the argument that a Seattle ordinance that limited a landlord’s ability to evict houseboat occupants to six specific reasons was preempted by chapter 59.12 RCW. *See* 94 Wn.2d 376, 384, 617 P.2d 713 (1980). The ordinance 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. Even though the ordinance prohibited eviction when a tenant was liable for unlawful detainer under RCW 59.12.030(1) (holding over after the expiration of a lease term), the Supreme 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.” Id. at 384 (citing RCW 59.18.380).

In so holding, our supreme court adopted the reasoning of a California Supreme Court decision, which also upheld a municipal ordinance limiting permissible grounds for eviction. *See id.* (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 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 unlawful detainer statute is intended to create an expedited *procedure* for regaining possession of property and not to create an affirmative

substantive right to evict whenever there is a ground under the statute.

Applying the analysis from Kennedy, our state supreme court later upheld 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 Wn.2d 651 (2019). The property owner argued that the prohibition irreconcilably conflicted with the RLTA since the state law allowed for eviction without regard to compliance with rental registration requirements. Id. The court concluded that “[t]his argument was rejected in Kennedy.” Id. at 652. Like in Kennedy, the registration ordinance was not preempted because it created a defense for a tenant without raising further procedural barriers within an unlawful detainer action. Id.

Most recently, this Court upheld Seattle ordinances that prohibit the eviction of a tenant for nonpayment of rent during

the winter months and for six months after the termination of the eviction moratorium. See Rental Hous. Ass’n v. City of Seattle, 22 Wn. App. 2d 426, 438-41, 512 P.3d 545 (2022). The landlords argued that the eviction bans conflicted with the unlawful detainer statute and the RLTA by precluding them from obtaining an order of eviction after the nonpayment of rent, which is both a basis for liability for unlawful detainer under RCW 59.12.030(3) and grounds for just cause under RCW 59.18.650(2)(a). Id. at 438-39. The Court of Appeals reiterated that under Kennedy, a municipality may enact defenses to eviction without coming into conflict with the unlawful detainer statute or the RLTA and “neither the unlawful detainer statute nor the RLTA limits the defenses available to a tenant in an unlawful detainer action.” Id. at 440-41. The court concluded that the ordinances were not preempted because they “do not erect new procedural barriers to unlawful detainer but merely determine the timing of the issuance of writs of restitution” and “nothing in the unlawful detainer statute . . . *requires* that an

eviction occur within any specific period of time.” Id. at 441 (emphasis added).

In Kennedy, Margola, and RHA, Washington appellate courts upheld ordinances that forbid what state law permitted—evicting houseboat occupants for unlawful detainer on grounds that are included in chapter 59.12 RCW but not in the Seattle houseboat ordinance, evicting tenants without regard to whether rental properties are registered, and obtaining a writ of restitution for nonpayment during winter or within six months of the eviction moratorium. The court harmonized the ordinances with state law and found no irreconcilable conflict because RCW 59.12.030 is part of a procedural scheme and was not intended to create affirmative substantive rights to evict whenever a tenant is liable for unlawful detainer under the statute; the RLTA permits tenants to raise defenses in unlawful detainer actions; and nothing in the statutes prohibit local governments from creating defenses, including substantive ones limiting grounds for

eviction, that do not erect procedural barriers within an unlawful detainer proceeding.

3. More protective local just cause ordinances do not conflict with the state just cause statute because the state law imposes a minimum set of limits on a landlord's substantive rights and does not guarantee the right to evict for just cause over the prohibition of a local government.

Just like the ordinance in Kennedy, ACC 5.23.070 narrows permissible grounds for eviction without erecting procedural barriers in an unlawful detainer proceeding. Though Kennedy predated the RLTA's just cause provision, nothing in RCW 59.18.650 alters the ability of local governments to narrow permissible grounds for eviction in their jurisdictions. The statute imposes a statewide minimum set of limits on landlords' substantive rights and does not create affirmative rights for landlords. The language the legislature chose to use is prohibitory, rather than affirmative, providing that a landlord "may not" evict a tenant "except for" one of the reasons enumerated in the statute. RCW 59.18.650(1)(a), (d). The legislature's use of prohibitory language is consistent with the

purpose of the statute, which was to ban no-cause evictions of month-to-month tenants and most evictions based on the expiration of a lease term. Local laws that are inconsistent with RCW 59.18.650 only in that they go farther in limiting permissible grounds for eviction can be harmonized with the statute because they do not run counter to the statute's prohibition and they further the legislature's objectives of limiting evictions and promoting housing stability.

Washington appellate courts have repeatedly held that where the difference between state and local laws is “that the ordinance goes farther in its prohibition—but not counter to the prohibition under the statute” they are not “contradictory in the sense that they cannot coexist.” City of Bellingham v. Schampera, 57 Wn.2d 106, 111, 356 P.2d 292 (1960) (quoting Fox v. City of Racine, 225 Wis. 542, 275 N.W. 513, 515 (1937)). In City of Bellingham v. Cissna, 44 Wash. 397, 402, 87 P. 481 (1906), for example, the state supreme court upheld Bellingham's 6 mile per hour speed limit even though state law

set the speed limit in cities at 12 miles per hour. The court concluded the statute “had in contemplation the safety of the general public upon streets and highways,” and did not “confer[] upon the owner of an automobile the absolute right to travel the streets of any city at such rate of speed as he might desire, provided he did not exceed 12 miles per hour.” Id. at 401-02. According to the court, “[i]f it had been the intention of the Legislature to provide that no municipal ordinance, regulating speed of automobiles, should be permitted, it could have so stated.” Id. at 403. Similarly, in Rabon, the supreme court held that a statute making it unlawful to have a “dangerous dog” without a certification of registration did not conflict with a local ordinance that essentially forbid any possession of dangerous dogs because rather than permitting a person to own a dangerous dog, the provision imposed minimum requirements a person must follow *if* they own a dangerous dog. 135 Wn.2d at 292-93. Because both the statute and ordinance were prohibitory in nature, the local ordinance could go further in its prohibition

without creating an irreconcilable conflict. Id. Likewise, in Weden, the supreme court held that a county ordinance banning the use of motorized personal watercraft on all marine waters and one lake in the county was not preempted by the state vessel registration statute because the statute does not grant personal watercraft owners “an unbridged right to operate [personal watercraft] in all waters throughout the state.” 135 Wn.2d at 695. Rather, “[o]n its face, the statute *prohibits* operation of an unregistered vessel” and does not grant an unconditional right to operate a vessel upon obtaining such registration. Id. (emphasis added).

Like the statutes in Cissna, Rabon, and Weden, the RLTA’s just cause provision is prohibitory in nature, intended to limit the reasons for which a landlord may evict a tenant. Because ACC 5.23.070.A also limits permissible reasons for eviction, it is not “deemed inconsistent [with the RLTA’s just cause provision] because of mere lack of uniformity in detail.” Brown, 116 Wn.2d at 558, 562-63 (upholding a local ordinance that

restricted the sale of fireworks to a narrower period than under state law).

Moreover, the legislature is presumed to know that Washington appellate courts have held that the RLTA does not preempt more protective local ordinances that do not erect procedural barriers to unlawful detainer, and if the legislature, in enacting RCW 59.18.650, had intended to limit the ability of local authorities to enact their own just cause ordinances, it would have said so. See El Coba Co. Dormitories v. Franklin Cnty. Pub. Util. Dist., 82 Wn.2d 858, 862, 514 P.2d 524 (1973) (the legislature is presumed to be “familiar not only with its own prior legislation relating to the subject, but also with the court decisions construing such former legislation”); see also Cissna, 44 Wash. at 403 (“If it had been the intention of the Legislature to provide that no municipal ordinance, regulating speed of automobiles, should be permitted, it could have so stated.”). To the contrary, the legislature specifically *rejected* proposed amendments that would have prohibited local governments from

passing more protective just cause ordinances. *See supra* IV.B.2; Kennedy, 94 Wn.2d at 384 (citing the Governor’s veto of legislative provisions that would have expressly preempted the Seattle houseboat ordinance at issue).

The trial court’s conclusion that RCW 59.18.650(2)(j) creates an affirmative right for landlords to evict a month-to-month tenant because the tenant no longer qualifies for a transitional housing program ignores the text of the statute, additional evidence of the legislature’s intent, and Washington’s preemption case law. As courts held in Cissna, Rabon, Weden, and Brown, the fact that the state has not prohibited an activity does not indicate the state intended to create an unabridged affirmative right to engage in that activity over the prohibition or restriction of a local authority. *See also* Lawson v. City of Pasco, 168 Wn.2d 675, 683, 230 P.3d 1038 (2010) (upholding an ordinance that prohibited placement of recreational vehicles in mobile home parks because the Manufactured/Mobile Home Landlord-Tenant Act’s “acknowledgement that [RVs] could be

present on mobile home lots” does not “create a right enabling their placement”). And Washington courts have even held that state legislation expressly authorizing and licensing an activity does not create an affirmative unbridged right or restrict the power of local governments to preclude the activity in their jurisdiction. In Emerald Enterprises, LLC, for example, the Court of Appeals held that a county ordinance prohibiting the retail sale of marijuana in unincorporated areas did not conflict with state law authorizing the retail sale of recreational marijuana. The court found no irreconcilable conflict because, “while the [Uniform Controlled Substances Act] permits the retail sale of marijuana, it does not grant retailers an affirmative right to sell marijuana.” 2 Wn. App. 2d at 805. The court noted that “[t]he legislature promulgated the section of the USCA at issue to reallocate law enforcement resources, generate tax revenue, and create an alternative to the illegal drug market” and that there is no evidence of an intent “to encourage the sale, production, or use of marijuana.” Id. at 809-10. Even though the

statute created a marijuana retailer’s license and permitted retail outlets to become licensed, the statute “did not state[] that a county may not prohibit retail recreational marijuana sales,” or “create a right to engage in the specific activity prohibited by the Ordinance.” Id. at 805-06.

As in Emerald Enterprises, Weden, Rabon, and Cissna, nothing in the RLTA’s just cause provision creates an affirmative right to evict a tenant who no longer qualifies for a transitional housing program. The purpose of enacting the just cause provision was to limit landlords’ rights in order to reduce evictions and improve stability for tenants, and there is no evidence of any intent to encourage eviction for the reason in RCW 59.18.650(2)(j) or guarantee a landlord’s ability to do so over the prohibition of a local government. Implying an affirmative right to evict in RCW 59.18.650(2) would be particularly inappropriate given this court’s mandate that the RLTA must be construed ““to accomplish the purpose for which it was enacted,”” which is ““to protect several tenant interests

susceptible to the landlord’s upper hand, which is especially strong in times of housing shortages.” Silver v. Rudeen Mgmt. Co., Inc., 197 Wn.2d 535, 548, 484 P.3d 1251 (2021) (quoting State v. Douty, 92 Wn.2d 930, 936, 603 P.2d 373 (1979); Thomas Bothwell, Comment, Washington Tenant Remedies and the Consumer Protection Act, 10 GONZ. L. REV. 559, 559 (1975)).¹

Nothing in RCW 59.18.650 guarantees landlords an affirmative right to evict for just cause, requires eviction when there is just cause under the state statute, limits defenses to eviction, or states that a local government cannot narrow the

¹ In finding an irreconcilable conflict between ACC 5.23.070 and RCW 59.18.650(2)(j), the trial court relied on Rental Hous. Ass’n of Washington v. City of Burien, 23 Wn. App. 2d 1015 (2022) (unpublished), where this Court held that Burien’s just cause statute was preempted by state law to the extent it did not permit eviction of a tenant at the expiration of a lease term as allowed under RCW 59.12.030 and RCW 59.18.290(2). The City of Burien case is inapposite because it involved a different provision of the RLTA and the Court did not consider the salient question here—whether RCW 59.18.650 creates an affirmative right to evict for the reasons enumerated in that statute.

permissible grounds for eviction. To the extent it excludes the cause enumerated in 650(2)(j), the City of Auburn's just cause ordinance is a valid exercise of Auburn's expansive powers to legislate for the health and welfare of its residents. The city may enact laws, as it did here, to improve housing stability in its jurisdiction, and an ordinance like ACC 5.23.070.A that narrows permissible substantive grounds for eviction without erecting procedural barriers in an unlawful detainer can be harmonized with RCW 59.12.030 and RCW 59.18.650(2)(j).

E. The Court Should Award Mr. Eddines Attorney Fees and Costs on Appeal.

Mr. Eddines respectfully requests the Court award him reasonable attorneys' fees and costs on appeal pursuant to RAP 18.1(b). A prevailing party is entitled to attorneys' fees and costs on appeal if requested in the party's opening brief and if "applicable law grants a party the right to recovery." RAP 18.1(a). The Residential Landlord Tenant Act authorizes an award of attorney fees to the prevailing party. RCW 59.18.290(2); *Faciszewski*, 187 Wn.2d at 324; *Council House*,

Inc. v. Hawk, 136 Wn. App. 153, 159, 147 P.3d 1305 (2006). A prevailing party may recover reasonable attorney fees even if legal services are provided at no cost. *See Hawk*, 136 Wn. App. at 160 (“Nothing in the [RLTA] prohibits fees to pro bono attorneys defending tenants in unlawful detainer actions.”).

V. Conclusion

For these reasons, this Court should vacate the trial court’s order and remand for dismissal.

This document contains 6,319 words, excluding the parts of the document exempted from the word count by RAP 18.17.

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Respectfully submitted,

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