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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

RENTAL HOUSING ASSOCIATION, a
Washington corporation,

Plaintiff,

v.

CITY OF SEATTLE, a municipal corporation
of the State of Washington,

Defendant.

NO.

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTION

I. INTRODUCTION

1.1 The City of Seattle (City) is said to be suffering from a shortage of affordable rental housing. This shortage has been attributed in part to land use policies that foster demolition of longstanding affordable rental units and to zoning that does not protect existing affordable housing stock. New units may be developed and may offer greater amenities, but at a significantly higher cost.

1.2 In the face of this challenge, the City of Seattle has chosen to scapegoat those who provide rental housing and to progressively impose, including on small landlords for whom the regulatory burden is particularly severe, a cumulative web of oppressive regulations as if invasive municipal management of residential rental property will solve the housing affordability situation. In doing so, the City of Seattle has crossed the barrier established by

1 both Washington statute and the Washington Constitution against rent control and oppressive
2 legislation.

3 1.3 This lawsuit in particular challenges City of Seattle Ordinance 125222 (“the
4 Ordinance”) and its amendments to the Seattle Municipal Code, which is now codified in
5 Seattle Municipal Code Ch. 7.24. The new provisions and amendments adopted by the
6 Ordinance limit the amount of security deposits and non-refundable move-in fees that
7 landlords may charge tenants for residential rental properties. They simultaneously bar
8 landlords from requiring upfront payment of a security deposit, non-refundable fees, and last
9 month’s rent to protect their property as is customary in the residential rental industry.
10 Instead, they require that landlords allow tenants to make such payments in installments
11 spread out over six months’ time. In doing so, the City Council chose not to devote public
12 funds to assist tenants in making typically required security deposits and rental payments.
13 Instead it chose to shift that burden to landlords by controlling when and in what amounts
14 those payments could be required by landlords.
15

16 1.4 Therefore, as explained further more below, the Ordinance provisions
17 challenged in this action violate RCW 35.21.830, the statute adopted by the Legislature in
18 1981 to preempt and bar municipalities from imposing “controls on rent” and from regulating
19 “the amount of rent.”
20

21 1.5 The Ordinance and the specific provisions challenged in this action also violate
22 Washington Constitution Article I, Section 16 (Takings); Article I, Section 3 (Substantive
23 Due Process); and Article I, Section 5 (Freedom of Speech).

24 1.6 These provisions unlawfully attempt to control the financial rental relationship
25 between residential tenants and landlords, forcibly enlisting Rental Housing Association of
26 Washington members in addressing social ills such as housing unaffordability that are the
responsibility of the community as a whole.

1 WHEREAS, rents in Seattle have been increasing rapidly and
2 vacancies in rental housing are at low levels, making it increasingly
3 difficult for tenants, especially those with limited finances, to obtain
rental housing; and

4 WHEREAS, rent increases may cause a tenant to move due to inability
5 to pay the increased rent; and

6 WHEREAS, these conditions in the rental market have created a
7 relocation crisis, because tenants, especially those with limited
8 finances, may be unable to save money to pay security deposits, non-
refundable move-in fees, and last month's rent; and

9 WHEREAS, payment of security deposits, nonrefundable move-in fees,
10 and last month's rent in advance of tenancy, especially for people with
limited finances, is one of the barriers to obtaining housing; and

11 WHEREAS, limiting the amount a landlord can charge for a security
12 deposit and non-refundable move-in fees will help reduce this barrier
13 and allow people to prepare for moving expenses with more certainty;
and

14 WHEREAS, allowing tenants to pay security deposits, non-refundable
15 move-in fees, and last month's rent in installments will help reduce this
barrier; and

16 WHEREAS, the City Council finds that this ordinance will protect and
17 promote the health, safety, and welfare of the general public; NOW,
18 THEREFORE,

Ordinance at 1-2.

19 4.5 While approving the Ordinance, the Mayor of Seattle identified its significant
20 shortcomings in his December 16, 2016 letter to the Seattle City Clerk:
21

22 I have signed and am returning Council Bill 118817 to the Office of the
23 City Clerk with the following statement:

24 Increasing access to affordable housing is a cornerstone of my
25 administration. I wholeheartedly support the goal of protecting tenants,
26 which is why I have signed this legislation despite some reservations
about its impacts on small landlords. The restriction on security
deposits has the potential to open family-run rentals up to increased
risk. Additionally, these small properties frequently do not have the
staff or oversight to keep up with the ever-changing regulatory

1 framework around rental properties.

2 According to the Seattle Department of Construction and Inspections,
3 21 percent of rental units in Seattle are housed on properties with fewer
4 than five units. Such properties are the heart of our naturally occurring
5 affordable housing stock, and I am concerned this bill could lead to
6 more small rentals raising rents or selling their properties to expensive
7 professional property management companies.

8 I am pleased that the bill requests the City Auditor evaluate the impacts
9 of this legislation once it is implemented in order to inform future
10 decisions about maintaining or amending the policy. I am eager to see
11 what we learn, and as these new regulations go into effect next year I
12 will be closely monitoring their impact to see if any changes are needed
13 to preserve affordability.

14 Despite his acknowledgement of the harm to tenants as well as landlords from the legislation,
15 the Mayor signed it on the basis that the Auditor might “evaluate” its impacts after it took
16 effect. A copy of the Mayor’s December 16, 2016 letter is the final page in **Exhibit A**, the
17 attachment to this Complaint.

18 4.6 One new section added to SMC Ch. 7.24 by the Ordinance is SMC 7.24.035
19 which provides:

20 **7.24.035 Security deposits and nonrefundable move-in fees**

- 21 A. Limit on the amount of charges for security deposits and non-
22 refundable move-in fees. After the effective date of the ordinance
23 introduced as Council Bill 118817, the total amount of a security
24 deposit and nonrefundable move-in fees may not exceed the
25 amount of the first full month’s rent for the tenant’s dwelling unit.
26 If rent is not paid or otherwise apportioned on a monthly basis,
then for the sole purpose of applying this limit the total rent shall
be pro-rated on an equal, monthly basis and the total charge to a
tenant for the cost of a security deposit and nonrefundable move-in
fees may not exceed the pro-rated, monthly rental amount.
- B. Restrictions on fees
1. Other than non-refundable move-in fees,
security deposits, pet security deposits, and last
month’s rent, landlords are prohibited from
charging tenants any one-time fee at the beginning
of the tenancy.

1 2. Pursuant to RCW 59.18.257, any fees
2 charged to a prospective tenant by the landlord for
3 the cost of obtaining a tenant screening report
4 cannot exceed the actual cost of obtaining the
5 report, which may not exceed the customary costs
6 charged by a tenant screening service in The City of
7 Seattle. The landlord shall provide, personally or by
8 mail, the prospective tenant with a receipt for any
9 fees charged for the cost of obtaining the screening
10 report. The landlord shall provide the tenant with
11 the name and address of the reporting agency and
12 the prospective tenant's rights to obtain a free copy
13 of the consumer report, pursuant to RCW
14 59.18.257.

15 3. If the tenant has paid a non-refundable
16 move-in fee for cleaning, the landlord may not
17 deduct additional cleaning fees from the tenant's
18 security deposit.

19 4. The total amount of non-refundable move-in
20 fees may not exceed ten percent of the first full
21 month's rent, except that if the cost of a tenant
22 screening report exceeds ten percent of the first full
23 month's rent, the amount in excess of ten percent
24 may be included in the non-refundable fee but may
25 not exceed the customary costs charged by a
26 screening service in The City of Seattle.

C. Fee payments in installments. Except as provided in subsection
7.24.035.C.4, tenants may pay security deposits and non-
refundable move-in fees in installments as provided below.
Landlords may not impose any fee, charge any interest, or
otherwise impose a cost on a tenant because a tenant elects to pay
in installments.

1. For any rental agreement term that
establishes a tenancy for six months or longer, the
tenant may elect to pay the security deposit and
non-refundable move-in fees, excluding any
payment made by a tenant to the landlord prior to
the inception of tenancy to reimburse the landlord
for the cost of obtaining a tenant screening report, in
six consecutive, equal monthly installments that
begin at the inception of the tenancy or, the tenant
may propose an alternative installment schedule. If
the landlord agrees to the tenant's alternative
installment schedule the schedule shall be described
in the rental agreement.

1 2. For any rental agreement term that
2 establishes a tenancy between 30 days and six
3 months, the tenant may elect to pay the security
4 deposit and non-refundable move-in fees, excluding
5 any payment made by a tenant to the landlord prior
6 to the inception of tenancy to reimburse the landlord
7 for the cost of obtaining a tenant screening report, in
8 no more than four equal amounts that begin at the
9 inception of the tenancy and are paid in installments
10 of equal duration or, the tenant may propose an
11 alternative installment schedule. If the landlord
12 agrees to the tenant's alternative installment
13 schedule the schedule shall be described in the
14 rental agreement.

15 3. For any rental agreement term that
16 establishes a tenancy from month to month, the
17 tenant may elect to pay the security deposit and
18 non-refundable move-in fees, excluding any
19 payment made by a tenant to the landlord prior to
20 the inception of tenancy to reimburse the landlord
21 for the cost of obtaining a tenant screening report, in
22 two equal installments. The first payment is due at
23 the inception of the tenancy and the second payment
24 is due on the first day of the second month or period
25 of the tenancy or, the tenant may propose an
26 alternative installment schedule. If the landlord
agrees to the tenant's alternative installment
schedule the schedule shall be described in the
rental agreement.

 4. The tenant cannot elect to pay the security
deposit and non-refundable move-in fees in
installments if (a) the total amount of the security
deposit and nonrefundable move-in fees does not
exceed 25 percent of the first full month's rent for
the tenant's dwelling unit; and (b) payment of last
month's rent is not required at the inception of the
tenancy.

 5. A tenant's failure to pay a security deposit
and non-refundable move-in fee according to an
agreed payment schedule is a breach of the rental
agreement and subjects the tenant to a 10-day notice
pursuant to RCW 59.12.030(4).

D. Return or retention of security deposits. The return or retention of a
security deposit, or portion thereof, must comply with the
requirements of RCW 59.18.280. The Director may establish by

1 rule procedures for enforcement of the requirements of RCW
2 59.18.280.

- 3 E. No deposit may be collected by a landlord unless the rental
4 agreement is in writing and a written checklist or statement
5 specifically describing the condition and cleanliness of or existing
6 damages to the premises and furnishings, including, but not limited
7 to, walls, floors, countertops, carpets, drapes, furniture, and
8 appliances, is provided by the landlord to the tenant at the
9 commencement of the tenancy. The checklist or statement shall be
10 signed and dated by the landlord and the tenant, and the tenant
11 shall be provided with a copy of the signed checklist or statement.
- 12 F. A landlord must place any required security deposit in a trust
13 account and provide a written receipt and notice of the name,
14 address, and location of the depository and any subsequent change
15 thereof to the tenant, in compliance with the requirements of RCW
16 59.18.270.
- 17 G. Nothing in this Chapter 7.24 prohibits a landlord from bringing an
18 action against a tenant to recover sums exceeding the amount of
19 the tenant's security deposit for damage to the dwelling unit for
20 which the tenant is responsible. The landlord may seek attorney's
21 fees for such an action as authorized by chapter 59.18 RCW.
- 22 H. This Section 7.24.035 does not apply to a tenant who rents a
23 housing unit in a single-family residence if the residence is the
24 principal residence of the owner of the residence.

25 Ordinance at 7-11; SMC 7.24.035.

26 4.7 Another new section added to SMC 7.24 by the Ordinance is SMC 7.24.036
which provides:

7.24.036 Installment payment option for last month's rent

A tenant may elect to pay last month's rent in installments as follows:

- 27 A. For any rental agreement term that establishes a tenancy for six
28 months or longer, the tenant may elect to pay the last month's rent in
29 six consecutive, equal monthly installments that begin at the inception
30 of the tenancy or, the tenant may propose an alternative installment
31 schedule. If the landlord agrees to the tenant's alternative installment
32 schedule the schedule shall be described in the rental agreement.
- 33 B. For any rental agreement term that establishes a tenancy between 60
34 days and six months, the tenant may elect to pay the last month's rent
35 in no more than four equal amounts that begin at the inception of the
36

1 tenancy and are paid in installments of equal duration or, the tenant
2 may propose an alternative installment schedule. If the landlord
3 agrees to the tenant's alternative installment schedule the schedule
4 shall be described in the rental agreement.

5 C. Landlords may not impose any fee, charge any interest, or otherwise
6 impose a cost on a tenant because a tenant elects to pay the last
7 month's rent in installments.

8 D. This Section 7.24.036 does not apply to a tenant who rents a housing
9 unit in a single-family residence if the residence is the principal
10 residence of the owner of the residence.

11 Ordinance at 11; SMC 7.24.036.

12 4.8 SMC 7.24.038, added to SMC 7.24, extends the Ordinance's web of complex
13 controls on financial rental arrangements to pet damage deposits and pet damage, including a
14 control stating that "the landlord may not charge the tenant any fee for keeping a pet:"

15 **7.24.038 Pet Damage Deposits**

16 A. Except as provided in subsection 7.24.038.B, the landlord may
17 require payment of a pet damage deposit provided that the total
18 amount of the pet damage deposit may not exceed 25 percent of
19 the first full month's rent, regardless of the time when the pet
20 damage deposit is paid. If rent is not paid or otherwise apportioned
21 on a monthly basis then for the sole purpose of applying this limit
22 the total rent shall be pro-rated on an equal, monthly basis and the
23 total charge to a tenant for the pet damage deposit may not exceed
24 25 percent of the pro-rated, monthly rental amount.

25 B. The landlord may not require a pet damage deposit if the pet serves
26 as an assistance animal for the tenant. This prohibition does not
prohibit a landlord from bringing an action for damages resulting
from damage to the landlord's property caused by the tenant's
assistance animal.

C. If the pet's occupancy begins at the beginning of tenancy, the
amount of the pet damage deposit shall be specified in a rental
agreement. If the pet's occupancy begins after the beginning of the
tenancy, the amount of the pet damage deposit shall be specified in
an addendum to the rental agreement. The tenant may elect to pay
the pet damage deposit in three consecutive, equal monthly
installments that begin when the pet first occupies the rental unit
or, the tenant may propose an alternative installment schedule. If
the landlord agrees to the tenant's alternative installment schedule
the schedule shall be described in the rental agreement.

1 D. The landlord cannot keep any portion of the pet damage deposit for
2 damage that was not caused by pets for which the tenant is
3 responsible.

4 E. Other than the pet damage deposit authorized by subsection
5 7.24.038.A, the landlord may not charge the tenant any fee for
6 keeping a pet.

7 4.9 The Ordinance also adds these new definitions to SMC 7.24.020:

8 “Last month’s rent” means money that is paid as rent for the last month of
9 a residential tenancy and that is paid at the inception of the tenancy or in
10 installments as authorized by Section 7.24.036.

11 “Month-to-month tenancy” means a residential tenancy of an indefinite
12 period with monthly or other periodic rent reserved.

13 “Non-refundable move-in fees” means non-refundable fees paid by a
14 tenant to reimburse a landlord for the cost of obtaining a tenant screening
15 report, criminal background check, or credit report or to pay for cleaning
16 of the dwelling unit upon termination of the tenancy, but does not include
17 payment of a reservation fee authorized by RCW 59.18.253(2).

18 “Pet damage deposit” means money that is paid by the tenant to the
19 landlord at any time as security to pay for damage to the landlord’s
20 property that is caused by a pet for which the tenant is responsible.

21 “Security deposit” means any payment, fee, charge, or deposit of money
22 paid to the landlord by the tenant at the beginning of the tenancy as a
23 deposit and security for performance of the tenant’s obligations in a
24 written rental agreement, but does not include payment of a reservation fee
25 authorized by RCW 59.18.253(2) or a payment to assure the payment of
26 rent, provided that a security deposit may be applied to rent as provided in
Section 7.24.030. Security deposits include payments, charges, or deposits
for the purpose of:

1. Repairing damage to the premises, exclusive of
ordinary wear and tear, caused by the tenant, or by a guest
or licensee of the tenant.

2. Compensating the landlord for the tenant’s breach
of the tenant’s duties prescribed in the rental agreement to
restore, replace, or return personal property or
appurtenances.

3. Compensating the landlord for the tenant’s failure
to return keys to the premises, except that a landlord shall
not retain any portion of the deposit for keys for lock
mechanisms that must be changed upon a change of
tenancy pursuant to subsection 22.206.140.A.7.

1 Ordinance at 3-4; SMC 7.24.020.

2 4.10 The Ordinance amends SMC 7.24.030 to impose new requirements on rental
3 agreements entered into after the effective date of the Ordinance. Ordinance at 4-7.

4 4.11 One of the new requirements imposes controls on allocation of tenant
5 payments among rent and other payments due:

6 . . . When any monthly or periodic payment is made pursuant to the rental
7 agreement, the landlord shall first apply the payment to the rent due before
8 applying it to other payments due by the tenant to the landlord, except that
9 if the payment is made in response to a notice issued pursuant to RCW
10 59.12.030 during the period of that notice, the landlord shall first apply the
11 payment to the amount specified in that notice, before applying it to the
12 rent due or to other payments due by the tenant to the landlord.

13 Ordinance at 6-7, SMC 7.24.030.E.

14 4.12 The Ordinance adds several new sections to SMC Ch.7.24 regarding
15 enforcement of its provisions by the Director of the Seattle Department of Construction and
16 Inspections or the Director's designee and authorizes criminal jeopardy for violations.
17 Ordinance at 17-27; SMC 7.24.120 - .160.

18 4.13 Per the Ordinance, "First and second violations of this Chapter 7.24 shall be
19 enforced under the citation provisions set forth in Section 7.24.130. Subsequent violations
20 may be enforced, at the Director's discretion, under the notice of violation provisions set forth
21 in Section 7.24.140 or criminal provisions set forth in Section 7.24.150." Ordinance at 17-18;
22 SMC 7.24.120.B.

23 4.14 The citation procedures for violations of SMC 7.24 are specified in SMC
24 7.24.130, which the Ordinance added to SMC 7.24. Per the Ordinance:

25 The following penalties shall be assessed for violations of any
26 provision of this Chapter 7.24:

- a. Five hundred dollars for the first violation; and
- b. One thousand dollars for each subsequent violation within a 5-year period.

1 Ordinance at 23; SMC 7.24.130.F.1.

2 4.15 The notice of violation procedures for violations of SMC 7.24 are specified in
3 SMC 7.24.140, which the Ordinance added to SMC 7.24. Per the notice of violation
4 procedures:

5 any person violating or failing to comply with any of the provisions of this
6 Chapter 7.24 shall be subject to a cumulative penalty of up to \$150 per
7 day for each violation from the date the violation begins for the first ten
8 days of noncompliance; and up to \$500 per day for each violation for each
9 day beyond ten days of noncompliance until compliance is achieved. In
10 cases where the Director has issued a notice of violation, the violation will
11 be deemed to begin for purposes of determining the number of days of
12 violation on the date compliance is required by the notice of violation. The
13 City shall also be entitled to recovery of its enforcement costs, including
14 but not limited to staff time, administrative expenses and fees, and
15 attorneys' fees.

16 Ordinance at 26; SMC 7.24.140.D.1.

17 4.16 The Ordinance further authorizes criminalizing violations of SMC 7.24 and
18 lessening the city's burden of proof for criminal violations:

19 Any person who violates or fails to comply with any of the provisions in
20 this Chapter 7.24 and who has had at least two or more citations and one
21 notice of violation issued against them for violating this Chapter 7.24
22 within the past three years from the date the criminal charge is filed shall
23 upon conviction be guilty of a misdemeanor subject to the provisions of
24 Chapters 12A.02 and 12A.04, except that absolute liability shall be
25 imposed for such a violation or failure to comply and none of the mental
26 states described in Section 12A.04.030 need be proved. The Director may
request the City Attorney prosecute such violations criminally as an
alternative to the citation and notice of violation procedures outlined in
this chapter.

27 Ordinance at 27; SMC 7.24.150.

28 4.17 The Ordinance also purports to create a private right of action for a tenant
29 against a landlord who enforces provisions in a rental agreement that are determined to be
30 contrary to the various technical requirements of SMC 7.24.030, 7.24.035, 7.24.036 or

1 7.24.038, making the landlord liable to the tenant for actual damages, double any City
2 penalties, double the amount of any security deposit unlawfully charged or withheld and
3 attorney fees and costs:
4

5 **7.24.060 Private right of action**

6 A. Landlord liability to tenant

7 1. If a landlord attempts to enforce provisions in a
8 rental agreement that are contrary to the requirements of
9 Sections 7.24.030, 7.24.035, 7.24.036, or 7.24.038, the
10 landlord shall be liable to the tenant for: 1) any actual
11 damages incurred by the tenant as a result of the landlord's
12 attempted enforcement; 2) double the amount of any
13 penalties imposed by the City; 3) double the amount of any
14 security deposit unlawfully charged or withheld by the
15 landlord; and 4) reasonable attorney fees and costs.

16 Ordinance at 13-14; SMC 7.24.060.A.1.

17 4.18 The private right of action goes even further, also making a landlord liable to a
18 tenant "for up to \$3,000 plus reasonable attorney fees and costs" for including provisions in
19 the rental agreement prohibited by 7.24.030.B, Section 7.24.035, Section 7.24.036, or Section
20 7.24.038, regardless of whether the landlord attempts to enforce the provision or simply has
21 mistakenly violated the new requirements:
22

23 2. A landlord who includes provisions prohibited by
24 subsection 7.24.030.B, Section 7.24.035, Section 7.24.036,
25 or Section 7.24.038 in a new rental agreement, or in a
26 renewal of an existing agreement, shall be liable to the
tenant for up to \$3,000 plus reasonable attorney fees and
costs.

Ordinance at 14; SMC 7.24.060.A.2.

4.19 A tenant may terminate the rental agreement and also obtain actual damages,
attorney fees, and a penalty of between \$500 and \$1,000, depending on whether the violation

1 was deliberate, from a landlord who violates SMC 7.24.080 by failing to provide the tenant
2 summaries prepared by the Director under SMC 7.24.070:

3 B. Remedies for tenants if landlord fails to comply

4 1. If a landlord fails to comply with the requirements
5 of subsections 7.24.080.A or 7.24.080.B and such failure
6 was not caused by the tenant, the tenant may terminate the
rental agreement by written notice pursuant to law.

7 2. In addition to the remedy provided by subsection
8 7.24.060.B.1, if a landlord fails to comply with the
9 requirements of Section 7.24.080, the tenant may recover in
10 a civil action from the landlord actual damages, attorney
11 fees, and a penalty of up to \$500. If a court determines that
the landlord deliberately failed to comply with the
requirements of Section 7.24.080, the penalty may be up to
\$1,000.

12 Ordinance at 14; SMC 7.24.060.B.

13 4.20 This action challenges the Ordinance and each of the specific provisions
14 referenced in the preceding paragraphs both individually and cumulatively.

15 4.21 The Ordinance and the specific provisions challenged in this action are
16 “controls on rent” and also “regulate the amount of rent” in violation of RCW 35.21.830.

17 4.22 The right to rent property, the right to rent property on financial terms of one’s
18 choosing, and the right to collect security deposits up front in an amount that the owner
19 deems necessary to protect property and ensure performance of a tenant’s obligations, as is
20 customary in the residential rental industry, are, *inter alia*, fundamental attributes of property
21 ownership.

22 4.23 The Ordinance and the specific provisions challenged in this action deprive
23 property owners of one or more fundamental attribute of ownership in violation of Article I,
24 Section 16, of the Washington State Constitution.

25 4.24 The Ordinance and the specific provisions challenged in this action deprive
26 landlords of interest to which they are entitled under RCW 59.18.270 and which would

1 otherwise accrue if the full amount of the security deposit was paid up front rather than over
2 six months' time.

3 4.25 The Ordinance and the specific provisions challenged in this action, by
4 requiring landlords to accept payment of security deposits, non-refundable move-in fees, and
5 last month's rent over six months' time (and pet deposits over three months' time) rather than
6 collecting these amounts in full at the beginning of the tenancy, as is customary in the
7 residential rental industry, force landlords to rent their property without adequate security to
8 protect their property and to ensure performance of tenant obligations.

9
10 4.26 The Ordinance and the specific provisions challenged in this action prohibit a
11 landlord from charging a tenant any one-time fees at the beginning of a tenancy – except for
12 those fees within the definition of “non-refundable move-in fees”, security deposits, pet
13 security deposits, and last month's rent – regardless of whether the landlord does in fact incur
14 additional legitimate costs in connection with a new tenancy and regardless of whether the
15 tenant makes a request that would result in the additional one-time fee.

16 4.27 The Ordinance and the specific provisions challenged in this action cap the
17 total amount of a security deposit and nonrefundable move-in fees so as to not exceed the
18 amount of the first full month's rent for the tenant's dwelling unit in all cases irrespective of a
19 landlord's actual costs or the monthly lease rate and regardless of whether or not such amount
20 is adequate to provide the landlord security in his or her property interest or to ensure
21 performance of the tenant's obligations.

22
23 4.28 The Ordinance and the specific provisions challenged in this action appropriate
24 private property for private use in violation of Article I, Section 16, of the Washington State
25 Constitution.

26 4.29 Under the Ordinance and the specific provisions challenged in this action, the
failure to include required language in a rental agreement or the inclusion of an improper term

1 in a rental agreement, regardless of whether the error is technical or landlord the attempts to
2 enforce it, could result in substantial financial liability to tenants and imposition of City fines.
3 For example, a landlord with a single unit who adopts a form lease that is somehow deficient
4 or erroneous in a technical aspect would be liable to a tenant in an amount up to \$3,000 (plus
5 attorney fees and costs), as well as whatever fines the City imposes. A landlord with several
6 units rented using a form lease containing an error would be liable to each and every tenant
7 who signed the lease in an amount up to \$3,000 (plus attorney fees and costs), as well as
8 whatever fines the City imposes. Further, the landlord could also be subject to criminal
9 liability.
10

11 4.30 Under the Ordinance, failing to give the tenant at the beginning of the tenancy
12 the actual summary of laws prepared by the Director (as opposed, e.g., to a notice or link
13 showing where to find it) results in landlord liability for: a \$500.00 payment to the tenant;
14 attorney fees and costs to the tenant; City fines. The omission also would permit a tenant to
15 terminate the tenancy in violation of its terms.

16 4.31 The Ordinance and the specific provisions challenged in this action use means
17 that are not reasonably necessary to achieve the Ordinance's purpose(s), are unduly
18 oppressive, and deprive property owners of property without due process of law in violation
19 of Article I, Section 3, of the Washington State Constitution.

20 4.32 The Ordinance and the specific provisions challenged in this action
21 impermissibly and unlawfully attempt to shift the burden for solving the affordable housing
22 problem in the City of Seattle from the general public to individual property owners, with a
23 particular burden on small landlords and in a manner that is irrational.
24

25 4.33 The Ordinance and the specific provisions of it challenged in this action,
26 whether considered individually or cumulatively, are unlawful and violate RCW 35.21.830
and Article I, Sections 3, 5, and 16 of the Washington State Constitution.

1 4.34 The Ordinance and the specific provisions challenged in this action, cumulated
2 with the complex web of regulation imposed on Seattle landlords, including “first in time
3 requirements”, exacerbate each of the deprivation of rights alleged above.

4 **V. FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT (RCW 7.24)**

5 5.1 Plaintiff re-alleges, reasserts and incorporates the allegations in the paragraphs
6 above as if fully set forth here.

7 5.2 Plaintiff is entitled to a declaration that the Ordinance and the specific
8 provisions of it challenged in this action are “controls on rent” and also “regulate the amount
9 of rent” all in violation of RCW 35.21.830, which provides:
10

11 The imposition of controls on rent is of statewide significance and is
12 preempted by the state. No city or town of any class may enact, maintain, or
13 enforce ordinances or other provisions which regulate the amount of rent to be
14 charged for single-family or multiple-unit residential rental structures or sites
15 other than properties in public ownership, under public management, or
16 properties providing low-income rental housing under joint public-private
17 agreements for the financing or provision of such low-income rental housing.
18 This section shall not be construed as prohibiting any city or town from
19 entering into agreements with private persons which regulate or control the
20 amount of rent to be charged for rental properties.

21 5.3 Plaintiff is entitled to a declaration that the Ordinance and the specific
22 provisions challenged in this action deprive property owners of a fundamental attribute of
23 ownership and also appropriate private property for private use all in violation of Article I,
24 Section 16, of the Washington State Constitution, which provides:
25

26 Private property shall not be taken for private use, except for private ways of
necessity, and for drains, flumes, or ditches on or across the lands of others for
agricultural, domestic, or sanitary purposes. No private property shall be taken
or damaged for public or private use without just compensation having been
first made. . .

 5.4 Plaintiff is entitled to a declaration that the Ordinance and the specific
provisions challenged in this action use means that are not reasonably necessary to achieve

1 the Ordinance's purpose(s), are unduly oppressive, and deprive property owners of property
2 without due process of law all in violation of Article I, Section 3, of the Washington State
3 Constitution, which provides:

4 No person shall be deprived of life, liberty, or property, without
5 due process of law.

6 5.5 Plaintiff is entitled to a declaration that the Ordinance and the specific
7 provisions challenged in this action impermissibly impose on individual private landlords
8 what should be the common burden of the City as a whole to underwrite governmental
9 "solutions" to the affordable housing situation in the City of Seattle.
10

11 5.6 Plaintiff is entitled to a declaration that the Ordinance and the specific
12 provisions challenged in this action are unlawful, invalid and unenforceable because they
13 violate RCW 35.21.830 and the following sections of the Washington State Constitution:
14 Article I, Section 3; Article I, Section 5; and Article I, Section 16.

15 **VI. SECOND CAUSE OF ACTION: PERMANENT INJUNCTION (RCW 7.40)**

16 6.1 Plaintiff re-alleges, reasserts and incorporates the allegation set forth in the
17 paragraphs above as if fully set forth here.

18 6.2 Plaintiff has no adequate remedy at law and will suffer irreparable injury
19 absent an injunction restraining the City from enforcing the Ordinance and the specific
20 provisions of it which are unlawful, invalid and unenforceable.

21 6.3 Plaintiff is entitled to permanent injunctive relief barring the City from taking
22 any action to implement or enforce the Ordinance and the specific provisions challenged in
23 this action which are unlawful, invalid and unenforceable.
24

25 **VII. PRAYER FOR RELIEF**

26 Plaintiff prays for the following relief:

1 a. For a declaration that the Ordinance and the specific provisions of it
2 challenged in this action are unlawful, invalid and unenforceable because they violate RCW
3 35.21.830 and the following sections of the Washington State Constitution: Article I, Section
4 3; Article I, Section 5; and Article I, Section 16.

5 b. For a permanent injunction barring the City from taking any action to
6 implement or enforce the Ordinance and the specific provisions of it challenged in this action,
7 including but not limited to any action pursuant to regulations adopted by the City to
8 implement the Ordinance and the specific provisions of it challenged in this action.

9 c. For an award of reasonable attorney fees, expenses and costs as allowed by law
10 and equity, including but not limited to RCW 4.848.010 and RCW 7.24.100; as well as
11 common and case law.

12 d. For such other relief as the Court deems just and proper.

13
14 Respectfully submitted this 30th day of May, 2017.

15
16
17 EGLICK & WHITED PLLC

18
19 By 

20 Peter J. Eglick, WSBA No. 8809
21 Joshua A. Whited, WSBA No. 30509
22 Attorneys for Plaintiff
23
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