The Princeton Problem, Practical Considerations, and Updates in Residential Landlord-Tenant Law

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About me

- Associate attorney at Piskel Yahne Kovarik, PLLC since 2021. Before that, I served as Rule 9 Clerk in 2020 for PYK and Armitage & Thompson, PLLC shortly before that—primarily dealing with landlord-tenant disputes. In 2021, I received my Bar license in Washington state, Idaho in 2022, and California in 2024. My practice consists primarily of complex-commercial litigation, including construction, intellectual property, contractual, and property rights, and residential/commercial lease disputes.

Special Proceedings

- Unlawful detainer actions are "*special proceedings*" Christensen v. Ellsworth, 162 Wn.2d 365, 374 (2007)
- Civil Rules apply, unless inconsistent with rules of special proceedings
- CR 81(a)
- Examples: UDs, DVPAs, garnishments, will contests, lien foreclosures. Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn.2d 974, 981 (2009).

Understanding Effect of Special Proceedings

- Court calendar priority
- Statutory forms and Civil Rules variations
  - RCW 59.18.365 – Summons Form
  - RCW 59.18.055

RCW 59.18.365 - Summons

- USE THE STATUTORY FORM
- Ordinary CR 4 summons will not suffice
- "***COURT DATE:*** *If you respond to this Summons, you will be notified of your hearing date in a document called an "Order to Show Cause." This is usually mailed to you. If you get notice of a hearing,* ***you must go to the hearing****. If you do not show up, your landlord can evict you. Your landlord might also charge you more money. If you move before the court date, you must tell your landlord or the landlord's attorney.*"

RCW 59.18.055 – Alternative Service

- Posting, mailing, and certified mailing
- Available only after "*due diligence*" requirement is met
  - Three personal service attempts;
  - Over at least two days;
  - At different times of the day
  - Must provide declaration of non-service, outlining "*due diligence*"
  - Concerns? Get a court order

Limitations on Alternative Service?

- No money judgment
- Possession only

A “Summary Proceeding”

- “*A show cause hearing is a summary proceeding, but it is also fairly substantial. At the hearing, ‘[t]he court shall examine the parties and witnesses orally to ascertain the merits’ of the case.*” Kiemle & Hagood Co. v. Daniels, 26 Wn. App. 2d 199, 212 (2023).
- Result.....?

Summary Proceeding? Realistic Timeline for a Residential Eviction

- RCW 59.18.370 – not less than 7 days, nor more than 30 days
- RCW 59.18.055 – not less than 9 days
- In practice – two-week response

File and Serve? Or Just Serve?

- If filing and serving, RCW 59.18.370 – allows you set it for show cause and serve with summons
- Different filing fee - $197
- Just serving, no filing - no cost and can wait to see if tenant responds or not
- Risk: must set it show a show cause hearing anyway

If Tenant Does Not Respond

- Default
- Writ
- Sheriff fee - $120 for Spokane
- Issuance fee - $20 for Spokane
- Filing fee - $85 for Spokane
- So, it’s over?

If Tenant Responds to Summons

- Appearance? Proceed with caution
- First show cause hearing – RCW 59.18.370
- Be prepared
- Continuance
- Right to Counsel – RCW 59.18.640
  - "*Court **must** appoint an attorney for an indigent tenant....*"
  - Payton v. Nelson, 525 P.3d 244 (2023).

The Show Cause Hearing

- Tenant may "*answer orally or in writing*"
- Motions, motions, motions
- More delays
- Civil Rules on motion practice?

Tenant Response After Issuance of a Writ

- RCW 59.18.410(2) – tenant can restore tenancy by paying into court registry within 5 days after judgment
  - Landlord must accept pledge of rental assistance
  - Receipt of pledge stays writ for 14 days
- RCW 59.18.410(3) – tenant may stay writ (subject to factors)
  - Payment history
  - Hardship on tenant

Stay of Writ under .410(3)

- Burden is on the tenant
- No more than 90-day stay
- Must pay one month’s rent 5 days after order
- Default later on? May execute writ, subject to notice
- Limits: three or more non-payment notices in preceding 12 months BUT...

Vacation of Writ

- Tenant defaults
- Writ is served by Sheriff
- Tenant admits to personal service and failure to answer
- Must present some defense for why writ should be vacated/possession should be restored
- Cf. ”meritorious defense” standard for CR 60 motion

Meritorious Defense

- Primary purpose is to avoid useless trial, which would arise if there are insufficient facts to produce a different result
- General statements/denials are insufficient
- But even a "*tenuous defense may sufficiently support a motion to vacate*". Little v. King, 160 Wn.2d 696, 711 (J. Fairhurst et. al., concurring).
- Tip for LL advocates: defense must purport to excuse the breach. Munden v. Hazelrigg, 105 Wn.2d 39, 41 (1985) (rockslide v. duty to pay rent)

Habitability as a Defense

- Know/understand the property at issue
- Constitutes affirmative defense to eviction proceeding
- "*goes directly to issue of rent due and owing*" Foisy v. Wyman, 83 Wn.2d 22 (1973)
- Arises from:
  - Lease
  - Common law
  - Statute (not replaced)

Common Landlord Counsel Pitfalls

- Conduct-related notice specificity
- Multiple concurrent notices
- Improper calculations on non-payment notices
- Lease status for purposes of non-renewal
  - Initial lease term of 6-12 months or
  - Uninterrupted 6-12-month tenancies
- Lack of inspection

Common Defense Counsel Arguments

- Notice specificity
- Improper notice
- Concurrent notices
- Improper calculations
- Misleading notices

Tips to Avoid Common Pitfalls

- Be painstakingly specific, e.g., 10-day notices or 3-day notices for waste
- Review tenant ledger
- Create a record, e.g., four 10-day notices
- Track tenant lease status
- Avoid unnecessary communication with tenant

Strict v. Substantial Compliance

- "*form and contents*" – substantial compliance
- "*timing and manner*" – strict compliance
- The reality?

Affidavits of Service

- Keep proof of service for all pre-filing notices and summons/complaint
- Create a form
- "*An affidavit of service is presumed to be valid if it is regular in its form and substance; the person contesting the service must prove by clear and convincing evidence that the service was improper.*" State ex rel. Coughlin v. Jenkins, 102 Wn. App. 60, 65 (2000)

A Tenant’s Remedy: Orders of Limited Dissemination

An OLD is Not:

- Does not vacate any court orders, i.e., orders of default, writ issuance, etc.
- Does not seal documents from public view
- Does not limit landlord's ability to ask tenant's if they have been the subject of an eviction action
- Does not limit landlord's right to information. Hundtofte v. Encarnación, 181 Wn.2d 1, 4 (2014) (plurality opinion) (prohibiting superior court from redacting the names of defendants in meritless unlawful detainer action given the public's interest in the open administration of the courts).

An OLD Is:

- Seattle's UGM v. Bauer, 22 Wn. App.2d 934 (Div. 1 2022):
- Prevents screening services—not landlords—from using action itself as factor in tenant's score
- The "*issue [of an OLD] is therefore not 'purely academic,' contrary to UGM's contention; the relief Bauer seeks may have serious consequences on her future ability to access housing.*"
- But does not hinge on landlord's disclosure

Effect of an Order of Limited Dissemination

- Tenant screening service providers
  - Cannot disclose existence of eviction action
  - Or use as factor in tenant screening score
- Must be in writing
- Low burden to obtain: (1) no factual or legal basis for eviction; (2) tenancy was reinstated; and (3) other good cause
- Seattle's UGM v. Bauer, 22 Wn. App.2d 934 (Ct. App. Div. 1 2022)
  - *"A tenant screening service's ability to include an unlawful detainer action in its report does not depend on whether a landlord shares that information with the screening service, but on whether the court enters an order limiting dissemination of the action."*

“Other Cause” for OLD

- Housing Authority of Grant County v. Parker, 535 P.3d 516 (2023)
- Broad
- Statute is non-exhaustive – “*open-ended basis for relief*”
- But see footnotes: “*narrow form of relief … Nothing in the OLD statute limits a landlord's ability to ask prospective tenants about whether they have ever been the subject of an unlawful detainer action. The statute merely operates to limit the use of prior unlawful detainer information in a service provider's tenant screening report.*”

RCW 59.18.255 and OLDs

- No direct reference to OLD
- Income discrimination provision
- Proceed with caution

Ethical Considerations in Both Landlord and Tenant Representation

Candor to the Tribunal RPC 3.3

- Shall not knowingly make false statement of fact or law to tribunal
- Shall not offer evidence that lawyer knows to be false
- Lawyer may refuse to offer evidence that the lawyer "*reasonably believes is false*"
- Example: tenant contesting notice
- Example: landlord asserting basis for notice, e.g., 90-day intent to sell/intent to occupy

Cf. Biliske v. Anderson

- 2024 WL 3507713
- RCW 59.18.200(c)(i) – "*Whenever a landlord plans to demolish or substantially rehabilitate premises or plans a change of use of premises, the landlord shall provide a written notice to a tenant at least 120 days before the tenancy ends.*"

Biliske v. Anderson

- Facts
  - Served tenant with non-descriptive 120-day notice of intent to substantially rehabilitate property (no specific plans identified)
  - Tenants claimed it was defective without such descriptions of plans

The Opinion

- Rejected tenant's argument
- "*While the Andersons might have been willing to occupy the premises during Mr. Biliske's repairs,* ***their subjective willingness is irrelevant to a termination of tenancy****.*"
- "*The governing statute defines substantial rehabilitation as an 'extensive structural repair or extensive remodeling' that would require a 'permit' and result in "displacement of an existing tenant.*"
    - Important

But see Garrand v. Cornett and RCW 59.18.650(2)(d)

- 550 P.3d 64 – "*Cornett's central claim that tenants need to be able to discover whether an owner is lying about their intention to either occupy or have an immediate family member occupy the unit does not bear upon the* ***sufficiency*** *of the notice.*"

- .650(2)(d) – allows termination of tenancy upon 90 days' advance notice of landlord's intent to have immediate family member occupy premises.
  - Must be no "substantially equivalent unit available"
  - "*There is a rebuttable presumption that the owner did not act in good faith if the owner or immediate family* ***fails to occupy the unit as a principal residence for at least 60 consecutive days during the 90 days*** *immediately after the tenant vacated*"

The Princeton Problem

Overwhelming Volume

- Light docket – 15 cases
- Normal docket – 25-30 cases
- Heavy docket – 30+ cases
- All different, new ones every week
- Burdensome for everyone

Making it Work

- Once tenant obtains counsel – negotiations
- Move-out v. payment plan v. contested hearing
  - Further notice? Typically no
  - Unclogs the Court's docket
- Effect?
  - Reduces active case volume
  - Manageable docket

RCW 59.18.230(1)(a)

- Enacted 2021
- "*Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable*"
    - No exculpation or LL or indemnity provisions
    - No late fees until rent is more than 5 days past due
    - Unilateral fee provisions
    - Can't require only electronic payment

RCW 59.18.230(1)(b)

- More significant
- "*Any agreement, whether oral or written, between a landlord and tenant,* ***or their representatives****, and entered into* ***pursuant to an unlawful detainer action*** *under this chapter that requires the tenant to pay any amount in violation of RCW 59.18.283 [must apply $ to "rent" first] or the statutory judgment amount limits under RCW 59.18.410 (1) or (2),* ***or waives any rights of the tenant under RCW 59.18.410*** *or any other rights afforded under this chapter except as provided in RCW 59.18.360 is* ***void and unenforceable****."

Effect of .230(1)(b)

- Tenant, represented by competent legal counsel
- Knowingly and voluntarily agrees to payment plan, move-out date, etc.
- Defaults, i.e., doesn’t pay or doesn’t leave
- Writ should issue without further notice, but . . . . . .

Princeton Property Management, Inc. v. Allen

- 550 P.3d 56
- .230 is "*extremely broad*"
- Facts
  - Arising from 3-day notice to quit for waste
  - Case is filed, both sides represented by counsel
  - Settled and required payment of certain arrears
  - Tenant defaults days after signing
  - Moved to reinstate tenancy under .410

The Opinion

- Allens argued that eviction basis was waste, not arrears-based, so they were deprived of proper procedure for a non-payment of rent case
- Court: "*it is unnecessary to decide whether each of the specific rights listed by the Allens are directly implicated by this dispute because of the persuasiveness of the general proposition that RCW 59.18.230(1)(b) invalidates a settlement agreement that waives any tenant right under RLTA.*"
- Court focused on provision in agreement stating: "*parties forego the usual UD procedures*"
- "*Moreover, the settlement agreement **permitted an immediate writ of restitution** without affording the Allens any of the procedures and protections that permeate RLTA. There is no question these features constituted a waiver of "any other rights afforded under this chapter [(RLTA)] ....*"

The Result?

- “*is absolute—the agreement is void and unenforceable.*”
- Remanded for a contested hearing

Practical Concerns

- Remember the court volume issue?
- "*greatly reduce the use of settlement agreements*"
  - Harms landlords and tenants
  - Waste judicial resources
  - Both parties are represented, why can't they settle freely?

The Response?

- *"We disagree with Princeton's suggestion that settlement agreements will have no utility following our holding. But it is true that RCW 59.18.230(1)(b) will likely change how these settlement agreements are drafted. And Princeton's view may be a valid policy argument for why settlement agreements* ***(especially when both parties are represented)*** *should be treated more favorably under RLTA.* ***But that policy argument is better made to the legislature****."*

Flashback: 2021 Washington Committee Report

- April 8, 2021
- "*The bill will result in increased attorney costs for landlords that will be passed on to the tenant, creating more costs overall for both parties.*"
    - Reducing housing supply
- "*The court process is too slow to evict tenants. Landlords will be forced to renew tenancies in perpetuity and create hostile living environments for other tenants.*"

Questions?