

I. COMPLAINT

1
2 1.1 This is an action for damages and remedies against FPI Management,
3 Inc. (FPI) for its multiple violations of the Washington Residential
4 Landlord-Tenant Act, RCW 59.18, *et seq.*

II. JURISDICTION & VENUE

6
7 2.1 Jurisdiction of this Court arises under 28 U.S.C. § 1332.

8 2.2 Defendant is a citizen of the state of California.

9 2.3 Plaintiff is a citizen of Washington State.

10 2.4 The matter in controversy is a putative class action which exceeds the
11 sum or value of \$75,000.00, exclusive of interest and costs.

12 2.5 Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

13 2.6 Venue is proper in this District under 28 U.S.C. § 1391(b) because the
14 Defendant conducts affairs and transacts business in this District, and
15 the unlawful acts giving rise to this Complaint occurred, in part, in this
16 District.
17

III. PARTIES

18
19 3.1 At all relevant times, Plaintiff was a resident of Spokane County,
20 Washington.
21

1 3.2 Defendant FPI is a California corporation that is primarily engaged in
2 the business of managing rental properties in Washington State and
3 elsewhere.

4 3.3 Defendant and its related, parent, and subsidiary corporations are a
5 provider of services to residents, property owners, and investors in the
6 multifamily real estate industry.
7

8 3.4 Defendant is an owner, lessor, sublessor, or the designated
9 representative of the owner, lessor, or sublessor, or an agent, resident
10 manager, or a designated property manager for multiple dwelling units,
11 or properties of which one or more dwelling units are a part, throughout
12 Washington State and elsewhere.

13 3.5 Defendant FPI is a “Landlord” as defined by RCW 59.18.030(14).
14

15 **IV. FACTS**

16 4.1 In March of 2019, Plaintiff applied to rent a unit at Defendant’s Copper
17 Hill apartment complex, located on 3210 E. 44th Avenue in Spokane,
18 Washington.
19

20 4.2 Copper Hill is a multifamily dwelling that is managed by Defendant
21 FPI.

22 4.3 Defendant required Plaintiff to pay a thirty-five-dollar (\$35) application
23 fee.
24

1 4.4 The application fee was, in whole or part, used to pay for a consumer
2 report on Plaintiff.

3 4.5 Defendant's purpose for obtaining the consumer report was to gather
4 information about a prospective tenant.

5 4.6 Defendant's standard tenant screening procedure requires prospective
6 tenants to pay the cost for Defendant or its agents to obtain a consumer
7 report on the prospective tenant.

8 4.7 In the three years preceding the filing of this Complaint, more than
9 10,000 people applied to rent a property in the state of Washington that
10 was or is managed by Defendant and paid an application fee as a part
11 of the Defendant's required application process.

12 4.8 Defendant also required Plaintiff to pay a one hundred dollar (\$100)
13 refundable "holding deposit" at the time she applied for tenancy at
14 Copper Hill apartments.

15 4.9 The marketing brochure for Copper Hill states in part: "\$35.00
16 application fee. \$100 to hold, cashier's check or money order only."

17 4.10 At the same time she paid the application fee, Plaintiff paid Defendant
18 a "holding deposit", via money order.

19 4.11 Defendant required Plaintiff to pay the "holding deposit" prior to
20 determining whether she was eligible to rent at Copper Hill.

1 4.12 Defendant required Plaintiff to pay the “holding deposit” prior to
2 offering her any lease.

3 4.13 Defendant required Plaintiff to pay the “holding deposit” prior to
4 disclosing the lease terms for the premises.

5 4.14 Defendant required Plaintiff to pay the “holding deposit” prior to
6 determining whether Plaintiff was eligible to rent at Copper Hill or any
7 other property managed by Defendant.

8 4.15 Defendant required Plaintiff to pay the “holding deposit” as a
9 precondition to Defendant considering Plaintiff for a tenancy at Copper
10 Hill.
11

12 4.16 On or about April 5, 2019, Plaintiff received an adverse action notice
13 from Defendant, informing her that her application for rental housing
14 at Copper Hill Apartments was denied.
15

16 4.17 Defendant’s April 5, 2019, adverse action notice informed Plaintiff that
17 her consumer report was obtained and reviewed on March 21, 2019.
18

19 4.18 Plaintiff’s “holding deposit” was negotiated by Defendant on or about
20 March 25, 2019.

21 4.19 To date, Defendant has not refunded Plaintiff’s “holding deposit”.

22 4.20 The Defendant’s application criteria at Copper Hill states:
23

1 All holding deposits are deposited once they become non-
2 refundable. The “holding deposit” is not refundable when:
3 1) the applicant has been approved for move-in; including
4 affordable program compliance approval, and 2) seventy-
two (72) hours have expired since the initial deposit on the
apartment home was made.

5 4.21 The Defendant’s application criteria also provides:

6 The applicant waiting list is maintained according to unit
7 size and will remain open with the understanding that
8 those who are listed are informed of its length, the policies
9 and procedures for selecting individuals, and how
applicants are added to the waiting list.

- 10 1. if no apartment homes are available, an eligible
applicant will be placed on the applicant waiting list.
- 11 2. In order to maintain a balanced application pool, the
12 property may restrict or suspend application
acceptance and close the applicant waiting list. The
13 property will also update the applicant waiting list by
removing the names of those who are no longer
14 interested in, or no longer qualify for housing.
- 15 3. If the applicant waiting list contains enough
applicants to result in a wait of more than one full year
16 for all applicable bedroom sizes, the wait list may be
closed. The applicant waiting list may remain closed
17 until it is reduced to less than a one-year wait for
admission.
- 18 4. During the period when the applicant waiting list is
closed, the property will not maintain a list of
19 individuals who wish to be notified when the waiting
list is reopened.
- 20 5. The applicant waiting list is updated approximately
21 every six (6) months.

22 Waiting List Preferences:

- 23 a. Current residents who need to transfer to a different
24 unit

- b. Outside applicants wishing to move into the property
- c. Date of availability for move-in

4.22 The Copper Hill apartments are owned or managed by Defendant.

4.23 Defendant manages more than 50 residential multi-family properties in the state of Washington.

4.24 Defendant obtains a tenant screening report on all prospective Washington tenants, who are over the age of eighteen, including Plaintiff.

4.25 All prospective tenants in the state of Washington, who are over the age of eighteen, are required to pay a tenant screening fee prior to renting a unit at any property Defendant owns or manages.

4.26 The tenant screening fee is non-refundable.

4.27 Defendant obtains consumer reports on all prospective Washington adult tenants.

4.28 Defendant obtains consumer reports on all prospective co-signers for prospective Washington tenants

4.29 Defendant obtained a consumer report on Plaintiff when deciding whether to accept Plaintiff's application for rental housing at Copper Hill.

1 4.30 Prior to obtaining information about prospective tenants, Defendant
2 does not provide any written or posted notice to prospective tenants
3 regarding the name of the consumer reporting agency from which
4 information will be obtained.

5
6 4.31 Prior to obtaining information about Plaintiff, Defendant did not
7 provide her with any written or posted notice regarding the name of the
8 consumer reporting agency from which information was obtained.

9 4.32 Prior to obtaining information about prospective tenants, Defendant
10 does not provide any written or posted notice to prospective tenants
11 regarding the address of the consumer reporting agency from which
12 information will be obtained.

13
14 4.33 Prior to obtaining information about Plaintiff, Defendant did not
15 provide her with any written or posted notice regarding the address of
16 the consumer reporting agency from which information was obtained.

17 4.34 Prior to obtaining information about prospective tenants, Defendant
18 does not provide any written or posted notice to prospective tenants
19 regarding their right to obtain a free copy of the consumer report in the
20 event of a denial or other adverse action.

21
22 4.35 Prior to obtaining information about Plaintiff, Defendant did not
23 provide her with any written or posted notice regarding her right to
24

1 obtain a free copy of the consumer report in the event of a denial or
2 other adverse action.

3 4.36 Prior to obtaining information about prospective tenants, Defendant
4 does not provide any written or posted notice to prospective tenants
5 regarding the prospective tenants' right to dispute the accuracy of
6 information appearing in the consumer report.
7

8 4.37 Prior to obtaining information about Plaintiff, Defendant did not
9 provide any written or posted notice Plaintiff regarding her right to
10 dispute the accuracy of information appearing in the consumer report.
11

12 4.38 After Defendant completes the tenant screening, Defendant does not
13 provide any information, through any medium, regarding which
14 consumer reporting agency provided information to Defendant, unless
15 the rental application is denied or conditionally approved by Defendant.
16

17 4.39 For any prospective tenant, information contained in different
18 consumer reports may be different.

19 4.40 Defendant did not provide the above-described disclosures to Plaintiff
20 or to any member of the putative class.

21 4.41 In the three (3) years preceding the filing of this Complaint, Defendant
22 has obtained information on more than 10,000 prospective Washington
23 tenants.
24

1 4.42 In the three (3) years preceding the filing of this Complaint, Defendant
2 has required more than 10,000 prospective tenants at Washington
3 properties managed by Defendant to pay the cost of obtaining a
4 consumer report.
5

6 **V. VIOLATIONS OF WASHINGTON’S RESIDENTIAL
7 LANDLORD-TENANT ACT (RLTA), RCW 59.18, *ET SEQ.***

8 5.1 Pursuant to RCW 59.18.030(14), Defendant is a “landlord” subject to
9 the provisions of RCW 59.18, *et seq.*, including RCW 59.18.253 and
10 .257.

11 5.2 RCW 59.18.253 prohibits landlords from requiring a “fee or deposit
12 from a prospective tenant for the privilege of being placed on a waiting
13 list to be considered as a tenant for a dwelling unit.”

14 5.3 RCW 59.18.253 prohibits landlords from requiring a holding fee or
15 deposit from prospective tenants prior to determining whether a
16 prospective tenant is eligible to be offered a tenancy.
17

18 5.4 By charging Plaintiff and other prospective tenants a “holding deposit”
19 or fee prior to approval of tenancy and prior to offering a lease
20 agreement, Defendant violated RCW 59.18.253.
21
22
23

1 5.5 The Washington legislature found the following, with respect to the
2 type of holding fee charged to Plaintiff and members of the putative
3 class:

4 The legislature finds that tenant application fees often
5 have the effect of excluding low-income people from
6 applying for housing because many low-income people
7 cannot afford these fees in addition to the rent and other
8 deposits which may be required. The legislature further
9 finds that application fees are frequently not returned to
10 unsuccessful applicants for housing, which creates a
11 hardship on low-income people. The legislature therefore
 finds and declares that it is the policy of the state that
 certain tenant application fees should be prohibited and
 guidelines should be established for the imposition of
 other tenant application fees. RCW 59.18.253.

12 5.6 Defendant’s practice of charging “holding deposits” or fees in order to
13 be considered as a tenant for a dwelling unit, and failing to return the
14 deposit when a prospective tenant is denied housing, is contrary to the
15 public interest as set forth in the legislative findings.

16 5.7 By charging a “holding deposit” or fee to Plaintiff and other prospective
17 tenants prior to approval of tenancy and prior to offering a lease
18 agreement, Defendant caused damage to Plaintiff and others.

19 5.8 Defendant has required more than ten thousand (>10,000) prospective
20 Washington tenants to pay a “holding deposit” or fee as a condition of
21

1 its rental application process in the three (3) years preceding the filing
2 of this action.

3 5.9 In 2012, the Washington legislature found the following with respect to
4 landlords' use of tenant screening reports:
5

6 The legislature finds that residential landlords frequently
7 use tenant screening reports in evaluating and selecting
8 tenants for their rental properties. These tenant screening
9 reports purchased from tenant screening companies may
10 contain misleading, incomplete, or inaccurate information,
11 such as information relating to eviction or other court
12 records. It is challenging for tenants to dispute errors until
13 after they apply for housing and are turned down, at which
14 point lodging disputes are seldom worthwhile. The costs
15 of tenant screening reports are paid by applicants.
16 Therefore, applicants who apply for housing with multiple
17 housing providers pay repeated screening fees for
18 successive reports containing essentially the same
19 information.

20 The legislature also finds that it is important to both
21 landlords and tenants that consumer information
22 concerning prospective tenants is accurate. Many tenants
23 are unaware of their rights under federal fair credit
24 reporting laws to dispute information that may be
25 inaccurate. The legislature therefore finds and declares
that it is the policy of the state for prospective tenants to
be informed of their rights to dispute information they feel
is inaccurate in order to help prevent denials of housing
based upon incorrect information.

5.10 Defendant was, at all times relevant to this action, required by RCW
59.18.257 to provide the name and address of the consumer reporting
agency from which it will obtain information about the prospective

1 tenant prior to the tenant being charged any fee for a tenant screening
2 report.

3 5.11 Prospective tenants may decide where they will apply to rent based on
4 which consumer report will be used for screening.

5
6 5.12 Prospective tenants who know that derogatory information exists on
7 one consumer report may choose not to waste the screening fee if
8 another landlord utilizes the same report.

9 5.13 Alternatively, prospective tenants may choose to apply with a
10 prospective landlord because the prospective tenants know that a
11 particular consumer report contains no derogatory information.

12
13 5.14 Defendant's practice of failing to provide its source(s) of consumer
14 information, prior to obtaining the prospective tenants' consumer
15 information, frustrates prospective tenants' ability to make informed
16 decisions regarding where to apply for rental housing.

17 5.15 Defendant's practice of failing to disclose the name and address of the
18 consumer reporting agency from which Defendant obtains information
19 pertaining to prospective tenants violates RCW 59.18.257(1)(a)(iii).

20
21 5.16 Defendant's practice of failing to disclose that the prospective tenants
22 may obtain a free copy of their consumer reports in the event of a denial
23 or other adverse action violates RCW 59.18.257(1)(a)(iii).

1 5.17 Defendant's practice of failing to disclose to prospective tenants their
2 right to dispute the accuracy of information appearing in the consumer
3 report violates RCW 59.18.257(1)(a)(iii).

4 5.18 Landlords who violate RCW 59.18.257(1)(a) are prohibited from
5 charging prospective tenants for tenant screening fees, and also
6 prohibited from obtaining any consumer reports on prospective tenants.
7

8 5.19 By failing to provide the required information to the Plaintiff and the
9 members of the putative class, prior to charging the Plaintiff and the
10 members of the putative class for tenant screening fees, Defendant
11 violated RCW 15.18.257(1)(b).

12 5.20 By charging prohibited tenant screening fees, Defendant caused
13 damage to the Plaintiff and others.
14

15 5.21 Defendant has required more than ten thousand (>10,000) prospective
16 Washington tenants to pay a tenant screening fee, as a condition of its
17 rental application process in the three (3) years preceding the filing of
18 this action.
19

20 **VI. UNJUST ENRICHMENT**

21 6.1 Defendant was prohibited pursuant to RCW 59.18.253 from charging
22 any prospective Washington tenant a deposit or fee for the privilege of
23 being considered for tenancy.
24

1 6.2 Defendant was prohibited pursuant to RCW 59.18.257 from charging
2 any prospective Washington tenant a fee for tenant screening.

3 6.3 Defendant benefitted from collecting and withholding unlawful holding
4 fees and deposits from prospective tenants.

5 6.4 Defendant benefitted from receiving consumer reports and other useful
6 information as a result of the prospective tenants paying the tenant
7 screening fee.
8

9 6.5 Defendant avoided the cost of obtaining the information in the tenant
10 screening reports by illegally forcing prospective tenants to pay the fee.
11

12 6.6 Defendant was unjustly enriched by receiving unlawfully collected
13 holding fees or deposits and tenant screening fees from prospective
14 tenants.

15 6.7 Defendant was unjustly enriched in the amount of the cost to the
16 prospective tenant by receiving the reports paid for by prospective
17 tenants.
18

19 6.8 The value of the reports and information obtained by Defendant on each
20 prospective tenant is equal to the amount paid by each tenant.

21 6.9 Defendant should not be allowed to retain the value it received via the
22 illegal charges paid by the prospective tenants.
23

VII. CLASS ALLEGATIONS

This action is brought on behalf of a class consisting of:

7.1 FOR ALL CLASS MEMBERS

7.1.1 All persons;

7.1.2 Who applied to rent any property in Washington State;

7.1.3 Where the rental property, on the date of the application, was owned or managed by Defendant, or where Defendant was a “landlord” of the property, as defined by RCW 59.18.030(14);

7.2 SUBCLASS A

7.2.1 Who, as prospective tenants, had their information obtained by Defendant and/or paid a tenant screening fee to Defendant;

7.2.2 Where Defendant failed to provide the information to the prospective tenants as required by RCW 59.18.257, including but not limited to, the right to dispute the accuracy of the consumer report, and the prospective tenants’ right to receive a free copy of the report.

7.2.3 The class period for Subclass A is three (3) years prior to filing of this action, through the date that the class is certified;

1 7.3 SUBCLASS B

2 7.3.1 All persons who paid monies characterized as a “holding
3 deposit” or fee to be considered for a tenancy at properties owned
4 or managed by Defendant FPI Management, Inc., in Washington
5 State;

6 7.3.2 Where the Defendant required a “holding deposit” or fee from a
7 prospective tenant for the privilege of being placed on a waiting
8 list to be considered as a tenant for a dwelling unit; or

9 7.3.3 Where the Defendant had not offered the tenant(s) a lease for a
10 dwelling unit or determined the prospective tenants eligibility to
11 rent prior to the collection of “holding” monies;

12 7.4 Plaintiff has the same claims as the members of the class. All of the
13 claims are based on the same factual and legal theories.

14 7.5 Plaintiff will fairly and adequately represent the interests of the class
15 members. She is committed to vigorously litigating this matter.

16 7.6 Neither Plaintiff nor her counsel have any interests which might cause
17 them not to vigorously pursue this claim.

18 7.7 A class action is a superior method for the fair and efficient adjudication
19 of this controversy.

20 7.8 Class-wide damages are essential to induce Defendant to comply with
21 the law.
22 the law.

1 7.9 The interests of the class members in individually controlling the
2 presentation of separate claims against the Defendant is small, because
3 the amount of damages recoverable in an individual case under RCW
4 59.18.253 or .257 is relatively small.

5
6 7.10 Certification of a class pursuant to Fed. R. Civ. Pro 23(b)(3) is
7 appropriate. A class action is the only appropriate means of resolving
8 this controversy because the class members are not aware of their
9 rights, the class is comprised of a largely vulnerable population, and the
10 amount of available damages for many of the class members may be
11 relatively small. In the absence of a class action, a failure of justice will
12 result.

13
14 7.11 Certification of a class pursuant to Fed. R. Civ. Pro. 23(b)(2) is also
15 appropriate. Defendant acted on grounds generally applicable to the
16 class, making declaratory relief appropriate with respect to the class as
17 a whole.

18 **VIII. DEMAND**

19
20 WHEREFORE, Plaintiff demands judgment as follows:

21 8.1 Actual damages in the amount paid for tenant screening by each
22 prospective tenant class member;

1 8.2 Statutory damages of one hundred dollars (\$100) per prospective
2 tenant, pursuant to RCW 59.18.257(3);

3 8.3 For a refund of each class member's "holding" fee or deposit paid to or
4 retained by Defendant;

5 8.4 Double the amount of each class member's "holding" fee or deposit
6 paid to or retained by Defendant pursuant to RCW 59.18.253(4);
7

8 8.5 Costs and reasonable attorney's fees pursuant to RCW 59.18.257(3)
9 and/or RCW 59.18.253(4);

10 8.6 Pre-judgment interest on all amounts paid by prospective tenants for
11 tenant screening fees;

12 8.7 Post-judgment interest;

13 8.8 Declaratory judgment that Defendant's practices complained of herein
14 violate Washington's Residential Landlord-Tenant Act, RCW 59.18, *et*
15 *seq.*;

16 8.9 Injunctive relief enjoining the Defendant's practices complained of
17 herein; and
18

19 8.10 Such other and further relief as may be just and proper.
20
21
22
23

1 DATED this 16th day of April, 2019.

2 ***Kirk D. Miller, P.S.***

3
4 /s Kirk D. Miller

5 Kirk D. Miller, WSBA No. 40025
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12 ***Cameron Sutherland, PLLC***

13
14 /s Shayne Sutherland

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21 *Attorney for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS BRIANNA MORRIS
(b) County of Residence of First Listed Plaintiff Spokane
(c) Attorneys (Firm Name, Address, and Telephone Number) Kirk D. Miller, P.S. and Cameron Sutherland, PLLC

DEFENDANTS FPI MANAGEMENT, INC.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State X 1 1
Citizen of Another State 2 X 2
Citizen or Subject of a Foreign Country 3 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Washington Residential Landlord-Tenant Act RCW 59.18, et seq
Brief description of cause:
violation of the WA Residential Landlord-Tenant Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 04/12/2019 SIGNATURE OF ATTORNEY OF RECORD /s Kirk D. Miller

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: