

UNLAWFUL DETAINER BENCHCARD

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This bench card originally was created in 2021 in association with the Eviction Resolution Pilot Program Work Group and the Superior Court Judges' Association's ad hoc Unlawful Detainer Work Group.

The bench card was updated in 2025 in association with the Unlawful Detainer 101 presentation at the Superior Court Judges' Association Spring Conference.

This bench card does not provide comprehensive updates regarding legislative changes currently pending in the 2025 session. Additional changes in the law will become effective January 1, 2028, including to RCW 59.18.650 – this bench card does not attempt to address such changes.

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1) OVERVIEW OF EVICTION PROCEDURES

(a) IN GENERAL

- Residential Tenancies are governed by the Residential Landlord-Tenant Act, RCW 59.18, [RLTA] with the general unlawful detainer [UD] statute, RCW 59.12, applicable to the extent it is not supplanted by the RLTA. *Housing Authority of the City of Pasco et al. v. Pleasant*, 126 Wn. App. 382 (2005)
- RCW 59.12.090, .100, .121, and .170 are inapplicable to rental agreements under RLTA. RCW 59.18.420
- UD's are summary proceedings to determine the right of possession and related issues such as restitution of premises and rent. *Munden v. Hazelrigg*, 105 Wn.2d 39 (1985). Thus, counterclaims, affirmative defenses, and set offs are not allowed unless they are based on facts that excuse tenant's breach. *Id.*
- If possession/right of possession has been resolved, then courts may convert UD actions into general civil actions where any applicable crossclaims, counterclaims and affirmative defenses may be asserted. *See, e.g., Barr v. Young*, 187 Wn. App. 105, 109 (2015) (citing *Munden*, 105 Wash. 2d at 45-46)
- RCW 59.18.380 permits tenants to raise any defense arising out of the tenancy, but courts have held that a defense "arises out of the tenancy" only when it affects tenant's right of possession or is based on facts which excuse tenant's breach. *See, e.g., Josephinum Associates v. Kahli*, 111 Wn. App. 617, 625 (2002)
- UD's hold priority over other civil cases. *Fed Nat. Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 382 (2015)
- UD's not the proper forum to litigate title. *Fed Nat. Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 382 (2015)
- **The landlord tenant statutes are strictly construed in favor of the tenant.** *See, e.g. IBF, LLC v. Heuft*, 141 Wn. App. 624, 632 (2007) (applying RCW 59.12 as to commercial tenant); *Hous. Auth. Of City of Everett v. Terry*, 114 Wn.2d 558, 563-64 (1990) (applying RCW 59.18 as to residential tenant)
- Where a lease provides the tenant with greater protection than UD statute, the landlord must comply with the lease. *Indigo Real Est. Servs., Inc. v. Wadsworth*, 169 Wn. App. 412, 422 (2012)

(b) UNLAWFUL DETAINER ACT (UDA) (CHAPTER 59.12)

- Creates statutory proceeding to remove an individual from property either through forcible or unlawful detainer. RCW 59.12.010; RCW 59.12.020; RCW 59.12.030
- The summary procedure may be used by a party seeking possession when authorized by statute. *Puget Sound Inv. Grp. v. Bridges*, 92 Wn. App. 523, 526 (1998)
- Examples of application:
 - Commercial tenancies. *See, e.g., Spokane Airport Board v. Experimental Aircraft Ass'n, Ch. 79*, 198 Wn.2d 476, 485 (2021)
 - Possession following deed of trust foreclosure. RCW 61.24.060(1), 59.12.032
 - Possession following real estate contract forfeitures. RCW 61.30.100(3)

(c) RESIDENTIAL LANDLORD-TENANT ACT (RLTA) (CHAPTER 59.18)

- Modifies RCW 59.12 eviction procedures for residential tenancies.
- Cannot waive statutory protections of RLTA by agreement except as provided in RCW 59.18.360. RCW 59.18.230; *Princeton Prop. Mgmt., Inc. v. Allen*, 31 Wn. App. 2d 454 (2024)
- RCW 59.18.230 expressly prohibits certain provisions from a rental agreement, including authorizing confession of judgment, limiting landlord's liability, late fees for rent paid within 5 days, or requiring electronic payment of rent exclusively.
- Incorporates notice and service provisions from RCW 59.12.030 and RCW 59.12.040. RCW 59.18.650(6)
- Summons and hearing procedures are governed by RCW 59.18.365 through RCW 59.18.412
- Hearings may be conducted in person or remotely to enhance access. RCW 59.18.412
- Local Mandates – Some local codes have more restrictive notice and eviction procedures.
- Federally Subsidized Housing – Tenants receiving a federal subsidy (e.g., Housing Choice Voucher (Section 8), Public Housing, Low-Income Housing Tax Credit) may be subject to federal regulations with additional

requirements.

- Federal CARES Act Continues to apply to “covered property” as defined by 15 USC 9058(a)(1), (2)(B), and requires 30-days notice for failure to pay rent. *Hous. Auth. of King County v. Knight*, --- P.3d ---, 2025 WL 555636 (Wash. Sup. Ct. Feb. 20, 2025)
- Discussed further below regarding Just Cause Evictions.

(d) MOBILE HOME LANDLORD-TENANT ACT (MHLTA) (CHAPTER 59.20)

- Applies to tenants who own a manufactured housing model and rent a lot in a community with at least two mobile homes within it, where the tenant has no ownership interest in the land. RCW 59.20.030; RCW 59.20.040
- The grounds for lease termination are contained in RCW 59.20.080, not RCW 59.12.030
- Service of pre-eviction notice governed by RCW 59.20.150.
- RCW 59.12.090, .100, & .170 shall not apply to any rental agreement under Ch. 59.20 RCW. RCW 59.20.040
- Incorporates RLTA hearing procedures. RCW 59.20.040
- Rental of mobile homes, manufactured homes, park models themselves governed by RLTA. RCW 59.20.040

(e) TERMINATION OF TENANCY AT WILL

- Where a person occupies property with the owner’s consent, but not as part of an agreement for regular or periodic payment of rent, the relationship is considered a “tenancy at will,” and eviction under RCW Chs. 59.18 and 59.12 is not appropriate. *Turner v. White*, 20 Wn. App. 290, 292 (1978) (property owner sought to evict tenant who was former employee and lived on property as part of employment).
- “‘Rent’ or ‘rental amount’ means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities.” RCW 59.18.030(29)
- To terminate a tenancy at will, the owner must provide notice with reasonable time to vacate. *Turner v. White*, 20 Wn. App. 290, 292 (1978) (citing *Najewitz v. Seattle*, 21 Wn.2d 656 (1944)).
- The proceeding to enforce the reasonable notice to vacate is an action for ejectment.

2) PRE-LITIGATION NOTICE UNDER the RLTA

(a) CONTENT AND SUFFICIENCY OF NOTICE

- Notices must **substantially comply** with requirements for content of the notice. RCW 59.18.057, *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 215 (2023)
- If a landlord provides **inadequate or deficient notice**, the action never begins, the landlord may not avail itself of the court’s jurisdiction, and **action must be dismissed**. *Sherwood Auburn LLC v. Pinzon*, 24 Wn. App. 2d 664, 680 (2022); *Hous. Auth. v. Bin*, 163 Wn. App. 367, 374 (2011) (but not that court lacks jurisdiction)
- Notices must “[i]dentify the facts and circumstances known and available to the landlord at the time of issuance of the notice that support the cause or causes with enough specificity so as to enable the tenant to respond and prepare a defense to any incidents alleged.” RCW 59.18.650(6)(b)
- The landlord may present more facts later if unknown/unavailable at issuance notice. RCW 59.18.650(6)(b)
- The purpose of the notice is to provide the tenant with at least one opportunity to correct a breach. *Christensen v. Ellsworth*, 162 Wn.2d 365, 371 (2007)
- The notice must be sufficiently particular and certain so as not to deceive or mislead. *IBF, LLC v. Heuft*, 141 Wn. App. 624, 632 (2007)
- Inadequate notice includes failing to clearly set forth the period to cure the alleged default or providing conflicting information. *See Sherwood Auburn LLC v. Pinzon*, 24 Wn. App. 2d 664, 680 (2022)
- Notice to vacate for interference with use and enjoyment sufficient where tenant was on notice that landlord was relying on the unsanitary condition, even when victim not identified. *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 217 (2023).

- RCW 59.18.057 provides the required form for a 14-day notice to pay rent or vacate.
- Where a landlord's notice specifies a tenant has an opportunity to cure a statutory violation or a lease violation, the notice “expire[s] after sixty days unless the landlord pursues any remedy under” the RLTA. *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 211, 528 P.3d 834, 841 (2023) (citing RCW 59.18.190)

(b) SERVICE OF NOTICE

- Service of notices under RLTA must **strictly comply** with time and manner requirements of RCW 59.12.040. RCW 59.18.650(6), *Christensen v. Ellsworth*, 162 Wash. 2d 365 (2007)
- See additional provisions of RCW 59.12.040 re sub-tenants and corporations.
- When a copy of the notice is sent by mail, service is deemed complete when a copy is deposited in the mail in the county in which the property is situated. However, when service is by mail, **one additional day** is allowed before commencement of an action based on such notice. (until July 26, 2025, see below) RCW 59.12.040
 - *But note* that recently adopted legislation, HB 1003, effective July 27, 2025, requires the addition of **five days** for mailing notice certified mail from within the state and the date of termination must be specified.
- The calculation of time provided in the Civil Rules including CR 6(a) does not apply to the notice provisions of RCW 59.12.030. *Christensen v. Ellsworth*, 162 Wn. 2d 365 (2007)

3) CONTENT AND SERVICE OF THE SUMMONS AND COMPLAINT UNDER RLTA

- Must wait until notice and cure period has expired.
- The summons must be in **substantially** the form required by RCW 59.18.365.
- The complaint must “set forth the facts on which [the landlord] seeks to recover.” RCW 59.12.070
- The provisions governing the time and manner of bringing an unlawful detainer action are to be **strictly construed**. *Sherwood Auburn LLC v. Pinzon*, 24 Wm. App. 2d 664, 680, 521 P.3d 212, 220 (2022)
- RCW 59.18.055(1) provides for alternative service after exercise of due diligence at personal service.
 - No order for this alternative service is required (an order is required under RCW 59.12.085). However, a declaration by the person that attempted service must describe the efforts at personal service and a declaration from the landlord stating their belief that the tenant cannot be found must be provided before entry of a writ due to a tenant’s failure to appear. RCW 59.18.055(3)
 - Posting and deposit in the mail must be at least nine days prior to return date. RCW 59.18.055(a), (b)
 - When alternative service, **court’s jurisdiction is limited to restoring possession**. RCW 59.18.055(2)

4) JUST CAUSE EVICTION UNDER RLTA

Just Cause Evictions. Applies to all periodic leases. A periodic lease is a month-to-month lease or a lease for a period of time that automatically converts to month-to-month lease at the end of that period. A periodic lease cannot convert to a lease of a specified time without an agreement.

- The just cause eviction standards do not apply to a lease for a specified time with an expiration date of at least 12 months at the inception of the tenancy, and continuous, successive rental agreements for fixed terms of six months or more since the inception. A lease for specified time is terminated upon at least 60-days’ written notice and good cause is not required. RCW 59.18.650(c). For the 60-day notice to apply, the tenancy must not have been for an indefinite period on a month-to-month or periodic basis at any point (with the limited exception for some leases in existence as of May 10, 2021). RCW 59.18.650(c)(iii)
- Statute controls over conflicting ordinance. *Valley Cities Counseling v. Eddines*, 31 Wn. App. 2d 863 (2024)
- An oral agreement is presumed to be month-to-month. *Tedford v. Guy*, 13 Wn. App. 2d 1, 10 (2020)

- Statute provides exclusive list of causes for termination. *Garrand v. Cornett*, 31 Wn. App. 2d 428, 437 (2024)
- A landlord who causes a tenant to be removed from a dwelling in violation of RCW 59.18.650 is liable for wrongful eviction, including damages or three times the monthly rent of the dwelling, and reasonable attorneys' fees and costs. RCW 69.18.650(4); *Hernandez v. France*, 29 Wn. App. 2d 777, 787 (2024).

Notice period. This is the minimum notice period required to terminate. A lawsuit may be filed if the tenant does not move out after the expiration of the notice period. Premature filing results in dismissal of the lawsuit.

JUST CAUSE TO EVICT	NOTICE
Waste, nuisance, unlawful activity, or unreasonable interference with use and enjoyment (RCW 59.18.650(2)(c)) <ul style="list-style-type: none"> • Notice is to vacate/quit. The statute provides no right to correct or cure. • “A landlord may enjoy their property as an investment free from unreasonable risk. By failing to keep an apartment in a clean and sanitary condition, a tenant may interfere with their landlord's right to a secure investment, insofar as they risk permanent damage to the apartment or disturbances to the landlord's other tenants.” <i>Kiemle & Hagood Co. v. Daniels</i>, 26 Wn. App. 2d 199, 219 (2023). The opinion went on to interpret “‘interference with the use and enjoyment of the premises’ as referring to either ‘substantial or repeated and unreasonable’ conduct that approximates a nuisance. . . .” <i>Id.</i> at 220. The court concluded there was a dispute of fact whether the tenant’s failures “had tangibly damaged the property or posed an imminent threat of such injury.” <i>Id.</i> at 220-21. • While there is limited authority on waste in the context of unlawful detainer, case law interpreting waste under Ch. 64.12 RCW generally requires “substantial injury” “touching real estate.” See <i>Graffel v. Honeysuckle</i>, 30 Wn.2d 390, 398 (1948); <i>Kane v. Timm</i>, 11 Wn. App. 910, 911-12 (1974) (concluding there was no damage douching the very nature of the realty); <i>Dorsey v. Speelman</i>, 1 Wn. App. 85 (1969) (interior walls and ceilings torn out) 	3 days
Comply with rules, material term of lease, or tenant legal obligation (RCW 59.18.650(2)(b)) <ul style="list-style-type: none"> • Statute requires notice “specifying the acts or omissions constituting the breach” 	10 days
Rent failure (RCW 59.18.650(2)(a), RCW 59.12.030) <ul style="list-style-type: none"> • Notice may be served at any time after the rent becomes due. • <i>But see below:</i> CARES Act requires 30 days’ notice for failure to pay rent for “covered properties.” 15 U.S.C. § 9058 	14 days
Shared housing with owner or lessor (RCW 59.18.650(2)(i)) <ul style="list-style-type: none"> • Share dwelling unit or access to a common kitchen or bathroom. • Co-tenant manager is not a “lessor.” <i>Brewer v. Hill</i>, 25 Wn. App. 2d 844, 855-58 (2023) Unwanted sexual advances or sexual harassment by tenant (RCW 59.18.650(2)(p))	20 days

<p>Fixed term rental agreement expires and tenant fails to sign new (RCW 59.18.650(2)(k))</p> <ul style="list-style-type: none"> • Statute requires proposed, reasonable rental agreement offered at least 30 days before expiration. • Not applicable where lease goes month to month at expiration. <p>Fraud in application (RCW 59.8.1650(2)(l))</p> <p>Condemnation of property (RCW 59.18.650(2)(h))</p> <p>Transitional Housing (RCW 59.18.650(2)(j))</p> <ul style="list-style-type: none"> • Tenant no longer qualifies or program expired <p>CARES Act requires 30 days for failure to pay rent for covered property (15 U.S.C. § 9058)</p> <ul style="list-style-type: none"> • Only applies to failure to pay rent. <i>Hous. Auth. of King County v. Knight</i>, --- P.3d ----, 2025 WL 555636 (Wash. Sup. Ct. Feb. 20, 2025) • Covered property is defined as a property that participates in a covered housing program or a rural housing voucher program or that has a federally backed mortgage loan. 	30 days
<p>Four or more 10-day notices given in preceding 12 months (RCW 59.18.650(2)(n))</p> <ul style="list-style-type: none"> • Statute provides specific requirements for notices. <p>Other legitimate business or economic reason not otherwise covered (RCW 59.18.650(2)(m))</p> <ul style="list-style-type: none"> • The court may stay any resulting writ of restitution for up to 60 additional days for good cause, including difficulty procuring alternative housing. The court must condition the stay on the tenant's continued payment of rent during stay. Must award cost/fees if stay. <p>Tenant required to register as sex offender or failed to disclose (RCW 59.18.650(2)(o))</p>	60 days
<p>Owner to Sell single family home (RCW 59.18.650(2)(e))</p> <ul style="list-style-type: none"> • Statute defines "owner elects to sell" and provides further rebuttable presumption of when the owner did not intend to sell. Owner need not attempt to sell before vacation/eviction. <i>Klee v. Snow</i>, 27 Wn. App. 2d 19, 24-25 (2023) <p>Occupancy by owner or their immediate family member (RCW 59.18.650(2)(d))</p> <ul style="list-style-type: none"> • Statute provides rebuttable presumption of when owner did not act in good faith. • Does not apply to accessory structure not intended to be used as residence by owner/family. <i>Howard v. Pinkerton</i>, 26 Wn. App. 2d 670, 676-78 (2023) • Immediate family "includes state registered domestic partner, spouse, parents, grandparents, children, including foster children, siblings, and in-laws." RCW 59.18.030 • The notice need not identify the family member. <i>Garrand v. Cornett</i>, 31 Wn.App.2d 428, 443-44 (2024) (and suggesting but not holding that niece is not immediate family) 	90 days
<p>Rehabilitate or Change Use of Property (RCW 59.18.650(2)(f), RCW 59.18.200(1)(c))</p> <p>Convert to condominiums (RCW 59.18.650(2)(g), RCW 64.90.655)</p>	120 days

5) [RIGHT TO COUNSEL \(RCW 59.18.640\)](#)

(a) APPLICABILITY OF RIGHT TO COUNSEL (RTC)

- Summons must provide notice of right to counsel and screening information. RCW 59.18.365
- Subject to appropriation of funds, but Office of Civil Legal Aid is responsible for implementation, and for cost of counsel.
- Court must appoint counsel for indigent tenants in UD proceedings under RCW Chapters 59.12, 59.18, and 59.20. (Would not appear to apply if there is no tenant relationship, such as former homeowner in a

foreclosure.)

- Right to counsel is mandatory, and court has a duty to inform unrepresented tenants of their right to appointment of counsel if eligible and should continue hearing to provide opportunity for screening and appointment if requested. SPR 98.24W(1), *MOSM, LLC v. Deegan*, 30 Wn. App. 2d 284, 291-92 (2024); *Payton v. Nelson*, 28 Wn. App. 2d 719, 727-28 (2023)
- RCW 59.18.640(2)(b) defines indigency, which includes receiving annual income, after taxes, of **200%** or less of the current federal poverty guideline.

(b) PROCESS/SCREENING FOR ELIGIBILITY (Eviction Defense Screening Line: 1-855-657-8387)

- Review any local standing order of your court for appointment of counsel.
- If the tenant does not have an attorney at the show cause hearing, the court shall advise the tenant of their right to counsel and refer the tenant to the Eviction Defense Screening line or to the court's designated RTC provider. SPR 98.24W(1) The court also should inquire whether the tenant needs an interpreter or disability accommodation to effectively participate or access screening.
- If the tenant has not been screened and desires to be screened, the hearing shall be continued for a reasonable period. SPR 98.24W(1)
- If the tenant has completed the screening and is ineligible (not indigent) or waives the appointment of counsel, the hearing may proceed on the merits.

(c) SAMPLE SCRIPT FOR SELF-REPRESENTED TENANTS

- *"You may have a right to be represented by an attorney in this case at no cost to you."*
- *"To be eligible, you must be low-income. Would you like to be screened to see if you qualify?"*
- *"To get an attorney appointed for you, you must go through the screening process. You will need to contact _____ (either the Eviction Defense Screening Line or the name of the local RTC provider or local screener, depending on your court's protocol)."*
- **(Alternatively)** *"This person will help you complete the screening process before you leave."*
- *"Would you like to request a continuance in order to complete the screening process?"*

For continuances: *"I will continue the eviction hearing for ___ days to allow you to complete the screening process. If you are eligible, this will give you time to meet with an attorney about this case. You must contact _____ (designated screening entity) right away. If you do not, the court might decide that you waived your right to an attorney and you would need to represent yourself."*

6) SHOW CAUSE HEARINGS (RCW 59.18.370, 380)

Note: The Washington Supreme Court has twice in recent decisions stated, arguably in dicta, that "[t]o obtain a writ, a landlord must apply for an order for a show cause hearing." *See, e.g., Randy Reynolds & Associates, Inc. v. Harmon*, 193 Wn.2d 143, 157 (2019) (citing RCW 59.18.370); *Housing Auth. Of King County v. Knight*, --- P.3d ---, 2025 WL 555636 (Wash. Sup. Ct. Feb. 20, 2025) (quoting *Randy Reynolds*, 193 Wn.2d at 157). *Consider whether it is appropriate to issue a writ on a motion for default prior to/without a show cause hearing.*

(a) OBJECTIVE OF THE HEARING:

- Determine whether:
 - 1) Landlord has met burden of proof.
 - 2) Tenant has legal or equitable defenses or set-offs to the complaint.
 - 3) There are material issues of fact necessitating trial.
 - 4) Landlord should be restored possession pending trial.

- “A show cause hearing is a summary proceeding to determine the question of possession pending suit; it is not a final determination of the parties' rights.” *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 211–12 (2023) (reasoning that it is like a preliminary injunction proceeding). The court may restore the landlord to possession at the close of the hearing if it appears the landlord will likely prevail on the merits. *Id.*

(b) CONDUCT OF HEARING

- RCW 59.18.380 permits “the defendant to appear for the first time at an unlawful detainer show cause hearing and assert, either ‘orally or in writing,’ ‘any legal or equitable defense’ to the plaintiff’s request for a writ of restitution.” *Leda v. Whisnand*, 150 Wn. App. 69, 79 (2009) (quoting RCW 59.18.380).
- Unless court specifically orders otherwise, tenant may appear at show cause hearing through counsel. *Liverpool, LLC v. Farley*, --- P.3d ---, 2025 WL 380052, at *5 (Wash. Ct. App., Div. 1, Feb. 4, 2025).
- The court has an affirmative duty to examine the parties/witnesses to ascertain the merits of the complaint and answer. *Tedford v. Guy*, 13 Wn. App. 2d 1, 11 (2020); *Leda*, 150 Wn. App. at 79-81.
- The court has authority to determine what evidence is relevant. *Tedford*, 13 Wn. App. 2d at 13.
- The court must allow tenant to present evidence supporting defenses. *Leda*, 150 Wn. App. at 79.
- However, the show cause hearing is not a trial and due process does not require the defendant to have direct and cross examination of witnesses. *Leda*, 13 Wn. App. 2d at 81.
- Rules of evidence apply at show cause hearings. *Leda*, 150 Wn. App. at 82.
- If the landlord does not convince the court that it is likely to succeed and therefore entitled to immediate possession, the court must deny the writ of restitution and hold an expedited trial within 30 days. *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 212 (2023); RCW 59.18.380.
- If tenant’s defense is dispositive and there is no genuine issue of material fact, deny and dismiss.
- If a tenant raises “**a genuine issue of ... material fact**” pertaining to a defense against eviction, set the case for trial and determine whether appropriate to issue writ while case is pending. RCW 59.18.380; *Kiemle*, 26 Wn. App. 2d at 212 (citing *Faciszewski v. Brown*, 187 Wn.2d 308, 315 n.4 (2016)).
- A tenant’s testimony specifically disputing the breach of the lease alleged by the landlord would likely create an issue of material fact warranting trial. *See Webster v. Litz*, 18 Wn. App. 2d 248, 254-56 (2021).
- If a writ is issued without final judgment, the court shall require a bond. RCW 59.18.380
- Tenant may stay writ within 3 days by posting rent owed – if for failure to pay rent. RCW 59.18.380
- If there is no issue of material fact regarding possession or any defense raised by the tenant, the court need not set the matter for trial. *Tedford*, 13 Wn. App. at 11, 16-17 (2020).

(c) LANDLORD’S BURDEN OF PROOF

- The landlord has the burden of proof to establish by a **preponderance of the evidence** entitlement to possession and compliance with the UD statutes. *Hernandez v. France*, 29 Wn. App. 2d 777, 784 (2024); *FPA Crescent Assoc., LLC v. Jamie’s, LLC*, 190 Wn. App. 666, 675 (2015).
- Establishing entitlement to possession includes proving ownership, landlord-tenant relationship, service of required notice, and substantive basis for eviction. *Hernandez*, 29 Wn. App. 2d at 785; *Indigo Real Estate v. Wadsworth*, 169 Wn. App. 412, 421-26 (2012).
- Landlord must establish **strict compliance** with time, place, and manner requirements of pre-eviction notice, which are discussed above. *Christensen v. Ellsworth*, 162 Wn.2d 365 (2007).
- Landlord must establish **substantial compliance** with form and content of notice. *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 215 (2023).
- Landlord must show **possession remains an issue**. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45-46 (1985).

(d) TENANT DEFENSES

- Tenant may assert any legal or equitable defense or other set-off arising out of the tenancy. RCW 59.18.380.
- A defense arises out of the tenancy only when it affects tenant’s right of possession or is based on facts

which excuse tenant's breach. *Josephinium Associates v. Kahl*, 111 Wn. App. 617, 625 (2002) (holding as a matter of first impression that unlawful discrimination may be a defense that arises out of the tenancy).

7) COMMON TENANT DEFENSES

(a) PROCEDURAL DEFENSES

- No Landlord-Tenant relationship.
- Tenant is tenant-at-will; RLTA does not apply. *Turner v. White*, 20 Wn. App. 290 (1978)
- Tenant vacated and relinquished all claim to possession. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45-46 (1985)
- Insufficient content or service of pre-eviction notice. *Christensen v. Ellsworth*, 162 Wn.2d 365 (2007) (service); *Sherwood Auburn LLC v. Pinzon*, 24 Wn. App. 2d 664, (2022) (content)
- Failure to abide by specific lease provisions, or federal or local rules regarding evictions pertaining to tenant's housing
- Improper Summons: summons must comply with the material requirements of RCW 59.18.365. *Truly v. Heuft*, 138 Wn. App. 913 (2007); *but see MHM&F, LLC v. Pryor*, 168 Wn. App. 451 (2012), *abrogating Truly* as to the holding that failure is "jurisdictional" such that could be raised first time on appeal.
- Failure to substantially comply with the requirements of RCW 59.18.057 for notice to pay or vacate form.
- Corporate entity has no attorney or no capacity to sue. *Dutch Vill. Mall v. Pelletti*, 162 Wn. App. 531, 535 (2011) (LLC cannot be self-represented); *Reese Sales Co., Inc. v. Gier*, 16 Wn. App. 664, 667 (1977) (delinquent corporation lacked capacity to sue)

(b) EQUITABLE DEFENSES

- Acceptance of rent after commencing unlawful detainer for failure to pay rent waives breach, unless additional rent still owed. *Wilson v. Daniels*, 31 Wn.2d 633 (1948); *Hous. Auth. of Grant Cty. v. Newbigging*, 105 Wn. App. 178, 187 (2001); *but see Leda v. Whisnand*, 150 Wn. App. 69, 78 (2009) (payment of rent no defense where eviction for other basis).

(c) SUBSTANTIVE DEFENSES (OR ARGUMENT FOR SET-OFF)

- Implied warranty of habitability [IWH]. *Foisy v. Wyman*, 83 Wn.2d 22, 28 (1973)
- Set-off and relocation assistance for Landlord's Breach of IWH. *Pham v. Corbett*, 187 Wn. App. 816 (2015)
- Covenant of Quiet Enjoyment, but only where circumstances excuse the tenant's breach. *Munden v. Hazelrigg*, 105 Wn. 2d 39, 45 (1985); *Angelo Property Co., LP v. Hafiz*, 167 Wn. App. 789, 812-15 (2012)
- Retaliation. RCW 59.18.240; RCW 59.18.250; *Lee v. Sauvage*, 38 Wn. App. 699 (1984); *but see Tedford v. Guy*, 13 Wn. App. 2d 1, 14 (2020) (tenant failed to rebut presumption against retaliation)
- Discrimination. *Josephinium Assoc. v. Kahli*, 111 Wn. App. 617, 626 (2002) (permitting defense)
- Failure to accommodate a disability. *Kiemle & Hagood Co. v. Daniels*, 26 Wn. App. 2d 199, 221-22, 528 P.3d 834, 846 (2023) (citing elements and standards)

8) JUDGMENT & ATTORNEY FEES

- Where judgment is for failure to pay rent, execution upon judgment shall not occur until the expiration of 5 court days after entry of judgment. RCW 59.18.410.
- The court may also grant judgment for other relief if there is no issue of material fact as to landlord's entitlement. RCW 59.18.380; *Garrand v. Cornett*, 31 Wn. App. 2d 428, 439 (2024).
- *But* no monetary judgment if alternative service (e.g., mail + post) was used. RCW 59.18.055
- Judgment for late fees may not exceed \$75. RCW 59.18.410(1)
- Rent owed can be sought even if basis for eviction is not failure to pay rent. RCW 59.18.380; *Webster v. Litz*, 18 Wn. App. 2d 248, 253 (2021).

- The prevailing party in an unlawful detainer action may recover their costs and reasonable attorney fees. RCW 59.18.290(2). *But* attorney fees may not be awarded if: a) tenant failed to respond; or b) the total amount of rent awarded in the judgment for rent is equal to or less than two months of the tenant's monthly contract rent or one thousand two hundred dollars, whichever is greater. RCW 59.18.290(3)

9) ORDER FOR LIMITED DISSEMINATION

- RCW 59.18.367(1) provides that the court “may order” an unlawful detainer action to be of limited dissemination if: “(a) The court finds that the plaintiff's case was sufficiently without basis in fact or law; (b) the tenancy was reinstated under RCW 59.18.410 or other law; or (c) other good cause exists for limiting dissemination of the unlawful detainer action.”
- When there is an order for limited dissemination, a tenant screening service must not: (a) disclose the existence of that unlawful detainer action in a tenant screening report or (b) use the unlawful detainer action as a factor in determining any score or recommendation to be included in a tenant screening report.
- The purpose of an order of limited dissemination is to limit “the automatic dissemination of misleading, inaccurate, or incomplete information about unlawful detainer proceedings.” In *Housing Authority of Grant County v. Parker*, 28 Wn. App. 2d 335, 343 (2023).
- “Other good cause” under RCW 59.18.367(1)(c) necessarily means something other than those grounds covered by (1)(a), that plaintiff’s case was without basis in fact or law, or (1)(b), the tenancy was reinstated under RCW 59.18.410. *Parker*, 28 Wn. App. 2d at 345.
- “Other good cause” under RCW 59.18.367(1)(c) may include “a judicial finding of good cause to believe that a prior eviction does not fairly reflect the risk a prior tenant poses to future landlords.” *Id.* at 343-44.
- “Given the public policy considerations and impact on tenants, ordinarily a court should exercise its discretion to enter an order for limited dissemination where the plaintiff’s case was without basis in fact or law. *Seattle’s Union Gospel Mission v. Bauer*, 22 Wn. App. 2d 934, 938 n.2 (2022).

10) POST-JUDGMENT RELIEF

(a) IN GENERAL

- Tenants may seek post-judgment relief under the Civil Rules or RCW 59.18.410 or RCW 59.12.190.
- Tenant may seek a stay of the writ of restitution pending outcome. RCW 59.18.410(3)-(4); *Randy Reynolds & Assoc. v. Harmon*, 193 Wn.2d 143 (2019).

(b) EX PARTE STAYS OF THE WRIT OF RESTITUTION

- Court may issue *ex parte* stay. RCW 59.18.410(4).
- If the tenant is unrepresented and the court issues a writ before judgment or by default, the tenant may request appointment of an attorney prior to execution of the writ and the attorney may request the court stay the writ for 10 days. SPR 98.24W(2)
- Bond is not required. *Randy Reynolds & Assoc. v. Harmon*, 193 Wn.2d 143 (2019).
- Court may require service of motion by any means most likely to give notice. RCW 59.18.410(4)

(c) CIVIL RULE MOTIONS

- Court may set aside order or judgment under CR 55(c) and 60(b) per Civil Rules. *Randy Reynolds & Assoc. v. Harmon*, 193 Wn.2d 143 (2019).

(d) REINSTATEMENT BY RIGHT IN FAILURE PAY RENT – RCW 59.18.410(2)

- After 14-day notice to pay or vacate expires, tenant may reinstate tenancy by paying into court or to landlord: a) rent owed; b) late fee up to \$75 if lease provides; c) court costs incurred at time of payment; and d) attorney’s fees if court has awarded at judgment. RCW 59.18.410(2)
- Tenant may reinstate before judgment or until five court days after judgment. RCW 59.18.410(2)

- Tenant may extend time by presenting a pledge letter covering full amounts prior to date of execution of writ. RCW 59.18.410(2)
- Tenant shall pay \$50 for time tenant was reinstated after judgment per RCW 59.18.410(2) in last 12 months.

(e) REINSTATEMENT AND PAYMENT PLANS BY COURT DISCRETION IN FAILURE PAY RENT – RCW 59.18.410(3)

- At show cause hearing or before writ executes, tenant may ask court for reinstatement for good cause and on such terms that the court deems fair and just for both parties. RCW 59.18.410(3)(a)
- Tenant may not have payment plan if tenant has received three or more pay or vacate notices in last 12 months unless court determines any of the notices were invalid. RCW 59.18.410(3)(d)
- Court weighs seven factors listed at RCW 59.18.410(3)(a) when deciding whether to reinstate.
- The court shall not stay the writ of restitution for more than 90 days. RCW 59.18.410(3)(i)
- If granted, court may permit payment using any of 3 methods:
 - Out of pocket (writ is stayed, payment plan subject to a statutory schedule, max length of 90 days);
 - By emergency rental assistance (charity provides pledge to pay the judgment), .410(3)(c)(iv); OR
 - Tenancy Preservation Program (TPP) (writ is stayed; court must find the tenant is low-income, limited resourced, or experiencing hardship; court authorizes payment of judgment from TPP account, court includes required findings in .410(3)(e), landlord applies for reimbursement).

(f) PETITION FOR RELIEF FROM FORFEITURE

- Separate from RCW 59.18.410, 30 days after court issues judgment, tenant may ask for relief from forfeiture by: a) tendering rent owed, or b) remedying breach of lease. RCW 59.12.190
- Tenant may not use RCW 59.12.190 to cure where UD based on nuisance activities. *Burgess v. Crossan*, 189 Wn. App. 97 (2015)

(g) TENANCY PRESERVATION PROGRAM (TPP)

- TPP was created in 2019 to assist tenants facing extraordinary life events in avoiding homelessness.
- TPP payments are a loan from the Department of Commerce to the tenant, paid directly to the landlord.
- Requirements for payment are set out at *RCW 59.18.410(3)(c)-(e) and RCW 43.31.605(1)*.
- Instructions for claims and a list of required documents are available on the Department of Commerce's Tenancy Preservation Program web page.
- Note that as of June 15, 2023, the program is paused for new applicants due to insufficient funding. It may reopen if/when funding becomes available.