

# Unlawful Detainer: Strategies and Procedures

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The Residential Landlord-Tenant Act (RLTA) of the state of Washington (RCW 59.18) sets minimum standards which residential property owners and residents are expected to follow. Additionally, by contract (i.e. a lease or rental agreement), additional obligations may be created which supplement the minimum standards of the RLTA.

When a landlord seeks to evict a tenant, he or she is asserting that the tenant has breached the terms of tenancy (failure to pay rent, violation of rules, damage to persons or property, etc...) in such a serious way that the tenant is no longer entitled to derive the benefit (continued residence in the rental unit) of that agreement.

Therefore, the property owner or manager must recognize from the beginning that they have the burden of proof. They are arguing that the tenant has, in essence, forfeited their rights under the rental agreement. More importantly, they are asking the court to forcibly remove the tenant from their home. As a practical matter, a court will only order this when the violation is substantial.

The procedures the owner or manager follows which lead up to the filing of an unlawful detainer action are extremely important because they lay the foundation for the legal action that the lawyer will pursue in court. We have found that there are...

## Ten steps to a successful eviction

- 1) A rule or obligation of tenancy exists.
- 2) The rule has been violated.
- 3) The violation can be proven.
- 4) The landlord (or agent) provides the tenant with a *written* notice of default.
- 5) The notice is served in the proper manner as provided in RCW 59.12.040.
- 6) The landlord waits the appropriate period of time.
- 7) The tenant fails to comply with the notice.
- 8) The landlord has not waived the right to enforce the terms of the notice.
- 9) The landlord decides to terminate the tenancy.
- 10) The Attorney commences unlawful detainer action.

### ***Step 1: A rule or obligation of the tenancy exists***

- The rules or obligations which the tenant must follow can be found in several places. They may be explicitly set forth in the RLTA, they may be present in a lease or rental agreement, and/or they may be set forth in "House Rules."
- Make sure you are using a recent, comprehensive rental agreement. Remember, you can't enforce a rule that doesn't exist.
- While you can make analogy to the general requirements of the RLTA (e.g. RCW 59.18.130(5) which establishes a duty not to permit a nuisance or common waste), you are always on firmer legal ground when a specific requirement is being violated.

### ***Step 2: The rule has been violated***

- Examples include failure to pay rent in a timely manner, presence of unauthorized residents or pets, failure to comply with local ordinances, etc...
- Remember, the clearer your rules are, the more obvious the violation will be.

**Step 3: The violation can be proven**

- Failure to pay rent is objective and is more easy to prove than are noise complaints, etc...
- Some violations are subjective (e.g. what constitutes a failure to “maintain a yard” or to make an “unreasonable amount of noise”).
- Hopefully, you have objective third party witnesses who can verify that the violation(s) occurred and who will testify in court if necessary.

**Step 4: The landlord (or agent) provides the tenant with a written notice of default**

- Types of Notices: Three-day notice for waste, nuisance or illegal activity; Three-day notice to pay rent **or** vacate; Ten-day notice to comply **or** vacate
- Be sure that the terms of the rental agreement do not provide for longer periods of time than those prescribed by statute.
- Alternative language is **required** for three-days for rent and ten-days or the notice is void.
- Ten-day notices should clearly state what action is required for compliance.

**Step 5: The notice is served in the manner set forth in RCW 59.12.040.**

- Hand delivery to the tenant, or
- Hand delivery to a person of suitable age and discretion on the premises *and* mailing, or
- Posting (affixing) to the door *and* mailing.
- Get an affidavit or declaration of service of the notice.

**Step 6: The landlord waits the appropriate period of time.**

- **Weekends count.** CR 6 says weekends and holidays do not count for time periods of less than seven days. However, service of notices is prior to the commencement of legal action, so the Rules of Civil Procedure do not apply. Therefore, weekends count, except that the final day for compliance may not fall on a Sunday or legal holiday.
- If the notice is served by any method other than personal service then the landlord must allow one extra day. RCW 59.12.040.
- Caveat: with ten-day notices, the landlord must usually wait for a period of time that is reasonable under the circumstances, particularly if it is impossible to comply sooner.

**Step 7: The tenant fails to comply with the notice.**

- Partial compliance is not compliance and may be rejected by the landlord unless it is unreasonable to do so.

**Step 8: The landlord has not waived compliance with the notice.**

- If a tenant makes a partial payment of rent and the landlord accepts, then it satisfies a three-day notice. Landlord may issue a new three-day notice for the balance of rent due and owing.
- If a tenant pays rent after the tenth day of a ten-day notice then the landlord may have waived compliance with the notice. The landlord may have to issue a new ten-day notice.
- If a landlord issues a notice of termination of tenancy and the tenant does not vacate, the landlord must not accept rent from the tenant, since this contradicts the argument that the tenant has no right to be there. If the landlord accepts rent payments, this usually waives compliance with the notice and thereby allows the tenant to remain as a month-to-month tenant.

**Step 9: The landlord decides to terminate the tenancy.**

- It is important to pick your battles, especially if the tenant may be able to claim retaliation.
- The landlord should not, under any circumstances—even if the lease expressly allows it—do anything that could be construed as a “self-help” eviction: withhold services, turn off utilities, remove the door, distress for rent, etc. Doing so, while occasionally legally defensible, only gives the tenant an issue to raise.

**Step 10: Attorney commences unlawful detainer action.**

- Service of Summons and Complaint
- Default Judgment
- Show Cause Hearing
- Trial (if ordered by Court) – Note: jury trials are possible