

Elements of a Cause of Action for Residential Unlawful Detainer for Failure to Pay Rent

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Contents

Summary

Under Washington law, a landlord must prove five essential elements to establish a cause of action for unlawful detainer based on failure to pay rent:

- (1) a default in the payment of rent,
- (2) service of a written notice requiring payment of rent or surrender of the premises,
- (3) proper service of the notice pursuant to RCW 59.12.040,
- (4) the tenant's failure to comply with the notice for the required period (three days for general tenancies or fourteen days for residential tenancies under the Residential Landlord-Tenant Act), and
- (5) the tenant's continued possession of the premises after the cure period expires.
- Additionally, the complaint must specifically state the amount of rent due, and the landlord bears the burden of proving these elements by a preponderance of the evidence.

Statutory Framework and Elements

Washington's unlawful detainer statute, RCW 59.12.030(3), defines the essential elements for an unlawful detainer action based on nonpayment of rent.

A tenant is liable for unlawful detainer

when he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) on behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service, or for the period of 14 days after service for tenancies under chapter 59.18 RCW.

- RCW 59.12.030.

The statute establishes distinct notice periods depending on the type of tenancy.

General (Commercial) Tenancies

For general tenancies, the tenant has three days to cure the default after proper service of notice.

- RCW 59.12.030

Residential Tenancies

For residential tenancies governed by the Residential Landlord-Tenant Act (chapter 59.18 RCW), the cure period extends to fourteen days.

- RCW 59.12.030

The notice may be served at any time after the rent becomes due, providing landlords with flexibility in timing their notices.

- RCW 59.12.030

Notice Requirements and Procedural Prerequisites

Washington courts have consistently held that proper notice is a condition precedent to maintaining an unlawful detainer action. In Little v. Catania, the Washington Supreme Court emphasized that "the giving of the statutory three-day notice is a condition precedent to an unlawful detainer action. It

is a fact to be established upon the trial before the court may pronounce a judgment of unlawful detainer"

KeyCite Yellow Flag Little v. Catania, 48 Wash.2d 890 (1956).

The court further noted that where "the three-day notice was neither pleaded nor proved; therefore, any judgment of unlawful detainer was erroneous" KeyCite Yellow Flag Little v. Catania, 48 Wash.2d 890 (1956).

The notice must be served in the manner specified in RCW 59.12.040.

- RCW 59.12.030

Courts require strict compliance with these procedural requirements, as emphasized in Hall v. Feigenbaum, where the court stated that

"Washington courts require strict compliance with the time and manner requirements for unlawful detainer actions and strictly construe them in favor of the tenant."

- Hall v. Feigenbaum, 178 Wash.App. 811 (2014).

This strict compliance requirement extends to ~~both the content and service of the notice.~~

In FPA Crescent Assocs., LLC v. Jamie's, LLC, the court reinforced that lease provisions allowing termination without notice did not relieve landlords of providing notice pursuant to the unlawful detainer statute and that the three-day notice to pay rent or quit was a condition precedent to instituting an unlawful detainer action where reentry was sought for nonpayment of rent

- KeyCite Yellow Flag FPA Crescent Associates, LLC v. Jamie's, LLC, 190 Wash.App. 666 (2015).

This holding demonstrates that contractual provisions cannot override statutory notice requirements.

Pleading Requirements

RCW 59.12.070 establishes specific pleading requirements for unlawful detainer complaints based on nonpayment of rent.

- RCW 59.12.070

The statute requires that the plaintiff's complaint "must set forth the facts on which he or she seeks to recover, and describe the premises with reasonable certainty".

- RCW 59.12.070

Most importantly for rent-based actions, "in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent".

- RCW 59.12.070

The complaint serves as notice to the tenant of the specific claims being made. In Angelo Prop. Co., LP v. Hafiz, the court noted that where a landlord "had not alleged Maged's failure to pay rent as a basis for seeking unlawful detainer damages in its notice to quit or in its unlawful detainer complaint," the trial court's order based on failure to pay rent was not supported by the record KeyCite Yellow Flag Angelo Property Co., LP v. Hafiz, 167 Wash.App. 789 (2012). This reinforces the importance of properly pleading the rent default in the complaint.

Burden of Proof and Standard of Evidence

The burden of proof in unlawful detainer actions rests squarely on the landlord. In FPA Crescent Assocs., LLC v. Jamie's, LLC, the court held that "the burden is on the landlord in an unlawful detainer action to prove his or her right to possession by a preponderance of the evidence"

- KeyCite Yellow Flag FPA Crescent Associates, LLC v. Jamie's, LLC, 190 Wash.App. 666 (2015).

The court explained that "the possession of a tenant is originally lawful, and is so presumed until the contrary appears"

- KeyCite Yellow Flag FPA Crescent Associates, LLC v. Jamie's, LLC, 190 Wash.App. 666 (2015).

This burden extends to proving each element of the unlawful detainer claim. The landlord must establish not only the existence of the lease relationship and the default in rent payment, but also proper service of the required notice and the tenant's continued possession after the cure period expired. The Washington Supreme Court in Sangha v. Keen reaffirmed that "both chapters are in derogation of the common law and are strictly construed in the tenant's favor"

- Sangha v. Keen, 4 Wash.3d 852 (2025).

Waiver and Acceptance of Rent

Washington law recognizes that landlords can waive their right to proceed with an unlawful detainer action through their conduct after serving notice. In First Union Mgmt., Inc. v. Slack, the court found that a landlord waived the default by accepting and cashing rent payments after serving notice without advising the tenant that the payments were for damages rather than rent.

- First Union Management, Inc. v. Slack, 36 Wash.App. 849 (1984).

The court noted that tenants were justified in assuming the landlord accepted their payment as rent when the landlord provided no advisement otherwise.

Similarly, in Leda v. Whisnand, the court noted that "in an action for unlawful detainer based upon the nonpayment of rent, the landlord waives prior breaches by accepting rent after he has served the notice to quit"

- KeyCite Yellow Flag Leda v. Whisnand, 150 Wash.App. 69 (2009).

This principle requires landlords to be cautious about accepting any payments after serving notices, as such acceptance may cure the default and prevent the unlawful detainer action from proceeding.

Residential Tenancy Protections

For residential tenancies governed by the Residential Landlord-Tenant Act, additional protections and procedures apply. RCW 59.18.410 provides courts with discretion to stay writs of restitution in cases involving nonpayment of rent.

- KeyCite Yellow Flag RCW 59.18.410

The statute directs courts to consider factors including "the tenant's willful or intentional default or intentional failure to pay rent" when determining whether to grant such relief

- KeyCite Yellow Flag RCW 59.18.410.

The Act also establishes that tenants who have been served with "three or more notices to pay or vacate for failure to pay rent as set forth in RCW

59.12.040 within twelve months prior to the notice to pay or vacate upon which the proceeding is based may not seek relief under this subsection" unless the court determines the notices were invalid.

- KeyCite Yellow Flag RCW 59.18.410

This provision balances tenant protection with accountability for repeat violations.

Damages and Remedies

Upon successful proof of unlawful detainer for nonpayment of rent, Washington law provides specific remedies. RCW 59.12.170 establishes that for proceedings involving unlawful detainer after default in payment of rent, "the judgment shall also declare the forfeiture of the lease, agreement, or tenancy" and that "the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due".

- RCW 59.12.170

In Queen v. McClung, the court clarified that "the statute clearly requires the doubling of all unpaid rent, whether it accrues before or during the period the tenant is found to be in unlawful detainer".

- KeyCite Yellow Flag Queen v. McClung, 12 Wash.App. 245 (1974).

This double damages provision serves as both compensation and deterrent, though it applies only after the court has found the tenant in unlawful detainer.

Related Issues

Breach of warranty of habitability claims

Tenants frequently assert that landlord's failure to maintain premises in habitable condition justifies rent withholding, creating a defense to unlawful detainer actions

Unlawful discrimination defenses

Fair housing violations are commonly raised as defenses in eviction proceedings, as recognized in cases like Josephinium Assocs. v. Kahli

Retaliatory eviction claims

Allegations that eviction proceedings are in retaliation for tenant complaints about housing conditions or exercise of tenant rights under the Residential Landlord-Tenant Act

Security deposit disputes

Disagreements over proper handling, application, and return of security deposits often arise in conjunction with unpaid rent claims

Commentary on This Question

An unlawful detainer action in Washington to evict a tenant for failure to pay rent requires the landlord to establish specific elements. The landlord must show

- the existence of a valid lease agreement obligating the tenant to pay rent,
- that the tenant breached this obligation by failing to pay rent when due, and
- that the landlord served proper notice of the breach to the tenant.

Following the notice, if the tenant does not pay or vacate, the landlord initiates the unlawful detainer proceeding through statutory summons and complaint. Washington law specifically mandates that tenants in actions based on nonpayment of rent must pay the landlord the amount claimed due into the court registry during the pendency of the action. Failure to do so may result in an order directing sheriff to return possession to the landlord. Courts focus exclusively on the immediate right to possession, with damages or other claims handled separately. A valid unlawful detainer notice in Washington must comply with statutory notice requirements, which include giving the tenant a chance to remedy the default if mandated. The underlying rent obligation is not suspended by eviction moratoria, and tenants remain liable for rent due.

Real Estate Leasing Practice Manual RELPM § 38:20 Defaults and other failures to perform obligations—Remedies for defaults—Cancellation of lease—Eviction.

Cause of Action by Residential Landlord to Evict Tenants or Other Occupants
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In summary pleadings, the landlord must allege:

- the existence of the lease,
- the breach by nonpayment,
- the amount due,
- the notice provided,
- and the tenant's continued possession.

The eviction procedure is summary and expedited, focusing solely on possession and rent due. Notice requirements in Washington are designed to protect due process, and a landlord's failure to comply may defeat the action. The statutory scheme permits amendment of amounts due during the proceeding and requires landlords to follow prescribed procedural prerequisites before eviction.

Plaintiff's Proof of a Prima Facie Case PPPFC § 7:5 Summary proceeding to evict tenant

Real Estate Leasing Practice Manual RELPM § 38:20 Defaults and other failures to perform obligations—Remedies for defaults—Cancellation of lease—Eviction.

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Current awareness

In Washington, unlawful detainer actions, including those based on failure to pay rent, proceed under the Residential Landlord-Tenant Act (RCW 59.18 et seq.), and landlords must strictly comply with the statute's procedural requirements; recent amendments have increased notice requirements within this framework.

- Regaining Possession of Real Property – Unlawful Detainer or Ejectment?
 - Harman Bual, Lasher Holzapfel Sperry & Ebberson PLLC JD Supra • 2024 WLNR 25711178 • April 23, 2025 (Westlaw News Review)

For properties covered by the CARES Act, a 30-day notice to vacate is required for evictions based on nonpayment after the federal moratorium period; the Washington Supreme Court held that this 30-day requirement applies only to nonpayment evictions and not to other lease breaches.

- Housing Authority of County of King v. Knight, 563 P.3d 1058 (Wash. 2025) 54-APR RELR-NL 4.